

**THIS AGREEMENT** is made the 15<sup>th</sup> day of December 2011

**BETWEEN**

**The Government of the Cayman Islands** acting herein and represented by Orrett Connor MBE, JP, Cabinet Secretary of the Government Administration Building, Elgin Avenue, Grand Cayman, Cayman Islands ("Government")

**AND**

**National Roads Authority** of PO Box 10426, 370 North Sound Road, Grand Cayman KY1-1004, Cayman Islands ("NRA")

**AND**

**Dart Realty (Cayman) Ltd.** of PO Box 30611, Grand Cayman KY1-1203, Cayman Islands ("DRCL" which expression shall include its Affiliates and where the context admits or requires include its assigns and successors in title)

**(each of the above, a "Party" and together, the "Parties")**

**Background**

This Agreement is a component of the ForCayman Investment Alliance ("FCIA"), which is a partnership entered in to between the Cayman Islands Government and Dart Realty to stimulate the economy, to put people back to work and to create opportunities for Caymanian businesses in the short term; and in the medium to long term, the FCIA sets out to help create some of the conditions necessary for sustained prosperity and a good quality of life for all of us who live, work and visit our islands.

Government believes that the best strategy for achieving sustainable growth in the Cayman Islands' economy is to inspire the private sector to do what it does best - create jobs and generate wealth – to create a "Partnership for Recovery" with the private sector. The FCIA is such a partnership for recovery. Government is constrained in its ability to borrow funds for needed projects and therefore, cannot itself inject Government funds in the economy to create the catalyst for an economic turnaround and this remains an urgent priority that even at the of 2011. A significant component of this Agreement is the delivery of needed roads infrastructure at a time when the Government is constrained and unable to fund or finance infrastructure projects. The investment alliance incentives Dart to redevelop a defunct Seven Mile Beach hotel and in so doing, provide a large and immediate economic stimulus - one that creates jobs and generates wealth across several industries, by utilizing businesses of all sizes - by investing large sums of capital in developments that will benefit the country.

While Government is expecting its finances to improve over the course of the 3-year plan agreed with the Foreign and Commonwealth Office (FCO), it does not intend to rely only on international economic growth as the basis for growth in the Cayman Islands' economy.

Government believes that the best strategy for achieving sustainable growth in the Cayman Islands' economy is to inspire the private sector to do what it does best - create jobs and generate wealth. This investment alliance will cause Dart to provide a large and immediate economic stimulus - one that creates jobs and generates wealth across several industries, by utilizing businesses of all sizes - by investing large sums of capital in developments that will benefit the country. Furthermore, pursuant to this investment alliance, Dart will help fund and deliver much needed national infrastructure, facilities and social and educational programmes, without any requirement for Government to incur any debt or obligation to repay, now or in the future.

As a standalone agreement, this Agreement allows faster mobilization of the projects and faster activation of the intended direct economic benefits to the local economy in the short term.

Under the FCIA Main Agreement and Components, the Government intends to accomplish the following specific objectives:

- A. Create jobs for Caymanians in the short, medium and long-term and across a number of sectors;
- B. Stimulate the Cayman Islands economy in cooperation with DRCL with an anticipated economic benefit exceeding US\$515 million over the next 5 years and exceeding US\$3 billion over the next 30 years;
- C. Improved traffic flow: these improvements have been validated by the NRA's technical teams; by Dart's independent, professional studies and by previous studies carried out by previous governments.
- D. Safer roads: in some instances the movement of traffic away from the coastline will create safer roads, especially during inclement weather; and in other instances the increased carrying capacity and incorporation of modern planning regulations to road design will enhance the safety of the roads.
- E. Redevelop, refurbish and reactivate closed and deteriorating tourist accommodation facilities on Grand Cayman and, in particular, to restore the SMB Hotel in a reasonably expedient manner to the available hotel inventory;
- F. Stimulate the construction and operation of at least two or more hotels across Grand Cayman, which may be brand aligned and help further enhance the tourism product to retain the destination's leadership position in the Caribbean;
- G. Master plan, fund and deliver a number of needed infrastructure projects on an expedited basis, including roads such as the extension of the Esterley Tibbetts Highway from its current end point to Batabano Road in West Bay;
- H. Establish learning and training programs for Caymanians;

- I. Stimulate economic development, foster public health and welfare, provide education infrastructure and affordable housing, and ensure the provision of quality infrastructure;
- J. Assist DRCL in achieving its obligations, and completing the projects contemplated, under the terms of this Agreement in a reasonably expedient and economic manner.

