



Agreement



DBSA

Development Bank
of Southern Africa

I hereby, certify that the attached copy of this document, all pages whereof, have been initialed by me for identification purposes, are true copies of the original thereof.

21 August 2009
DATE


COMMISSIONER OF OATHS

ZAMBILE DETHICK MSIMOMEZULU
Commissioner of Oaths /for Republic of S.A.
Ex Officio: Advocate R.S.A.
C/o Development Bank of Southern Africa
P.O. Box 1234, Halfway House, 1685
Halfway Hill, Midrand

LONG TERM LOAN FACILITY AGREEMENT

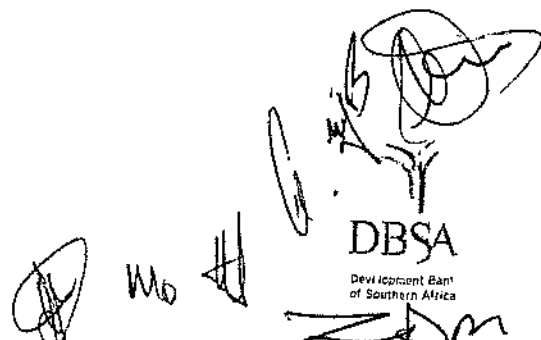
entered into between

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

and

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

[in respect of the funding of the Soccer City Stadium]



Handwritten signatures and stamps of the Development Bank of Southern Africa Limited and the City of Johannesburg Metropolitan Municipality. The signatures are in black ink and appear to be initials or full names. There are also some stamps or marks, including a large circular stamp and a rectangular stamp with the letters 'MB'.

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Drafting Notes:

- *The Agreement set out in this document is a draft only and does not necessarily represent an absolute position of the DBSA on any of the issues stipulated.*
- *In certain instances where documents or items are listed the appropriate definitions will be added when the lists are finalised.*
- *The document is subject to final edit*
- *This document and the schedules are to remain confidential and may not be copied, disseminated or disclosed by the Borrower to any party other than the Borrower's advisors without the prior written consent of the DBSA.*
- *This document or any other document distributed to the Borrower and/or its advisors by or on behalf of the DBSA shall not be construed as an unconditional offer of finance and remain subject to the DBSA's internal protocols and approvals being completed to its sole satisfaction and in addition does not constitute a warranty or representation regarding the availability of financing or any other matter set out herein.*



The bottom right corner of the page contains several handwritten signatures in black ink. To the right of these signatures is the logo for the Development Bank of Southern Africa (DBSA). The logo consists of the letters 'DBSA' in a bold, sans-serif font, with the full name 'Development Bank of Southern Africa' written in a smaller font below it. The signatures are written over and around the logo.

SUMMARY

1. LOAN AMOUNT : R500 000 000,00 (five hundred million Rand)
2. LOAN PERIOD : 20 years.
3. FLOATING INTEREST RATE : 6 Month Jibar plus 285 (two hundred & eighty five) basis points.
4. GRACE PERIOD FOR INTEREST PAYMENT : None.
5. GRACE PERIOD FOR CAPITAL PAYMENT : None.
6. CAPITAL REPAYMENT : 40 (forty) 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. : GP 102761.



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THIS AGREEMENT is made between:

1. The Development Bank of Southern Africa Limited (the "DBSA"); and
2. The City of Johannesburg Metropolitan Municipality (the "Borrower");

1. **INTERPRETATION**

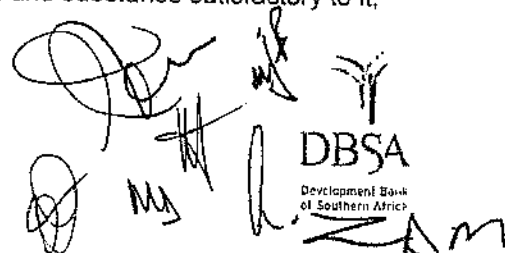
1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 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 following the CP Fulfilment Date;
- 1.1.6. "**Borrower**" means the City of Johannesburg Metropolitan 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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- 1.1.8.1. any underlying funding instrument raised by the DBSA to raise any funds to advance the Capital (or any portion thereof); and/or
- 1.1.8.2. 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
- 1.1.8.3. the amount (if any) determined by the DBSA by which:
- 1.1.8.3.1. 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;
- 1.1.8.3.2. 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 R500 000 000,00 (five 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;



