

Agreement

103946/2



**DBSA**

Development Bank  
of Southern Africa

**LOAN AGREEMENT**

entered into between

**THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**






and

**OVERSTRAND LOCAL MUNICIPALITY**

in respect of




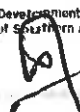
**OVERSTRAND INFRASTRUCTURE LOAN FACILITY**


105946/2.

      
Development Bank  
of Southern Africa

**SUMMARY**

1. LOAN AMOUNT : R100 000 000.00 (one hundred million Rand).
  2. LOAN PERIOD : 15 (fifteen) years.
  3. FIXED INTEREST RATE : R186 plus 200 (two hundred) basis points'
- The above rates are only indicative rates and shall be finally determined on Interest Determination Date.**
4. GRACE PERIOD FOR INTEREST PAYMENT : Nil.
  5. GRACE PERIOD FOR CAPITAL REPAYMENT : 14.5 years.
  6. CAPITAL REPAYMENT : Bullet Repayment at end of Loan Period.
  7. PROJECT FILE NO. : WC 103946.2.


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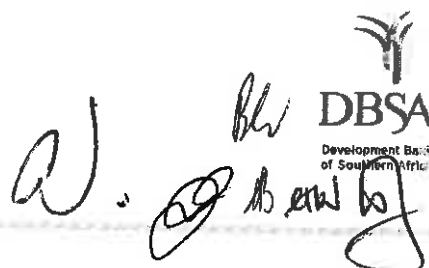
**THIS AGREEMENT** is made between:

1. The Development Bank of Southern Africa Limited (the "**DBSA**"); and
2. Overstrand Local Municipality (the "**Borrower**").

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;
- 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 a period of 6 (six) months from Signature Date;
- 1.1.6. "**Borrower**" means the Overstrand Local Municipality;
- 1.1.7. "**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;
- 1.1.8. "**Breakage Costs**" means any direct and properly evidenced costs and losses incurred by the DBSA pursuant to the premature termination, unwinding, closing out or modification of:

The bottom right of the page contains several handwritten signatures in black ink. To the right of the signatures is the logo of the Development Bank of Southern Africa (DBSA), which includes the letters 'DBSA' in a bold, sans-serif font, with 'Development Bank of Southern Africa' written in smaller text below it.

- a. any underlying funding instrument raised by the DBSA to raise any funds to advance the Capital (or any portion thereof); and/or
- b. the derivative transactions entered into by DBSA in order to hedge any interest rate exposure which it may have assumed by concluding this Agreement; and/or
- c. the amount (if any) determined by the DBSA by which:
  - (i) the interest, which the DBSA would have received for the period commencing on the date of such prepaid principal amount to the next Interest Payment Date,  
  
exceeds;
  - (ii) the interest which the DBSA would have obtained by placing an amount equal to the prepaid principal received by it, on deposit with a leading bank in the relevant Interbank Market for the period commencing on the date of receipt of such principal amount and ending on the next Interest Payment Date;

1.1.9. **"Capital"** means an amount of R100 000 000.00 (one hundred million Rand);

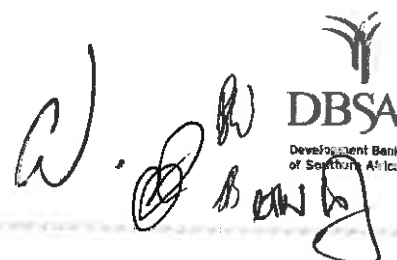
1.1.10. **"Change in Law"** means any implementation, introduction, abolition, withdrawal or variation of any applicable laws (including ordinances), regulation, published practice concession or official directive, ruling, request, notice, announcement (including but not limited to any budget speech), guideline by any government entity (whether or not having the force of law) or any change in any interpretation, or the introduction or making of any new or further interpretation, or any new or different competent authority or compliance with any new or different request or direction (in either case whether or not having the force of law) from any government entity;

1.1.11. **"CP's"** means the conditions precedent contained in 4 below;

1.1.12. **CP Fulfilment Date** means the date on which the DBSA notifies the Borrower pursuant to clause 4.1 (*First Disbursement*) that it has received

all the documents and evidence listed therein in form and substance satisfactory to it;

- 1.1.13. **"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.
- 1.1.14. **"Default Interest"** means any interest which accrues at the Default Rate in terms of this Agreement;
- 1.1.15. **"Default Rate"** means the Interest Rate plus 200 (two hundred) basis points;
- 1.1.16. **"Disbursement"** means any amount drawn down by the Borrower, and disbursed by the DBSA under and in terms of a Disbursement Request;
- 1.1.17. **"Disbursement Date"** means the date on which a Disbursement is stipulated to be made or actually made by the DBSA to the Borrower;
- 1.1.18. **"Disbursement Request"** means a notice substantially in the form of Annexure A;
- 1.1.19. **"Economic Failure"** means any adverse change, determined in the sole discretion of the DBSA, in the South African or international capital markets or in South African or international monetary, financial, political or economic conditions which renders it unlawful or impossible for the DBSA to advance any portion or the Capital on any Disbursement Date or which adversely affect the DBSA's access to the relevant local or international capital markets;
- 1.1.20. **"Encumbrance"** means:
  - 1.1.20.1. any mortgage, pledge, lien or cession conferring security, hypothecation, security interest, preferential right or trust arrangement or other encumbrance securing any obligation of any person;
  - 1.1.20.2. any arrangement under which money or claims to, or the benefit of, a bank account or other account may be applied, set off or made subject



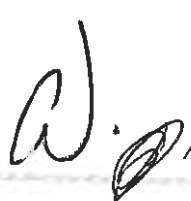


The block contains a handwritten signature in dark ink, which appears to be 'W. D. R.', written over the DBSA logo. The logo consists of a stylized bird-like emblem above the letters 'DBSA' in a bold, sans-serif font. Below 'DBSA' is the text 'Development Bank of Southern Africa' in a smaller font.

to a combination of accounts so as to effect discharge of any sum owed or payable to any person; or



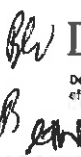

- 1.1.20.3. any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security,

and "Encumber" shall bear a corresponding meaning;