#### **Recitals**

- 1. DRCL and Government have entered into the Heads of Terms in relation to the development of various infrastructure projects, including roads.
- 2. In accordance with section 5 of the National Roads Authority Law (2006 Revision), the NRA is responsible for the administration, management, control, development and maintenance of public roads in the Cayman Islands. For those purposes, the NRA shall, *inter alia*, plan, design, construct, develop, maintain, protect and administer public roads and related road works, administer contracts for public road improvement where contracting is considered by it to be cost effective or otherwise advantageous, and shall supervise such work that is contracted out.
- 3. The Parties are desirous of entering into a formal agreement in relation to various matters including the Legal Closure of roads, the gazettal of new roads, road works, Construction and matters related thereto in the Cayman Islands.
- 4. The Parties have agreed to adopt a coordinated approach to dealing with the matters referred to in this Agreement.

#### **Government and NRA Objectives:**

- K. The Government and the NRA are desirous of having certain roads infrastructure that is required in the public interest, constructed. The particulars of the roads to be constructed are set out in the attached Schedules to this Agreement.

#### **DRCL Objectives:**

- A. DRCL and Affiliates have recently acquired several parcels of land in Blocks 5D, 9A, 10A, 10E, 11B and 11C of Grand Cayman including the SMB Hotel, the Yacht Club and other properties along Seven Mile Beach, West Bay Road and the West Bay Peninsula.
- B. DRCL and Affiliates wish to continue to develop the West Bay Properties including refurbishing and reopening the SMB Hotel.
- C. As part of its development of the West Bay Properties, DRCL wishes to have a portion of West Bay Road Legally Closed and re-aligned.
- D. DRCL and Affiliates wish to assist Government by Constructing, for and on behalf of it and the NRA, the ETH Extension and the other projects set out in this Agreement.

**NOW, IN CONSIDERATION** of the covenants set out in this Agreement the Parties agree as follows:

## **West Bay Road and ETH**

1. Government and the NRA hereby approve the Construction by DRCL at its sole cost and expense of the ETH Extension as the NRA's designated independent contractor and in accordance with the terms hereof.
2. Government and the NRA hereby approve and adopt the right of way corridor and preliminary design of the ETH Extension as outlined on the West Bay Road and ETH Extension Plan.
3. DRCL shall Construct, at its sole cost and expense, the ETH Extension in accordance with the terms of this Agreement.
4. In order to access Salt Creek, Yacht Club and the West Bay Properties, Government shall make the Public Road Declaration in respect of, and direct the NRA, and the NRA hereby agrees, to layout as public roads:
  - 4.1. two full roundabout accesses identified as ETHR1 and ETHR3 in the West Bay Road and ETH Extension Plan; and
  - 4.2. a T junction at Batabano Road and the ETH Extension; and
  - 4.3. at least two left on/left off accesses along the ETH between Governor's Way and Raleigh Quay ; and
  - 4.4. left on/left off accesses spaced not less than 660 feet on centre along the ETH between Raleigh Quay and Batabano Road; and
  - 4.5. at least two Full Road Accesses and left on/left off accesses spaced not less than 660 feet on centre along the Reverend Blackman Extension between ETHR3 and Willie Farrington Drive; and
  - 4.6. up to two ETHR2 Roundabouts spaced not less than 1320 feet on centre with any other roundabout along the ETH between ETHR1 and ETHR3 as outlined in the ETHR2 Roundabout Gazette Plan.
5. To the extent possible, Immediately following the date of this Agreement, but in any event immediately following the expiry of the Review Period, Government and the NRA shall commence all steps required to complete the West Bay Road Legal Closure and the Raleigh Quay Legal Closure, and review and approve the design and layout of the new or altered public roads as shown on the West Bay Road Plan and ETH Extension Plan.
6. Without limiting the generality of the foregoing, the steps referred to herein required to be taken by Government shall include provision of all necessary written directions by the relevant Minister to the NRA as permitted under the NRA Law, and making all necessary declarations in respect of the Legal Closure of existing public roads and gazetting new public roads under the Roads Law.