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

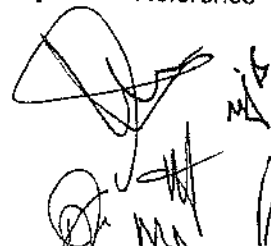



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1.1.20.3. any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of security;

and "**Encumber**" shall bear a corresponding meaning

- 1.1.21. "**Event of Default**" means any event of default as envisaged in clause 17 (*Events of Default*) below;
- 1.1.22. "**Financial Year**" means the financial year of the Borrower ending on 30 June 2009;
- 1.1.23. "**Interest Determination Date**" means the day 2 (two) Business Days prior to each Interest Payment Date;
- 1.1.24. "**Interest Payment Date**" means the last Business Day of each Interest Period;
- 1.1.25. "**Interest Period**" means each period of 6 (six) months beginning on 1 January and ending on 30 June, or beginning on 1 July and ending on 31 December of each calendar year, except that, in respect of the first Interest Period, Interest Period shall mean the period beginning on the date the first Disbursement is made and ending on the Interest Payment Date immediately following the first Disbursement;
- 1.1.26. "**Interest Rate**" means the JIBAR plus the Margin;
- 1.1.27. "**JIBAR**" means, on any applicable date:
- 1.1.27.1. an Interest Rate equal to the 6 (six) month Johannesburg Interbank Accepted Rate which appears on the Reuters Screen SAFEY page under caption "**YIELD**" at approximately 11h00 South African time on that date which is a nominal annual compounded quarterly rate; or
- 1.1.27.2. if such rate does not appear on the Reuters Screen SAFEY page, the rate for the relevant 6 (six) month period shall be deemed to be the arithmetic means at the mid-market deposit rates for South African currency 6 (six) month deposits as quoted on the respective money market Reuters pages by the Reference Banks at

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approximately 11h00 on that date converted to a nominal annual compounded quarterly rate:

- 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 the period of 20 years commencing on the CP Fulfilment Date and ending on the last Business Day of the Financial Year;
- 1.1.32. "Margin" means (285) basis points, expressed as a percentage rate, per annum;
- 1.1.33. "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:
- 1.1.33.1. the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
 - 1.1.33.2. the ability of the Borrower to perform its obligations in terms of this Agreement; or
 - 1.1.33.3. the validity or enforceability of this Agreement or the rights or remedies of the DBSA hereunder; or
 - 1.1.33.4. the right or remedies of DBSA in terms of and pursuant to this Agreement; or
 - 1.1.33.5. South African or international monetary, financial, political, or economic conditions or the DBSA's access to the relevant local or international capital markets;



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- 1.1.34. "**Parties**" means the DBSA and the Borrower, and "**Party**" shall as the context requires, be a reference to either one of them;
- 1.1.35. "**Permitted Encumbrance**" means an Encumbrance being any of the following:
- 1.1.35.1. 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;
- 1.1.35.2. 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; and
- 1.1.35.3. any Encumbrance created with the written consent of DBSA;
- 1.1.36. "**Potential Event of Default**" means any event, envisaged in clause 17 (*Events of Default*) which will become an Event of Default:
- 1.1.36.1. after the expiry of the applicable cure period set out in respect of such event in clause 17 (*Events of Default*); or
- 1.1.36.2. 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*);
- 1.1.37. "**Project**" means the completion of the Soccer City Stadium as more fully described in **Annexure B** (*Project Description*);
- 1.1.38. "**Reference Banks**" means four major banks in the Johannesburg interbank market, selected by the DBSA;
- 1.1.39. "**Signature Date**" means the date on which this Agreement is signed by the last party signing it;
- 1.1.40. "**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



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with any penalties, additions, fines, surcharges or interest relating thereto, and "Tax" and "Taxation" shall be construed accordingly; 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 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.
- 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 R500 000 000,00 (five 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 and be applied in accordance with the norms and criteria set out in (*Project Description*), but notwithstanding anything



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contained herein, the DBSA shall have the right to enforce but 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.