- 1.1.21. **"Event of Default"** means any event of default as envisaged in clause 23 (*Events of Default*) below;
- 1.1.22. **"Financial Year"** means the financial year of the Borrower ending on 30 June of each year;
- 1.1.23. **"Interest Rate (Fixed)"** means R186 plus Fixed Rate Margin;
- 1.1.24. **"Fixed Rate Margin"** means 200 (two hundred) basis points expressed as a percentage rate, per annum or as may be amended as contemplated in clause 6 herein;
- 1.1.25. **"Interest Determination Date"** means 2 (two) Business Days prior to each Disbursement;
- 1.1.26. **"Interest Payment Date"** means the last Business Day of each Interest Period;
- 1.1.27. **"Interest Period"** means each period of 6 (six) months commencing on 1 January or 1 July of each calendar year. The first Interest Period shall begin to run from the date of the first Disbursement to 30 June or 31 December, whichever immediately follows the first disbursement. Each Interest Period thereafter shall run from the date immediately following 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 6 (six) months running from the date of a Disbursement to the date of 30 June or 31 December immediately following such disbursement, shall be deemed an Interest Period;

    
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- 1.1.28. **"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;
- 1.1.29. **"Loan Discharge Date"** means the date on which the Borrower has paid to the DBSA, in full, all amounts which may become payable by the Borrower pursuant to this Agreement, whether in respect of interest, principal or otherwise which date shall not be later than the last day of the Loan Period;
- 1.1.30. **"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;
- 1.1.31. **"Loan Period"** means 15 (fifteen) years;
- 1.1.32. **"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:
- 1.1.32.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
  - 1.1.32.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
  - 1.1.32.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
  - 1.1.32.4. the right or remedies of DBSA in terms of and pursuant to this Agreement; or
- 1.1.33. **"Parties"** means the DBSA and the Borrower, and **"Party"** shall as the context requires, be a reference to either one of them;
- 1.1.34. **"Permitted Encumbrance"** means an Encumbrance being any of the following:
- 1.1.34.1. title retention arrangements arising in the ordinary course of trading with suppliers of goods to the Borrower or arising under a conditional





  
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sale or hiring arrangements in respect of goods supplied to the Borrower in the ordinary course of trading; and

- 1.1.34.2. liens arising in the ordinary course of trading by operation of law and not by contract so long as any amount in respect of which such liens arise is not overdue for payment;
- 1.1.35. **"Potential Event of Default"** means any event, envisaged in clause 23 (*Events of Default*) which will become an Event of Default:
- 1.1.35.1. after the expiry of the applicable cure period set out in respect of such event in clause 23 (*Events of Default*); or
- 1.1.35.2. if notice to remedy is given as envisaged in clause 23 (*Events of Default*) and such event is not remedied within the applicable notice period set out in clause 23 (*Events of Default*);
- 1.1.36. **"Programme"** means the Overstrand Infrastructure Loan Facility Programme as more fully described in **Annexure B** (*Project Description*) and **"Project"** mean any project within the Programme;
- 1.1.37. **"Semi-Annual"** means from the 1<sup>st</sup> (first) day of January to the 30<sup>th</sup> (thirtieth) day of June and/or from the 1<sup>st</sup> (first) day of July to the 31<sup>st</sup> (thirty first) day of December in the same calendar year and **"Half-year"** shall have a cognate meaning;
- 1.1.38. **"Signature Date"** means the date on which this Agreement is signed by the last party signing it;
- 1.1.39. **"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;
- 1.1.40. **"Unwinding Costs"** means any and all actual costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position,

    
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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

1.1.41. "VAT" means value added tax payable in terms of the Value-Added Tax Act, 1991, as amended.

- 1.2. Any reference to the singular includes the plural and *vice versa*;
- 1.3. Any reference to natural persons includes legal persons and *vice versa*;
- 1.4. Any reference to gender includes the other gender.
- 1.5. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.6. 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.
- 1.7. 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 the interpretation clause.
- 1.8. 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.
- 1.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10. Appendices, schedules or annexures to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 1.11. A reference to a person includes such person's permitted successors, assignees, transferees or substitutes.

- 1.12. Any reference to a document is a reference to that document as amended, novated, ceded or supplemented.
- 1.13. 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.
- 1.14. Unless stated otherwise, all fees referred to in this Agreement are exclusive of VAT.
- 1.15. 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.
- 1.16. 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.
- 1.17. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.18. This Agreement shall bind the Borrower's successors-in-title.




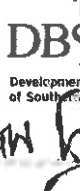

## 2. RECORDAL

- 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 R100 000 000.00 (one hundred million 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; and

- 3.1.2. 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.

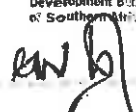

3.2. The Loan proceeds shall be disbursed by the DBSA to the Borrower in accordance with the provisions of this Agreement.

**3.3. Disbursement Procedure**

- 3.3.1. The Borrower shall, subject to clause 4 (*Conditions Precedent*), 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 such bank account as specified by the Borrower in the Disbursement Request.

**3.4. Terms and Conditions for Disbursement**

- 3.4.1. The Disbursements shall, subject to the fulfilment of all the conditions precedents, be made on the 1<sup>st</sup> of June 2011 to the amount of R 30 million, 1<sup>st</sup> of August 2011 to the amount of R 50 million and 1<sup>st</sup> of August 2012 to the amount of R 20 million failing which commitment fees will be applicable as per clause 9 below.
- 3.4.2. The DBSA shall disburse the Capital to the Borrower upon written request and no proof of expenditure shall be required from the Borrower in respect of the first disbursement.
- 3.4.3. The second disbursement shall be made on submission by the Borrower of proof of actual expenditure for the first disbursement as per clause 3.4.2 above.

     
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3.4.4. The third and last disbursement shall be made on submission by the Borrower of proof of actual expenditure for the second disbursement as per clause 3.4.3 above.

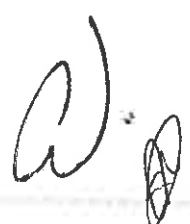


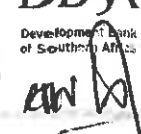
3.4.5. Proof of total expenditure will be made available to the DBSA upon completion of the Programme.

