



Dated 21st November, 2001

**NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED**

as GPD Lender

- and -

**TRANSJAMAICAN HIGHWAY LIMITED**

as Borrower

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THIS GPD LOAN AGREEMENT is made this 21st day of November 2001

BETWEEN

(1) NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED, a company duly incorporated under the Laws of Jamaica with registered offices at 11a-15 Oxford Road, Kingston 5, Jamaica (as "GPD Lender"); and

(2) TRANSJAMAICAN HIGHWAY LIMITED, a company duly incorporated under the Laws of Jamaica with registered offices c/o Hart Muirhead Fatta, 2 St Lucia Avenue, 3rd floor, Kingston 5, Jamaica (as "Borrower")

WHEREAS

(A) The GPD Lender has, on the date hereof, entered into a Concession Agreement with the Borrower for the design, construction, operation, maintenance and financing of the Highway 2000 toll road in Jamaica.

(B) The Project is to be implemented in Phases described as the Early Project, Phase 1A and Phase 1B.

(C) The GPD Lender has agreed to make available to the Borrower a loan facility of up to US\$87,500,000 without deduction for any amount of tax to assist in the financing of the implementation of the Project including US\$72,000,000 without deduction for any amount of tax in respect of the Early Project Construction Works and US\$15,500,000 without deduction for any amount of tax in respect of the Phase 1B Construction Works to be disbursed upon and subject to the terms and conditions contained in this Agreement.

(D) The parties to this Agreement ("Parties") have agreed the general drawdown and funding mechanism in Clause 24A of the Concession Agreement.

WHEREBY IT IS AGREED:

## 1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms used and not defined in this Agreement shall have the same meanings as in the Concession Agreement.

1.2 In addition, in this Agreement, unless there is something in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

"Business Day" means a day (other than a Saturday or Sunday) on which Lenders and financial markets in Kingston are open for business and, in respect of a day on which a payment is required to be made, in the place where that payment is to be made in accordance with this Agreement;

"Capital Expenditure" and "CAPEX" means expenditure as certified in a Monthly Certificate, with respect to the Cost Centres 1, 2, 3, 4, 5 and 6.

"Cash" in a Payment Period means cash balances of the Developer at the beginning of that Payment Period, plus amounts received with respect to Toll Revenues, plus any Compensation Amount payable in relation to that Payment Period, plus amounts subscribed for Equity by the Borrower under the Shareholder Equity Undertaking, plus amounts drawn under the Financing Agreements, plus amounts drawn hereunder in that Payment Period;

"Cash Available" has the meaning given in Clause 11 hereof;

"Cash Available for GPD and Subordinated Debt Service" has the meaning given in Clause 11 hereof;

"Cash Available for GPD Debt Service" has the meaning given in Clause 11;

"Concession Agreement" means the Agreement entered into on the date hereof between the GPD Lender with the Borrower for the design, construction, operation, maintenance and financing of the Highway 2000 toll road;

"Disbursement" means the principal amount of each payment which the GPD Lender shall pay to the Borrower pursuant to Clause 4 hereof and Clause 24A of the Concession Agreement, or the principal amount outstanding of that payment;

"Early Project Commitment" has the meaning given in Clause 2 hereof;

"First Payment Period" means the period commencing on the date hereof and ending on 30th May 2002;

"First Repayment Instalment Date" has the meaning set out in Clause 7.2;

"Indebtedness" includes any obligation for payment or repayment of money, whether actual or contingent, present or future, incurred as principal or as surety;

"LIBOR" means for a Term of any Disbursement or overdue amount the rate quoted by a leading bank in the London interbank market as of 11.00 a.m. on the Rate Fixing Day for the offering of deposits in the currency of that Disbursement or overdue amount for a period comparable to that Term;

"Loan" the aggregate principal amount disbursed or outstanding under this Agreement;

"Operating Expenditure" and "OPEX" means expenditure as certified in a Monthly Certificate, with respect to the Cost Centres 7, 8 10 and 12.