4. **CONDITIONS PRECEDENT**

4.1. **Disbursement**

4.1.1. The obligation of the DBSA to make the 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;

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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

4.1.1.3.2. authorising the ~~Accounting Officer~~ ^{ED: FINANCE} to execute this Agreement on its behalf;

4.1.1.4. documentary proof that the Borrower has complied with the provisions of S46 (3) of the MFMA

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

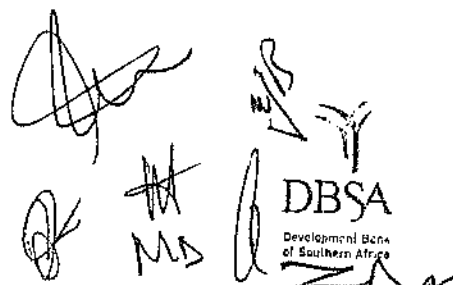
4.1.1.6. the Disbursement Request shall have been received during the Availability Period. The DBSA may, after consideration of the reasons for the Borrower's delay to request the Disbursement, determine to extend the Availability Period. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision in writing.

4.2. Further terms and conditions of 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;

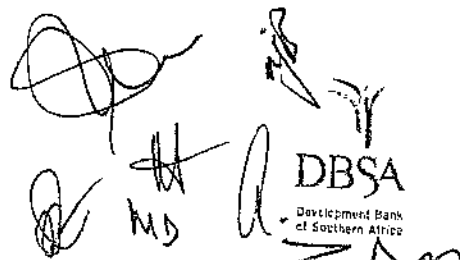
4.2.1.2. the representations and warranties made or confirmed by the Borrower, in this Agreement, shall be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates;

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

5. INTEREST

- 5.1. 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;
- 5.2.4. be calculated on a nominal annual compounded quarterly basis;
- 5.2.5. accrue and be payable before any judgment is taken.



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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;

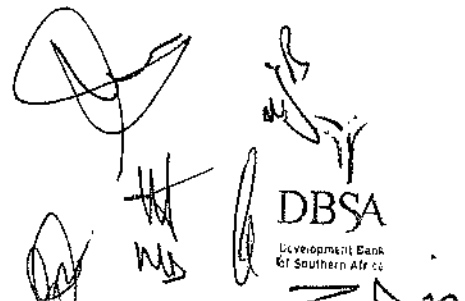
DR = the Default Rate;

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.

5.4. 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.



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6. **COMMITMENT FEES**

The Borrower shall pay to the DBSA a commitment fee at the rate of 0.5% (zero point five percent) per annum on the Capital which from time to time has not been disbursed nor cancelled. The commitment fee shall:

- 6.1. commence to accrue from the Signature Date.
- 6.2. 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
- 6.3. be payable semi-annually, in arrears, on each Interest Payment Date, the first such payment to be due on the first Interest Payment Date.

7. **REPAYMENT**

The Borrower shall, subject to clause 8 (*Early Payment*) repay the Capital in 40 (forty) 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.

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

10.2.3. Upon cancellation of an undisbursed portion of the Capital in terms of this clause 10 (*Suspension /Cancellation of Disbursements*), the Borrower shall pay to the DBSA a cancellation fee of 1% (one percent) on the cancelled portion of the Capital.

10.3. Re-borrowing and reinstatement

10.3.1. Any amounts of the Loan Outstanding repaid may not be re-borrowed.

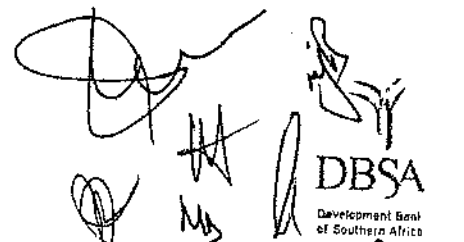
10.3.2. Unless otherwise provided in this Agreement, no amount of the Capital cancelled under this Agreement may be reinstated.

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.



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- 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).

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.



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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 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. Stamp duties

The Borrower must pay and indemnify the DBSA against any stamp duty, registration or other similar Tax payable in connection with the entry into, performance or enforcement of this Agreement.

