

DBSA - Master Files



Document Type

Restructuring

Category

Restructuring Loan Agreement

FINAL: 14 MARCH 2009

02 JUN 2009

Registry
~~103473~~
103473

**LOAN AGREEMENT FOR THE CONSOLIDATION, RESCHEDULING AND REDEMPTION OF
THE ARREAR PENALTY INTEREST**

made and entered into by and between

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED
(hereinafter "DBSA")




and

GREAT KEI LOCAL MUNICIPALITY
(hereinafter "Borrower")

~~_____~~
acs
RBP
DBSA
Development Bank
of Southern Africa

TABLE OF CONTENTS**PAGE**

MEMORANDUM OF AGREEMENT	1
TABLE OF CONTENTS	2
SUMMARY	3
CLAUSE	
1. INTERPRETATION	4
2. BACKGROUND	5
3. THE CONSOLIDATED AND RESCHEDULED LOAN AMOUNT	6
4. INTEREST	6
5. REPAYMENT OF LOAN AND PAYMENT OF INTEREST	6
6. WRITE-OFF	7
7. REPAYMENTS	7
8. SECURITY PACKAGE	7
9. LATE PAYMENT	8
10. EVENTS OF DEFAULT	8
11. NON-VARIATION OF THE LALF LOAN AND/OR AGREEMENTS RELATING THERETO	9
12. RENUNCIATION OF LEGAL EXCEPTIONS	10
13. GENERAL	10
13.1 DOMICILIUM	10
13.2 WHOLE AGREEMENT	12
13.3 NON-VARIATION	12
13.4 NON-ENFORCEMENT/INDULGENCE	12
13.5 ENFORCEMENT OF THIS AGREEMENT	12
13.6 LIQUIDITY OF DEBT	13
13.7 ALLOCATION OF PAYMENTS RECEIVED	13
13.8 EFFECTIVE DATE	13
EXECUTION PAGE	15
ANNEXURE "A" DEBT VERIFICATION SCHEDULE	16
ANNEXURE "B" MILESTONES	17
ANNEXURE "C" AUTHORISATION – BORROWER	19
ANNEXURE "D" AUTHORISATION – DBSA	20

~~REDA~~ aas *aa*



 DBSA
 Development Bank
 of Southern Africa

SUMMARY

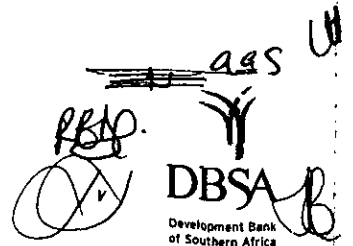
1. CONSOLIDATED & RESCHEDULED
LOAN AMOUNT (AT 31/03/2008) : **R3 676 824.85** (three million six hundred and seventy six thousand eight hundred and twenty four Rand and eighty five Cents).
2. CONSOLIDATED & RESCHEDULED
LOAN REPAYMENT PERIOD : **40** (forty) Quarters
(10 Years).
3. FIXED INTEREST RATE : **13%** per annum.
4. CONSOLIDATED & RESCHEDULED
LOAN REPAYMENT : **QUARTERLY** installments commencing on **30 June 2009**. The calculation of the Quarterly installments shall be based on the actual number of days elapsed in a 365 day year and shall be payable in arrears on the last Business Day of each Quarter.
5. SECURITY
- 5.1 Registration of a Mortgage Bond.
- 5.2 Cession of future leases on the Royal Hotel
6. PROJECT NO. : **EC 103473**.

aas
UB
BB
BB
DBSA
Development Bank
of Southern Africa

1. INTERPRETATION

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

- 1.1.1 "this Agreement" means this Agreement, together with any Annexures hereto;
- 1.1.2 "the Borrower" means Great Kei Local Municipality;
- 1.1.3 "Business Day" means any day of the week from Monday to Friday between 08h00 and 16h30, excluding a Public Holiday(s);
- 1.1.4 "the DBSA" means the Development Bank of Southern Africa Limited, a juristic person; reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No. 13 of 1997;
- 1.1.5 "DBSA Loans" means certain monies, advanced, by the DBSA, pursuant to certain written loan agreements, concluded, by the DBSA, with the Borrower, as depicted in Annexure A and "Loan" has a corresponding meaning;
- 1.1.6 "Effective date" means the date on which this agreement comes into operation, as described in clause 13.8 of this Agreement;
- 1.1.7 "the Fixed Interest Rate" means 13%;
- 1.1.8 "the Parties" means collectively, the Borrower and the DBSA and "Party" shall mean anyone of them; and
- 1.1.9 "Quarter" means the first day of January to the 31st day of March and/or from the 1st day of April to the 30th day of June



