

LOAN AGREEMENT

made and entered into by and between

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

DRAKENSTEIN LOCAL MUNICIPALITY

in respect of funding the

Capital Programme 2017/2018



Handwritten signatures and initials, including "MB" and "F. M.", are visible at the bottom right of the page.

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SUMMARY

1	LOAN AMOUNT	:	R404 755 427.00 (four hundred and four million, seven hundred and fifty five thousand, four hundred and twenty seven rand).
2	LOAN PERIOD FIXED	:	10 (ten) Years
3	FIXED INTEREST RATE	:	See Clause 6
4	INTEREST GRACE PERIOD		Nil
5	CAPITAL REPAYMENT		20 (twenty) Half-Yearly instalments, commencing on the last day of the half-year following the half year during which first disbursement was made.
6	INTEREST REPAYMENT	:	20 (twenty) Half-Yearly instalments, commencing on the last day of the Half-year following the half year during which first disbursement was made.
7	PROGRAMME FILE NO.	:	12008089



Handwritten signatures and the DBSA logo are present at the bottom right of the page. The DBSA logo is orange and black, with the text 'DBSA' and 'Development Bank of South Africa' below it. There are several handwritten signatures in black ink, including one that appears to be 'MB' and another that is more stylized.

1. INTERPRETATION

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 1.1.1. **"Accounting Officer"** shall have the meaning ascribed thereto in the Municipal Finance Management Act No. 56 of 2003, as amended from time to time;
- 1.1.2. **"Agreement"** means the agreement as set out in this document together with the Annexures hereto;
- 1.1.3. **"Authorisation"** means any authorisation, consent, registration, filing, agreement, notarisation, certificate, licence, approval, resolution, permit and/or authority or any exemption from any of the aforesaid, by or with any Authority;
- 1.1.4. **"Authority"** means the Government of South Africa and any province or municipality therein and any organ of state as contemplated in Section 239 of the Constitution of the Republic of South Africa Act, 1996, including without limitation, any ministry, department, board, agency, court, tribunal, commission, entity or any other authority, subdivision or instrumentality of the Government of South Africa, or of any province or municipality therein;
- 1.1.5. **"Availability Period"** means twelve months from CP Fulfilment Date;
- 1.1.6. **"Base Rate"** means R2023 Government Bond rate;
- 1.1.7. **"Borrower"** means the Drakenstein Local Municipality, a municipality established or deemed to be established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as amended from time to time;
- 1.1.8. **"Borrower's Account"** means the bank account with the following details:

Account Holder:	Drakenstein Local Municipality
Bank:	FIRST NATIONAL BANK
Account Number:	6270 231 0385
Branch:	PAARL
Branch Code:	250-655

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- 1.1.9. **"Business Day"** means any day (other than a Saturday, Sunday or officially recognised public holiday) on which day banks generally are open for business in Johannesburg, South Africa;
- 1.1.10. **"Breakage Costs"** means the amount (if any) determined by the Lender by which:
- 1.1.10.1. the interest (but excluding the Margin) which the Lender would have received for the period from the date of receipt of an amount repaid or prepaid in respect of a Loan to the last day of the applicable Interest Period for that Loan, if the principal received had been paid on the last day of that Interest Period,
- exceeds:
- 1.1.10.2. the amount which the Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Interest Period;
- 1.1.11. **"Breakage Gains"** means the amount (if any) by which the amount of interest contemplated in 1.9.2 above exceeds that in 1.9.1 above;
- 1.1.12. **"Cancellation Fee"** means an amount equal to 0,5% (nought comma five percent) of the Capital or a portion of the cancelled Capital;
- 1.1.13. **"Capital"** means an amount of R404 755 427.00 (four hundred and four million, seven hundred and fifty five thousand, four hundred and twenty seven rand);
- 1.1.14. **"Change in Law"** means any implementation, introduction, abolition, withdrawal or variation of any applicable laws and/or regulations;
- 1.1.15. **"Commitment Fee"** means an amount equal to 0,5% (nought comma five percent) per annum;
- 1.1.16. **"Cost of Funding Margin"** means the costs that the DBSA incurs in acquiring its requisite liquidity and is quoted above the R2023 RSA Government Bond. The Cost of Funding Margin will be determined and fixed 2 days prior to each disbursement;
- 1.1.17. **"Court"** means any court of law having jurisdiction;

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- 1.1.18. **"CP"** means the conditions precedent contained in clause 5 (*Conditions Precedent For First Disbursement*) of this Agreement;
- 1.1.19. **"CP Fulfilment Date"** means the date on which the DBSA notifies the Borrower pursuant to clause 5.1 (*First Disbursement*) that it has received all the documents and evidence listed therein in form and substance satisfactory to it;
- 1.1.20. **"DBSA"** means the Development Bank of Southern Africa Limited, a development funding institution reconstituted and incorporated in terms of the Development Bank of Southern Africa Act, No. 13 of 1997;
- 1.1.21. **"Debt Service"** means the Borrower's gross interest incurred on borrowings (including finance leases) plus the capital portion of debt repayable in that financial year;
- 1.1.22. **"Debt Service Coverage Ratio" or "DSCR"** means the number of times that cash flows from operations adjusted for gross finance costs paid and capital grants received covers the debt service obligations in any given financial year;
- 1.1.23. **"Default Interest"** means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.1.24. **"Default Rate"** means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.25. **"Disbursement"** means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.26. **"Disbursement Date"** means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.27. **"Disbursement Request"** means a notice substantially in the form annexed hereto marked "Annexure A" (*Form of Request for Disbursement/Loan*);
- 1.1.28. **"Disbursement Schedule"** means the schedule received from the Borrower pursuant to clause 5.1.6 of this Agreement which sets out the amounts to be disbursed by the DBSA to the Borrower and the dates on which such amounts will be disbursed to the Borrower, under this Agreement;
- 1.1.29. **"Discretionary Revenue"** means all the municipality's income excluding any other conditional receipts;

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- 1.1.30. **"Economic Failure"** means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which adversely affect the DBSA's access to the relevant local capital markets or which renders it unlawful or impossible for the DBSA to advance any portion of the Capital on any Disbursement Date. In the case of the Borrower, Economic Failure means any adverse change in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it impossible for the Borrower to request a disbursement as it shall be financially unsustainable and shall have a severe impact on the sustainability of the Borrower;
- 1.1.31. **"Event of Default"** means any event of default as envisaged in clause 17 (*Events of Default*) below;
- 1.1.32. **"Facility"** means the loan facility made available under this Agreement as described in clause 2.2;
- 1.1.33. **"FICA"** means the Financial Intelligence Centre Act No. 38 of 2001, as amended from time to time;
- 1.1.34. **"Finance Documents"** means all the Finance Agreements including completely without limitation:
- 1.1.34.1. The Loan Agreement;
 - 1.1.34.2. Disbursement Request(s);
 - 1.1.34.3. All material documents in respect of the Programme as identified by the DBSA in its sole discretion as Finance Documents.
- 1.1.35. **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.1.36. **"Fixed Lending Margin"** means 79 (Seventy Nine) basis points, expressed as a percentage rate, per annum;
- 1.1.37. **"Half-Yearly" or "Six-Monthly"** means from the first day of January to the 30th day of June and/or from the first day of July to the 31st day of December during the same calendar year;
- 1.1.38. **"Interest Payment Date"** means the last Business Day of each Interest Period;