7. DRCL shall consult with Government and the NRA and, subject to the terms hereof, DRCL shall comply with the reasonable requests of Government and the NRA made at any time in accordance with the terms of this Agreement with regard to Construction of the ETH Extension by DRCL on behalf of the NRA.
8. The Construction quality of the ETH Extension shall be generally consistent with the design and quality of the ETH as constructed between Gecko Link/Galleria Loop and Raleigh Quay, and in accordance with the standards and specifications specified in this Agreement.
9. Construction of Phase 1 shall commence within thirty (30) days of the date of this Agreement and Government complying with all requirements under the Roads Law, but subject to all permissions required under law, having first been granted to DRCL.
10. Within thirty (30) days following the West Bay Road Legal Closure and Raleigh Quay Legal Closure and the vesting in DRCL of the land formerly comprised therein, DRCL shall commence Phase 2 in accordance with the ETH Extension Plan. DRCL shall complete Construction in accordance with the West Bay Road and ETH Extension Construction Schedule, subject to any reasonable delays which may arise during the course of such Construction; provided, DRCL shall not have any obligation to commence Construction of Phase 2 until completion of the West Bay Road Legal Closure and Raleigh Quay Legal Closure.
11. Subject to clause 39 and as provided herein, DRCL shall have absolute discretion in engaging contractors and sub-contractors for purposes of completing Construction of the ETH Extension. DRCL hereby undertakes that any contractor or subcontractor so engaged shall be competent and suitably qualified for the purpose for which he is engaged. DRCL shall be solely responsible for making all payments to any contractor or subcontractor it engages for any purpose of this Agreement and neither Government nor the NRA shall be liable in any way to any such contractor or subcontractor engaged by DRCL.

#### **Compensation**

12. Provided and conditional upon the West Bay Road Legal Closure and Raleigh Quay Legal Closure being completed (including for the avoidance of doubt the addition of the portions of West Bay Road and Raleigh Quay Legally Closed to the adjacent or proximate parcels of land owned by DRCL), DRCL hereby irrevocably waives any right it may have as the registered proprietor of the land referred to herein, to claim compensation under the Roads Law or by means of any other proceedings of any kind in respect of the approximately 32.94 acres of land required in respect of Phase 1 and Phase 2, or any other land that may be required for any of these road extension works.
13. DRCL shall reimburse Government for the full amount of any compensation Government is required to pay in respect of Construction of the ETH Extension, whether such compensation is agreed as between the NRA and/or its agents and any person to whom compensation is payable or determined by the Roads Assessment Committee or any court of the Cayman Islands

pursuant to the Roads Law. In addition, DRCL shall reimburse Government for all costs and expenses incurred with the assessment of compensation including legal representation in any negotiations or legal proceedings for the purpose of assessing compensation pursuant to the Roads Law, valuation fees and costs associated with expert witnesses. Otherwise, anywhere in this Agreement where Government agrees to make a Public Road Declaration, it shall be solely responsible for all compensation required to be made to any land owner under the Roads Law, except where expressly stated that compensation will be paid or waived by DRCL.

14. Where a claim for compensation is made pursuant to the Roads Law for which DRCL has agreed to be responsible, Government shall inform DRCL of all matters relating to the claim and obtain DRCL's prior written approval of all material decisions in relation thereto.
15. Where a claim for compensation is made pursuant to the Roads Law for which DRCL has agreed to reimburse Government for any such compensation required to be paid:
  - 15.1 at the option of DRCL, Government shall offer a settlement with the claimant whereby the claimant receives as full compensation DRCL land with a value equivalent to the quantum of compensation due to the claimant. In the event that a claimant agrees to this form of compensation, DRCL shall promptly take all steps necessary to have the said land subdivided and transferred to the claimant and DRCL hereby irrevocably waives any right that it may have as registered proprietor of the portion of its land made available for exchange with the claimant for compensation, to claim compensation under the Roads Law or by means of any other proceedings of any kind, at any time;
  - 15.2 the land in lieu of compensation settlement offer described in the above paragraph shall only be made where DRCL wishes to do so and in all other cases DRCL shall indemnify Government for amounts due to claimants in settlement of claims for compensation under the Roads Law;
  - 15.3 any transfer or other vesting of land by DRCL in respect of a settlement offer described above shall not be subject to assessment or payment of stamp duty and Government shall and hereby waives any stamp duty otherwise due in respect of such settlement;
  - 15.4 at the request of DRCL, Government and the NRA shall provide Reasonable Assistance in providing egress and ingress to the land of the claimant for such compensation in order to mitigate the quantum of such claim for compensation;
  - 15.5 notwithstanding the obligation of DRCL to reimburse Government for such compensation, Government shall administer and negotiate the claim for compensation as it would any other such claim in all respects, including, without limitation, the quantum of compensation offered, the timeframe within which such claim is administered and having carriage of any legal proceedings for the assessment of compensation; and

- 15.6 where under this Agreement, DRCL is required to reimburse or indemnify Government for any compensation agreed or assessed, DRCL shall make payment of such sum to Government within seven (7) days of receipt of a request for payment.

