13 315/2

LOAN AGREEMENT

in respect of

KEIMOES: REFINANCING OF URBAN INFRASTRUCTURE: SURFACING OF STREETS, STREET LIGHTING AND UPGRADING OF LOW VOLTAGE RETICULATION

entered into by and between

KEIMOES TRANSITIONAL LOCAL COUNCIL

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

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MEMORANDUM OF LOAN

CLAUSE

SUMMARY

1.	LOAN AMOUNT	:	R562 700
2.	LOAN PERIOD	:	20 years
3. *	INTEREST RATE (Indicative)	:	16.50% nominal rate per annum.
4.	GRACE PERIOD FOR CAPITAL REPAYMENT	:	Nil
5.	CAPITAL REPAYMENT	:	40 equal six-monthly instalments, commencing on the last day of the 1st Half-year after the Half-year during which the first disbursement was advanced to the Borrower.
6.	PROJECT FILE NO.	:	NC 13315.2

* The interest rate will be fixed upon the date of signature of the loan agreement and the prevailing DBSA rate at that time will be applicable.

1. INTERPRETATIONS

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

1.1.1	"Borrower"	Keimoes Transitional Local Council;
1.1.2	"the DBSA"	the Development Bank of Southern Africa Limited, reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No. 13 of 1997;
1.1.3	"Parties"	the Borrower and the DBSA;
1.1.4	"Project"	Keimoes: Refinancing of 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 2;
1.1.6	"Project Agent"	a person nominated in writing by the Borrower to act on its behalf in respect of the Project;
1.1.7	"On-lending"	the transfer, by the Borrower, of any amount(s) to any third parties, from the proceeds of the Loan, excluding payments for the procurements of goods and services;
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;
1.1.9	"this Agreement"	means this Agreement together with any Annexures thereto.

1.2 Headings to the clauses of this Agreement, the table of contents and summary are for reference purposes only and are not intended to affect the interpretation thereof.

1.3 Any reference to the singular shall include the plural and vice versa.

1.4 Any reference to a natural person shall include an artificial or corporate person and vice versa.

1.5 Any reference to one gender shall include the other.

1.6 This Agreement shall bind the Borrower and its successors-in-title.

2. THE LOAN

2.1 The Loan shall be:-

2.1.1 an amount not exceeding, in aggregate, R562 700 (five hundred and sixty two thousand seven hundred Rand); and

2.1.2 utilised exclusively for the Project and the Borrower, hereby, undertakes that it shall comply with all provisions of this Agreement..

2.2 The Loan proceeds shall be paid by the DBSA to, and on the order of, the Borrower in such disbursements and in accordance with all provisions contained in this Agreement.

2.3 No On-Lending shall be effected unless provided for in this Agreement.

3. INTEREST

3.1 The Loan shall bear interest on the amount from time to time outstanding at a nominal fixed rate of 16.50% (sixteen comma fifty per centum) per annum.

3.2 Interest on the amount from time to time outstanding shall be compounded six-monthly and payable on the last day of each Half-year. Payment shall commence on the last day of the Half-year following the Half-year during which the first disbursement was advanced to the Borrower from the proceeds of the Loan.

4. REPAYMENT OF LOAN AND PAYMENT OF INTEREST

4.1 The capital amount of the Loan shall be repaid in 40 (forty) equal six-monthly instalments, commencing on the last day of the 1st (first) Half-year following the Half-year during which the first disbursement 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 subject to the provisions of clause 7, the Borrower may, with 1 (one) month written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided further that this shall not jeopardise the proper completion of the Project.

4.2 An instalment shall be a fixed amount, determined as at the outset of the 1st (first) Half-year following the Half-year during which the first disbursement 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 3.1 above, in 40 (forty) equal six-monthly payments. Should, at the outset of the said 1st (first) 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.

5. COMMITMENT FEE

The DBSA shall charge a commitment fee of 0,5% (nought comma five per centum) per annum on all the undisbursed portion of the Loan effective 3 (three) months from the date of the last signature of this Agreement. Payment shall be made on the same terms and conditions as the other amounts due in terms of this Agreement.

6. LATE PAYMENT

6.1 The Borrower shall be liable to the DBSA for the payment of penalty interest on all amounts payable, yet unpaid, in terms of this Agreement should the Borrower:-

6.1.1 fail to pay on the due date any amount owing or which may become owing to the DBSA in terms of this Agreement; or

6.1.2 with the DBSA's written consent defer the payment of any amount so owing.

6.2 Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid at the ruling prime rate charged by the Standard Corporate and Merchant Bank, Sandton, South Africa on its overdraft accounts from time to time. Penalty interest shall be compounded six-monthly and payable on demand.

