FINAL: 03:08:2009

LOAN AGREEMENT

entered into between

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

MSUNDUZI MUNICIPALITY

in respect of the funding of

CAPITAL EXPENDITURE 2008/2009 (TIP LOAN)

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SUMMARY

1.	LOAN AMOUNT	:	R37 500 000.00
2.	LOAN PERIOD	:	15 Years
3.	INTEREST RATE	:	6.75%.
4.	GRACE PERIOD FOR INTEREST PAYMENT	:	Nil.
5.	GRACE PERIOD FOR CAPITAL PAYMENT	:	Nil.
6.	CAPITAL REPAYMENT	:	30 equal Six-monthly instalments, commencing on the last day of the 1st (first) Half-year after the Half-year during which the first disbursement was advanced to the Borrower.
7.	PROJECT FILE NO.	:	KZN 103594.1

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THIS AGREEMENT is made between:

1. The Development Bank of Southern Africa Limited (the "**DBSA**"); and

2. Msunduzi 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 56 of 2003;

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 6 (six) months from the Signature Date;

1.1.6. "**Borrower**" means the Msunduzi 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:

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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 R37 500 000.00 (thirty seven million five hundred thousand 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;

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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. "**Event of Default**" means any event of default as envisaged in clause 17 (*Events of Default*) below;

1.1.21. "**Financial Year**" means the financial year of the Borrower ending on the 30 June each year;

1.1.22. "**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;

1.1.23. "**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

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1.1.24. "**Interest Determination Date**" means the day 2 (two) Business Days prior to each Interest Payment Date;

1.1.25. "**Interest Payment Date**" means the last Business Day of each Interest Period;

1.1.26. "**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 disbursement. Each Interest Period thereafter shall begin to run from the date of expiry of the preceding Interest Period, even if the first day of this Interest Period is not a Business Day. Notwithstanding the foregoing, any period less than six months running from the date of a disbursement to the date of 30 June or 31 December immediately following this disbursement shall be deemed an Interest Period;

1.1.27. "**Interest Rate**" means 6.75%;

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 from date of first disbursement;

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

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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 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 17 (*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 17 (*Events of Default)*; or

1.1.35.2. 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)*;

1.1.36. "**Project**" means Capital Expenditure 2008/2009 as more fully described in **Annexure B** (*Project Description*);

1.1.37. "**Signature Date**" means the date on which this Agreement is signed by the last Party signing it;

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1.1.38. "**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; and

1.1.39. "**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 genders.

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.

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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 R37 500 000.00 (thirty seven million five hundred thousand Rand) subject to the terms and conditions set out in this Agreement.

2.3. The Parties agree as set out below.

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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.

3.3.4. The Capital shall be disbursed by the DBSA to the Borrower according to the drawdown schedule as submitted by the Borrower. The disbursement of the funds is to be effected in accordance with the Application and Source of Funds Statement read together with the Programme Description to the maximum amount of R37 500 000.00 (thirty seven million five hundred thousand Rand).

3.3.5. The total loan amount will be disbursed by the DBSA to the Borrower upon receipt of proof of payment by the Borrower to the contractors and/or service providers.

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4. CONDITIONS PRECEDENT

4.1. First Disbursement

4.1.1. 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 this Agreement, and, in particular, the DBSA shall have received the following, all to the satisfaction of the DBSA:

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. a certified 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:

4.1.1.3.1. approving the terms of this Agreement and resolving that it executes this Agreement; and

4.1.1.3.2. authorising the Accounting Officer to execute this Agreement, on its behalf;

4.1.1.4. proof that the Accounting Officer has complied with the provisions of section 46 (3) of the Municipal Finance Management Act;

4.1.1.5. proof that the KwaZulu-Natal Provincial Government has been advised of this Agreement;

4.1.1.6. certified copies of all Authorisations which it has obtained in respect of the Project;

4.1.1.7. the Disbursement Request 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

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consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing;

4.1.1.8. The Borrower shall provide the DBSA with an undertaking that only projects that comply with the requirements of the DBSA's Targeted Infrastructure Programme (TIP) will be funded under this Loan.