#### **Right of Way**

16. Upon the West Bay Road Legal Closure and the vesting in DRCL of the land formerly comprised therein, DRCL shall:
- 16.1. grant a 30 foot private vehicular right of way over part of the Legally Closed portion of West Bay Road in favour of those property owners immediately adjacent to the Legally Closed portion of West Bay Road who are not Affiliates (and who would otherwise have a right of way to a public road) as indicated on the West Bay Road and ETH Extension Plan and such right of way shall provide to any such property owner rights of egress and ingress from their property to a public road.
- 16.2. grant a 30 foot private vehicular right of way over the adjacent private Yacht Club road in favour of the proprietor of Parcel 10E/33. Such right of way shall provide the said proprietor with rights of egress and ingress from their property to a public road.
- 16.3. any rights of way granted as provided herein shall afford, and shall continue to afford the affected landowners with a reasonable and comparable means of egress and ingress from their property to a public road as they currently enjoy in terms of the quality of the right of way and the amenities that exist along such right of way, including but not limited to road surface, lighting, drainage and the maintenance thereof.

#### **Lighting**

17. Government and the NRA shall be responsible for all costs and expenses in relation to the supply, installation and maintenance of road lighting and for all obligations to CUC in relation to any infrastructure and services provided by CUC equivalent to the standard of lighting in the portion of the ETH between Gecko Link/Galleria Loop and Raleigh Quay.
18. Notwithstanding the foregoing, DRCL shall be entitled to install enhanced road lighting on the gazetted road dimensions of the ETH over the portions between Governor's Way and Yacht Drive, provided such lighting meets with the approval of Government and the NRA. In the event that DRCL elects to install enhanced road lighting on any part of the ETH:
- 18.1. DRCL shall be solely responsible for all costs and expenses in relation to the supply, installation and maintenance thereof; and
- 18.2. Government and the NRA shall be responsible for the costs and expenses of all electricity consumption following installation thereof up to the costs and expenses of electricity in relation to standard lighting used by the NRA on other parts of the ETH and DRCL shall be responsible for the costs and expenses, if any, in excess thereof.

## **Landscaping Licence**

19. Government and the NRA shall and hereby grant DRCL, or an Affiliate designated by DRCL, an exclusive assignable licence for a term of 99 years permitting DRCL or such Affiliate to maintain and control landscaping (which landscaping shall be subject to the prior approval of the NRA, not to be unreasonably withheld) on all medians, verges, ditches, road sides, walkways, roundabouts and traffic circles within the gazetted road dimensions of the ETH over the portions marked in green on the West Bay Road and ETH Extension Plan and ETH Plan at Camana Bay; provided, nothing herein shall be construed as an obligation on the part of DRCL to maintain landscaping on or adjacent to any such road or part thereof in the event that DRCL surrenders, in whole or in respect of any part of the ETH, the licence granted herein to landscape the portions of the ETH referred to herein. The licence shall not be assigned without the prior written consent of Government, such consent not to be unreasonably withheld.

## **Signage**

20. Government and the NRA shall and hereby grant DRCL, or an Affiliate designated by DRCL, an exclusive licence for a term of 99 years permitting DRCL and any Affiliate to place its commercial signage on or adjacent to the ETH Extension and those portions of the ETH which pass through or are proximate to land owned by DRCL or an Affiliate.
21. Under the terms of the above licence, Government shall not licence or otherwise permit any third parties to place signate on or adjacent to the ETH Extension and those portions of the ETH which pass through or are proximate to land owned by DRCL or an Affiliate.
22. Under the terms of the above licence, DRCL shall have the authority to remove any unauthorized signage placed on the gazetted road corridor, including, without limitation, signs associated with the sale of land or property.
23. The licence hereby granted by Government and the NRA to DRCL, shall not be assignable by DRCL.
24. The placing of signage as described herein shall be subject to planning permission having been obtained where required by law. Government and the NRA shall provide Reasonable Assistance to DRCL in respect of obtaining planning permission for any signage relating to the above licence.
25. Government and the NRA reserve the right to place directional or identification signage on roads subject to the above licence.

## **Government Signage Publications and Maps**

26. Government and the NRA will reasonably place directional or identification signage on roads not subject to the above licence indicating location and identity of Camana Bay, Salt Creek, SMB Hotel and, at the request of DRCL, other DRCL developments.