7. EARLY REPAYMENT

7.1 The Borrower may prepay all or part of the Loan on payment dates and subject to prior notice of at least 1 (one) month. The amount prepaid shall be equal to a full payment of any instalments of the Loan.
In such case:

7.1.1 where the Loan interest rate is less than or equal to the reinvestment rate defined hereinbelow, no prepayment fee shall be payable;

7.1.2 where the interest rate of the Loan is greater than the reinvestment rate, defined hereinafter, each prepayment shall give rise to payment by the Borrower to the DBSA of a prepayment fee equal to the difference calculated on a present value basis to the DBSA's prejudice, between the interest which the Loan would have produced had there been no prepayment and the interest which would be produced by a reinvestment of the same amount having the same amortisation schedule as the prepaid portion of the Loan.

7.2 The reinvested rate shall be the rate at which the DBSA lends out funds to Borrowers at the date of such prepayment.

7.3 The discount rate shall be equal to the reinvested rate used hereinabove. The date used for the present value calculation shall be that of the prepayment.

7.4 Payment of the prepayment and prepayment fee shall take place for value on the payment date.

8. PAYMENT(S)

8.1 All payments to or by the Parties under this Agreement shall be effected in South African Rands.

8.2 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.

8.3 The Borrower shall furnish the DBSA with all the necessary information regarding its officials who are authorised to apply for drawdowns on the Borrower's behalf.

8.4 All payments under this Agreement to the DBSA shall be effected to the credit of such banking account(s) of the DBSA as the DBSA may from time to time direct, in writing.

8.5 Payments to the DBSA in terms of this Agreement shall be effected without deduction and free from any taxes, charges, fees or other costs whatsoever.

8.6 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.

9. CANCELLATION/TERMINATION OF DRAWDOWNS

9.1 The Borrower may, by giving 30 (thirty) days written notice to the DBSA, cancel any undrawn portion 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 4.1 supra shall be reduced pro rata.

9.2 If the DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, the DBSA may by notice to the Borrower terminate the right of the Borrower to make drawdowns in respect of such undrawn portion; it being understood that upon giving of such notice the instalments referred to in clause 4.1 supra shall be reduced pro rata.

9.3 If the DBSA has not received a final application for a drawdown under the Loan from the Borrower at the end of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan, the DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless the DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.

10. BREACH

10.1 The DBSA shall be entitled, after giving the Borrower 30 (thirty) days written notice, to suspend drawdowns from the Loan or to terminate this Agreement and to claim from the Borrower immediate payment of all the outstanding amounts should the Borrower commit any breach of this Agreement, provided that the DBSA may, at its entire discretion, dispense with the giving of the 30 (thirty) days notice.

10.2 Without derogating from the generality of the aforegoing, the DBSA shall be entitled to exercise its rights in terms of clause 10.1 above, upon the happening of any of the following events:

10.2.1 the Borrower failing to repay the capital amount and to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in 10.1 above requiring it to do so;

10.2.2 any attachment being made or any execution being levied against the Borrower;

10.2.3 any failure to repay any of the DBSA's loans or breach of any agreement entered into between the Borrower and the DBSA;

10.2.4 should the DBSA, after consultation with the Borrower, reasonably conclude that the Borrower would probably not be in a position to perform its financial obligations in terms of this Agreement.

10.3 The exercise of the rights by the DBSA in terms hereof shall be without prejudice and/or in addition to any other rights which the DBSA may then have against the Borrower in law, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

11. FURTHER TERMS AND CONDITIONS

11.1 The Borrower undertakes to consult with the DBSA prior to incurring any medium and long-term debt obligations.

11.2 The Borrower undertakes to provide the DBSA with its audited financial statements within six (6) months from the end of each financial year.

12. ARBITRATION

12.1 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 the DBSA for the repayment of any monies due under this 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.

12.2 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.

12.3 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.

12.4 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, and furnish the Parties with written reasons for his/her judgment.

12.5 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.

13 GENERAL

13.1 YEAR 2000 COMPLIANCE

The Borrower shall provide the DBSA with proof that it is either already compliant with the year 2000 (Information Technology) changeover or that it has put steps in place to ensure such compliance.