"Payment Period" means the First Payment Period, and each successive period of six months, after the First Payment Period, which ends on 30th November or 30th May in any year. These dates shall be adjusted by agreement between the Parties to correspond to the relevant payment periods of the Financing Agreements;

"Phase 1B Commitment" has the meaning given in Clause 2 hereof;

"Rate Fixing Day" means the second Business Day before the first day of a Term or such other day as the GPD Lender determines is generally treated as the rate fixing day by market practice in the relevant interbank market;

"Rate of Exchange" means the weighted average rate of exchange for the purchase of US Dollars in Jamaica with Jamaican Dollars with respect to the relevant day published by the Bank of Jamaica (or in the event that the Bank of Jamaica does not publish this rate, such other rate as the Government of Jamaica may advise the parties to this Agreement is used for the purchase of US Dollars with Jamaican Dollars by commercial parties, shall be applicable) ;

"Relevant Statement of First Payment" means a written statement of the amount of the EFC First Payment, or a written statement of the amount of the Phase 1B First Payment, as the case may be;

"Repayment Instalment" means each instalment for repayment of the Disbursements;

"Subordinated Debt Service" means payment of amounts outstanding under the Subordinated Debt Agreement when such amounts are due and payable;

"Term" has the meaning given in Clause 6;

"Termination Event" means any of the events referred to in Clause 12.1;

"US Dollar Amount" means that part of a Disbursement denominated in US Dollars; and

"Utilisation Date" means the date a Disbursement is disbursed.

1.3 In this Agreement, references to periods of "months" shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Business Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Business Day in the relevant calendar month, and (b) if such numerically corresponding day is not a Business Day, such period shall end on the next following Business Day in the same calendar month or if there is no such Business Day, such period shall end on the preceding Business Day (and "month" and "monthly" shall be construed accordingly).

1.4 In this Agreement:

(a) Clause headings are inserted for convenience only and shall not affect the construction of this Agreement and unless otherwise specified, all references to Clauses and Appendices are to Clauses of, and Appendices to, this Agreement;

(b) unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;

(c) references to persons include bodies corporate and unincorporate;

(d) references to assets include property, rights and assets of every description;

(e) references to any document are to be construed as references to such document as amended, supplemented or re-stated from time to time; and

(f) references to any enactment include re-enactments, amendments and extensions thereof.

## 2. FACILITY

2.1 The Borrower shall be entitled to receive and the GPD Lender shall make Disbursements up to a maximum aggregate principal amount of US\$72,000,000 (Seventy Two Million United States Dollars) without deduction for any amount of tax with respect to the Early Studies and the Early Project (the "Early Project Commitment") and (subject to the occurrence of Financial Close 1B) a maximum aggregate principal amount of US\$15,500,000 (Fifteen Million, Five Hundred Thousand United States Dollars) without deduction for any amount of tax with respect to Phase 1B (the "Phase 1B Commitment"), subject to the terms and conditions contained in this Agreement.

2.2 The GPD Lender will deliver to the Borrower immediately prior to :

- (a) Early Financial Close, the Grantor EFC Letter of Credit;
- (b) Financial Close 1A, the Grantor FC1A Letter of Credit; and
- (c) Financial Close 1B, the Grantor FC1B Letter of Credit,

each issued by a bank rated higher than or equal to A + by Standard & Poors or the equivalent rating by another international rating agency.

### 3. CONDITIONS PRECEDENT TO DISBURSEMENTS

#### 3.1 Early Project Commitment

(a) The liability of the GPD Lender to disburse the Grantor's Proportion of the Preliminary Payment of the Early Project Commitment is subject to the condition that the Borrower has complied with the procedures set out in this Agreement and further has, not later than 5 Business Days before the proposed date of the Preliminary Payment delivered to the GPD Lender a legal opinion of a lawyer qualified to practise in Jamaica acting for the Developer in respect of the legal capacity of the Borrower and that all necessary steps under its constitutional documents have been taken to authorise the Developer to enter into all the documents listed as Effective Date Conditions Precedent to which it is a party.