4.1.1.9. Each disbursement request will specify the designated areas where the TIP funding will be used.

4.1.1.10. The Borrower shall put in place a governance framework which should be to the satisfaction of the DBSA.

4.1.1.11. The Borrower shall ensure that the municipality's leadership positions are filled with adequately skilled people.

4.2. **All Disbursements**

4.2.1. 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:

4.2.1.1. the DBSA 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 DBSA;

4.2.1.2. the representations and warranties made or confirmed by the Borrower, in this 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;

4.2.1.3. 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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4.2.1.4. 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:

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

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

4.2.1.5. the DBSA shall have received an original of the Borrower's Disbursement Request as provided for in clause 3.3 (*Disbursement Procedure*);

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

4.2.1.7. The disbursement of the funds is to be effected in accordance with the Application and Source of Funds Statement read together with the Programme Description to the maximum amount of R37 500 000.

4.2.1.8. Each disbursement request will specify the designated areas where the TIP funding will be used.

5. INTEREST

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

5.2. Interest on the Loan under this Agreement shall:

5.2.1. subject to clause 5.3, accrue from day to day;

5.2.2. 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;

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

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5.2.4. be calculated on a nominal annual compounded quarterly basis;

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

5.3. Default Interest:

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

5.3.2. 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.

5.3.3. Default Interest shall be payable on demand, or if not demanded, on the first Interest Payment Date, after such failure to pay.

5.3.4. The provisions of this clause 5.3 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.

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6. **COMMITMENT FEES**

The DBSA shall be entitled to charge a commitment fee of 0,5 per centum per annum on all the undisbursed and un-cancelled portion of the loan effective 3 (three) months from the date of conclusion of the loan agreement.

7. **REPAYMENT**

7.1. The Borrower shall, subject to clause 8 (*Early Payment*), repay the Capital in 30 (thirty) equal Six-monthly instalments, commencing on the last day of the 1st (first) Half-year after the Half-year during which the first disbursement was advanced to the Borrower.

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

8. **EARLY PAYMENT**

8.1. 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.

8.2. Any notice of prepayment pursuant to clause 8.1 shall:

8.2.1. be irrevocable;

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

8.2.3. specify the amount of the Loan Outstandings to be prepaid;

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

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

8.4. The Borrower shall not be entitled to reborrow any of the Loan Outstandings prepaid.

8.5. Any prepayment shall be:

8.5.1. applied to the Loans being prepaid in inverse order of maturity;

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

8.5.3. subject to Breakage Costs.

8.6. 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.

8.7. 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.

9. PAYMENT COVENANTS

9.1. 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.

9.2. The Borrower shall not be entitled to:

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

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

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

9.3. 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.

9.4. 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:

9.4.1. 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

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expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing any Security;

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

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

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

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

10. SUSPENSION/CANCELLATION OF DISBURSEMENTS

10.1. By the DBSA

10.1.1. 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.

10.1.2. Such suspension shall continue until the DBSA notifies the Borrower that it may again submit a Disbursement Request.

10.1.3. 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.

10.1.4. 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 10 (*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.

10.1.5. Any amount of Capital undrawn at the end of the Availability Period shall be automatically cancelled.

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10.2. **Cancellation by the Borrower**

10.2.1. 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.

10.2.2. If, after having received a notice in accordance with clause 10.2.1 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.

10.3. **Reinstatement**

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

10.4. **Other requirements**

10.4.1. 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.

10.4.2. 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.

10.4.3. The DBSA may agree a shorter notice period for a voluntary prepayment or a voluntary cancellation.

10.4.4. 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 (if applicable).

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11. TAXES

11.1. Tax gross-up

11.1.1. 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.

11.1.2. 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.

11.1.3. 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.

11.1.4. 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.

11.1.5. Within 30 (thirty) 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.

11.2. Tax indemnity

11.2.1. 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.