DBSA

 Development Bank

 of Southern Africa

and/or from the first day of July to the 30th day of September and/or from the 1st day of October to the 31st day of December during the same calendar year.


- 1.2 Headings to the Clauses of this Agreement and the Table of Contents are for reference purposes only and are not intended to affect the interpretation hereof.
- 1.3 Any reference to:-
- 1.3.1 the singular shall include the plural and vice versa;
 - 1.3.2 a natural person shall include an artificial or corporate person and vice versa;
 - 1.3.3 one gender shall include the other.
- 1.4 This Agreement shall bind the Parties and their successors-in-title and/or successors-in-law.
- 1.5 This agreement shall be governed by, and interpreted in accordance with the Laws of the Republic of South Africa.

2. BACKGROUND

- 2.1 The DBSA entered into various loan agreements listed in Annexure "A" in terms of which certain monies were lent and advanced to the Borrower.
- 2.2 The DBSA is owed certain monies, pursuant to the DBSA Loans.
- 2.3 The Borrower is, accordingly, indebted, to the DBSA, in respect of the DBSA Loans.
- 2.4 It is recorded that as at 27 October 2008 (date on which the write-off and rescheduling was approved) the total book debt of the loan amount owing by the Borrower to the DBSA was R5 694 094.46.
- 2.5 The DBSA's proposal is as follows:
- 2.5.1 that the DBSA will consolidate and reschedule an amount of R3 676 824.85 in terms of this agreement; and

aas *ll*

BBP *Y*

 *B*

DBSA
Development Bank
of Southern Africa

2.5.2 that an amount of R2 017 269.61 will, over a period of four years from the Effective Date, be written-off on condition that the Borrower achieve at least 90% of the milestones as described more fully in the implementation plan, (Annexure "B").

2.6 The DBSA has made an offer to the Borrower to Consolidate, Reschedule and write off a portion of the loan and the Borrower has accepted the offer.

2.7 The Parties agree that the write-off Consolidated and Rescheduled Loan and interest accruing there-on, and the repayments there-of, shall, from the Effective Date be governed by the terms and conditions of this Agreement.

3. THE CONSOLIDATED AND RESCHEDULED LOAN AMOUNT

It is recorded that, as at **30 June 2009** the Consolidated and Rescheduled Loan amounts to **R3 676 824.85** (three million six hundred and seventy six thousand eight hundred and twenty four Rand and eighty five Cents).

4. FIXED INTEREST RATE

The Capital shall bear interest on the amounts outstanding, from time to time, at the Fixed Interest Rate.

5. REPAYMENT OF THE LOAN AND PAYMENT OF INTEREST

The Loan, together with interest thereon, from time to time, calculated at the Fixed Interest Rate, shall be paid, by the Borrower, to the DBSA, in 40 (forty) **Quarterly** instalments commencing on the **30 June 2009**. The calculation of the Quarterly instalments shall be based on the actual number of days elapsed in a 365 day year and shall be payable in arrears on the last Business Day of each and every Quarter.


 The bottom right corner of the page contains several handwritten signatures and stamps. At the top right, there is a signature that appears to be 'aas'. Below it, there is a signature that looks like 'RBP'. To the right of these, there is a signature that looks like 'Y'. In the center, there is a circular stamp with a signature inside. To the right of this stamp, there is a signature that looks like 'W'. Below these, there is a stamp that reads 'DBSA' and 'Development Bank of Southern Africa'. At the bottom, there is a signature that looks like 'LB'.