(b) The liability of the GPD Lender to disburse the Grantor's Proportion of the EFC First Payment of the Early Project Commitment is subject to the conditions that the Borrower has complied with the procedures set out in Clause 24A of the Concession Agreement and this Agreement and further has, not later than 5 Business Days before the proposed date of the EFC First Payment:

- (i) satisfied the EFC Developer Conditions Subsequent; and

(ii) delivered to the GPD Lender a legal opinion of a lawyer qualified to practise in Jamaica acting for the Developer in respect of the legal capacity of the Borrower and that all necessary steps under its constitutional documents have been taken to authorise the Developer to enter into all the documents listed as EFC Developer Conditions Subsequent, EFC Joint Conditions Subsequent and EFC Grantor Conditions Subsequent to which it is a party.

(c) The liability of the GPD Lender to disburse the Grantor's Proportion of the FC1B First Payment is subject to the conditions that the Borrower has complied with the procedures set out in Clause 24A of the Concession Agreement and this Agreement and further has, not later than 5 Business Days before the proposed date of the FC1B First Payment:

(i) satisfied the Phase 1B Developer Conditions Subsequent and the Phase 1B Joint Conditions Subsequent; and

(ii) delivered to the GPD Lender a legal opinion of a lawyer qualified to practise in Jamaica acting for the Developer in respect of the legal capacity of the Borrower and that all necessary steps under its constitutional documents have been taken to authorise the Developer to enter into all the documents listed as FC1B Developer Conditions Subsequent, FC1B Joint Conditions Subsequent and FC1B Grantor Conditions Subsequent to which it is a party.

3.2 Conditions to all Disbursements: The liabilities of the GPD Lender under this Agreement are subject to the further conditions that:

(a) the GPD Lender will have received a Monthly Certificate not later than 5 Business Days before the proposed date of the Disbursement;

(b) no Termination Event will have occurred or would occur as a result of the making of the Disbursement, and no event shall have occurred which entitles the Grantor to issue a Grantor Termination Notice under the Concession Agreement;

(c) each of the representations and warranties as stated pursuant to Clause 9 will remain accurate at the date of the Disbursement as if given on that date by reference to the facts and circumstances then subsisting;

(d) no amount payable under the Shareholders Equity Undertaking with respect to a previous Monthly Certificate is due and not paid.

3.3 Unsatisfied conditions: Notwithstanding Clauses 3.1 and 3.2, the GPD Lender may in its sole discretion agree to make any Disbursement before receipt by the GPD Lender of all or any of the documents, and evidence and other items, or before the satisfaction of all or any of the other conditions, referred to in Clauses 3.1, 3.2 or 3.3 in accordance with those Clauses. If the GPD Lender does agree to do so, the Borrower will deliver to the GPD Lender such documents, evidence and other items, or procure the satisfaction of such other conditions, by such later date, and subject to such further conditions, as the GPD Lender may require and, without prejudice to the generality of Clause 12.2, the making of that Disbursement or any further Disbursement, or any other performance or discharge by the GPD Lender of any of its obligations under this Agreement will not constitute any waiver on the part of the GPD Lender of any of those conditions or of any of the Lender's rights, or any of the Borrower's liabilities, under this Agreement.

#### 4. DISBURSEMENTS

4.1 Timing: Subject to the terms of this Agreement, each Disbursement will be made by the GPD Lender to the Borrower as follows:

(a) with respect to the Preliminary Payment, within ten (10) Business Days after the execution of the Concession Agreement; and

(b) with respect to the EFC First Payment and the FC1B First Payment, within five (5) Business Days after the Early Financial Close and Financial Close 1B respectively; and

(c) with respect to each Monthly Payment, within 5 Business Days after receipt by the GPD Lender of the relevant Monthly Certificate.