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11.5. Value added taxes

- 11.5.1. 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.
- 11.5.2. 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 and/or Material Adverse Effect 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 such or any 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



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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
- 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. In addition to any other undertakings given by the Borrower to the DBSA pursuant to this Agreement, the Borrower gives the undertakings contained in this clause 14 (*Positive Undertakings*).
- 14.2. Each undertaking is a continuous undertaking and the Borrower shall comply with each undertaking for the entire period which commences on the Signature Date and which terminates on the Loan Discharge Date.
- 14.3. **The Borrower and the Project**
- 14.3.1. The Borrower shall :



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- 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 in a manner consistent with the Borrower's obligations under this Agreement;
- 14.3.1.3. 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-ordinate such visits and to minimise any disruption to the business and operations of the Borrower);
- 14.3.1.4. as soon as may reasonably be possible after receipt of a written request from the DBSA, institute an environmental review/audit in respect of the Project to be recorded in a written report and forthwith deliver such report to the DBSA and implement any recommendations contained in such report
- 14.3.1.5. promptly upon becoming aware thereof inform the DBSA of any occurrence which might have a Material Adverse Effect and/or of any Potential Event of Default and/or Event of Default;
- 14.3.1.6. use the Loan exclusively for the Project;
- 14.3.1.7. maintain separate records for the use of the proceeds of the Loan and make such records, as the DBSA may request, available;
- 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;



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- 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. allow the DBSA to participate in its existing project implementation structures that are responsible for overseeing the implementation of the 2010 Host City Capital Programme;
- 14.3.1.12. 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;
- 14.3.1.13. otherwise comply in all respects with the norms and criteria set out in Annexure A (*Project Description*); and
- 14.3.1.14. at all times and in all respects comply with the project co-operation provisions set out in B (*Project Co-Operation*).

14.4. Financial Statements

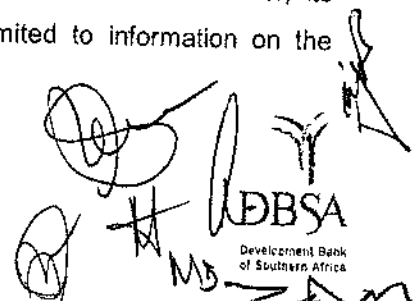
The Borrower shall deliver its audited annual financial statements to the DBSA within 180 (one hundred and eighty) days of the last day of the Financial Year.

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



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implementation of its Environmental Management Plan, (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;
- 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 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 will be exceeded as a result of borrowings under this Agreement;
- 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. applicable and adequate insurance in respect of the Project is in full force and effect;



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- 15.2.4. 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;
- 15.2.5. the rights of the DBSA under this Agreement shall rank at least *pari passu* with all of the Borrower's unsecured obligations;
- 15.2.6. the Project conforms in all material respects with the detailed descriptions as forwarded to the DBSA from time to time;
- 15.2.7. the Borrower has all Authorisations required in connection with the Project and is in compliance with such Authorisations;
- 15.2.8. 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;
- 15.2.9. 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;
- 15.2.10. 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 to which it is a party;
- 15.2.11. the Borrower is not in default of any of its obligations in respect of other borrowed monies;
- 15.2.12. from the Signature Date and for so long as any moneys are owing under this Agreement, it will:
- 15.2.12.1. 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 regulations and all other relevant statutory or other regulatory requirements and/or consents and approvals;



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15.2.12.2. 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;

15.2.12.3. 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;

15.2.13. 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

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strictly on due date and fails to remedy such failure within 10 (ten) Business Days after its due date;

- 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 30 (thirty) 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 30 (thirty) 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 R1 000 000,00 (one million 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;



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- 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.
- 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.

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 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.

22. **GOVERNING LAW**

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

23. **JURISDICTION**

The parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the South Gauteng Division of the High Court of South Africa (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 *prima facie* 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.

 The bottom right corner of the page contains several handwritten signatures in black ink. To the right of these signatures is a circular stamp containing the text "DBSA" in a large font, with "Development Bank of Southern Africa" written in a smaller font below it. There are also some initials and other markings scattered around the stamp.