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- 1.1.39. **"Interest Period"** means each period of 6 (six) months commencing on 1 January or 1 July of each calendar year, except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date of first Disbursement, ending on the Interest Payment Date immediately following the first Disbursement;
- 1.1.40. **"Interest Rate"** means interest rate determined in terms of clause 6 (*Interest*) of this Agreement;
- 1.1.41. **"Interest Rate Subsidy"** means a subsidy for defraying the interest cost component up to a maximum value of R15 860 000 (fifteen million eight hundred and sixty thousand rand) in the first year of loan and which subsidy has been granted to the Borrower pursuant to an interest rate subsidy undertaking dated 15 December 2017 concluded between the DBSA and the Infrastructure Investment Programme for South Africa;
- 1.1.42. **"Loan"** means any loan made under this Agreement, or as the context may require, the principal amount outstanding for the time being of that loan;
- 1.1.43. **"Loan Outstandings"** means at any time the aggregate of all amounts of principal, accrued and unpaid interest and all and any other amounts payable to the DBSA in terms of this Agreement;
- 1.1.44. **"Loan Period"** means a period of 10 (ten) years from the CP fulfilment date and such date to be confirmed in writing by the DBSA;
- 1.1.45. **"Material Adverse Effect"** means an event, circumstance or matter (or combination of events, circumstances or matters) which has or is likely to have a material adverse effect on:
- 1.1.45.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
 - 1.1.45.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
 - 1.1.45.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
 - 1.1.45.4. the right or remedies of DBSA in terms of and pursuant to this Agreement; or

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- 1.1.45.5. South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;
- 1.1.46. **"Mayor"** means in relation to:
- 1.1.46.1. a municipality with an executive mayor, means the councillor elected as the executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or
- 1.1.46.2. a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of the Municipal Structures Act.
- 1.1.47. **"Month/Monthly"** means a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day but one in the next calendar month, except that:
- 1.1.47.1. if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the directly preceding Business Day; and
- 1.1.47.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month;
- 1.1.48. **"MTREF"** means the Medium Term Revenue Expenditure Framework as prescribed by National Treasury;
- 1.1.49. **"MFMA"** means the Municipal Finance Management Act No. 56 of 2003 as amended from time to time;
- 1.1.50. **"Parties"** means the DBSA and the Borrower, and **"Party"** shall as the context requires, be a reference to either one of them;
- 1.1.51. **"Post-Financing Support"** means services and products to be provided by the DBSA to the Borrower from the Signature Date (as agreed between the Parties) to support projects implementation and post-investment monitoring which may *inter alia*, include the following:

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1.1.51.1. Pre-investment support:

- 1.1.51.1.1. advisory services on pre-implementation planning;
- 1.1.51.1.2. compliance with technical and regulatory matters;
- 1.1.51.1.3. compliance with Conditions Precedent as provided for under clause 5 (*Conditions Precedent For First Disbursement*) of this Agreement;
- 1.1.51.1.4. review of technical documentation to ensure norms and standards are met;

1.1.51.2. Implementation support:

- 1.1.51.2.1. oversight on implementation of projects, including those funded by fiscal transfers;
- 1.1.51.2.2. projects progress monitoring (quality, time, cost);
- 1.1.51.2.3. review and quality assurance of progress reports to National Treasury and CoGTA;
- 1.1.51.2.4. preparation and /or review of projects claims;
- 1.1.51.2.5. guidance and/or assistance with the formulation of operations and maintenance strategy for the new infrastructure; and/or
- 1.1.51.2.6. any other solutions, which may assist the Borrower, in conjunction with other stakeholders (MISA, SALGA etc) in reaching projects milestones in a timeous and efficient manner and to improve service delivery in general;

1.1.52. **"Potential Event of Default"** means any event, envisaged in clause 17 (*Events of Default*) which will become an Event of Default:

- 1.1.52.1. after the expiry of the applicable cure period set out in respect of such event in clause 17 (*Events of Default*); or
- 1.1.52.2. if notice to remedy is given as envisaged in clause 17 (*Events of Default*) and such event is not remedied within the applicable notice period set out in clause 17 (*Events of Default*);

Handwritten signatures and the DBSA logo are present in the bottom right corner of the page. The signatures are in black ink and appear to be initials or full names. The DBSA logo is a small orange and black emblem with the text 'DBSA' and 'Development Bank of South Africa' below it.

- 1.1.53. **"Programme"** means the new municipal infrastructure including the upgrading and rehabilitation of the existing electrical, water, sanitation, roads and storm water and social infrastructure for 2017/2018 as more fully described in **"Annexure B"** (*Project/Programme Description*);
- 1.1.54. **"Project"** means the means the Programme as more fully described in **"Annexure B"** (*Project/Programme Description*);
- 1.1.55. **"Rand"** and **"R"** means the lawful currency of the Republic of South Africa;
- 1.1.56. **"Signature Date"** means the date on which this Agreement is signed by the last Party signing it;
- 1.1.57. **"Taxes"** shall mean all taxes (including VAT), charges, imposts, levies, deductions, withholdings or fees of any kind whatsoever, or any amount or payment on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto, and **"Tax"** and **"Taxation"** shall be construed accordingly;
- 1.1.58. **"Total Debt"** means the total amount of all interest bearing obligations including finance lease and current portion of long term borrowing;
- 1.1.59. **"Unwinding Costs"** means 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 by the DBSA, in respect of funding any part or all of the Loan; and
- 1.1.60. **"VAT"** means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended.
- 1.2. A **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement.
- 1.3. **Law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law.

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- 1.4. **Person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 1.5. Any reference to the singular includes the plural and *vice versa*;
- 1.6. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this clause 1 (*Interpretation*).
- 1.9. Unless otherwise provided in this Agreement, if any period is referred to in this Agreement by way of reference to a number of days, the days 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 day shall be the next succeeding Business Day.
- 1.10. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11. Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 1.12. A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.
- 1.13. Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.14. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 1.15. Expressions defined in this Agreement shall bear the same meanings in appendices, schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 1.16. Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.

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- 1.17. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.18. Where the day on or by which a payment is due to be made or an obligation is to be performed is not a Business Day, such payment shall be made or that obligation done on or by, in the case of a payment due or thing to be done, on the next succeeding Business Day. Interest, fees and charges (if any) shall continue to accrue for the period from the due date which is not a Business Day.
- 1.19. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.20. This Agreement shall bind the Parties' successors-in-title or in law.

2. RECORDAL

- 2.1. The Borrower is undertaking the Project and seeks funding in respect thereof.
- 2.2. The DBSA has, after performing the necessary appraisal of the Borrower, approved the Borrower's application for a loan of R404 755 427.00 (four hundred and four million, seven hundred and fifty five thousand, four hundred and twenty seven rand) subject to the terms and conditions set out in this Agreement.
- 2.3. The Parties agree as set out below.

3. THE LOAN

- 3.1. The Loan shall be:
- 3.1.1. an amount not exceeding, in aggregate, the Capital;
 - 3.1.2. disbursed in accordance with the Disbursement Schedule; and
 - 3.1.3. utilised exclusively for the Project, but notwithstanding anything contained herein, the DBSA shall be under no obligation to monitor or verify the application of any amount borrowed hereunder.
- 3.2. The Loan proceeds shall be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.