4.2 Amount: Subject to the terms of this Agreement, the amount of each Disbursement shall be as determined in accordance with Clause 24A and Schedule 19 of the Concession Agreement, but in any event shall not when aggregated with the previous Disbursements made with respect to the relevant commitment be an amount which results in a greater amount being disbursed with respect to the Early Project than the Early Project Commitment or which results in a greater amount being disbursed with respect to Phase 1B than the Phase 1B Commitment.

4.3 Currency:

(a) Fifty per cent. (50%) of the amount of each Disbursement shall be paid in Jamaican Dollars and fifty per cent (50%) of the amount of each Disbursement shall be paid in US Dollars, save for the Disbursement related to the Preliminary Payment which shall be paid 100% in US Dollars.

(b) The amount of a Disbursement in Jamaican Dollars will be calculated as an amount equal to the US Dollar Amount of the Disbursement converted to Jamaican Dollars at the Rate of Exchange, at the Utilisation Date for that Disbursement.

(c) A Disbursement will remain denominated in the same currency from the Utilisation Date for that Disbursement until repayment in full.

## 5. INTEREST

5.1 Rate: Interest shall accrue on each Disbursement and be payable on the last day of each Term in arrears as follows:

(a) with respect to that part of a Disbursement which is disbursed in Jamaican Dollars, at the rate of 5% per annum on that part of the Disbursement, (adjusted in accordance with subclause 5.2); and

(b) with respect that part of a Disbursement which is disbursed in USD at LIBOR plus 4% per annum on that part of the Disbursement.

5.2 Adjustment of Principal Amount of Disbursements: For the purposes of determining the amount of interest payable under subclause 5.1(a), the part of each Disbursement which has been disbursed in Jamaican Dollars shall be adjusted by an amount which takes into account Inflation Compensation as described in Clause 5.9 (Capitalisation of Inflation);

5.3 Default rate:

(a) Subject to paragraph (b) below, if default is made on the payment of any amount due under this Agreement interest will accrue and shall be payable thereon from the date of default until payment, and that interest will be calculated at the rate which is 1 per cent per annum above the aggregate rate referred to in Clause 5.1.

(b) If any amount of interest is payable under Clause 5, but not paid on the due date due to there being insufficient Cash Available for GPD Debt Service on that date, then the Borrower shall not, for the purposes of this Clause 5, or for the purposes of Clause 12 of this Agreement be deemed to be in default, but the provisions of Clause 5.6 below shall apply to the relevant amount.

5.4 Calculation of interest: Save as otherwise provided in this Agreement, interest will be calculated on the basis of the actual number of days elapsed and a year of 360 days.

5.5 Notice of rate: The GPD Lender will notify the Borrower of each rate of interest promptly after it has been determined.

5.6 Capitalisation: If and to the extent that any amount of interest payable under this Agreement is not paid on the due date due to there being insufficient Cash Available for GPD Debt Service on that date, it shall be deemed to be a Disbursement hereunder and shall bear interest at the rates set out in Clause 5.1 above according to whether it is denominated in USD or Jam\$.

5.7 Market disruption:

(a) If the LIBOR can not be used due to market disruption conditions, the rate of interest on the affected Disbursement for the relevant Term will be the aggregate of:

(i) 4% per annum; and

(ii) the applicable rate to be agreed by the Parties in replacement of LIBOR.

5.8 Alternative basis

(a) After receipt of any notification under Clause 5.7, if the GPD Lender or the Borrower so requires, the Borrower and the GPD Lender must enter into negotiations for a period of not more than 30 days with a view to agreeing an alternative basis for determining the rate of interest and/or funding for the affected Disbursement and any future Disbursement.

(b) Any alternative basis agreed will be binding on each Party.

5.9 Capitalisation of Inflation

Inflation Compensation accrued to any date ("Inflation Compensation") on an amount will be calculated by first multiplying that amount by the Index Ratio applicable at that date and then subtracting the original amount.