6. WRITE-OFF

- 6.1 The DBSA shall, over a 4 (four) year period, from the Effective Date, write-off an amount of R2 017 269.61.
- 6.2 The above amount will be written-off on conditions that the Borrower achieve at least 90% of the agreed milestones attached hereto marked Annexure "B".
- 6.3 If the Borrower fails to meet the milestones then the DBSA shall not, in that year, write-off the portion of that amount. In this regard, the DBSA will add back the amount written-off.


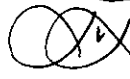

7. REPAYMENTS

- 7.1 All repayments, in terms of this Agreement, to the DBSA, by the Borrower, shall be effected:-
- 7.1.1 in South African Rand;
- 7.1.2 to the credit of such banking account of the DBSA, as the DBSA may, from time to time, direct, in writing; and
- 7.1.3 without deduction, and free from any taxes, charges, fees and other costs, whatsoever.
- 7.2 Whenever any payment falls due on a Saturday, Sunday or Public Holiday under the laws to which either of the Parties are subject, such payment shall be made on the next succeeding Business Day.

8. SECURITY PACKAGE

- 8.1 The DBSA shall, at the cost of the Borrower register a Mortgage Bond in favour of the DBSA over the Royal Hotel. In this regard the Borrower shall provide the DBSA with all relevant and/or requested information which will enable the DBSA to register such Mortgage Bond.
- 8.2 The DBSA shall take a cession of any future leases on the Royal Hotel.







DBSA
 Development Bank
 of Southern Africa


9. LATE PAYMENT

- 9.1 The Borrower shall be liable, to the DBSA, for the payment of default interest on all amounts payable, yet unpaid, in terms of this Agreement, should the Borrower:-
- 9.1.1 fail to pay, on the due date for payment thereof, any amount owing, or which may become owing, to the DBSA, in terms of this Agreement; or
- 9.1.2 with the DBSA's written consent, defer the payment of any amount so owing.
- 9.2 Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid, at the Fixed Interest Rate plus 2% (two per centum) above the Fixed Interest Rate. Penalty interest shall be compounded Quarterly and be payable, on demand.

10. EVENTS OF DEFAULT

- 10.1 The DBSA shall be entitled to, after giving the Borrower 30 (thirty) days' written notice, terminate this Agreement, and to claim, from the Borrower, immediate payment of all the outstanding amounts, should the Borrower commit any breach of this Agreement, provided that the DBSA may, at its entire discretion, dispense with the giving of the 30 (thirty) days' notice.
- 10.2 Without derogating from the generality of the afore-going, the DBSA shall be entitled to exercise its rights in terms of Clause 10.1, above, upon the happening of any of the following events:
- 10.2.1 the Borrower failing to repay any portion of the Loan and/or to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in Clause 10.1, above, requiring it to do so;
- 10.2.2 any attachment being made, or any execution being levied, against the Borrower;
- 10.2.3 the Borrower failing to repay any of the DBSA's loans or breaching any other agreement entered into, between the Borrower and the DBSA;




aas


 DBSA
 Development Bank
 of Southern Africa

- 10.2.4 any fact or circumstance shall have occurred, which, in the opinion of the DBSA, may affect the ability, or willingness, of the Borrower to comply with all, or any, of its obligations, pursuant to this Agreement;
- 10.2.5 the Borrower proposing any further consolidation, rescheduling, re-organisation or re-arrangement of the whole, or part, of its indebtedness with the DBSA, or any of the Borrower's creditors;
- 10.2.6 the Borrower's business operations, or any significant part thereof, being interrupted for a continuous period of, at least, 3 (three) months;
- 10.2.7 any approval, licence, authorisation, or other requirement, necessary to enable the Borrower to comply with any of its obligations, in terms of this Agreement, is modified, revoked or withdrawn, whilst this Agreement is still in force;
- 10.2.8 any order is made, or resolution passed, or other action taken, for the dissolution, or termination, of the existence of the Borrower; and
- 10.2.9 any representation, warranty or statement made in, or in connection with, this Agreement, or any opinion delivered by, or on behalf of, the Borrower, pursuant to this Agreement, is found to be incorrect.
- 10.3 The exercise of the rights by the DBSA, in terms hereof, shall be without prejudice and/or in addition to any other rights, which the DBSA may, then, have against the Borrower, in law, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

11. NON VARIATION OF THE AGREEMENTS RELATING TO THE LOANS

11.1 The Borrower, hereby, acknowledges that this Agreement:-

- 11.1.1 does not, in any manner, or form, whatsoever, waive, amend, vary, replace, cancel, supplant and/or novate the agreements, in respect of the DBSA;

~~_____~~ ^{aas}


DBSA
 Development Bank
 of Southern Africa


11.1.2 governs, only, the issues, relating to the Loan (as defined in this Agreement), specifically, the acceleration of the repayment of the Consolidated and Rescheduled Loan already forwarded to it as well as the Arrears.