#### 4. CONDITIONS PRECEDENT FOR FIRST DISBURSEMENT

##### 4.1. First Disbursement

4.1.1 The obligation of the Bank to make the first Disbursement is subject to the fulfilment, in a manner satisfactory to it, of the conditions specified in this Agreement, and, in particular, the Bank shall have received the following, all to the satisfaction of the Bank

- 4.1.1.1 a certified copy of the annual budget of the Borrower reflecting that money for the Project has been appropriated in the capital budget of the annual budget;
- 4.1.1.2 a certified copy of the resolution of the Council of the Borrower, approving the Project and the total cost thereof;
- 4.1.1.3 certified copies of the Borrower's financial statements for the year 2009 and 2010;
- 4.1.1.4 copy of a resolution of the Council of the Borrower in terms of section 46 of the Municipal Finance Management Act, signed by the Mayor of the Borrower:
  - 4.1.1.4.1 authorising the Accounting Officer to execute this Agreement on its behalf;
- 4.1.1.5 proof that the Accounting Officer has complied with the provisions of section 46 (3) of the Municipal Finance Management Act;
- 4.1.1.6 all documentation required in terms of the Financial Intelligence Act of 2001 ("FICA");

- 4.1.1.7 a cession agreement, which shall correspond with the first drawdown, in respect of the capital redemption fund shall have been concluded to the satisfaction of the DBSA;
- 4.1.1.8 documentary proof of Environmental Authorisations, or letters documenting the grant of exemption from compliance in respect of such Projects,
- 4.1.1.9 the Disbursement Request shall have been received during the Availability Period. The Bank may, after consideration of the reasons for the Borrower's delay to request the first Disbursement, determine to extend the Availability Period. The Bank shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing.

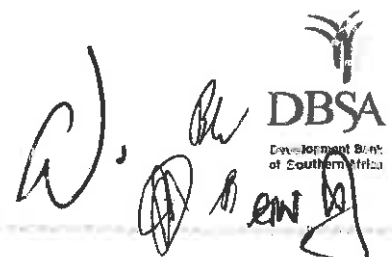
## 5. CONDITIONS PRECEDENT FOR SUBSEQUENT DISBURSEMENTS

A cession agreement, which shall correspond with the second and third drawdown, in respect of the capital redemption fund shall have been concluded to the satisfaction of the DBSA;

### 5.1. All Disbursements

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

- 5.1.1.1 the Bank shall 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 Bank;
- 5.1.1.2 the representations and warranties to be made or confirmed by the Borrower in the Loan Agreement shall 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;
- 5.1.1.3 the Borrower shall 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 Project;

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5.1.1.4 the Borrower shall certify that to the best of its knowledge (after due enquiry) after receipt of that Disbursement, the Borrower would not be in violation of:

5.1.1.4.1 any provision contained in any document to which the Borrower is a party (including the Loan Agreement) or by which the Borrower is bound; or

5.1.1.4.2 any law, rule or regulation directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow;

5.1.1.5 the Bank shall have received an original of the Borrower's Disbursement Request;

5.1.1.6 all fees, charges and expenses due and payable to the Bank shall have been paid in full.

## 6. INTEREST

6.1. From the first Disbursement Date the Loan shall bear interest at the Interest Rate.

6.2. Interest on the Loan under this Agreement shall:

6.2.1. subject to clause 6.3, accrue from day to day;

6.2.2. be calculated on the amount of the Loan Outstandings from time to time on the basis of the actual number of days elapsed and a 365 day year;

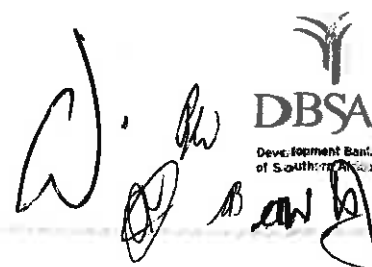
6.2.3. be calculated and payable on an Interest Payment Date;

6.2.4. be calculated on a nominal annual basis compounded Semi-Annually;

6.2.5. accrue and be payable before any judgment is taken.

6.3. Default Interest:

6.3.1. 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



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due date up to the date of actual payment of such Overdue Amount (both before and after judgment (if any)) at the Default Rate.

- 6.3.2. 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.





- 6.3.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay, as provided for in 6.3.1 above.

- 6.3.4. The provisions of this clause 6.3 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.

- 6.4. The DBSA shall, on each Interest Determination Date for any Interest Period in accordance with this clause, determine the amount of interest payable for that Interest Period and promptly notify the Borrower of the amount payable on the relevant Interest Payment Date.

## 7. REPRICING:

The Parties hereby agree that no re-pricing of the Floating or Fixed Rate Margin shall be made in respect of the first Disbursement. In respect of the Disbursements made subsequent to the first Disbursement, the DBSA hereby reserves the right to re-price the loan Facility should there be a change in the market conditions that affects the DBSA's funding costs to the Borrower. In exercising

     
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its right reserved herein, the DBSA shall give the Borrower written notice of 30 (thirty) Business Days prior to the next Disbursement of its intention to do so. Should the Borrower accept the terms of the re-pricing proposed by the DBSA, the Borrower shall confirm its acceptance of the re-pricing within 15 (fifteen) days prior to the next Disbursement.

In the event that the Borrower does not accept the re-pricing terms of the DBSA, the Borrower shall have the right to cancel any undrawn portions of the Facility without incurring a penalty for such cancellation.

**8. CONVERSION OPTION FROM A FLOATING RATE TO A FIXED RATE:**

NOT APPLICABLE.

**9. COMMITMENT FEES**

9.1. The Borrower shall pay to the DBSA a commitment fee at the rate of 0.5% (percent) per annum on the Capital which from time to time has not been disbursed nor cancelled in the event that the Borrower deviates (on both amount and date) from the draw-down schedule as per clause 3.4.1 above. The commitment fee shall:

- 9.1.1. commence to accrue from the first day after the date of deviation from the draw-down schedule.
- 9.1.2. 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
- 9.1.3. be payable Semi-Annually, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date after the date of deviation.

**10. REPAYMENT**

10.1. The Borrower shall, subject to clause 11 (*Early Payment*), repay the Capital as a bullet payment at the end of the Loan Period. The Interest accruing and accumulated on the Capital shall be payable on each Interest Payment Date; and

10.2. The Loan Outstandings shall be repaid in full by no later than the last day of the Loan Period.


## 11. EARLY PAYMENT

11.1. At any time the Borrower may, by giving DBSA not less than 30 (thirty) Business 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

11.2. Any notice of prepayment pursuant to clause 11.1 shall:

11.2.1. be irrevocable;

11.2.2. specify a date (the "Prepayment Date") upon which prepayment is to be made;

11.2.3. specify the amount of the Loan Outstandings to be prepaid,

11.2.4. oblige the Borrower to make such prepayment on the Prepayment Date.

