

DBSA



IMPLEMENTATION

Loan Agreement

LOAN AGREEMENT

10619

in respect of

BEAUFORT WEST URBAN INFRASTRUCTURE

Entered into by and between

BEAUFORT WEST LOCAL TRANSITIONAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

*[Handwritten signatures and initials]*  
210

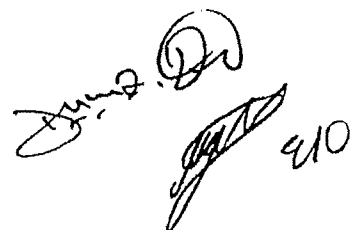
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## SUMMARY

1. LOAN AMOUNT : R3 800 000
2. LOAN PERIOD : 20 years
3. INTEREST RATE : 14 per centum per annum
4. GRACE PERIOD FOR  
CAPITAL REPAYMENT : 2 years
5. CAPITALISATION OF INTEREST: nil
6. CAPITAL REPAYMENT AND  
PAYMENT OF INTEREST : 36 equal six-monthly instalments, commencing on  
the last day of the 5<sup>th</sup> Half-year after the Half-year  
during which the first disbursement was advanced  
to the Borrower. Interest only will be payable from  
the last day of the 1<sup>st</sup> Half-year after the Half-year  
during which the first disbursement was advanced  
to the Borrower up to the last day of the 4<sup>th</sup> Half-  
year during which the first disbursement was  
advanced to the Borrower.
7. PROJECT FILE NO. : LS10619

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MEMORANDUM OF LOAN AGREEMENT

in respect of

BEAUFORT WEST URBAN INFRASTRUCTURE

Entered into by and between

BEAUFORT WEST LOCAL TRANSITIONAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA

In fulfillment of the role of the Development Bank of Southern Africa to support development in Southern Africa, it is hereby agreed as follows:

*[Handwritten signature]*  
*[Handwritten signature]*  
2/10

## 1. DEFINITIONS AND HEADINGS

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

- |       |                 |   |
|-------|-----------------|---|
| 1.1.1 | "Borrower"      | Beaufort West Local Transitional Council;   |
| 1.1.2 | "DBSA"          | the Development Bank of Southern Africa, established in terms of an agreement (hereinafter referred to as the "Establishment Agreement") signed at Cape Town on 30 June 1983; |
| 1.1.3 | "Parties"       | the Borrower and DBSA;  |
| 1.1.4 | "Project"       | Beaufort West Urban Infrastructure, as described in more detail in Annexure A attached hereto;  |
| 1.1.5 | "Loan"          | the financing granted to the Borrower in terms of clause 3;   |
| 1.1.6 | "On-Lending"    | the transfer of any amounts by the Borrower to third parties out of the proceeds of the Loan, excluding payments for the procurement of goods and services;                   |
| 1.1.7 | "Project Agent" | a person nominated in writing by the Borrower to act on its behalf in respect of the Project;   |
| 1.1.8 | "Half-year"     | from the first day of April to the 30th day of September and/or from the first day of October to the 31st day of March during the next calendar year.                         |

1.2 Headings to the clauses of this agreement, the table of contents and summary are for reference purposes only and do not form part of this agreement.

## 2. PROJECT CO-OPERATION

2.1 To ensure that the purposes of the Loan are accomplished the Parties shall:

2.1.1 periodically and at the request of either Party:

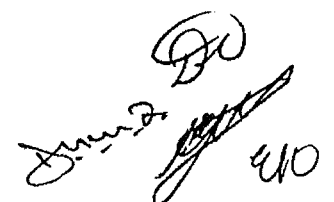
2.1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this agreement as well as other matters relating to the purposes of the Loan; and

2.1.1.2 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;

2.1.2 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 under this agreement;

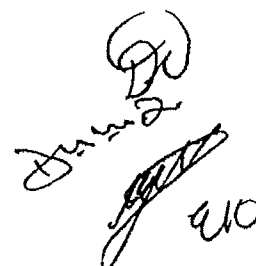
2.1.3 jointly determine the technical, financial and organisational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters; and

2.1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan, bearing in mind that preference shall be given to the involvement of natural persons and bodies corporate respectively resident and registered in South Africa.