11.2.2. Clause 11.2.1 above does not apply:

11.2.2.1. 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

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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

11.2.2.2. to the extent a loss, liability or cost is compensated for by an increased payment under clause 11.1.3.

11.2.3. If the DBSA makes, or intends to make, a claim under clause 11.2.1 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.

11.3. **Tax credit**

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

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

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

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

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.

11.4. **Value added taxes**

11.4.1. 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.

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11.4.2. 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.

12. INCREASED 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.

12.2. 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.

12.2.2. If an Economic Failure occurs that in the opinion of the DBSA affects 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

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matched funding in the market for its obligations under this Agreement, the DBSA shall be entitled to withhold further Disbursements.

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 11.2 (*Tax indemnity*) (or would have been but was not so compensated solely because any of the exclusions in clause 11.2 (*Tax indemnity*) applied); 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**

13.1.1. 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:

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

13.1.1.2. 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);

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

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

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

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13.1.2.2. 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.

13.1.3. 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.

13.2. **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.

14. **POSITIVE UNDERTAKINGS**

14.1. 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.

14.2. The Borrower undertakes to inform the DBSA of the Borrower's intentions to enter into any further long term debt obligations.

14.3. **The Borrower and the Project**

14.3.1. The Borrower shall :

14.3.1.1. comply with all law applicable to it;

14.3.1.2. 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;

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14.3.1.3. maintain the validity and ranking of the Security and of any further security provided by the Borrower to the DBSA in relation to the Loan;

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

14.3.1.5. 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 to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report

14.3.1.6. 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;

14.3.1.7. use the Loan exclusively for the Project;

14.3.1.8. in respect of the Project comply with acceptable environmental management principles and ensure that systems and procedures are implemented which will give effect to environmental requirements specified in law;

14.3.1.9. ensure that no materials containing asbestos are used in the construction of the Project;

14.3.1.10. plan and design the infrastructure in respect of the Project in accordance with national standards as guided by the Guidelines for Human Settlement Planning and Design;

14.3.1.11. within [14 (fourteen)] days of the Signature Date, submit written confirmation, to the satisfaction of the DBSA, that National Treasury has been informed of this Agreement;

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14.3.1.12. at its own cost, if it is requested to do so by the DBSA erect a notice board at the Project site, which notice board shall clearly state that the construction and building operations in respect of the Project are being financed by the DBSA.

14.4. **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 or after Council approval.

14.5. **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.

14.6. **Reporting**

14.6.1. 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.

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

14.6.3. The Borrower shall, promptly, provide the DBSA with such information as the DBSA may, from time to time reasonably request about the Borrower, its operations and the Project, including but not limited to information on the implementation of its Environmental Management Plant, (if any) the proposed changes to actions or costs thereof.

15. **REPRESENTATIONS AND WARRANTIES**

15.1. In addition to any representation and warranties give 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;

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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;

15.1.4. 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.

15.2. **The Borrower**

The Borrower represents and warrants that:

15.2.1. it has full power to execute, deliver and perform is 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 [or the creation and delivery of the Security Documents respectively;

15.2.2. 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;

15.2.3. it shall ensure that no third person will have any rights ranking in priority to those of the DBSA in relation to the subject matter of the Security;

15.2.4. applicable and adequate insurance in respect of the Project is in full force and effect;

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;

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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 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 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;

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 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;

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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 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;

15.2.14. the Borrower is carrying out the Project 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**

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

16.2. 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 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) days of receipt of written demand from the DBSA;

17.1.3. 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) days of receipt of written demand from the DBSA;

17.1.4. 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;

17.1.5. 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;

17.1.6. 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;

17.1.7. 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);

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

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

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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 :

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. call on and realise so much of the Security as shall be required to discharge the obligations of the Borrower under the Agreement and to apply the proceeds realised from any such Security in discharge of such obligations.