11.3. The Borrower shall not be entitled to make more than 1 (one) prepayment in any calendar month.

11.4. The Borrower shall not be entitled to re-borrow any of the Loan Outstandings prepaid.

11.5. Any prepayment shall be:

11.5.1. applied to the Loans being prepaid in inverse order of maturity,

11.5.2. made together with accrued interest on the amount prepaid (together with other amounts than due to DBSA); and

11.5.3. subject to Breakage Costs and/or Unwinding Costs, if applicable.

11.6. The Borrower shall not prepay all or any of the Loan Outstandings except at the times and in the manner expressly provided for in this Agreement.

11.7. 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 and/or Unwinding Costs applicable thereto, if any.

  
  
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## 12. PAYMENT COVENANTS

12.1. 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 from time to time direct in writing.

12.2. The Borrower shall not be entitled to:

12.2.1. defer, withhold or adjust any payment due to the DBSA arising out of this Agreement;

12.2.2. obtain deferment or any judgment for or any such payment or part thereof;

12.2.3. obtain deferment of any execution of any judgment, by reason of any set-off or counterclaim of any nature whatsoever and howsoever arising.

12.3. 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.


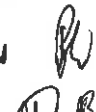



12.4. If the DBSA at any time receives less than the full amount then due and payable to it under this Agreement, the DBSA may allocate and apply such payment as follows notwithstanding any instruction from the Borrower:

12.4.1. 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 including without limitation, legal expenses on an attorney and own client scale and reinstatement costs;

12.4.2. secondly, in or towards payment of any accumulated and accrued interest in respect of the Loan; and

12.4.3. thirdly, in or towards repayment of the Loan.

12.5. The DBSA may set off any obligation due under this Agreement from the Borrower against any obligation owed by DBSA to the Borrower.

      
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12.6. The Borrower shall not set off any obligation due under this Agreement from the DBSA against any obligation owed by the Borrower to DBSA.

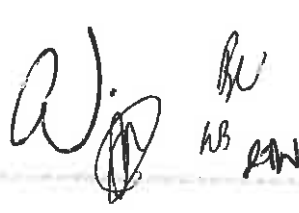
### 13. **SUSPENSION/CANCELLATION OF DISBURSEMENTS**

#### 13.1. **By the DBSA**

- 13.1.1. 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 or a Material Adverse Effect has occurred.
- 13.1.2. Such suspension shall continue until the earlier of the Bank notifying the Borrower of the lapse of the suspension and the Loan Agreement being terminated by the Parties in writing.
- 13.1.3. 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.
- 13.1.4. 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 13 (*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, or in law.
- 13.1.5. Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled.

#### 13.2. **Cancellation by the Borrower**

- 13.2.1. The Borrower may, at any time after the signature of this Loan Agreement and fulfilment of the Conditions Precedents, but before the Disbursement is made, upon 30 (thirty) Business Days' written notice to the Bank, request the Bank to cancel all or a portion of the Facility on the date specified in

  
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such request, subject to a cancellation fee of 1% (one percent) (plus VAT) on the amount being cancelled.





- 13.2.2. If, after having received a notice in accordance with clause 13.2.1 above, the DBSA is satisfied that the Borrower has sufficient funding available on terms satisfactory to the DBSA, to complete the Project (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.

### 13.3. Reinstatement

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

### 13.4. Other requirements

- 13.4.1. 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.
- 13.4.2. 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.
- 13.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.
- 13.4.4. 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/or Unwinding Costs (if applicable).

     
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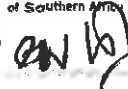
#### 14. SECURITY

The Borrower shall establish a Capital Redemption Fund ("the Fund") in the form of a long term growth investment which shall be redeemable at the end of the Loan Period. The Borrower shall ensure that such Fund accumulates an amount not less than the Capital drawn by the Borrower over the Loan Period. The Borrower shall be entitled to any interest over and above the Capital accumulated by the Fund over the Loan Period. The Borrower shall cede such Fund to the DBSA as security for repayment of the Capital drawn by the Borrower.

#### 15. TAXES

##### 15.1. Tax gross-up

- 15.1.1. The Borrower must make all payments to be made by it under this Agreement without any Tax Deduction, unless a Tax Deduction is required by law.
- 15.1.2. If the Borrower is aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the DBSA.
- 15.1.3. If the Borrower is required by law to make a Tax Deduction, the amount of the payment due from the Borrower will be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 15.1.4. If the Borrower is required to make a Tax Deduction, it must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.
- 15.1.5. Within 30 (thirty) Business Days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the Borrower must deliver to the DBSA documentary proof satisfactory to the DBSA (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

    
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## 15.2. Tax indemnity

15.2.1. Except as provided below, the Borrower indemnifies the DBSA against any direct loss, liability or cost which will be or has been directly or indirectly suffered by the DBSA for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under this Agreement.

15.2.2. Clause 15.2.1 above does not apply:

15.2.2.1. to any Tax assessed on the DBSA if that Tax is imposed on or calculated by reference to the net income received or receivable by the DBSA. However, any payment deemed to be received or receivable, including any amount treated as income but not actually received by the DBSA, such as a Tax Deduction, will not be treated as net income received or receivable for this purpose; or

15.2.2.2. to the extent a loss, liability or cost is compensated for by an increased payment under clause 15.1.3.

15.2.3. If the DBSA makes, or intends to make, a claim under clause 15.2.1 above, it must promptly notify the Borrower of the event which will give, or has given, rise to the claim, and provide reasonable details regarding the manner and basis upon which the amount claimed was calculated.

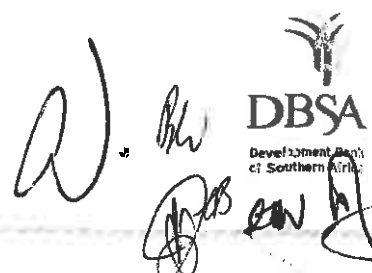
## 15.3. Tax credit

15.3.1. In this Clause, **Tax Credit** means a credit against any Tax or any relief or remission for Tax (or its repayment).

15.3.2. If the Borrower makes a Tax Payment and the DBSA (acting reasonably) determines that:

15.3.2.1. a Tax Credit is attributable to that Tax Payment; and

15.3.2.2. it has finally obtained, used and retained that Tax Credit,



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the DBSA must pay an amount to the Borrower which will leave it (after that payment) in the same after-tax position as it would have been if the Tax Payment had not been required to be made by the Borrower.