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3.3. Disbursement Procedure

- 3.3.1. The Borrower shall, subject to clause 5 (*Conditions Precedent for First Disbursement*), request a Disbursement by delivering to the DBSA the Disbursement Request at least 10 (ten) Business Days (or such shorter time as may be acceptable to the DBSA for the purpose of the relevant Disbursement) prior to the applicable Disbursement Date.
- 3.3.2. The Disbursement Request shall be irrevocable and shall create an obligation on the Borrower to borrow in accordance with such Disbursement Request.
- 3.3.3. The DBSA shall make the Disbursements to the Borrower only (and to no third party) in Rand to the credit of the Borrower's Account as specified by the Borrower in the Disbursement Request.

4. FACILITY LAPSE DATE

Unless otherwise agreed between the DBSA and the Borrower, the Facility will lapse in its entirety if:

- 4.1. The Finance Documents are not signed on or before 20 March 2018; and
- 4.2. The Borrower does not procure the fulfilment of all the Conditions Precedent within 6 (six) months from the date of signature of this Agreement.
- 4.3. For the avoidance of doubt, the Finance Agreements shall never become of any force and effect if the Borrower does not comply with both clauses 4.1 and 4.2.

5. CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT

5.1. First Disbursement

The obligation of the DBSA to make the first disbursement is subject to the **fulfilment**, in a manner satisfactory to it, of the conditions specified in the loan agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

- 5.1.1. a copy of the latest approved MTREF budget of the Borrower reflecting that money for the Project has been appropriated in the capital budget, approving the Project and the total cost thereof. In this regard the Borrower's Chief Financial Officer shall in writing confirm to the DBSA the authentication of the copies of the budget;
- 5.1.2. a certified copy of a resolution of the Council of the Borrower in terms of section 46 of the MFMA:

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- 5.1.2.1. signed by the Mayor;
- 5.1.2.2. approving the terms of the loan agreement; and
- 5.1.2.3. authorising the Accounting Officer to execute the loan agreement or any other document which creates or acknowledges the Loan on its behalf;
- 5.1.3. proof from the Accounting Officer that the Borrower has complied with the provisions of section 46 (3) of the MFMA;
- 5.1.4. proof that the Provincial or National Treasury has been advised of the loan/programme;
- 5.1.5. all FICA documents from the Borrower as required by legislation;
- 5.1.6. the disbursement schedule from the Borrower which should be within the Availability Period;
- 5.1.7. a Disbursement Request from the Borrower, which shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the first disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing;
- 5.1.8. written confirmation from the Department of Environmental Affairs , sent to the DBSA by the Borrower, indicating which of the projects listed in "Annexure B" (Programme/Project Description), require environmental authorizations, permits or licenses; and
- 5.1.9. the Borrower will provide the DBSA with all the required environmental authorizations, permits or licenses required in terms of clause 5.1.8.

5.2. All Disbursements

The obligation of the DBSA to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to the DBSA, of the conditions that on the date of the Borrower's application for such Disbursement and on the Disbursement Date:

- 5.2.1. the DBSA will have received all such agreements, documents, statements and instruments as the Borrower is bound to deliver in terms of this Agreement and/or reasonably requested by the DBSA;

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- 5.2.2. the representations and warranties made or confirmed by the Borrower, in this Agreement, will be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;
- 5.2.3. the Borrower will certify that no Potential Event of Default or Event of Default has occurred and is continuing and that the proceeds of the disbursement are needed by the Borrower for the purposes of the Programme/Project;
- 5.2.4. the Borrower will certify that to the best of its knowledge (after due enquiry) after receipt of that disbursement, the Borrower would not be in violation of:
 - 5.2.4.1. any provision contained in the Finance Documents; or
 - 5.2.4.2. any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;
- 5.2.5. the Borrower will provide the DBSA with an original Disbursement Request(s) within the Availability Period; and
- 5.2.6. all fees, charges and expenses due and payable to the DBSA under the Finance Documents or in relation to the Programme/Project will have been paid in full.

6. INTEREST

- 6.1. Interest will be capitalised for each Disbursement made by the DBSA to the Borrower pursuant to a Disbursement Request, on the Interest Payment Date and in terms of this clause 6 (*Interest*).
- 6.2. The Interest Rate for each disbursement will be determined two days before disbursement of each draw and will consist of the appropriate base rate (R2023 Government Bond) plus the DBSA's Cost of Funding and the DBSA Fixed Lending Margin.
- 6.3. Default Interest, to the extent applicable, will be determined in accordance with clause 6.5 (*Default Interest*).
- 6.4. Interest on the Loan under this Agreement shall:
 - 6.4.1. subject to clause 6.5 (*Default Interest*), accrue from day to day;
 - 6.4.2. be calculated on the amount of the Loan Outstanding from time to time on the basis of the actual number of days elapsed and a 365 day year;

Handwritten signatures and the DBSA logo are present at the bottom right of the page. The DBSA logo is orange and black, with the text 'DBSA' and 'Development Bank of South Africa' below it. There are several handwritten signatures in black ink, including one that appears to be 'MB' and another that is a large, stylized signature.

- 6.4.3. be calculated and payable on an Interest Payment Date;
- 6.4.4. be calculated on a nominal annual compounded Half-Yearly basis;
- 6.4.5. Interest repayment(s) shall commence on the last day of the first Half-Year during which first disbursement was made; and
- 6.4.6. accrue from date of first disbursement.

6.5. Default Interest

- 6.5.1. If the Borrower fails to pay an amount payable by it in terms of this Agreement on an Interest Payment Date (any such amount being an Overdue Amount), interest shall accrue on the Overdue Amount from the due date up to the date of actual payment of such Overdue Amount (both before and after judgment (if any) at the Default Rate.
- 6.5.2. Default Interest due in a particular Interest Period shall be calculated in accordance with the following formula:

$$D1 = \frac{OM \times DR \times d}{365}$$

Where:

- D1 = the Default Interest amount;
- OM = the Overdue Amount;
- DR = the Default Rate;
- d = the number of days from the due date of an Overdue Amount to the date of actual payment of such Overdue Amount.

- 6.5.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.
- 6.5.4. The provisions of this clause 6.5 (*Default Interest*) are without prejudice to any other rights which the DBSA may have as a result of the failure by the Borrower to pay amounts whether of stated maturity or upon pre-maturity by acceleration or otherwise and if not so specified, as notified by the DBSA to the Borrower.

The bottom right corner of the page contains several handwritten signatures in black ink. To the right of the signatures is the DBSA logo, which consists of the letters 'DBSA' in a bold, sans-serif font, with a small orange flame-like graphic above the 'A'. Below the logo, there is a small line of text that is difficult to read but appears to be a tagline or slogan.