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2.2 The Borrower shall:

- 2.2.1 grant representatives of DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;
- 2.2.2 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 that Annexure;
- 2.2.3 be responsible for the management and maintenance of work carried out within the context of the Project, provided that DBSA shall be consulted in this regard when reasonably necessary;
- 2.2.4 with regard to the procurement of goods and services for the Project, in consultation with DBSA, invite participation in tender or quotation procedures on equal terms from natural persons and bodies corporate respectively resident and registered in South Africa and, unless otherwise agreed to by the Parties, follow the following procedures in respect of tenders and quotations:
  - 2.2.4.1 tender documents or invitations for quotations shall be drawn up in consultation with DBSA's project team and ratified by DBSA;
  - 2.2.4.2 the tenders and quotations shall be invited and, after completion of the steps described in clause 2.2.4.4, adjudicated by the Tender Board, or other responsible body, of the Borrower;
  - 2.2.4.3 open tenders shall be open to all interested parties falling within the description contained in clause 2.2.4, and it shall not necessarily be a pre-requisite that the tenderer be a member of any particular association;

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- past experience with similar projects;
- knowledge of local conditions;
- abilities and qualifications;
- membership of professional institutions;
- curriculum vitae of key personnel in the local office in the territory of the Borrower or other office of the consultant from where the work will be carried out.

2.4.3 DBSA's information on capable consultants will be made available to the Borrower for this purpose.

2.4.4 The short list shall include a cost estimate of the services to be provided.

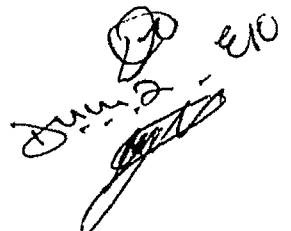
2.4.5 The Borrower will then appoint one of the consultants from the short list, subject to the approval of DBSA.

2.4.6 Should arrangements be made to the effect that DBSA will provide funds to remunerate any consultant, such consultant shall not be appointed without the prior written consent of DBSA.

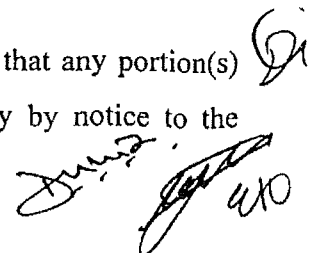
2.5 DBSA shall use its best endeavours to make technical assistance available to the Borrower within the limits of its resources and upon such terms and conditions as agreed to by the Parties when and if the need for such assistance is identified by the Parties in terms of the provisions of clause 2.1.3 supra.

### 3. THE LOAN

3.1 DBSA shall lend to the Borrower on the terms and conditions set forth in this agreement an amount not exceeding in aggregate R3 800 000 (three million eight hundred thousand Rand) at the rate of interest set forth in clause 4 hereunder.

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- 3.2 The Loan shall be utilised exclusively for the purpose of the Project as set out in Annexure A, and the Borrower shall ensure that any provisions contained in Annexure A are complied with.
- 3.3 DBSA shall pay the Loan proceeds to and on the order of the Borrower in such disbursements and on such terms and conditions as set forth in Annexure B attached hereto.
- 3.4 The Borrower shall furnish DBSA with particulars regarding officials authorised to apply for withdrawals on its behalf.
- 3.5 The capital amount of the Loan, which shall include the interest capitalised in terms of clause 4.2 hereunder, shall be repaid, and further interest shall be paid, in 36 (thirty six) equal six-monthly instalments, commencing at the end of the 5<sup>th</sup> (fifth) Half-year after the Half-year during which the first advance was made to the Borrower from the proceeds of the Loan, and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that the Borrower may, with 1 (one) month written notice to DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding. An instalment shall be a fixed amount, determined as at the outset of the 5<sup>th</sup> (fifth) Half-year after the Half-year during which the first advance was made to the Borrower from the proceeds of the Loan, calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 4.1 hereof, in 36 (thirty six ) equal six-monthly payments. Should, at the outset of the said 5<sup>th</sup> (fifth) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.
- 3.6 The Borrower may by notice to DBSA cancel any undrawn portion(s) of the Loan provided that such cancellation shall not jeopardise the proper completion of the Project; it being understood that upon the giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.
- 3.7 If DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, DBSA may by notice to the

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Borrower terminate the right of the Borrower to make drawings in respect of such undrawn portion(s); it being understood that upon giving of such notice the instalments referred to in clause 3.5 supra shall be reduced pro rata.