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

26. **COSTS**

26.1. 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) 313-3080

Attention: Bethuel Netshiswinzhe; and

27.2.2. **Borrower:**

Physical: City of Johannesburg
15th Floor – Jorissen Place
66 Jorissen Street
Braamfontein

Postal: P.O. Box 1450, Johannesburg

Facsimile: (011) 2421055

Attention: ~~William Mathemela~~; MANKOOI MOITSE

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 addressee 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.

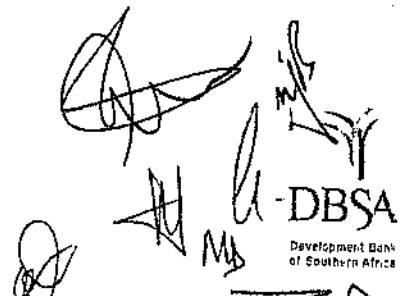
27.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

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 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.

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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.



Handwritten signatures and stamps, including the logo for DBSA (Development Bank of Southern Africa).

THIS DONE AND SIGNED AT Johannesburg ON THE 19th DAY OF August 2009.

[Handwritten initials]

AS WITNESSES:

1. *[Signature]*

2. *[Signature]*

[Signature]

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

THIS DONE AND SIGNED AT Midrand ON THE 20th DAY OF August 2009.

AS WITNESSES:

1. *[Signature]*

2. *[Signature]*

[Signature]

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



PROJECT DESCRIPTION

1. INTRODUCTION

PROGRAMME GOAL

DBSA would like to partner with South African Football Association (SAFA), the three spheres of government, the private sector, utilities and other service providers to create the institutional capacity and infrastructure to ensure a successful outcome of the 2010 FIFA World Cup.

PROGRAMME OBJECTIVE

The objective of this programme is to propose a comprehensive support package to the City of Johannesburg as a host city to ensure that preparation funding is available for the planning, design and procurement of supporting infrastructure; that adequate capital funding is available for the construction of match venues and that project management capacity is enhanced where required.

PROGRAMME DESCRIPTION

The programme, estimated at R1billion is aimed at enhancing the socio-economic development of City of Johannesburg as a result of a successful hosting of the 2010 Soccer World Cup. The programme capital expenditure caters for the completion of Soccer City Precinct and funding cost overruns for stadia construction as follows:

PROJECT FUNDING REQUIRED	BUDGET (R'm)
Soccer City	
Soccer City Estimated Funding Shortfall	R 841
Soccer City Precinct	
Soccer City Precinct	R269
Sub-total	R1,110
Funded by COJ	R110
Total application by COJ	R 1,000



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2. NORMS AND CRITERIA

A joint Steering Committee consisting of representatives from the Borrower and the DBSA, will adjudicate and approve the design and implementation of each Project in terms of the following norms and criteria:

2.1 Economic

- o Each project shall be justified and sustainable in terms of effective demand; and
- o An economic cost-benefit analysis shall be executed on each project rendering an economic rate of return of above 5% and a benefit-cost ratio of more than 1.

2.2 Environmental

- o The Borrower shall comply to the Environmental, Water and Occupational Health and Safety legal requirements, and shall provide the DBSA with copies of the Records of Decision (RoD) from the relevant Provincial Environmental Authority where applicable to the projects;
- o The Borrower shall closely monitor environmental and related risks, with regard to the specific projects where such risks are relevant;

2.3 Social

- o All Projects to be funded, pursuant to this Programme, shall support the expressed development priorities and needs of the beneficiaries;
- o The Borrower shall procure that the beneficiaries understand and endorse the level of service chosen in each Project element and that they are willing and able to pay for the cost of the services;
- o Project implementation will be accompanied by formalized beneficiary communication arrangements, which will at regular intervals, furnish benefiting communities with full progress reports about the projects;
- o The Borrower shall follow an empowerment strategy, that ensures that local skills and resources are mobilized, during the implementation of the Projects;

The bottom right corner of the page contains several handwritten signatures in black ink. To the right of these signatures is the logo of the Development Bank of Southern Africa (DBSA), which includes the acronym 'DBSA' in a large font and the full name 'Development Bank of Southern Africa' in a smaller font below it.