5.10 Index Ratio

For the purposes of Clause 5.9, the Index Ratio is the ratio of the reference CPI applicable to such date ("Ref CPI Date") divided by the reference CPI applicable to the date of the Disbursement ("Ref CPI Base"). The reference CPI Base is the CPI for the calendar month immediately preceding the date of that Disbursement. The reference CPI for any day of succeeding calendar months is the CPI for the second preceding calendar month. For example, the reference CPI for January 2002 is the CPI for November 2001. In the event of the non-availability of the CPI for the second preceding month, the reference CPI date shall be the CPI for the third preceding calendar month.

## 6 TERMS

### 6.1 Selection

(a) Each Disbursement has successive Terms. Each Term for a Disbursement will start on its Utilisation Date or on the expiry of its preceding Term.

(b) Each Term shall be a Payment Period, except for the first Term for a Disbursement, which shall commence on the Utilisation Date for that Disbursement and run until 30th May or 30th November, whichever occurs first thereafter. These dates shall be adjusted by agreement between the parties to correspond to the relevant payment periods of the Financing Agreements.

### 6.2 No overrunning

If a Term would otherwise overrun the end of the Concession Period, it will be shortened so that it ends at the end of the Concession Period.

## 7 REPAYMENT AND PREPAYMENT

### 7.1 Repayment:

The first Repayment Instalment shall be paid on the First Repayment Instalment Date and each Repayment Instalment thereafter shall be paid on 30th November and 30th May in each year thereafter together with interest accrued due to the date of payment in an amount equal to the Cash Available for GPD Debt Service for that Payment Period. These dates shall be adjusted by agreement between the parties to correspond to the relevant payment periods of the Financing Agreements.

### 7.2 Commencement and Subordination:

(a) The first Repayment Instalment shall be due and payable on the date (the "First Repayment Instalment Date") that all amounts due under the Financing Agreements have been paid in full, provided that all sums payable under this Agreement must be repaid by the Borrower by the end of the Concession Period, subject to Clause 7.5 hereof.

(b) For the avoidance of doubt, in no Payment Period shall amounts paid to discharge interest or principal under the Subordinated Debt Agreement and/or the GPD Loan Agreement exceed 50% of the Cash Available for that period.

(c) It is agreed that no payment of interest or principal under this Agreement or the Subordinated Debt Agreement shall be paid if and to the extent that the corresponding amount of dividend payable under the Shareholders Equity Undertaking may not be paid due to a restriction under the Financing Agreements (if any). In the event that this situation arises an amount equal to the sum of principal or interest which would otherwise have been paid shall be deposited in a separate account of the Borrower subject to such security in favour of the GPD Lender as it may reasonably request until the relevant restriction is lifted and that sum shall not be used for any other purpose.

#### 7.3 Prepayment:

(a) The Borrower may prepay any Disbursement without premium in whole or in part together with all accrued interest and all fees and other amounts payable to the GPD Lender under this Agreement at any time.

(b) No amount of a Disbursement prepaid under this Agreement may subsequently be re-borrowed.

(c) All prepayments under this Agreement must be made with accrued interest on the amount prepaid and any amounts due under Clause 12.3. Subject to the foregoing no premium or penalty is payable in respect of any prepayment.

7.4 Consequences of termination of the Concession Agreement: Upon vesting of the Toll Road in the Grantor and the other events set out in Clause 32 of the Concession Agreement occurring after termination of the Concession Agreement for any reason and by any party to the Concession Agreement, this Agreement shall terminate forthwith and rights of the GPD Lender accrued herein will terminate. The GPD Lender hereby agrees that it will have no recourse nor any indemnification right against either the Borrower or the Shareholders with respect to the Disbursements or arising under this Agreement.