11.2 Accordingly, the Borrower, hereby, further acknowledges, that, in the event that the Borrower fails and/or refuses and/or neglects to comply with the provisions of this Agreement, the DBSA, in its sole option, shall be entitled to:-

11.2.1 proceed, pursuant to the provisions of this Agreement; or

11.2.2 terminate this Agreement, immediately, and proceed, pursuant to the provisions of the original agreements, in respect of the DBSA Loans.

12. RENUNCIATION OF LEGAL EXCEPTIONS

12.1 The Borrower, hereby, renounces the benefits of the legal exceptions:-

12.1.1 non causa debiti;

12.1.2 errore calculi;

12.1.3 division;

12.1.4 de duobus vel pluribus reis debendi;

12.1.5 no value received;

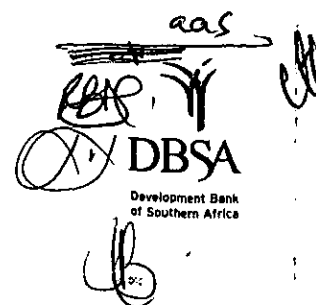

12.1.6 revision of accounts,

the meaning and effect, of which, the Borrower declares and warrants itself to be fully acquainted.

13. GENERAL

13.1 DOMICILIUM

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

ras

DBSA
 Development Bank
 of Southern Africa


In the case of the DBSA:

Physical address: Development Bank of Southern Africa Limited
1258 Lever Road
Headway Hill
MIDRAND, SOUTH AFRICA; or

Postal address: P O Box 1234
HALFWAY HOUSE
1685;

Telefax number: (011) 313 3086

In the case of the Borrower:

Postal address: Great Kei Local Municipality
P O Box 21
KOMGA
4950; or

Telephone number: (043) 8311 028 / 325

Telefax number: (043) 8311 306

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

13.1.3 Any notice addressed by either Party to the other ("the addressee"), which:-

13.1.3.1 is delivered by hand, during the normal business hours of the addressee, at the addressee's domicilium, for the time being, shall be presumed to have been received by the addressee at the time of delivery;

13.1.3.2 is posted by prepaid registered post to the addressee at the addressee's domicilium, for the time being, shall be presumed to have been received by the addressee on the seventh day, after the

aas
DBSA
Development Bank
of Southern Africa
oct

date of posting. Provided that the Parties may agree that all other forms of correspondence and/or requests may be effected, via telefax and/or electronic mail (e-mail).

13.2 WHOLE AGREEMENT

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

13.3 NON-VARIATION




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

13.4 NON-ENFORCEMENT/INDULGENCE

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

13.5 ENFORCEMENT OF THIS AGREEMENT

13.5.1 In the event that the DBSA, in having to enforce any of its rights against the Borrower, pursuant to the provisions of this Agreement, instructs Attorneys, the Borrower shall be liable to refund, the DBSA, all and any costs, charges, expenses and disbursements, of whatsoever nature, including, without limiting the generality of this Clause, legal costs and/or collection commission as between an Attorney and his own client, incurred, by the DBSA, in securing, or endeavouring to secure, compliance, by the Borrower, of its obligations, pursuant to the provisions of this Agreement.

aas


DBSA
 Development Bank
 of Southern Africa


13.5.2 In addition to any rights that the DBSA has, pursuant to the provisions of this Agreement, or any security having been furnished, to the DBSA, pursuant to this Agreement, the DBSA shall be entitled to require, from the Borrower, further security, the provision of which, shall not, in any manner or form, whatsoever, affect, or diminish, the DBSA's rights, pursuant to this Agreement, or the DBSA's rights, pursuant to any security already having been furnished, to the DBSA.