- o Negative impacts of the projects on the affected communities or groups will be sufficiently mitigated to the satisfaction of all parties concerned.

2.4 Institutional Aspect

- o Institutional capacity is available within all departments/units responsible for the implementation of Projects. However, any reorganization, re-skilling and other institutional capacity-building needs that arise, during implementation of the Projects shall be addressed timeously and DBSA should be informed accordingly;
- o Adequate provision for routine maintenance, in terms of staff, planning, finance and community/stakeholder interaction shall be effected, where necessary;

2.5 Technical

- o The planning and design of infrastructure shall be in accordance with national standards, as guided by the "Guidelines for Human Settlement Planning and Design", which are acceptable to the client;
- o Existing infrastructure shall be utilized, as far as possible;
- o All purchasing of goods and services shall be conducted in compliance with the preferential procurement regulations, 2001, pertaining to the Preferential Procurement Policy Framework Act: no 5 of 2000;
- o The infrastructure provided shall be technically appropriate, in that it shall be cost-effective, meet the demand requirements and be flexible enough to accommodate future needs; and
- o The Borrower shall ensure that Business Continuity Measures are in place in case of occurrence of unforeseen disaster.

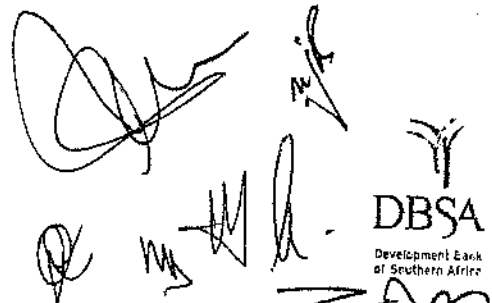
2.6 Financial

- o The Borrower shall submit a detailed Project Description, with reference to the Application and Source of Funds Statement, to the satisfaction of the DBSA, before any disbursement of funds by the DBSA shall occur; and
- o The Borrower shall institute the necessary management and financial arrangements, involving all parties concerned, to ensure the effective and efficient implementation of the Projects.

Handwritten signatures and stamps are present at the bottom right of the page. One signature is a large, stylized scribble. Below it, there are several smaller signatures and initials, including 'MD'. To the right, there is a stamp that reads 'DBSA Government Bank of Southern Africa'.

LOGICAL FRAMEWORK

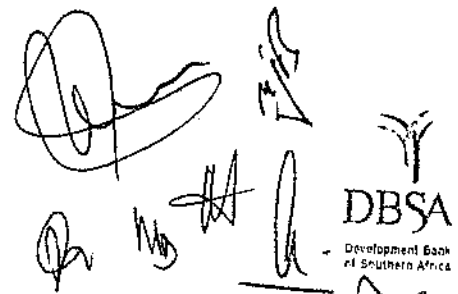
Narrative Summary	Objectively Verifiable Indicators	Means or Sources of Verification	Risks/Assumptions
1.1 GOAL			
Sustainable provision of municipal infrastructure that will enhance the socio economic development and ensure successful hosting of the FIFA 2010 World Cup event.	Extent of municipal infrastructure expanded and new infrastructure built e.g. roads, electrical supply, etc.	Municipal reports such as annual mayoral report and budget report; Inspection and site visit	Communities utilize new infrastructure. Sufficient effort is made to document and record results so that they can be available for evaluation
1.2 PURPOSE			
Provision of a finance facility to fund the capital programme of the CoJ comprising of a programme of projects for the upgrading and extension of existing and new, bulk and reticulated water supply, sanitation, electricity supply, roads and storm water drainage.	Extent and amount of projects in programme implemented (e.g. roads built, etc)	Municipal reports and records of projects implemented Site inspection Community interviews	Provision of better infrastructure leads to higher living conditions and improved willingness to pay for services. Sufficient effort is made to document and record results so that they can be available for evaluation
1.3 Results or Outputs			
Amount and length of roads built; Improved services such as water, sanitation, and electricity supply. Improved payment levels.	Completion plans and site inspections Invoices and proof of payment	End of Project survey Completion report Site inspection Municipal financial records	Borrower as implementing agent capable of managing the programme of projects to completion.
1.4 Activities			
Accepted loan agreements Identification of projects within the programme	Approved report, accepted bid proposal and loan agreement; Approved and signed sector appraisal Recorded on CORE	DBSA records on CORE	DBSA team performs within targets
2010 Fifa World Cup Infrastructure programme implemented	Loan agreement signed Loan funds disbursed Contracts completed on time and within cost.	DBSA records on CORE; End of Project survey; Completion report; Site inspection; Municipal financial records	Borrower as implementing agent capable of managing the project to completion.
Monitoring and evaluation	Disbursements	Manage financial records	Borrower as implementing agent capable of managing the project to completion.
Technical and Advisory Services to client.	Client's drawdown of full amount.	Completion report. Financial Statements.	Client's capacity of financial management.