## 8. PAYMENTS AND TAXES

8.1 Manner of payment: All payments to be made by the Borrower under this Agreement for the account of the GPD Lender shall be received by the GPD Lender no later than the due date, at such place or in such account which the GPD Lender may from time to time designate and shall be made free and clear of and without deduction or withholding for or on account of any Tax or other deductions of any nature payable by the GPD Lender imposed now or at any time after the date of this Agreement, unless the deduction or withholding is required by law, in which event:

(i) the Borrower will ensure that the deduction or withholding does not exceed the minimum amount required by law;

(ii) the Borrower will pay to the authorities responsible for collection, within the period for payment permitted by the applicable law, the full amount of the deduction or withholding (including, but without limitation, the full amount of any deduction or withholding from any additional amount paid under this sub clause (a)); and

(iii) the Borrower will supply to the GPD Lender, within the period for payment permitted by the applicable law, either an official receipt of the relevant authorities in respect of all amounts so deducted or withheld, or (if receipts are not issued by the relevant authorities on payment to them of amounts so deducted or withheld) a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

8.2 Repayment Currency: The currency of each Repayment Instalment shall be:

(a) (for those amounts disbursed in Jamaican Dollars) Jamaican Dollars; and

(b) for those amounts disbursed in USD either in USD or in Jamaican Dollars at the Rate of Exchange on the date of the Repayment Instalment.

8.3 Business Days: Whenever any payment under this Agreement becomes due on a day which is not a Business Day, the due date for that payment will be extended to the next succeeding day which is a Business Day.

8.4 Partial payments by the Borrower: If at any time the amount received by the GPD Lender from the Borrower falls short of the total amount of the payment due to be made by the Borrower then, without prejudice to any rights or remedies available to the GPD Lender hereunder, the GPD Lender will apply the amount actually received from the Borrower in or towards discharge of the liabilities of the Borrower in the following order:

(a) first, in or towards payment to the GPD Lender of any interest which has become due but which remains unpaid;

(b) secondly, in or towards payment to the GPD Lender of any Disbursement which has become due but which remains unpaid,

and the order of application set out in this Clause 8.4 will prevail over any appropriation made, or purported to be made, by the Borrower, but may be varied by the GPD Lender with the Borrower's prior written approval.

## 9. REPRESENTATIONS AND WARRANTIES

9.1 Restatement of Representations: The Borrower hereby represents and warrants to the GPD Lender on the same terms as it represents and warrants as Developer to the GPD Lender as Grantor in the Concession Agreement as if those provisions were set out in full herein but with references to "the Grantor" being replaced with references to "the GPD Lender" and references to "the Developer" being replaced with references to "the Borrower".

9.2 Survival: The representations and warranties of the Borrower shall survive the execution of this Agreement and the making of each Disbursement and shall be deemed to be repeated at the time of delivery to the GPD Lender of each Monthly Statement, with respect to the facts and circumstances existing at each such time, as if made at each such time.

## 10. COVENANTS

10.1 The Borrower irrevocably and unconditionally covenants with and undertakes to the GPD Lender as follows:

(a) that it will:

(i) procure that its liabilities under this Agreement rank at all times at least *pari passu* with all its other Indebtedness excepting and excluding those due to Lenders (as defined in the Concession Agreement) and those preferred by law.

(ii) perform all its obligations under the Concession Agreement and all agreements included in the EFC Developer Conditions Precedent and notify the GPD Lender of any failure by it or any other party to perform any of their obligations under the Concession Agreement and the agreements included in the

EFC Developer Conditions Precedent as the case may be or of any review or termination or purported termination by it or any other party of any such obligations;

(b) that it will not, save where permitted under the Grantor Documents, without the prior written consent of the GPD Lender:

(i) create or permit to arise or continue any encumbrance, security interest or other third party right affecting all or any of its property, assets and undertaking (whether present or future) which could adversely affect the Borrower's ability to perform its obligations hereunder save and except such encumbrances, security interests and rights created by the Financing Agreements;

(ii) make, or permit to be made, any change in the nature of its business as carried on at the date of this Agreement; or

(iii) take any action the taking of which would be likely to result in any impairment of the legal effect of any of the Concession Agreement or the agreements included in the EFC Developer Conditions Subsequent or of any of the interests, rights or powers granted to or created by this Agreement in favour of the GPD Lender.