13.6 LIQUIDITY OF DEBT

13.6.1 A certificate under the hand of any Director or Manager, employed by the DBSA, as to the existence and amount of indebtedness, by the Borrower, to the DBSA, pursuant to this Agreement, shall be prima facie evidence as to the correctness of the contents and amount, cited in such certificate, regarding the Borrower's indebtedness, for the purposes of obtaining Provisional Sentence, or Summary Judgment, or for any other proceedings instituted, in any competent court, by the DBSA, against the Borrower, and shall be valid, as a liquid document, for such purposes.

13.6.2 For the purposes of sub-Clause 13.6.1, above, it shall not be necessary to prove the appointment of the person signing such certificate, and such certificate shall be binding upon the Borrower and, further, shall be deemed to be of sufficient particularity, for the purposes of Pleadings, or Trial, in any action, or proceedings, instituted, by the DBSA, against the Borrower.

13.7 ALLOCATION OF PAYMENTS RECEIVED

13.7.1 The DBSA shall, in respect of any monies received, by it, from the Borrower, pursuant to this Agreement, in its sole and unfettered discretion, be entitled to:-

13.7.1.1 attribute such monies as cash security, until the Borrower has discharged all its obligations, pursuant to this Agreement; or

13.7.1.2 apply such monies to such debt, or debts, owing, by the Borrower, to the DBSA, as the DBSA deems fit.

aas


 Development Bank
 of Southern Africa


13.8 EFFECTIVE DATE

Notwithstanding the date of signature of this Agreement, the effective date, for all purposes arising out of, or in connection with, this Agreement, shall be **30 June 2009**, from which said date, the Borrower shall be liable, to the DBSA, in respect of all of the Borrower's obligations, pursuant to the provisions of this Agreement.

~~_____~~ aas
RBA Y
DBSA
Development Bank
of Southern Africa

EXECUTION

THUS DONE AND SIGNED AT Komga ~~Zob~~ ON THE 28th DAY OF May 2009.

AS WITNESSES:

1. ~~_____~~

2. AB Samuun

[Signature]
FOR AND ON BEHALF OF THE
BORROWER, DULY AUTHORISED
THERETO, IN TERMS OF ANNEXURE C.

THUS DONE AND SIGNED AT MIDRAND ON THE 28 DAY OF MAY 2009.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]
FOR AND ON BEHALF OF THE DBSA,
DULY AUTHORISED THERETO, IN
TERMS OF ANNEXURE D.



BORROWER DEBT VERIFICATION SCHEDULE AT 2009-03-31**FIN021 - BORROWER DEBT VERIFICATION**

BORROWER DEBT VERIFICATION AT 2009-03-31
BORROWER: Great Kei Municipality (EC123) - 25702
Includes Accrued Interest to 2009-03-30



OPER /LOAN NO.	LOAN DEBT		ARREARS		FEES	TOTAL DEBT	ANALYSIS OF ARREARS			
	AMOUNT	RATE %	INSTALMENTS	RATE %			CAPITAL	LOAN INTEREST	ARREARS INTEREST	TOTAL
SOUTH AFRICAN RAND										
10878/101	2,456,104.90	15.0000	1,665,795.86	15.0000	0.00	4,121,900.76	291,257.08	1,274,407.58	100,131.20	1,665,795.86
12446/101	396,364.27	14.4700	472,937.78	18.0000	0.00	869,302.05	127,560.04	233,885.52	111,492.22	472,937.78
100792/1	1,808,107.25	14.6700 *	2,645,758.33	14.0000 *	0.00	4,453,865.58	1,191,892.75	997,353.39	456,512.18	2,645,758.33
Client Total:	4,660,576.42		4,784,491.97		0.00	9,445,068.39	1,610,709.87	2,505,646.49	668,135.61	4,784,491.97
TOTAL: ZAR	4,660,576.42		4,784,491.97		0.00	9,445,068.39	1,610,709.87	2,505,646.49	668,135.61	4,784,491.97