#### 15.4. Value added taxes

- 15.4.1. Any amount payable under this Agreement by the Borrower is exclusive of any VAT or any other Tax of a similar nature which might be chargeable in connection with a supply made in respect of that amount. If any such VAT and/or Tax is chargeable on any supply made by the DBSA to the Borrower under this Agreement, the Borrower must, upon presentation of a valid invoice, pay to the DBSA (in addition to and at the same time as paying the relevant amount) an amount equal to the amount of that Tax and/or VAT.
- 15.4.2. Where the DBSA requires the Borrower to reimburse it for any costs or expenses, the Borrower must also at the same time pay and indemnify the DBSA against all VAT or any other Tax of a similar nature incurred by the DBSA in respect of those costs or expenses, but only to the extent that the DBSA is not entitled to a credit or repayment from the relevant tax authority in respect of the Tax and/or VAT.

### 16. INCREASED COSTS

#### 16.1. Increased Costs

Except as provided in clause 16.3 below, the Borrower must pay to the DBSA the amount of any Increased Cost incurred by the DBSA as a result of:

- 16.1.1. a Change in Law;
- 16.1.2. compliance with any law or regulation made after the date of this Agreement.

#### 16.2. Economic Failure

- 16.2.1. 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



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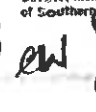

receive on the Capital under any Finance Documents then, at the DBSA's sole discretion:

- 16.2.1.1. 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
- 16.2.1.2. 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) Business Days after the date of such written notice.
- 16.2.2. 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.

### 16.3. Exceptions

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

- 16.3.1. attributable to a Tax Deduction required by law to be made by the Borrower;
- 16.3.2. compensated for under clause 15.2 (*Tax indemnity*) (or would have been but was not so compensated solely because any of the exclusions in clause 15.2 (*Tax indemnity*) applied); or
- 16.3.3. attributable to the DBSA failing to comply with any law or regulation.

## 17. MARKET DISRUPTION

### 17.1. Failure of a Reference Bank to supply a rate

- 17.1.1. Subject to clause 17 (*Market disruption*), if JIBAR is to be calculated by reference to the Reference Banks but a Reference Bank does not supply a rate by 12h00 on a Rate Fixing Day, the applicable JIBAR will, subject as provided below, be calculated on the basis of the rates of the remaining Reference Banks.

### 17.2. Market disruption

- 17.2.1. In this clause, if :

- 17.2.1.1. JIBAR is to be calculated by reference to the Reference Banks but no, or only one, Reference Bank supplies a rate by 12h00 on the Rate Fixing Day; or

- 17.2.1.2. by close of business on the Rate Fixing Day, the DBSA receives notification that the cost to it of raising finance in the money market is in excess of the spread on the Interest Determination Date relative to the cost as at the immediately presiding Interest Determination Date,

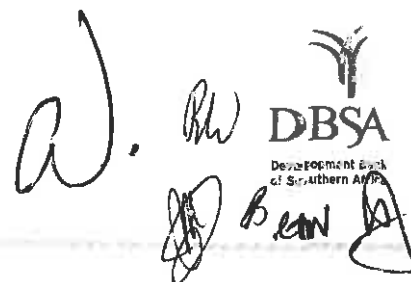
a Market Disruption Event shall be deemed to have occurred.

- 17.2.2. If a Market Disruption Event occurs in relation to a Loan, the DBSA must promptly notify the Borrower.

- 17.2.3. After notification under clause 17.2.2 above, the rate of interest on the Loan for the relevant Interest Period will be the aggregate of the applicable:

- 17.2.3.1. rate notified by the DBSA to the Borrower as soon as practicable, and in any event not later than 5 (five) Business Days after the relevant Rate Fixing Day, to be that which expresses as a percentage rate per annum the cost to DBSA of funding the Loan from whatever source it may reasonably select; and

- 17.2.3.2. the Margin.


  
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### 17.3. Alternative basis

If a Market Disruption Event occurs and the DBSA or the Borrower so requires, the Borrower and the DBSA must enter into negotiations for a period of not more than 14 (fourteen) Business days with a view to agreeing on an alternative basis for determining the rate of interest and/or funding for the affected Loan. Any alternative basis so agreed will be binding on all the Parties, failing which the Borrower shall repay the Loan Outstandings within 10 (ten) Business Days.

## 18. OTHER INDEMNITIES AND BREAKAGE COSTS

### 18.1. Indemnities

18.1.1. The Borrower indemnifies the DBSA against any direct cost, loss or liability (including legal fees on an attorney and own client scale) which the DBSA directly or indirectly incurs as a result of:

18.1.1.1. the occurrence of any Event of Default, including legal fees on an attorney and own client scale;





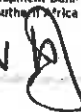
18.1.1.2. funding, or making arrangements to fund a Loan which, after a Disbursement Request has been delivered for that Loan, is not made (other than by reason of the gross negligence or wilful conduct by the DBSA);

18.1.1.3. a Loan (or part of a Loan) not being prepaid in accordance with this Agreement.

18.1.2. The Borrower indemnifies the DBSA against any direct loss or liability directly or indirectly incurred by the DBSA as a result of:

18.1.2.1. investigating any event which the DBSA reasonably believes to be a Potential Event of Default or an Event of Default; or

18.1.2.2. 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.






  
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- 18.1.3. The Borrower's liability in each case includes any direct loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under this Agreement or any Loan, but excludes any form of indirect or consequential loss.

**18.2. Breakage Costs**

The Borrower must pay to the DBSA Breakage Costs if a Loan is repaid or prepaid otherwise than on an Interest Payment Date.

**19. POSITIVE UNDERTAKINGS**

19.1. 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 19 (*Positive Undertakings*).

19.2. 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 on the Loan Discharge Date.

**19.3. The Borrower and the Project**

19.3.1. The Borrower shall:

19.3.1.1. comply with all law applicable to it;

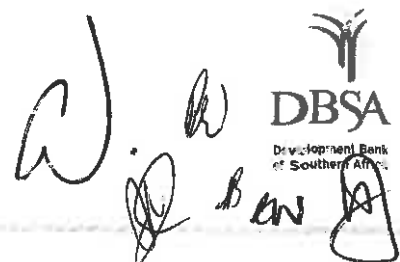
19.3.1.2. fully and punctually comply with all the terms of this Agreement and any other agreement to which it is a party that is material in the context of the Project and take all necessary action or enforce prompt and proper performance and discharge by the other parties of their respective obligations under the agreements that are material in the context of the Project under the agreements that are material in the context of the Project in a manner consistent with the Borrower's obligations under this Agreement;

19.3.1.3. permit representatives or nominees of the DBSA, at reasonable times, access to the Project 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-