## 11 CASH WATERFALL

The GPD Lender and the Borrower hereby agree that with respect to each Payment Period, the Borrower shall apply Cash in the following order of priority:

(1) Capital Expenditure with respect to the Construction Works which is due and payable in that Payment Period;

(2). Operating Expenditure and taxes (if any) which is due and payable in that Payment Period;

(3) interest, principal and other amounts under the Financing Agreements which is due and payable in that Payment Period;

(4) amounts required to fund or to restore the required balance of any debt service reserve and maintenance reserve under the Financing Agreements and the repayment of any amounts drawn under the Grantor Working Capital Reserve Agreement each of which is due and payable in that Payment Period;

(5) Capital Expenditure incurred with respect to Expansion Schemes which is due and payable in that Payment Period

To the extent that there is any Cash left after the liabilities set out in items (1) - (5) above have been satisfied, ("Cash Available"), 50% will be used to pay distributions to Shareholders of the Borrower. The remaining 50% ("Cash Available for GPD and Subordinated Debt Service") is to be applied in the following order:

(6) payment of interest under the Subordinated Debt Agreement which is due and payable in that Payment Period and payment of principal under the Subordinated Debt Agreement which is due and payable in that Payment Period ;

and the remaining cash ("Cash Available for GPD Debt Service") shall be applied as follows:

(7) payment of interest under this Agreement which is due and payable in that Payment Period and (after repayment of the principal under the Financing Agreements), Repayment Instalments under this Agreement which is due and payable in that Payment Period.

## 12. TERMINATION EVENTS

12.1 Events: The termination of the Concession Agreement; the occurrence of an Insolvency Event; to the extent the Borrower has the funds to apply payment towards the GDP Lender and there is no restriction under the Financing Agreements, the failure by the Borrower to pay any sum expressed to be payable by it under this Agreement at the time and otherwise in the manner specified in this Agreement to the extent the has money shall each constitute a Termination Event under this Agreement.

12.2 Consequences: Without prejudice to Clause 7.4 hereof, immediately on, or at any time after the occurrence of a Termination Event, the GPD Lender may, by written notice to the Borrower, terminate all or any of its liabilities to the Borrower and/or (after the First Repayment Instalment Date) (except in the case of a Grantor Responsibility Termination or a Voluntary Termination under Clause 30 of the Concession Agreement) declare all Disbursements and all interest, fees and other amounts payable hereunder to be due and payable, either immediately or on the GPD Lender's demand, and the Borrower will pay to the GPD Lender in full, in accordance with the GPD Lender's declaration (either immediately or, if the GPD Lender so specifies, on the GPD Lender's demand), an amount equal to the Disbursements and all interest, fees and other amounts payable hereunder. For the avoidance of doubt, such a repayment shall only be made from Cash Available for GPD Debt Service.

12.3 Break Costs: Without prejudice to Clause 5.2 but taking into account any payments of interest made under that Clause, the Borrower will indemnify the GPD Lender against any loss or expense on account of funds borrowed, contracted for or utilised by the GPD Lender to fund any amount payable under this Agreement, due to any amount prepaid on a date other than the date of Repayment Instalment on which the relevant amount was originally due hereunder.

## 13. GENERAL

13.1 Further documents: The Borrower agrees to execute any further documents and do all acts and things which may be necessary from time to time in the opinion of the GPD Lender to establish, maintain and protect the rights of the GPD Lender under this Agreement and generally to carry out and procure the carrying out of the intent hereof, provided that the Borrower will incur neither more obligations nor additional costs pursuant to these further documents, acts or things.

13.2 No waiver: No failure to exercise and no delay in exercising on the part of the GPD Lender any right, power or privilege under this Agreement will operate as a waiver of such right, nor will any single or partial exercise by the GPD Lender of any right, power or remedy preclude any other or further exercise of it, or the exercise of any other right, power or remedy.

13.3 Severable terms: If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

## 14. ASSIGNMENT AND TRANSFER

14.1 No assignment by the Borrower: Save as otherwise provided in the Financing Agreements, the Borrower may not assign or transfer any of its rights or obligations under this Agreement.