13.2 DOMICILIUM

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

(i) In case of the DBSA:

Physical address:	Development Bank of Southern Africa Limited Headway Hill MIDRAND SOUTH AFRICA; or
Postal address:	P O Box 1234 HALFWAY HOUSE 1685; or
Telefax number:	011-3133086

(ii) In case of the Borrower

Physical address:	Keimoes Transitional Local Council Hoof Street KEIMOES 8860; or
Postal address:	P O Box 8 KEIMOES 8860; or
Telefax number:	(054) 461 1230

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

13.2.3 All notices made by either Party to the other ("the addressee") which:-

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

(ii) is posted by prepaid registered post to the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee on the seventh day after the date of posting; Provided that the Parties agree that all other forms of correspondence and/or requests may be done through fax and/or electronic mail (e-mail).

13.3. WHOLE AGREEMENT

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

13.4. NON-VARIATION

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

13.5. NON-ENFORCEMENT/INDULGENCE

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

13.6 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 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 R562 700 s subject to submission to the DBSA of fully documented proof of payment by the Borrower to supplier, consultant and/or contractor, 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.

THUS DONE AND SIGNED AT Keimoes ON THE 11 DAY OF March 1999

AS WITNESSES:

1. ____________________

2. ____________________

____

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 12 DAY OF MARCH 1999

AS WITNESSES:

1. ____________________

2. ____________________

____

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

ANNEXURE A

PROJECT DESCRIPTION

1. PROJECT OBJECTIVE

The Keimoes TLC's capital expenditure, which was inappropriately financed by short-term loans, is to be refinanced with long-term loans commensurate to the expected lifespan of the assets, to restructure the TLC's balance sheet and cashflow.

2. PHYSICAL DESCRIPTION

2.1 Surfacing of Streets

Surfacing of the streets by compacting the in-situ layer; application of two layers 13mm ∅ crushed stone; one layer of 6,7mm ∅ crushed stone and bituminous spray. No kerbing and/or storm water drainage is included.

Approximately 3.1km streets as follows:

- Non designated streets 1,7km
- Bokdamsingel 500m^2
- Friedberglaan 250m^2
- Dwarsstraat 450m^2
- Krugerstraat 450m^2
- Hoofweg 100m^2
- Straat sonder naam 1000m^2

2.2 Street Lighting

The street lighting consist of the purchasing of glass fibre poles and luminaries and the erection thereof which was completed departmentally.

2.3 Upgrading of Part of Low Voltage Reticulation

The installation of approximately 200m length of 120mm underground cabling, feeding residential and commercial consumers and also completing a ring feed at the same time.

3. COST ESTIMATE

The cost estimates for the different project outputs are as follows:

Item no	Description	Cost (R)
1.	**Upgrading and surfacing of streets**	**483,700**
2.	**Street lighting**	**49,000**
3.	**Upgrading of low voltage reticulation**	**30,000**
	Sub-total:	**562,700**
	TOTAL PROJECT COST (excluding VAT)	**562, 700**

4. MANAGEMENT ARRANGEMENTS

The Keimoes TLC, being the owner of the assets, will maintain and operate the infrastructure in good working condition, to accepted practice in municipal engineering.

ANNEXURE B

APPLICATION AND SOURCE OF FUNDS STATEMENT

KEIMOES:REFINANCING OF URBAN INFRASTRUCTURE (13315/2/1)

Description	Total (R)	DBSA (R)	%	Borrower (R)	%	Other (R)	%
FIXED ASSETS							
1.1 UPG. & SURFACING OF STREETS	483,700	483,700	100.0	0	0.0	0	0.0
1.2 STREET LIGHTING	49,000	49,000	100.0	0	0.0	0	0.0
1.3 UPG. LOW VOLTAGE RET.	30,000	30,000	100.0	0	0.0	0	0.0
Totals	562,700	562,700	100.0	0	0.0	0	0.0

ANNEXURE C

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 under 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 under this Agreement;

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.

ANNEXURE C

PROJECT CO-OPERATION

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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 under 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 under this Agreement;

2. The Borrower shall:

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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.

ANNEXURE D

AUTHORISATION - BORROWER

ANNEXURE E

AUTHORISATION

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

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 17 November 1998 that:

IAN ANDREW GOLDIN
in his capacity as Chief Executive

OR

JACOB HENRY DE VILLIERS BOTHA

OR

MANDLA SIZWE GANTSHO

OR

MAKAZIWE PHUMLA MANDELA
in their capacity as Executive Managers

OR

PULE LESAILANE MOKHOBO
in his capacity as Manager: Legal Services

OR

JOHN PATRICK BARTON-BRIDGES

OR

CHRISTINA JOANNA GOLINO

OR

CHRISTIAAN STEPHANUS HEYMANS

OR

BANE MOEKETSI MALEKE

OR

MAGARE LUTHER MASHABA

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

15/03/99
DATE

LEGAL SERVICES BUSINESS UNIT