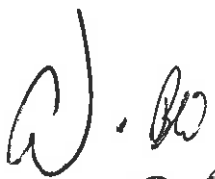


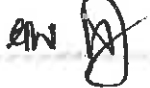
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ordinate such visits and to minimise any disruption to the business and operations of the Borrower);

- 19.3.1.4. ensure that the projects are designed, managed and implemented under the supervision of qualified and registered professionals with the relevant Architectural, Engineering, and Quantity Surveyor experience required for the successful execution of the project(s);
- 19.3.1.5. 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;
- 19.3.1.6. use the Loan exclusively for the Project;
- 19.3.1.7. maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available;
- 19.3.1.8. in respect of the Project comply with acceptable environmental management principles and ensure the implementation of systems and procedures which will give effect to environmental requirements specified in law;
- 19.3.1.9. ensure that Capital Redemption Fund to be established by the Borrower for the repayment of the Capital is regularly funded to ensure that the Capital drawn by the Borrower is accumulated over the Loan Period;
- 19.3.1.10. ensure that the DBSA is registered as an Interested and Affected Party (I&AP) for all the Projects;
- 19.3.1.11. submit to the DBSA its management accounts on a quarterly basis and for the avoidance of doubt, such management accounts must be in compliance with the provisions of the Municipal Finance Management Act 56 of 2003 ("MFMA");
- 19.3.1.12. ensure that the procurement of any services, relative to the Project, shall be subject to an open tender process, in line with Government policies and the requirements of the Municipal Finance management Act (No. 56 2003) pertaining to supply chain management;

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- 19.3.1.13. ensure that all construction work shall be in accordance with the standards set in SABS 1200, National Building Regulations as well as the Occupational Health and Safety Act;
- 19.3.1.14. have the responsibility of maintaining and operating the infrastructure, after full implementation of the Project(s);
- 19.3.1.15. ensure that the disbursement of the loan amounts will be in accordance with the Disbursement Schedule;
- 19.3.1.16. use standardised specifications, as compiled by the SABS, for the design, materials and construction, which construction work shall also be in accordance with National Building Regulations as well as the Occupational Health and Safety Act. The design approach and specifications shall make provision for labour-intensive approaches, where appropriate.
- 19.3.1.17. ensure that the design criteria include optimal site, infrastructure and space utilisation, cost-effective design and specification, energy efficiency and low-maintenance design approaches.
- 19.3.1.18. ensure that design, materials and construction work is in accordance with the requirements of the applicable Municipal Ordinances.
- 19.3.1.19. ensure that formal tender documents, with a comprehensive Bill of Quantities and construction drawings, are completed before going out to tender. Preference shall be given to local suppliers of construction material, depending on availability, quality and price of materials and assurance of timeous delivery.
- 19.3.1.20. promote the involvement of Black Economic Empowerment (BEE) participants and local labour in the Projects. For implementation and easy reference, the meaning of BEE shall be the meaning and definition as contained in the Broad Based Black Economic Empowerment Act 53 of 2003, taking into consideration the control and equity in the entity (ties) concerned.

  
  
  
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19.3.1.21. exercise careful Project execution, management and co-ordination to ensure cost containment during implementation.

19.3.1.22. ensure that all tender documents make provision for environmental rehabilitation measures and environmental management plans.

#### 19.4. Financial Statements

The Borrower shall provide the DBSA with its audited financial statements within 10 Business Days after Council tables the annual report.

#### 19.5. Taxes

The Borrower shall pay all and any Taxes of any nature whatsoever which may become due and payable by it, strictly on due date for payment.

#### 19.6. Reporting

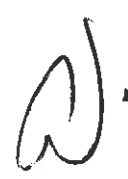




19.6.1. The Borrower shall ensure that reports reflecting progress made with the Projects included in the programme, are submitted to the DBSA on a quarterly basis;

19.6.2. The Borrower shall furnish the DBSA with such Project cash flows or revised projected cash flows for each of the uncompleted stages of the Project, at such intervals as the DBSA may reasonably require.

19.6.3. The Borrower shall in writing advise the DBSA of any decision by the Borrower to expand the scope and costs of the Project.

19.6.4. The Borrower shall, promptly, provide the DBSA with such information as the DBSA may, from time to time reasonably request about the Borrowers' operations and the Project, the proposed changes to actions or costs thereof, if any.

Failure to comply with any of the above covenants shall invoke a penalty of 50 (fifty) basis points over and above the Margin herein, which penalty shall be payable until such default is remedied. The imposition of the penalty shall however not preclude the DBSA from exercising its right in clause 20.2 hereunder.

## 20. REPRESENTATIONS AND WARRANTIES

20.1. In addition to any representation and warranties given elsewhere in this Agreement by the Borrower to the DBSA, the Borrower gives the warranties contained in this clause 20 (*Representations and Warranties*) to the DBSA. Each such warranty:

20.1.1. is a separate and distinct warranty;

20.1.2. is material and does not omit any matter, the omission of which makes any such warranty and representation misleading;

20.1.3. has induced the DBSA to enter into this Agreement;

20.1.4. is given, save where otherwise indicated, a continuing warranty in the sense that such warranty shall irrebuttably be deemed to have been repeated by the Borrower on each day during the period which commences on the Signature Date and which terminates on the Loan Discharge Date.

### 20.2. The Borrower

The Borrower represents and warrants that:

20.2.1. 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;

20.2.2. 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;

20.2.3. applicable and adequate insurance in respect of the Project, if any, is in full force and effect;










- 20.2.4. 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;
- 20.2.5. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 20.2.6. the Project conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 20.2.7. the Borrower has, all Authorisations required in connection with the Project and is in compliance with such Authorisations, save for those that have been specifically indicated to be reasonably delayed elsewhere in this Agreement;
- 20.2.8. 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;
- 20.2.9. 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;
- 20.2.10. 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;
- 20.2.11. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 20.2.12. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 20.2.12.1. ensure that the Project 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

     
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regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;

20.2.12.2. 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 including environmental authorisations, if any;

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

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

### 20.3. Disclosure

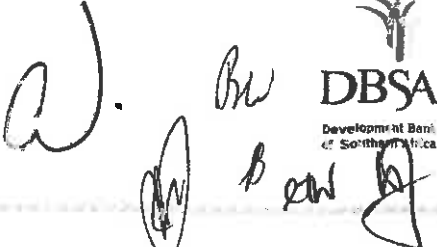
The Borrower has disclosed to the DBSA all such information as is material to the granting of the Loan and all information disclosed by the Borrower to the DBSA, whether in writing or otherwise, is true, correct and complete in every material respect.