14.2 Assignment, transfer by the Lender: The GPD Lender (the "Existing Lender") may, with the prior written approval of the Borrower not to be unreasonably withheld or delayed, at any time assign, transfer or novate to any other GPD Lender (the "New Lender") all or any of its rights and/or obligations hereunder, provided that a transfer of obligations will be effective only if the New GPD Lender undertakes to the Existing GPD Lender and to the Borrower, in form and substance satisfactory to the Existing Lender and the Borrower, to be bound by the terms hereof in place of the Existing Lender. On the transfer becoming effective in this manner the Existing GPD Lender will surrender its rights and will be released from its obligations hereunder to the extent specified in the transfer, and the New GPD Lender

will become a party to this Agreement, entitled to rights and liable to perform and observe obligations exactly corresponding to those surrendered and released by the Existing Lender.

14.3 Disclosure of information: The GPD Lender may disclose to a prospective assignee, transferee or sub participant any information about the Borrower which has been made available to the Lender.

## 15. COMMUNICATIONS

15.1 Notices: Except as otherwise provided for in this Agreement, all notices or other communications under or in respect of this Agreement to any party hereto shall be in writing and shall be deemed to be duly given or made when delivered (in the case of personal delivery or letter) or when despatched (in the case of telex or facsimile, save that in the case of any notice or communication sent by facsimile such notice or communication shall not be deemed to be given or made if the addressee has promptly notified the party despatching such notice or communication that it has not received a legible copy of such notice or communication) to it at the address stated below (or at such other address as such party may hereafter specify for such purpose to the others by notice in writing):

(a) in the case of the Borrower: Mr Pascal Radde

c/o Hart Muirhead Fatta,

2 St Lucia Avenue, 3rd floor Kingston 5, Jamaica

(b) in the case of the GPD Lender: Mr Wayne Reid

11a-15 Oxford Road

Kingston 5, Jamaica

A written notice includes a notice by telex or facsimile. A notice or other communication received on a non-Business day or after business hours in the place of receipt, shall be deemed to be served on the next following Business Day in such place.

15.2 English language: All communications and documents delivered pursuant to or otherwise relating to this Agreement shall be in English.

## 16. LAW AND JURISDICTION

16.1 Governing law: This Agreement shall be governed by and construed in accordance with the laws of Jamaica.

16.2 Waiver of immunity: To the extent that a Party to this Agreement has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from the jurisdictions of any court or from set-off or any legal process (whether service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution or judgment or otherwise) with respect to itself or any of its property and assets, that Party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement.

16.3 Disputes: The provisions of Clauses 47 (Dispute Resolution and Expert Determination) and 48 (Arbitration) of the Concession Agreement are applicable, mutatis mutandis, to this Agreement as if they were incorporated herein in full.

16.4 Joinder: The provisions of Clause 49 (Joinder) of the Concession Agreement are applicable, mutatis mutandis, to this Agreement as if they were incorporated herein in full.

16.5 Enforcement: With respect to any proceedings for enforcement of an award pursuant to Clause 16.3 against assets of either Party brought in the courts of England:

(a) the GPD Lender appoints the High Commissioner of Jamaica in England at 1 Prince Consort Road, London SW7 2BZ, to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings.

(b) the Borrower shall appoint an agent (to be notified in writing to the Grantor by not later than Early Financial Close) to receive for and on its behalf service of process in the United Kingdom in any such enforcement proceedings.

(c) each Party to this Agreement agrees to maintain in England duly appointed process agents, notified to the other Party, for the purpose of Clause 16.3.

(d) each Party to this Agreement agrees that failure by any such process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

IN WITNESS whereof the parties hereto have entered into this Agreement the date first above written

SIGNED by Mr Kingsley Thomas and Dr. Wayne Reid

on behalf of

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

in the presence of:

Miss Candice Rochester

Witness

SIGNED by Mr. Pascal Radde

on behalf of

TRANSJAMAICAN HIGHWAY LIMITED

in the presence of:

Mr. Thibault Cheyroud

Witness