18. 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 on the next Interest Payment Date or on such earlier date as the DBSA certifies to be necessary to comply with the relevant, law, regulation or applicable directive in full, the Loan Outstandings. In addition, upon receipt of such notification from the DBSA, the Borrower shall have no further right to Disbursement of the undisbursed portion of the Capital.

19. 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.

20. CESSION AND DELEGATION

20.1. 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.

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20.2. 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.

21. COUNTERPARTS

This Agreement maybe 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.

22. GOVERNING LAW

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

23. JURISDICTION

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.

24. 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.

25. 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.

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The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

26. **COSTS**

26.1. The Borrower shall bear the costs of and incidental to the negotiation and preparation of this Agreement.

26.2. 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 award or judgment awarded in favour of such party in relation to its rights in terms of or arising out of this Agreement.

27. **NOTICES AND DOMICILIA**

27.1. 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.

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

27.2.1. **DBSA**:

Physical:	Development Bank of Southern Africa Limited 1258 Lever Road Headway Hill Midrand
Postal:	P.O. Box 1234, Halfway House, 1685
Facsimile:	(011) 313 3086
Attention:	The Manager; and

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27.2.2. **Borrower**:

Physical:	Msunduzi Municipality City Hall Commercial Road Pietermaritzburg 3201
Postal:	Private Bag X205, Pietermaritzburg, 3200
Facsimile:	(033) 392 2532
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.

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

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

27.3.2. 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.

27.4. 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.

28. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other Parties 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 of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any

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such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

29. **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.

30. **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.

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

Signature: _____
who warrants that he / she is duly authorised thereto

Name: T.P. Nchocho
Date: 05/08/2009
Place: MIDRAND

Witness: _____

Witness: _____

For: **MSUNDUZI MUNICIPALITY**

Signature: _____
in his capacity as Accounting Officer

Name: R.F. HASWELL
Date: 4/8/09
Place: Pietermaritzburg

Witness: _____

Witness: _____

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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. [•]

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 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;

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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;

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: 4/8/09

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Annexure B

Project Description

The development goal of the Programme Phase IX is to provide basic municipal infrastructure for the MM to improve the quality of life throughout the city of Pietermaritzburg and to attract investment and stimulate business growth and entrepreneurship among all its citizens.

The development objective of the Programme Phase IX is to facilitate and enhance social and economic development in the greater MM area, through the provision and rehabilitation of the necessary municipal infrastructure to address backlogs, mainly benefiting formerly disadvantaged communities.

The programme relates to the Council of the MM's capital expenditure budget for 2008/ 2009 of R244 m. The total programme will be funded as follows: Grants of R94 m and external loans and MM's contribution of R150 m. The DBSA-funding is part of the external loans. The MM-funded infrastructure component includes infrastructure to the value of at least R64 m or 42% the MM-funded projects that the DBSA's Programme Team considers to fall within the Targeted Infrastructure Programme (TIP) to supplement Municipal Infrastructure Grant (MIG) funds. This infrastructure is primarily targeted at addressing the municipal services backlogs in townships in the Pietermaritzburg area whose beneficiaries are indigents and qualify for basic municipal services.

The Programme Team therefore recommends that 25% of the total DBSA funding should be TIP funded as a separate loan element for projects included in the list of projects that qualify for TIP funding in terms of the DBSA's TIP funding check list (refer to Annexure I).

The estimated cost break down into the various categories of projects that will be funded in Phase IX of the Programme is as follows:

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Application and Source of Funds Statement

CATEGORY OF MUNICIPAL INFRASTRUCTURE	AMOUNT (R)
Water:	40 000 000
Sanitation:	40 000 000
Electricity and Street Lighting:	20 000 000
Roads and Storm Water Drainage:	20 000 000
Waste Management:	10 000 000
Municipal Buildings:	20 000 000
Total:	**150 000 000**

- The projects will form part of the MM's Capital expenditure programme for the 2008/2009 financial year.
- This agreement should be read in conjunction with the other Msunduzi Loan Agreement *viz* KZN 103594.2.

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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: R.F. HASWELL

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