## 21. MONITORING

The following shall be monitored on a continuous basis as part of normal interaction with the Borrower:

21.1. A project committee shall be operational to control and monitor execution of the Project and ensure that the Project is implemented, according to the Project description and conditions.

21.2. The DBSA shall monitor the Borrower and all its appointed contractors' compliance with the environmental legal requirements and environmental best practice during implementation of the Project by the Borrower.


  
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## 22. RIGHTS AND REMEDIES

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:

- 22.1. by any investigation by or on behalf of the DBSA into the affairs of the Borrower; or
- 22.2. 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 22 (*Rights and Remedies*), prejudice such rights or remedies.

## 23. EVENTS OF DEFAULT

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

- 23.1.1. 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;
- 23.1.2. the Borrower breaches any representation and/or warranty given by it pursuant to this Agreement and/or any other agreement it has entered into with the DBSA, if such representation and/or warranty is capable of being remedied, fails to remedy it within 10 (ten) Business Days of receipt of written demand from the DBSA;
- 23.1.3. the Borrower breaches any of the undertakings given by it to the DBSA pursuant to this Agreement and/or any other agreement it has entered into with the DBSA, if such breach is capable of being remedied, fails to remedy such breach within 10 (ten) Business Days of receipt of written demand from the DBSA;
- 23.1.4. Authorisations in respect of the Project 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;
- 23.1.5. 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;

23.1.6. 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;

23.1.7. the Borrower allows 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 judgment within 5 (five) Business Days after the date on which the judgment becomes final (in the sense that the Borrower has exhausted all avenues for appeal or review open to it);

23.1.8. the Borrower abandons the Project or suspends the operation of the Project for a period of more than 3 (three) months;

23.1.9. an event occurs which the DBSA reasonably determines to have a Material Adverse Effect and the Borrower is unable, within 30 (thirty) Business Days of receipt of written notice from the DBSA, to overcome such event.

23.2. 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 :

23.2.1. 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

23.2.2. cancel any undrawn amount of the Capital; and/or

23.2.3. 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.

#### 24. ILLEGALITY OF THE LOAN

If, after the Signature Date, there is any Change in Law that makes it unlawful for the DBSA to continue to maintain or to fund the Loan then the Borrower shall, upon request by the DBSA, repay

W. bu DBSA  
Development Bank of Southern Africa

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.

26.1. 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.

26.2. 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.

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.

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

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

### 30. 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 proceedings, shall be valid as a liquid document for such purpose and shall in addition, be *prima facie* proof for purposes of pleading or trial in any action instituted by the DBSA arising herefrom.

### 31. 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.

### 32. NOTICES AND DOMICILIA

32.1. 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.

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

#### 32.2.1. DBSA:

Physical: Development Bank of Southern Africa Limited  
1258 Lever Road  
Headway Hill  
Midrand

Postal: P.O. Box 1234, Halfway House, 1685

#### 32.2.2. Borrower:

Postal: Overstrand Local Municipality

Handwritten signatures and the DBSA logo (Development Bank of Southern Africa) are present at the bottom right of the page.

PO Box 20  
Hermanus  
7200

**Facsimile:**                      **Fax No: (028) 313 1894**

**Attention:** The Municipal 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.

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

32.3.1. if delivered by hand be deemed to have been duly received by the addresses on the date of delivery;

32.3.2. 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.

32.4. 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.

### 33. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and 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 of 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.

Legal/Word/WC/Loan Agreements/WC 103946.2/ZS/23.03.2011



### 34. 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.

**35. 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.

Legal/Word/WC/Loan Agreements/WC 103946.2/ZS/23.03.2011

W. B. M. A.

 DBSA  
Development Bank  
of Southern Africa



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

Signature: 

who warrants that he / she is duly authorised thereto

Name: T Jansen van Vuuren

Date: 9/5/2011

Place: Midrand

Witness: AW Visagie

Witness: Bembael Vime

For: **OVERSTRAND LOCAL MUNICIPALITY**

Signature: 

who warrants that he / she is duly authorised thereto

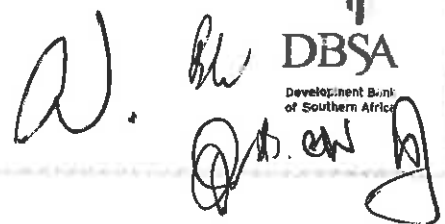
Name: WERNER ZIBRANDTS

Date: 20 APRIL 2011

Place: HEERMANUS

Witness: \_\_\_\_\_

Witness: L. BOTMA Botma



# 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. [*•*]

Project No. 103946/2

1. Please refer to the Loan Agreement dated [*insert date*] between the Overstrand 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 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;







  
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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:

WERNER ZIBRANDS

## Annexure B – Project Description

### 1. PROGRAMME OBJECTIVE

To support socio-economic development in the Overstrand Municipal area through the provision of new and upgrading of existing municipal infrastructure, benefiting approximately 6,700 households. The implementation of the projects will furthermore contribute towards the communities' expectations and the Municipality's objectives of improving existing services, addressing backlogs and economic growth, thereby, ensuring a higher standard of living for all.



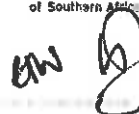
### 2. PROGRAMME OUTPUTS

The DBSA loan finance, to the amount of R160,000,000, is required for the funding of the following

Loan 1	Capital budget items 2010/11	R60,000,000
Loan 2	Waste Treatment Works Waste Water Treatment Works	R100,000,000
		<b>R160,000,000</b>

### 3. INSTITUTIONAL ARRANGEMENTS

- 3.1 A Project Committee (PC) shall be operational to control, manage the execution of the Programme, and ensure that the Programme is implemented, according to the Programme Description.
- 3.2 The Borrower will ensure that the Projects included in the Programme are designed, managed and implemented under the supervision of qualified and registered professionals with the relevant Engineering and Environmental Management experience required for the successful execution of the project(s).
- 3.3 The Borrower shall ensure that reports be submitted to the DBSA reflecting progress made with the Projects included in the Programme.




  
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#### 4. DESIGN PARAMETERS AND GUIDELINES





- 4.1 Standardised specifications, as compiled by the SABS, shall be used for the design, materials and construction. The design approach and specifications shall make provision for labour-intensive approaches, where appropriate.
- 4.2 Design criteria shall include optimal site, infrastructure and space utilisation, cost-effective design and specification, energy efficiency and low-maintenance design approaches.
- 4.3 The design, materials and construction work shall be in accordance with the requirements of the applicable Municipal Ordinances.