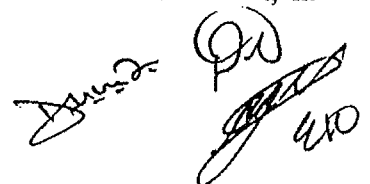
- 3.8 If DBSA has not received a last claim for an advance under the Loan from the Borrower at the end of the 5<sup>th</sup> (fifth) half year after the half year during which the first advance was made to the Borrower, DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision. A claim shall not be regarded as having been received if it is defective to such an extent that DBSA would not be obliged to make an advance in terms thereof.

#### 4. INTEREST

- 4.1 The Loan shall bear interest on the amount from time to time outstanding at a rate of 14 % (fourteen per centum) per annum.
- 4.2 Interest on the amount from time to time outstanding shall be calculated at the end of each Half-year, and shall on such dates be capitalised against the Loan up to the end of the Half-year after the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan, which capitalised interest shall be regarded as part of the capital amount. Thereafter interest shall continue to be calculated at the end of each Half-year, and shall be payable by the Borrower.

#### 5. PAYMENTS

- 5.1 All payments to or by the Parties under this agreement shall be effected in South African Rands.
- 5.2 All payments under this agreement to the Borrower shall be effected to the credit of such banking account(s) of the Borrower as the Borrower may from time to time direct, in writing.

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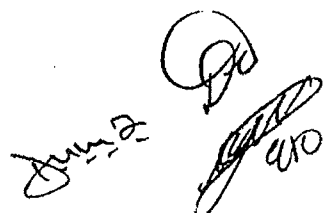
- 5.3 All payments under this agreement to DBSA shall be effected to the credit of such banking account(s) of DBSA as DBSA may from time to time direct, in writing.
- 5.4 Payments in terms of this agreement shall be effected without deduction for and free from any taxes, charges, fees or other costs whatsoever.
- 5.5 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.
- 5.6 For purposes of the calculation of interest and repayments, any disbursement for technical assistance, previously approved and forming part of the Loan, paid out before signature of this agreement, shall be deemed to have been paid out on the same date as the first disbursement after signature hereof.

## 6. ON-LENDING

- 6.1 No On-Lending shall be effected unless provided for in Annexure A.

## 7. ACCELERATION OF MATURITY AND IMPROBABILITY OF PERFORMANCE

Should DBSA, after consultation with the Borrower, be able to show that the Borrower will probably not be in a position to perform its financial obligations in terms of this agreement, then DBSA may, after giving the Borrower 30 (thirty) days notice of its intention to do so, demand immediate repayment of all amounts owing by the Borrower in terms of this agreement.

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## 9. VALIDITY OF LOAN AGREEMENT; ARBITRATION

- 9.1 Neither DBSA nor the Borrower shall be entitled to assert that any provision of this agreement is invalid or unenforceable because of any provision of the Establishment Agreement.
- 9.2 Any dispute arising out of or relating to this agreement concerning the interpretation of the terms and conditions of this agreement or of compliance by any Party with the terms/conditions of this agreement which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this clause, be settled by arbitration in terms of the Arbitration Act No. 42 of 1965, as amended from time to time; provided that a claim by DBSA for the repayment of any monies due under the loan agreement shall not be regarded as a dispute for the purpose of this clause and neither Party shall therefore be obliged to refer such a claim to arbitration.
- 9.3 In case of arbitration a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement, by the chairperson of the association of Arbitrators, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he/she has to adjudicate. In case the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his/her predecessor.
- 9.4 The arbitration shall be held at the place and in accordance with whatever procedures the arbitrator considers appropriate. In particular, the arbitrator, may, if he/she deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third Parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.
- 9.5 After the institution of arbitration proceedings the tribunal may proceed with the arbitration notwithstanding any failure, neglect or refusal of either Party to comply with the provisions

hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including interest and costs, without furnishing reasons unless otherwise agreed by the Parties in writing.