7. COMMITMENT FEES

- 7.1. If the Borrower draws down the Loan in accordance with the Disbursement Schedule, no Commitment Fee shall be payable.
- 7.2. In the event that the Borrower deviates (on both amount and date) from the draw-down schedule, the Borrower shall pay to the DBSA a Commitment Fee on the Capital which from time to time has not been disbursed nor cancelled. The Commitment Fee shall:
 - 7.2.1. commence to accrue from the first day after the date of deviation from the Disbursement Schedule;
 - 7.2.2. be pro-rated on the basis of a 365 (three hundred and sixty five) day year irrespective of whether it is a leap year or not, for the actual number of days elapsed; and
 - 7.2.3. be payable Half-Yearly, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

8. REPAYMENT

- 8.1. The Borrower shall, subject to clause 9 (*Early Payment*), repay:
 - 8.1.1. Capital in Half-Yearly instalments, commencing on the last day of the Half-year following the Half-year during which first disbursement was advanced to the Borrower.
 - 8.1.2. Interest in Half-Yearly instalments, commencing on the last day of the Half-year following the Half-year during which the first disbursement was advanced to the Borrower.
- 8.2. The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.

9. EARLY PAYMENT

- 9.1. At any time the Borrower may, by giving DBSA not less than 30 (thirty) days prior written notice to that effect, prepay the whole or any part of the Loan Outstandings on any Interest Payment Date and no other.
- 9.2. Any notice of prepayment pursuant to clause 9.1 shall:
 - 9.2.1. be irrevocable;

Handwritten signatures and the DBSA logo are present in the bottom right corner of the page. The DBSA logo is orange and black, with the text 'DBSA' and 'The Development Bank of South Africa' below it. There are several handwritten signatures in black ink, including one that appears to be 'NB' and another that is a large, stylized signature.

- 9.2.2. specify a date (the "**Prepayment Date**") upon which prepayment is to be made;
- 9.2.3. specify the amount of the Loan Outstandings to be prepaid;
- 9.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.
- 9.3. The Borrower shall not be entitled to make more than 1 (one) prepayment in any calendar month.
- 9.4. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings prepaid.
- 9.5. Any prepayment shall be:
 - 9.5.1. applied to the Loans being prepaid in inverse order of maturity;
 - 9.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to DBSA); and
 - 9.5.3. subject to Breakage Costs and Unwinding Costs.
- 9.6. The Borrower shall not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided in this Agreement.
- 9.7. If any prepayment of all or any part of the Loan Outstandings is made otherwise than on an Interest Payment Date, then the Borrower shall pay DBSA within 3 (three) Business Days of demand by DBSA a sum equal to the Breakage Costs applicable thereto.

10. PAYMENT COVENANTS

- 10.1. All payments to be made by the Borrower in terms of this Agreement shall be made in Rand, in same day funds, free of exchange and bank commission and without deduction or set-off into such bank account as the DBSA may nominate from time to time.
- 10.2. The Borrower shall not be entitled to defer, withhold or adjust any payment due to the DBSA arising out of this Agreement.
- 10.3. All payments made in terms of this Agreement shall be made free and clear of any Taxes and, to the extent that Taxes are payable, the amount to be paid will be increased to the extent necessary such that, after deduction or withholding of Taxes, the DBSA receives the amount that it would have received, but for the Taxes.
- 10.4. If the DBSA at any time receives less than the full amount then due and payable to it under this Agreement, the DBSA may allocate and apply such payment as follows notwithstanding any instruction from the Borrower:

Handwritten signatures and the DBSA logo. The logo consists of the letters 'DBSA' in a bold, sans-serif font, with a stylized orange flame-like graphic above the 'B'. Below the logo, the text 'DBSA' is repeated in a smaller font, followed by 'The South African Bank of Commerce' in an even smaller font. To the left of the logo, there are several handwritten signatures in black ink, including one that appears to be 'MB' and another that is more complex and stylized.

- 10.4.1. firstly, in or towards payment or satisfaction of all costs, charges, expenses and liabilities, incurred and payments made by the DBSA, under or pursuant to this Agreement and the Security Documents including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing any Security;
 - 10.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and
 - 10.4.3. thirdly, in or towards repayment of the Loan.
- 10.5. The DBSA may set off any obligation due under this Agreement from the Borrower against any obligation owed by DBSA to the Borrower.
- 10.6. The Borrower shall not set off any obligation due under this Agreement from the DBSA against any obligation owed by the Borrower to DBSA.

11. SUSPENSION/CANCELLATION OR REDUCTION OF DISBURSEMENTS

11.1. By the DBSA

- 11.1.1. The DBSA may, by notice to the Borrower at any time after the receipt of a Disbursement Request but prior to the Disbursement Date, in whole or in part suspend the making of the Disbursement if an Economic Failure has occurred.
- 11.1.2. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.
- 11.1.3. The DBSA may suspend or cancel the right of the Borrower to Disbursements if an Event of Default or Potential Event of Default has occurred or is continuing.
- 11.1.4. Upon the happening of an Event of Default or Potential Event of Default the right of the Borrower to any further Disbursement shall be suspended or cancelled, as the case may be. The exercise by the DBSA of its right of suspension shall not preclude the DBSA from exercising its right of cancellation, as provided for in this clause 11 (*Suspension/Cancellation of Disbursements*), either for the same or any other reason, and shall not limit any other rights of the DBSA under this Agreement, the Security Documents or in law.
- 11.1.5. Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled.

The bottom right corner of the page contains several handwritten signatures in black ink. Above the signatures is the DBSA logo, which consists of a stylized orange flame-like shape above the letters 'DBSA' in a bold, sans-serif font. Below the logo, there is a line of small text that reads 'The Development Bank of South Africa'.

11.2. Cancellation by the Borrower

- 11.2.1. The Borrower may at any time upon 30 (thirty) days' written notice to the DBSA, request the DBSA to cancel all or a portion of the undisbursed portion of the Capital on the date specified in such request.
- 11.2.2. If, after having received a notice in accordance with clause 11.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available, on terms satisfactory to the DBSA, to complete the Project/Programme (whilst complying with the provisions of this Agreement); then the DBSA shall, by notice to the Borrower, cancel the requested amount of the undisbursed portion of the Capital effective as of such specified date.
- 11.2.3. Should the Borrower cancel the Facility, any portion thereof or undisbursed portion of the Capital in terms of this clause 11.2.3 (*Suspension/Cancellation of Disbursements*), or otherwise in terms of this Agreement, a Cancellation Fee shall be payable by the Borrower to the DBSA within 30 (thirty) days from the earlier of the date of written notice of cancellation of the facility by the Borrower or the expiry of the Availability Period.

11.3. Reinstatement

Unless otherwise provided in this Agreement, no amount of the Capital cancelled under this Agreement may be reinstated.

11.4. Other requirements

- 11.4.1. Unless otherwise agreed by the DBSA, the Borrower may not repay or prepay all or any part of the Loan Outstandings or cancel all or any part of the Capital, except at the times and in the manner expressly provided for in this Agreement.
- 11.4.2. A notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date or dates on which the proposed cancellation or prepayment is to be made, and the amount of the proposed cancellation or prepayment.
- 11.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- 11.4.4. A prepayment by the Borrower of the Loan Outstandings in full under this Agreement must be made with accrued (but unpaid) interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment, except for Breakage Costs and Unwinding Costs (if applicable).