* = semi-floating or floating rate subject to change

Prepared by: All

Verified by: All

Signed _____

Date _____

Signed _____

Date _____

Print Date: 2009-03-10 / 10:16:17

Errors and omission excepted

Page 2 of 2



Handwritten signatures and initials

MILESTONESSPECIFIC MILESTONES

- a) Accepting the R651,419.65 disbursed for the purchase of the Royal Hotel be credited to the amount owing to DBSA;
- b) Improving collection levels to 68% by end December 2009;
- c) Payment in full of statutory liabilities (VAT, Compensation Fund, Pension contributions, medical contributions) by end December 2008;
- d) Start servicing the DBSA loan by June 2008; *9 aas* ~~_____~~ *LB* *(X)*
- e) Accepting one of the options tabled by DBSA; *u*
- f) Updated consumer database by December 2008;
- g) Response to A-G's report findings by December 2008;
- h) Finalising a proper handover to the Amathole District Municipality of the Water Services equipment and assets;
- i) Draft and implement a Property Valuation Roll by:
- Doing a property rates valuation;
 - Revising the rates;
 - Billing the correct rates to the community; and
 - Collecting and implementing the new tariffs.

LONG TERM FINANCIAL INTERVENTIONS

- a) The DBSA Development Fund and Great Kei Municipality to compile a comprehensive financial management turnaround strategy and this must be implemented by Great Kei Municipality to improve financial position of this municipality.

- b) Initiate a revenue enhancement plan to complement the Recovery Plan.
- c) Monitor the implementation of the Credit Control Policy; and
- d) The implementation of a debt recovery policy.

Handwritten initials: *U*, *aas*, *DBS*, *DBSA*
DBSA
Development Bank
of Southern Africa

AUTHORISATION - BORROWER

Handwritten signature
Handwritten signature
Handwritten signature
 **DBSA**
Development Bank
of Southern Africa

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED: DELEGATIONS OF SIGNING
AUTHORITIES FOR INVESTMENT LOANS AND TECHNICAL ASSISTANCE**

PAUL CAMBO BALOYI

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of this post by the Board of Directors of the Development Bank of Southern Africa Limited on 20 March 1997, as amended and read with section 5 of the Development Bank of Southern Africa Act No 13 of 1997, determined on 02 February 2009 that:

PAUL CAMBO BALOYI

in his capacity as Chief Executive Officer
and Managing Director

OR

HEINZ WEILERT

In his capacity as Chief Operating Officer

OR

LEONIE VAN LELYVELD

in her capacity as Chief Risk officer

OR

PIETER DE LA REY

In his capacity as Chief Financial Officer

OR

ADMASU YILMA TADESSE

OR

ERNEST ARTHUR DIETRICH

OR

LOYISO NDLOVU

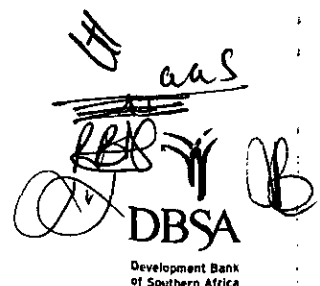
OR

SNOWY JOYCE KHOZA

OR

RAVINDRA NAIDOO

OR



DBSA
 Development Bank
 of Southern Africa

MAGARE LUTHER MASHABA
in their capacities as Executive Managers

OR

SAMUEL RAPULANE MOGOTOTOANE
in his capacity as Manager: Legal Services

OR

BANE MOEKETSI MALEKE

OR

PUMLA MANNYA

OR

CHUCHEKA BEN MHLONGO

OR

EMILE DU TOIT

OR

REMBULUWANI BETHUEL NETSHISWINZHE

OR

TSHOKOLO PETRUS NCHOCHO

OR

WILLIAM LUGEMWA

in their capacities as Managers: Business units in accordance with their delegated authorities

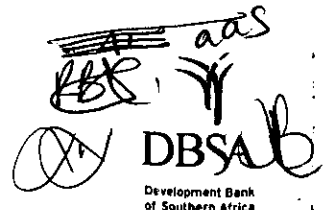
be authorised for and on behalf of the Development Bank of Southern Africa to enter into agreements in terms whereof money is:-

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

and to perform all acts and sign all contracts or any other documentation in connection therewith that may be necessary for the purpose.

29 MAY 2009
DATE


LEGAL SERVICES


DBSAB
Development Bank
of Southern Africa