#### 5. IMPLEMENTATION FRAMEWORK

- 5.1 Formal tender documents, with a comprehensive Bill of Quantities and construction drawings, will be completed, before going out to tender. Preference shall be given to local suppliers of construction material, depending on availability, quality and price of materials and assurance of timeous delivery.
- 5.2 The Borrower shall promote the involvement of Black Economic Empowerment (BEE) participants and local labour in the Programme.
- 5.3 All construction work shall be in accordance with the standards set in SABS 1200, National Building Regulations as well as the Occupational Health and Safety Act.
- 5.4 Careful Project execution, management and co-ordination shall be exercised, to ensure cost containment, during implementation.

#### 6. ENVIRONMENTAL IMPACT MANAGEMENT

- 6.1 Environmental management will be integrated into the management of the Projects. The mechanisms that will guide the implementation of the Programme will, therefore, include in its monitoring, all possible impacts on the environment.

- 6.2 Tender documents shall make provision for environmental rehabilitation measures and environmental management plans where applicable.

**Source and Application of Funds Statement**

SECTOR	DBSA LOAN	OVERSTRAND MUN	OTHER	TOTAL (R)
Water Supply and Treatment	100 000 000			
<b>TOTAL</b>	<b>100 000 000</b>			<b>100 000 000</b>

2

BLD  
DBSA  
Development Bank  
of Southern Africa  
B. M. J.

## LOG FRAME

## OVERSTRAND: LOAN FACILITY 2010 – 103946

	SUMMARY	INDICATORS	VERIFICATION	ASSUMPTIONS
<b>GOAL</b>	To capacitate Overstrand Municipality to improve service delivery and address development needs within its communities through the provision of new and upgrading of existing municipal infrastructure in support of the priorities identified through the Integrated Development Planning process.	Services both appropriate and affordable	Monthly monitoring by DBSA team as part of Project Monitoring	Overstrand Municipality approves the DBSA loan offer and funding conditions
<b>PURPOSE</b>	To support socio-economic development in the Overstrand Municipal area through the provision of new and upgrading of existing municipal infrastructure, benefiting approximately 12,700 households. The implementation of the projects will furthermore contribute towards the communities' expectations and the Municipality's objectives of improving existing services, addressing backlogs and creating job opportunities, thereby, ensuring a higher standard of living for all.	<ul style="list-style-type: none"> <li>• Increase consumer base.</li> <li>• Improve service provision.</li> <li>• Alignment with Provincial/ National directives</li> </ul>	Monthly monitoring as part of Project Monitoring	Developments are approved by stakeholders / direct beneficiaries
<b>OUTPUTS</b>	<ul style="list-style-type: none"> <li>• Provision of bulk and reticulation services for the Municipality's housing programme</li> <li>• Construction and upgrading of municipal buildings</li> <li>• Upgrading of various municipal infrastructure services</li> </ul>	<ul style="list-style-type: none"> <li>• Continuation with housing development programmes</li> <li>• Improved service provision</li> <li>• Provision of reliable bulk services</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced water shortages</li> <li>• Increase in the number of housing units</li> <li>• Accessibility to basic services</li> </ul>	Financial and human resources available for implementation of 2010/11 Capital Dev Programme
<b>ACTIVITIES</b>	Monitoring project implementation	Projects implemented according to project description, applicable legislation and engineering specifications	Construction and quality to be verified by responsible consultants engineers, local and Provincial authorities	All role players that can contribute to a successful implementation will be involved

## Annexure C

## CP Confirmation

Borrower's letterhead

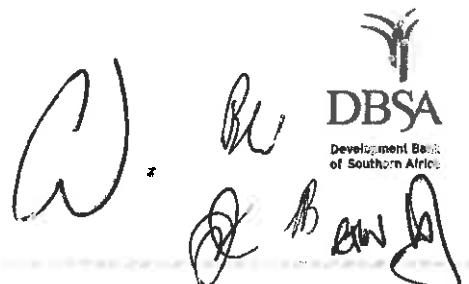
(Date)

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 [*•*] 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



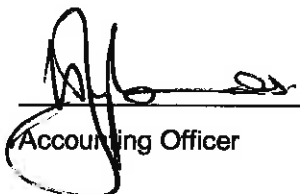
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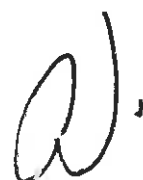




2.5.2 any law, rule or regulation, directly or indirectly limiting or otherwise restricting the Borrower's borrowing power or authority or its ability to borrow.

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

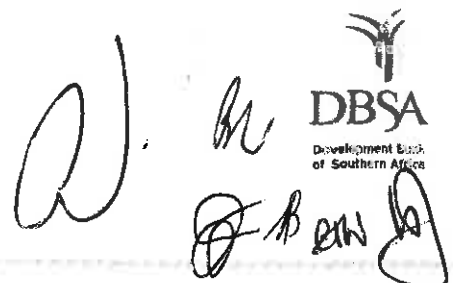
  
Accounting Officer

Name: Wesley Z. B. B. B.

  
  
  
  
  
DBSA  
Development Bank  
of Southern Africa




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DBSA  
Development Bank  
of Southern Africa

**Memo**

**To:** Manager: Legal Services

**From:** Chucheka Mhlongo  
Eastern Cluster

**cc:** Executive Managers  
Business Unit Managers  
Northern and Western Cape Business Unit

**Date:** 2011-05-05

**Re:** DELEGATION OF AUTHORITY Ref: 2/7/4/7/3

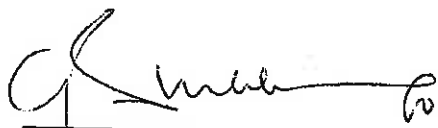
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I shall be away from the office from Monday 9<sup>th</sup> of May 2011, returning on Tuesday 17<sup>th</sup> of May 2011.

**Theo Jansen Van Vuuren** will assume responsibility as Divisional Executive: Eastern Cluster during this period with full delegation and authority, except structural adjustments to the Unit and remuneration issues.

All decisions taken during my absence will be subject to ratification by me upon my return.

For control purposes, please route all documentation through my office where it will be routed accordingly.



**Chucheka Mhlongo**  
Divisional Executive: Eastern Cluster

5/5/11

DATE

  
**Theo Jansen Van Vuuren**  
Divisional Executive: Portfolio Management

5/5/2011

DATE