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12. INCREASED COSTS AND DECREASED COSTS

12.1. Increased Costs

Except as provided in clause 12.3 below, the Borrower must pay to the DBSA the amount of any increased cost incurred by the DBSA as a result of:

- 12.1.1. a Change in Law;
- 12.1.2. compliance with any law or regulation made after the date of this Agreement;
- 12.1.3. the introduction of a new law or requirement by any statutory or tax authority which obliges the Borrower to make any Tax deduction in respect of any amounts which the Borrower must pay to the DBSA in respect of the Loan; or
- 12.1.4. any other event, which did not exist at the Signature Date, attributable to a statutory or tax authority in the Republic of South Africa which is beyond the control of DBSA, with the result that DBSA is subject to any VAT, duty or other charge in respects of any payment received or receivable (or deemed to be received or receivable) in terms of this Agreement.

12.2. Economic Failure

12.2.1. If an Economic Failure and/or Material Adverse Effect occurs, which in the opinion of the DBSA may reduce the rate of return which the DBSA may receive on the Capital under any Finance Documents then, at the DBSA's sole discretion:

- 12.2.1.1. the DBSA may demand in writing that the Borrower shall pay to the DBSA an additional amount as will be sufficient to compensate the DBSA for such reduction in return; or
- 12.2.1.2. the DBSA shall be entitled to increase the Margin by such percentage as shall be necessary to compensate the DBSA for such reduction in return. The increase in Margin shall take effect from the date specified in a written notice delivered by the DBSA to the Borrower but in any event not less than 30 (thirty) days after the date of such written notice.

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12.2.2. In the event that such revised funding terms referred to in clause 12.2.1.2, in the reasonable opinion of the Borrower, shall have an adverse impact on the financial sustainability of the Borrower, the Borrower shall have the right to reject such revised terms and cancel the Facility, within the Availability Period, without incurring a Cancellation Fee.

12.2.3. If an Economic Failure occurs that in the opinion of the DBSA effects the DBSA's ability to make any advance or to maintain any funding previously advanced, including, but not limited to the DBSA being unable to obtain matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further Disbursements and demand repayment of advances made prior to occurrence of the Economic Failure.

12.3. Exceptions

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- 12.3.1. attributable to a Tax deduction required by law to be made by the Borrower;
- 12.3.2. compensated for under clause 10.3; or
- 12.3.3. attributable to the DBSA failing to comply with any law or regulation.

13. OTHER INDEMNITIES AND BREAKAGE COSTS

13.1. Indemnities

The Borrower will, within 3 (three) business days of demand, indemnify the DBSA against any cost, loss or liability which the DBSA directly or indirectly incurred as a result of:

- 13.1.1. the occurrence of any Event of Default, including legal fees on an attorney and own client scale;
- 13.1.2. investigating or taking any other action in connection with any event that it reasonably believes is an Event of Default;
- 13.1.3. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- 13.1.4. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;

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- 13.1.5. any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the Programme/Projects contemplated or financed under this Agreement;
 - 13.1.6. a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result thereof;
 - 13.1.7. funding, or making arrangements to fund a Loan requested by the Borrower in a Disbursement Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the DBSA);
 - 13.1.8. a Loan (or part of a Loan) not being prepaid in accordance with this Agreement;
 - 13.1.9. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or
 - 13.1.10. acting or relying on any notice, request or instruction from the Borrower which the DBSA reasonably believes and which on the face thereof appears to be genuine, correct and appropriately authorised.
- 13.2. The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under Finance Document or any Loan.

14. COVENANTS - POSITIVE AND NEGATIVE UNDERTAKINGS

- 14.1. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in this clause 14.3 (*Positive Undertakings*).
- 14.2. Each undertaking is a continuous undertaking and the Borrower shall comply with each undertaking for the entire period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.
- 14.3. **Positive Undertakings/Warranties**
 - 14.3.1. The Borrower warrants that it has obtained and in future will or cause to be obtained 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. The Borrower agrees to provide the DBSA with copies of any such authorisation(s) and/or license(s) as received.

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- 14.3.2. The Borrower will 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 Programme, and to ensure compliance with all environmental legal requirements and water use licence requirements.
- 14.3.3. The Borrower will ensure proper maintenance of the assets created through this loan in line with National Treasury Municipal Finance Management Act Circular number 55 and 66.
- 14.3.4. The Borrower undertakes to implement its approved supply chain management policies in accordance with the MFMA to promote the utilisation of local labour, small local contractor participation and gender equity.
- 14.3.5. The Borrower undertakes to cover any cost overruns (if any) and/or secure additional funding in order to complete the projects funded by the DBSA.
- 14.3.6. The Borrower will ensure that all construction work to be as per standards: SABS 1200; National Building Regulations and Occupational Health and Safety Act. All building materials used are to be SANS approved.
- 14.3.7. The Borrower will make adequate provision(s) for the DBSA loan repayments.
- 14.3.8. The Borrower will also ensure that all engineering services comply with the guidelines for the provision of engineering services and amenities ("Red Book") and that all ESKOM and NERSA standards for the provision of bulk electricity and electrical reticulation are complied with.
- 14.3.9. The Borrower will arrange suitable insurance to cover any possible damage and such insurance will be in line with section 13 of the MFMA.

14.4. **The Borrower and the Project/Programme**

The Borrower shall:

- 14.4.1. comply with all law applicable to it;

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- 14.4.2. fully and punctually comply with all the terms of this Agreement and any other agreement to which it is a party that is material in the context of the Project/Programme and take all necessary action or enforce prompt and proper performance and discharge by the other parties of their respective obligations under this Agreement and such agreements in a manner consistent with the Borrower's obligations under this Agreement;
- 14.4.3. permit representatives or nominees of the DBSA, at reasonable times, access to the Project/Programme site, subject to compliance with normal safety procedures, and to have access to its books of account and records (the DBSA shall use reasonable efforts to give prior notice to and co-ordinate such visits and to minimise any disruption to the business and operations of the Borrower);
- 14.4.4. as soon as may reasonably be possible after receipt of a written request from the DBSA, institute an environmental review/audit in respect of the Project/Programme to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report;
- 14.4.5. promptly upon becoming aware thereof inform the DBSA of any occurrence which might have a Material Adverse Effect and/or of any Potential Event of Default and/or Event of Default;
- 14.4.6. use the Loan exclusively for the Project/Programme; and
- 14.4.7. maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available.

14.5. **Financial Statements**

The Borrower shall deliver its audited annual financial statements to the DBSA within 180 (one hundred and eighty) days of the last day of the Financial Year.

14.6. **Financial Covenant**

- 14.6.1. The Borrower hereby undertakes that at any time during its Financial Year within the MRTEF period, its total historic and projected Debt Service shall not exceed 15% (fifteen percent) of Discretionary Revenue.
- 14.6.2. The Borrower shall maintain a DSCR of above 1 times at all times.

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15. REPRESENTATIONS AND WARRANTIES

15.1. In addition to any representation and warranties given elsewhere in the Agreement by the Borrower to the DBSA, the Borrower gives the warranties contained in this clause 15 (*Representations and Warranties*) to the DBSA. Each such warranty:

- 15.1.1. is a separate and distinct warranty;
- 15.1.2. is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;
- 15.1.3. has induced the DBSA to enter into this Agreement; and
- 15.1.4. is given, save where otherwise indicated, a continuing warranty in the sense that such warranty shall irrefutably be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates when the Loan Outstandings are repaid in full.