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PROJECT CO-OPERATION

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



- 2.3 be responsible for the management and maintenance of work carried out, within the context of the Project;
- 2.4 with regard to the procurement of goods and services for the Project, in consultation with the DBSA, invite participation, in tender or quotation procedures on an open bid basis (such documentation to be drawn up, in consultation with the DBSA's Project Team and ratified by the DBSA), from natural persons and bodies corporate, respectively;
- 2.5 ensure that contractors, to whom contracts are awarded, are insured, and remain insured, in terms of contractors-all-risk-insurance policies, in a manner reasonably acceptable to the DBSA;
- 2.6 insure, and keep insured at the replacement value thereof, such of its interests in the Project, against such risks, as may be agreed upon by the Parties;
- 2.7 maintain, or cause to be maintained, records, adequate to identify the operations carried out by means of the Loan, and furnish the DBSA with all such information (e.g. progress reports), concerning the implementation of the Project;
- 2.8 apply the Loan, in accordance with Annexure B;
- 2.9 require each contractor, to whom a contract is awarded, to furnish a performance guarantee acceptable to the DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.10 preserve all documents and accounting records, relating to the Project, up to the expiry of a period of 9 (nine) years, after signature of this Agreement, and shall allow the DBSA, at the DBSA's cost, at any reasonable time, to have such documents and records audited by a person, nominated by the DBSA.
3. Where the Parties agree that the further appointment of consultants, or the revision of the brief of appointed consultants, is necessary, the following criteria shall obtain:-
- promotion and/or support of the SMME sector;
 - past experience with similar projects;
 - knowledge of local conditions;
 - abilities and qualifications;
 - membership of professional institutions.

The image shows several handwritten signatures in black ink. To the right of the signatures is the logo of the Development Bank of Southern Africa (DBSA). The logo consists of the letters 'DBSA' in a bold, sans-serif font, with the full name 'Development Bank of Southern Africa' written in a smaller font below it.

FORM OF REQUEST FOR DISBURSEMENT (LOAN)

Borrower's letterhead

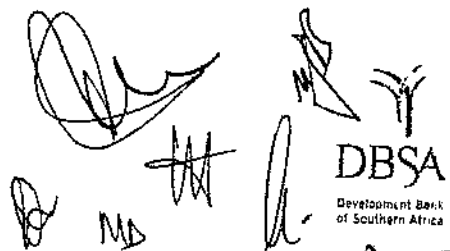
(Date)

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 City of Johannesburg Metropolitan 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

[authorised representative]

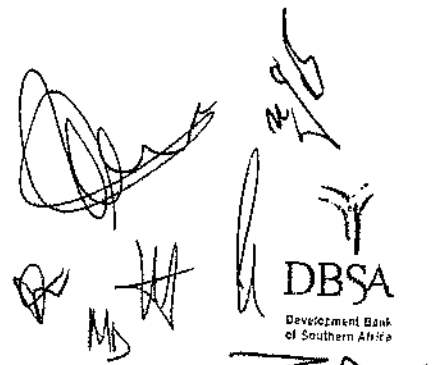
Name: _____



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ANNEXURE D

BORROWER'S AUTHORISATION IN TERMS OF SECTION 46 OF THE MUNICIPAL FINANCE
MANAGEMENT ACT



Handwritten signatures and the logo of the Development Bank of Southern Africa (DBSA). The logo includes the text "DBSA" and "Development Bank of Southern Africa".