- 9.6 The provisions of this clause may be invoked by any Party by delivering to the other party a demand, in writing, that an arbitrator be appointed to adjudicate in respect of a specified dispute.

## 10. GENERAL

- 10.1 Any notice or request to be given or made in terms of this agreement shall be in writing and shall be deemed to have been duly given or made when in the case of DBSA, addressed to the General Manager and received at:

Physical address: Development Bank of Southern Africa  
Headway Hill  
MIDRAND  
SOUTH AFRICA; or

Postal address: P O Box 1234  
HALFWAY HOUSE  
1685; or

Telex number: 4-25546  
SOUTH AFRICA

Telefax number: 011-3133086

and in the case of the Borrower, when addressed to the Borrower and received at the following address:

Postal address: Private Bag 582  
Beaufort West  
6970; or

Telefax number: 0201-52121

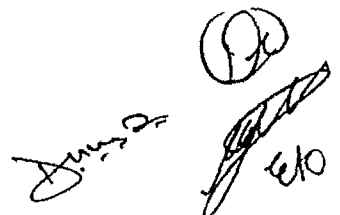
Either of the Parties shall be entitled to change the abovementioned addresses by giving notice to such effect by registered post.

- 10.2 No amendment of, 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, with the understanding that Annexures A, B and C hereto can be changed by agreement reached through correspondence.
- 10.3 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 right in respect of which such indulgence was granted.
- 10.4 This contains 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.

## 11. SUSPENSIVE CONDITIONS

The operation of this agreement is subject to the Borrower:

- 11.1 confirming in writing that the Administrator, being a competent authority within the jurisdiction of the Provincial Government designated by the Premier of the Province, is fully informed of and approves the Project and the funding arrangements with regard thereto; and
- 11.2 submitting proof to DBSA that the Government of the Province of the Western Cape has been fully informed of and supports the Project.

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THUS DONE AND SIGNED AT Beaufort West ON THE 9<sup>th</sup> DAY OF May 1997

AS WITNESSES:

1. *[Signature]*

2. *[Signature]*

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

THUS DONE AND SIGNED AT Midrand ON THE 9<sup>th</sup> DAY OF May 1997

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. PROJECT OBJECTIVE:

To contribute toward sustaining and supplementing existing urban infrastructure through the upgrading of bulk electricity and the electrification of a further 1587 houses, in order to enhance the quality of life of the poor community.

### 2. PROJECT PERSPECTIVE:

The Project entails the upgrading of bulk electricity and electrical reticulation to 1587 houses to be constructed under the Capital Subsidy Scheme. The total Project cost of R3 800 000 is applied as follows:

Upgrading of Bulk Electricity	R1 500 000
Reticulation of 1587 houses	R2 300 000
TOTAL	R3 800 000

### 3. TECHNICAL DESCRIPTION:

The Project is undertaken in the suburbs of Kwamandlakosi and Rustdene and will be a natural extension of the existing electrical network, conforming to the same standards as before.

Construction standards for both the bulk and reticulation construction will conform to the standards laid down by ESCOM, SABS, Cape Provincial Government and the Borrower.

Both low and high voltage reticulation will be above ground. The LV reticulation will be by means of aerial bundle conductors from which individual house connections are taken. House connections will both be underground or overhead through the roof, depending on the preference of the house owner. In the case where the homeowner prefers an underground connection, the owner will provide the trench for the cable.

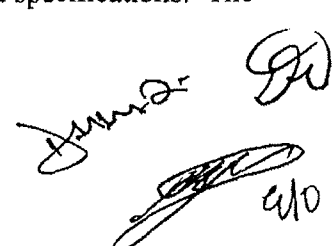
For the HV reticulation, the minisubs will be pole mounted on the same poles for the LV reticulation.

Each house will be provided with the same ready board and energy dispenser as is already in use in Beaufort West.