15.2. The Borrower

The Borrower represents and warrants that:

- 15.2.1. it is a legal entity duly established and validly existing under the laws of South Africa;
- 15.2.2. it has full power to execute, deliver and perform its obligations under this Agreement and that all necessary action has been taken to authorise the execution, delivery and performance of the same, and no limit on the powers of the Borrower to borrow or to create security will be exceeded as a result of borrowings under this Agreement;
- 15.2.3. the execution, delivery and performance of the obligations of the Borrower under, and compliance with the provisions of, this Agreement by the Borrower does not and will not violate or conflict with, or result in any breach of, any law or court order or judgment or any contractual obligations binding on the Borrower or affecting the Borrower or any of the Borrower's assets;
- 15.2.4. any factual information contained in or provided by the Borrower was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated;

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- 15.2.5. the Borrower is not presently involved in any litigation, arbitration or administrative proceeding and, to the knowledge of the Borrower, no litigation, arbitration or administrative proceeding is pending or threatened against it or any of its assets which if adversely determined, would have a Material Adverse Effect;
- 15.2.6. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 15.2.7. the Project/Programme conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 15.2.8. the Borrower has, all Authorisations required in connection with the Project/Programme and is in compliance with such Authorisations;
- 15.2.9. the Borrower is not aware of any facts or circumstances which could lead to the revocation, suspension or variation of the terms of any Authorisation in connection with the Project/Programme;
- 15.2.10. to the best of the Borrower's knowledge and belief (having made due enquiry) no Potential Event of Default or Event of Default has occurred and/or is continuing and no such event will occur as a result of its entering into performing its obligations under this Agreement;
- 15.2.11. the Borrower is not party to any agreement that has or could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to comply with its obligations in terms of this Agreement;
- 15.2.12. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 15.2.13. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 15.2.13.1. ensure that the Project/Programme is undertaken and completed in a good and workmanlike manner with good and suitable materials, and in compliance with all applicable technical, safety and environmental regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;
- 15.2.13.2. obtain and maintain all further requisite planning consents, building regulation approvals and other matters to enable it to commence, continue with and complete the Project/Programme;



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15.2.13.3. comply with all relevant laws of the national government and/or the applicable provincial government and/or regulations made there under and all by-laws, regulations and codes of practice of any local or competent authority in relation to the Project/Programme and all deeds, agreements or other obligations binding upon the owner or occupier of the land upon which the Project/Programme is situated and obtain all necessary consents in respect of the Project/Programme upon reasonably satisfactory terms; and

15.2.13.4. the Borrower is carrying out the Project/Programme and its operations in compliance with the laws of the Republic of South Africa.

15.3. Disclosure

The Borrower has disclosed to the DBSA all such information as is material to the granting of the Loan and all information disclosed by the Borrower to the DBSA, whether in writing or otherwise, is true, correct and complete in every material respect.

16. RIGHTS AND REMEDIES

16.1. The rights and remedies of the DBSA in relation to any misrepresentations or breach of warranty on the part of the Borrower are not prejudiced:

16.1.1. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or

16.1.2. by any other act or thing which may be done by or on behalf of the DBSA in connection with this Agreement and which might, apart from this clause 16 (*Rights and Remedies*), prejudice such rights or remedies.

17. EVENTS OF DEFAULT

17.1. An Event of Default shall occur if any one of the following events occur:

17.1.1. the Borrower fails to pay to the DBSA any amount due pursuant to this Agreement and/or any other agreement it has entered into with the DBSA strictly on due date and fails to remedy such failure within 5 (five) Business Days after its due date;

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- 17.1.2. the Borrower breaches any of the undertakings, representations and/or warranties given by it pursuant to this Agreement and/or any other agreement it has entered into with the Lender, if such representation and/or warranty is capable of being remedied, fails to remedy it within 10 (ten) days of receipt of written demand from the Lender;
- 17.1.3. the Borrower allows a Court judgment for an amount in excess of R100 000,00 (one hundred thousand rand) to be entered against it and fails to pay the amount of such Court judgment within the time frame stipulated in the final judgment (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);
- 17.1.4. If any of the following events occur and the event is capable of being remedied and the Borrower fails to remedy the event within 28 (twenty eight) days of receipt of written notice from the Lender:
 - 17.1.4.1. Authorisations in respect of the Project/Programme are modified in a manner unacceptable to the DBSA or are not granted or are revoked or terminated or expire and are not renewed or otherwise cease to be in full force and effect;
 - 17.1.4.2. any third party loan, debt, guarantee or any other obligations constituting indebtedness of the Borrower, whether or not the DBSA is concerned therewith, becomes due and payable prior to its specified maturity by reason of default by the Borrower;
 - 17.1.4.3. the Borrower is unable to pay its debts as and when they fall due for payment, threatens to stop or suspend payment thereof or commences negotiations with its creditors with a view to rescheduling or otherwise compromising its indebtedness;
 - 17.1.4.4. the Borrower abandons the Project/Programme or suspends the operation of the Project/Programme for a period of more than 3 (three) months;
 - 17.1.4.5. an event occurs which the DBSA reasonably determines to have a Material Adverse Effect.
- 17.2. If an Event of Default occurs, the DBSA shall, in addition to and without prejudice to any other rights which it may have in terms of this Agreement or in law, be entitled without further notice to:

Handwritten signatures and the DBSA logo. The logo is the DBSA (Development Bank of Southern Africa) logo, featuring a stylized 'Z' shape above the text 'DBSA' and 'The official Bank of Southern Africa'.

- 17.2.1. accelerate or place on demand payment of all amounts owing by the Borrower to the DBSA (whether in respect of principal, interest or otherwise) and all such amounts shall immediately become due and payable; and/or
- 17.2.2. cancel any undrawn amount of the Capital; and/or
- 17.2.3. require the Borrower to indemnify the DBSA in respect of any loss, claim expense or similar costs incurred as a result of the Event of Default; and/or
- 17.2.4. charge Default Interest.

18. POST-FINANCING SUPPORT

- 18.1. Over and above the DBSA's role as a Lender, the DBSA is committed to ensure that the Borrower has the required support needed for the implementation of the various projects under the programme. To this end, the DBSA will make Post-Financing Support available to the Borrower, at no additional cost, to ensure that the Borrower successfully achieves the objectives of the funded projects under the programme.
- 18.2. DBSA's Post-Financing Support, as defined, will focus on assisting the Borrower and providing guidance in the implementation planning including matters of regulatory compliance, in progress monitoring and oversight, in quality, time and cost management, in preparation and/or review of projects claims, in projects reporting processes and in the formulation of operations and maintenance strategy for the new infrastructure.
- 18.3. For the avoidance of doubt, the Post-Financing Support shall be provided by the DBSA at no additional cost to the Borrower. However, should the Borrower require additional services outside the scope of Post-Financing Support (as defined) as agreed by the Parties, such services shall be provided or facilitated by the DBSA at a fee to be agreed between the Parties.

19. ILLEGALITY OF THE LOAN

If, after the Signature Date, there is any Change in Law that makes it unlawful for either Party to continue to maintain or to fund the Loan then the Borrower shall, upon request by the Lender, repay the disbursed portion of the Capital and Interest in terms of this Agreement or in terms of any relevant, law, regulation or applicable directive in full. In addition, upon receipt of such notification from the Lender, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

The image shows several handwritten signatures in black ink. In the center, there is a logo for the DBSA (Development Bank of South Africa), which includes the text 'DBSA' and 'Development Bank of South Africa' below it. The signatures are written over and around the logo.

20. SEVERABILITY

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

21. CESSION AND DELEGATION

21.1. The Borrower shall not be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement to any third party.

21.2. The DBSA shall be entitled, without the Borrower's consent, to cede, delegate or assign all or any of its rights, benefits and obligations or obligation only under this Agreement to any third party, either absolutely or as collateral security, and on any such cession, assignment and/or delegation taking place, the Borrower shall, if so required make all payments to any specified cessionary.

22. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreements as at the date of signature of the Party last signing one of the counterparts.

23. GOVERNING LAW

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

24. JURISDICTION

The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria (or any successor to that division) in regard to all matters arising from this Agreement.

25. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager of the DBSA (whose appointment and/or designation and/or authority need not be proved) as to the existence of and the amount of indebtedness by the Borrower to the DBSA, that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the borrower's indebtedness to the DBSA in terms of this Agreement, shall be sufficient proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgment or any other Court proceedings, shall be valid as a liquid document for such purpose and shall in addition, be *prima facie* proof

The image shows several handwritten signatures in black ink. To the right of the signatures is the DBSA logo, which consists of the letters 'DBSA' in a bold, sans-serif font, with the tagline 'Be different. Be it.' underneath. The logo is orange and black.

for purposes of pleading or trial in any action instituted by the DBSA arising herefrom.

26. REMEDIES AND WAIVERS

Neither failure by the DBSA to exercise, nor any delay by the DBSA in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

27. COSTS

27.1. The Borrower shall pay to the DBSA within 14 days from written demand, the amount of all costs and expenses (including legal fees) reasonably incurred by the DBSA in connection with the negotiation, preparation, printing, execution, filing and registration of:

27.1.1. this Agreement and any other documents referred to in this Agreement; and

27.1.2. any other Finance Documents executed after the Signature Date.

27.2. If in any legal proceedings relating to the enforcement by either party of its rights in terms of this Agreement, a court awards costs to any party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any Court award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

28. NOTICES AND DOMICILIA

28.1. The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this Agreement for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

The image shows several handwritten signatures in black ink. To the right of the signatures is the logo of the Debtors' Business Support Agency (DBSA), which includes the text "DBSA" and "Debtors' Business Support Agency" below it.

28.2. For purposes of this Agreement the Parties' respective addresses shall be as follows:

28.2.1. DBSA:

Physical: 1258 Lever Road
Headway Hill
Halfway House
Midrand

Postal: PO Box 1234, Halfway House, 1685

Facsimile: (011) 313 3086

E-mail: claimadmin@dbsa.org

Attention: The Group Executive, SA Ops; and General Legal Counsel;
and

28.2.2. Borrower:

Physical: Civic Centre, Bergriver Boulevard, Paarl, 7646

Postal: PO Box 1, Paarl, 7646

Facsimile: 021 872 8054

E-mail: records@drakenstein.gov.za

Attention: City Manager

or at such other address in the Republic of South Africa of which the party concerned may notify the other in writing provided that no street address shall be changed to a post office box or post restante.

28.3. Any notice given in terms of this Agreement shall be in writing and shall:

- 28.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 28.3.2. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

The block contains several handwritten signatures in black ink. To the right of the signatures is the DBSA logo, which consists of the letters 'DBSA' in a bold, sans-serif font, with a stylized orange and yellow graphic element above it. Below the logo, there is small text that reads 'Drakenstein Basin' and 'Southern Africa'.

28.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

29. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this Agreement. No single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

30. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

31. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

The bottom right corner of the page contains several handwritten signatures in black ink. To the right of the signatures is the logo of the Dubai Business Support Agency (DBSA), which includes the letters 'DBSA' in a bold, sans-serif font, with the tagline 'Building Your Future' underneath it. The signatures are written over the logo and extend to the right.

SIGNATURES

For: **THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

Signature: 

who warrants that he / she is duly authorised thereto

Name: BEN MOKHESENG

Date: 14/02/2018

Place: PAARL

Witness: 

Witness: 

For: **DRAKENSTEIN LOCAL MUNICIPALITY**

Signature:  

who warrants that he / she is duly authorised thereto

Name: J. H. LEIBBRANDT JACQUES CARSTENS

Date: 14/2/2018

Place: PAARL

Witness: 

Witness: 

    

ANNEXURE A: FORM OF REQUEST FOR DISBURSEMENT (LOAN)

Borrower's letterhead

(Date)

To: The Manager: (*name and address of the DBSA*)

Dear [*insert*]

Disbursement Request No. [•]

DBSA Project/Programme No. [•]

1. Please refer to the Loan Agreement dated [*insert date*] between the Drakenstein Local Municipality (the "Borrower") and the Development Bank of Southern Africa Limited ("DBSA"). Terms defined in the Loan Agreement have their defined meanings whenever used in this request.
2. The Borrower irrevocably requests the Disbursement on or before [*insert date*] (or as soon as practicable thereafter) of the aggregate amount of [*insert numerals*] [*insert words*] under the Loan (the "Disbursement"). You are kindly requested to pay such amount to the account of the Borrower, Account No. [•] Branch Code [•].
3. The Borrower further certifies to the best of its knowledge (after due enquiry) as follows:
 - 3.1 the representation and warranties made in the Loan Agreement are true on the date of this request and will be true on the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date except as set forth on the certificate accompanying this request;
 - 3.2 the Borrower is not aware (after due enquiry) that any Potential Event of Default or Event of Default has occurred, is continuing or about to occur;
 - 3.3 since the date of the Loan Agreement no changes in the Project/Programme or in the financial condition of the Borrower has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;
 - 3.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Project/Programme;

The bottom right corner of the page contains several handwritten signatures in black ink. To the right of the signatures is the DBSA logo, which consists of a stylized orange 'Y' shape above the letters 'DBSA' in a bold, sans-serif font. Below the logo, there is smaller text that reads 'Development Bank of Southern Africa'.

- 3.5 after receipt of the Disbursement the Borrower will not be in violation of:
- 3.5.1 any provision contained in any document to which the Borrower is a Party or by which the Borrower is bound; or
- 3.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.
4. The above certifications are effective as at the date of this Disbursement Request and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully

Accounting Officer

Name: _____

Handwritten signatures and stamps are present at the bottom right of the page. The stamp includes the DBSA logo and the text "DBSA" and "Debitum 2011".