### 4. MATTERS AGREED UPON:

4.1 The Borrower will continue to promote the involvement of private sector in the Project by contracting the whole or suitable parts of the Project to small contractors. The selection of contractors is done in close consultation with the DBSA project team.

4.1.2 The tender documents are drawn up to include appropriate clauses for a community based construction programme. It explains the rationale behind labour-intensive design and construction and ensures that the tenderer base his price on the maximum use of "local" labour. The clauses do not take away any responsibilities from the main contractor for completion within the contract period or for meeting the required specifications. The wording of these clauses is agreed with the Project Team.



- 4.1.3 The Borrower continues to involve the community through the Electricity Steering Committee which meets regularly to discuss matters relating to the development of electricity in Beaufort West. .

  
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June 2.

# ANNEXURE B

## APPLICATION AND SOURCE OF FUNDS STATEMENT BEAUFORT WEST INFRASTRUCTURE (10619/1/1)

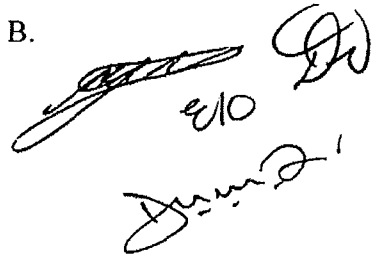
Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
UPGRADING BULK ELECTRICITY	1,500,000	1,500,000	100.0	0	0.0	0	0.0
RETICULATION TO HOUSES	2,300,000	2,300,000	100.0	0	0.0	0	0.0
Totals	3,800,000	3,800,000	100.0	0	0.0	0	0.0



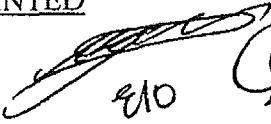

  
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## II. TERMS AND CONDITIONS OF DISBURSEMENT


Disbursement of each progress claim in respect of the amount financed by DBSA is to be effected as a ratio of actual cost of each item (for each phase) in accordance with the Application and Source of Funds Statement (Annexure B), read together with the Project Description (Annexure A), to the maximum amount of R3 800 000. This is subject to submission to DBSA of fully documented proof of payment(s) by the Borrower to supplier(s), consultant(s) and/or contractor(s), of actual claims (or in-house expenses incurred), as approved by the Borrower or its authorised representative. Each progress claim is to be in the itemised format as depicted in Annexure B.

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LIST OF CONSULTANTS AND  
CONTRACTORS ALREADY APPOINTED

  
210  
D. J. J.

AUTHORISATION - BORROWER

  
410  
D. J. J.

AUTHORISATION  
DEVELOPMENT BANK OF SOUTHERN AFRICA

**IAN ANDREW GOLDIN**

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of his post by the Board of Directors of the Development Bank of Southern Africa on 19 September 1985, determined on 25 September 1996 that:

**IAN ANDREW GOLDIN**  
in his capacity as Chief Executive

OR

**JACOB HENRY DE VILLIERS BOTHA**

OR

**MANDLA SIZWE GANTSHO**

OR

**KHOTSO MOLEFE NTSEARE**  
in their capacity as Executive Managers

OR

**PULE LESAILANE MOKHOBO**  
in his capacity as Manager: Legal Services

OR

**DAVID FERREIRA**

OR

**CHRISTINA JOANNA GOLINO**

OR

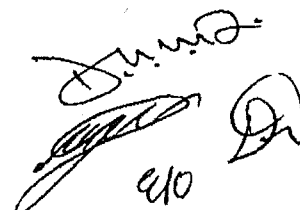
**CHRISTIAAN STEPHANUS HEYMANS**

OR

**BANE MOEKETSI MALEKE**

OR

**MAGARE LUTHER MASHABA**



26

OR

**. FAZAL MEHMOOD SAIB**

OR

**JENNIFER DAPHNE TYOBEKA**

OR

**DENNIS MDUDUZI ZIMU**

in their capacity as Managers: Business Units (DSP Related)

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 documents that may be necessary for the purpose

\_\_\_\_\_  
DATE

\_\_\_\_\_  
LEGAL DIVISION

*[Handwritten signature]*  
*[Handwritten signature]*  
4/10 *[Handwritten initials]*