ANNEXURE B: PROGRAMME/PROJECT DESCRIPTION

CAPITAL ITEM DESCRIPTION	COST CENTRE DESCRIPTION	2017/2018 APPROVED BUDGET
BOREHOLES INFRASTRUCTURE	Water Services Operations Divisions	4,000,000
REPLACEMENT OF STRAWBERRY KING BULK WATER PIPE LINE	Water Reticulation Wellington : Administration	5,289,123
WATER SUPPLY TO NEWTON / MBEKWENI / VAN WYKSVLEI	Water Reticulation Wellington : Administration	500,000
REPLACE / UPGRADE WATER RETICULATION SYSTEM	Water Reticulation Wellington : Administration	8,850,000
11 ML NEWTON RESERVOIRS & PUMP STATION	Water Reticulation Wellington : Administration	9,549,444
WELVANPAS WTW & OUT BUILDINGS	Water Reticulation Wellington : Administration	17,254,633
REPLACEMENT OF UPPER LONG STREET BULK WATER PIPE	Water Reticulation Paarl : Administration	4,585,000
UPGRADE BRB WATER SERVICES	Water Reticulation Paarl : Administration	3,516,189
REPLACE / UPGRADE WATER RETICULATION SYSTEM	Water Reticulation Paarl : Administration	5,000,000
REPLACEMENT OF CONTROLLERS / LOGGERS	Water Reticulation Paarl : Administration	250,000
REPLACEMENT OF VALVES ON WEMMERSHOEK BULK SUPPLY	Water Reticulation Paarl : Administration	450,000
UPGRADING OF BRB NORTH TO DUAL CARRIAGEWAY	Water Reticulation Paarl : Administration	1,194,863
8 ML COURTRAI RESERVOIR X 2 PLUS BULK SUPPLY PIPELINES	Water Reticulation Paarl : Administration	18,500,000
UPGRADE WTW: MEULWATER	Water Reticulation Paarl : Administration	6,500,000
SARON: BULK WATER PIPE REPLACEMENT	Water Reticulation Rural : Administration	750,000
DRAKENSTEIN RURAL AREA: RONWE PROJECT	Water Reticulation Rural : Administration	6,850,000
SIMONDIUM: UPGRADE OF BULK WATER SUPPLY (3ML RESERVOIR & BOOSTER PUMPS)	Water Reticulation Rural : Administration	1,150,000
WINDMEUL / SLOT VAN DIE PAARL: NEW RESERVOIR & PIPELINE	Water Reticulation Rural : Administration	740,000
Total for Water		94,929,062

CAPITAL ITEM DESCRIPTION	COST CENTRE DESCRIPTION	2017/2018 APPROVED BUDGET
UPGRADE AND EXTENSIONS TO PAARL WWTW	Waste Water Treatment: Paarl WWTW: Administration	76,351,583
SECURITY MEASURES FOR SEWERAGE PUMP STATIONS	Waste Water Treatment: Paarl WWTW: Administration	750,000
Drommedaris / Sandstraat)	Administration	1,750,000
WELLINGTON WWTW: REHABILITATION & EXTENTION	Waste Water Treatment: Wellington WWTW:	141,968,290
RECYCLING OF WWTW EFFLUENT	Waste Water Treatment: Saron WWTW:	4,003,978
REPLACE / UPGRADE SEWERAGE SYSTEMS	Waste Water Collection: Wellington:	3,000,000
REPLACE / UPGRADE MDBLOCK SEWER SYSTEMS	Waste Water Collection: Wellington:	800,000
VLAKELAND HOUSING PROJECT BULK SEWER	Waste Water Collection:Paarl: Administration	7,655,000
UPGRADE BULK SEWER: SOUTHERN PAARL (Phase 3 & 4)	Waste Water Collection:Paarl: Administration	6,800,000
NEW BULK SEWER SIMONDIUM (Pearl Valley Pump Station	Waste Water Collection:Paarl: Administration	3,102,689
MINIMUM BASIC SERVICES TO INFORMAL SETTLEMENTS	Waste Water Collection:Paarl: Administration	700,000
Total for WWTW		246,881,540

CAPITAL ITEM DESCRIPTION	COST CENTRE DESCRIPTION	2017/2018 APPROVED BUDGET
UPGRADING OF BRB NORTH	Streets: Paarl: Administration	10,320,000
REFURBISHMENT OF STREETS & STORMWATER DEPOT	Streets: Paarl: Administration	3,000,000
PROCLAIMED AND MAIN ROADS UPGRADES	Streets: Paarl: Administration	3,000,000
RECONSTRUCTION OF DROMMEDARIS STREET	Streets: Paarl: Administration	3,500,000
REFURBISH STORM WATER SYSTEMS (DRAKENSTEIN)	Streets: Paarl: Administration	5,000,000
VERSAILLES STREET WELLINGTON CHANNEL	Streets: Wellington: Administration	1,000,000
Total for Street & Stormwater		25,820,000

CAPITAL ITEM DESCRIPTION	COST CENTRE DESCRIPTION	2017/2018 APPROVED BUDGET
NETWORK EXTENSION: HV AND MV	Electrical Division	2,750,000
NEW INFRASTRUCTURE FROM PARYS SS TO CAROLINA SWITCH	Electrical Division	18,983,033
NETWORK UPGRADING: HV & MV	Electrical Division	6,821,640
PALMIET AND PARYS SS	Electrical Division	51,430,966
ELECTRIFICATION: HOUSING PROJECTS	Electrical Division	1,380,000
PROTECTION UPGRADING	Electrical Division	220,000
BASIC SERVICE INFRASTR SIYHLALA HOUSING	Operations and Maintenance Division	3,400,000
UPGRADING OF BRB NORTH TO DUAL CARRIAGEWAY	Operations and Maintenance Division	4,783,685
Total for Electricity		89,769,324

MB







DBSA
Development Bank of South Africa

ANNEXURE C: CP CONFIRMATION

Borrower's letterhead

(Date)

To: The Manager: (*name and address of the DBSA*)

Dear [*insert*]

Project No. [•]

1. Please refer to the Loan Agreement dated [*insert date*] between the Drakenstein Local Municipality (the "**Borrower**") and the Development Bank of Southern Africa Limited ("**DBSA**"). Terms defined in the Loan Agreement have their defined meanings whenever used in this request.
2. The Borrower further certifies to the best of its knowledge (after due enquiry) as follows:
 - 2.1 the representation and warranties made in the Loan Agreement are true on the date of this request and will be true on the date of Disbursement with the same effect as if such representations and warranties had been made on and as of each such date except as set forth on the certificate accompanying this request;
 - 2.2 the Borrower is not aware (after due enquiry) that any Potential Event of Default or Event of Default has occurred, is continuing or about to occur;
 - 2.3 since the date of the Loan Agreement no changes in the Project or in the financial condition of the Borrower has occurred and no other circumstance has arisen which has or is reasonably likely to have a Material Adverse Effect;
 - 2.4 the proceeds of the Disbursement are at the date of this request required by the Borrower exclusively for the purposes of the Project;
 - 2.5 after receipt of the Disbursement the Borrower will not be in violation of:
 - 2.5.1 any provision contained in any document to which the Borrower is a Party or by which the Borrower is bound; or
 - 2.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

The bottom right of the page contains several handwritten signatures in black ink. To the right of the signatures is the official logo of the Development Bank of Southern Africa (DBSA), which includes the acronym 'DBSA' and the full name 'Development Bank of Southern Africa'.

3. The above certifications are effective as at the date of this Disbursement Request and shall continue to be effective as of the date of the Disbursement. If any of these certifications is no longer valid as of or prior to the date of the requested Disbursement, the Borrower undertakes to promptly notify the DBSA unless it is not aware of the same (after due enquiry).

Yours faithfully

Accounting Officer

Name: _____

MB OM F Z
DBSA
10.10.10