## Road Legal Closures

27. Where Government agrees or undertakes anywhere in this Agreement to Legally Close any existing public road, or a portion of a public road, it shall, without limiting the generality of the foregoing:
- 27.1. Subject to consultation with the Board, the Minister shall endorse, and direct the NRA to follow, a policy consistent with the Legal Closure of any existing public road, or a portion of such road, provided under this Agreement and otherwise consistent with the terms of this Agreement
  - 27.2. Having considered the benefits of the West Bay Road and ETH Extension Plan and other terms of this Agreement, the NRA does hereby recommend and endorse the West Bay Road Legal Closure and the Raleigh Quay Legal Closure;
  - 27.3. Within thirty (30) days of the date of the expiry of the Review Period, publish in the Cayman Islands Gazette a declaration in respect of the West Bay Road Legal Closure and the Raleigh Quay Legal Closure specifying:
    - 27.3.1. the road or portion of road proposed to be discontinued;
    - 27.3.2. that the road or portion of road shall cease to be a road immediately upon the Completion of Phase 1 and commencement of Phase 2 in accordance with the West Bay Road and ETH Extension Construction Schedule; and
    - 27.3.3. the place where a plan of such road or portion of road may be inspected.
  - 27.4. In order to complete the Raleigh Quay Legal Closure, within thirty (30) days of the date of this Agreement, Government shall provide its Reasonable Assistance and otherwise ensure that the Prescribed Composite Map required in order to add that part of Raleigh Quay outlined in Boundary Plan 492 to the schedule of public roads is completed.
  - 27.5. As of the date from which the road or portion of road ceases to be a road, by declaration of the Governor advertised in the Cayman Islands Gazette, forthwith add all of the land comprised in such former road to adjacent or proximate land then owned by DRCL.
  - 27.6. For the avoidance of doubt, waive any tax, fees and stamp duty in respect of any land conveyance or vesting made in respect of the Legal Closing and any vesting of land formerly comprised in roads referred to in this Agreement to DRCL pursuant to section 14 of the Roads Law.
  - 27.7. Not at any time in the future make a Public Road Declaration in respect of any new road or take any action which would have the affect of reinstating the road or portion of road which has been Legally Closed.

28. DRCL shall have the right to have any land surveying required in order to complete the Legal Closing of any road and adding of any land comprised in such former road to land owned by it, including preparation of any Prescribed Composite Map, completed by a Cayman Islands licensed land surveyor retained and paid by it and in the event it elects to do so, Government shall accept all such surveys prepared by such land surveyor (subject always to receipt of a fully compliant survey prepared in accordance with the Land Surveyors Law and any regulations promulgated thereunder and approved by the Chief Surveyor), and use same for purposes of completing the process of Legally Closing the former public road, adding it to adjacent or proximate land owned by DRCL and removing it from the Registry Map and otherwise provide its Reasonable Assistance in processing any surveying works required in order to complete the Legal Closure of any road contemplated under the terms of this Agreement. Government shall forthwith complete the preparation, within thirty (30) days from the date from which the road or portion of road ceases to be a road, a new Registry Map in respect of the affected land which shall include, without limitation, the omission therefrom of the former road as obsolete.
29. Where Government has agreed herein to Legally Close any existing public road, or a portion of such public road, in the event that it has not done so prior to the date of this Agreement, the NRA shall do the following:
- 29.1. within thirty (30) days of the date of this Agreement, the Board shall consult with the Minister and make any necessary recommendations to the Minister regarding the Proposed Road Legal Closures;
- 29.2. having reviewed and considered the proposal to Legally Close a public road, advise the Minister pursuant to the Roads Law to proceed with the Proposed Road Legal Closures;
- 29.3. promptly comply with and execute any direction or policy given by the Minister to the NRA regarding the Proposed Road Legal Closures.

#### **New Roads**

30. Where Government agrees or undertakes anywhere in this Agreement to make a Public Road Declaration in respect of any new public road, in the event that it has not done so prior to the date of this Agreement, it shall, without limiting the generality of the foregoing, do the following:
- 30.1. Within thirty (30) days of the date of this Agreement, request the recommendation of the NRA to the alignment, layout and design of all new public roads contemplated under the terms of this Agreement.
- 30.2. Subject to consultation with the Board, the Minister shall endorse, and shall direct the NRA to follow, a policy consistent with (and adopt an alignment, layout and design of the new public roads contemplated under) the terms of this Agreement and otherwise consistent with the terms of this Agreement.

- 30.3. Within thirty (30) days of the date of receipt of the recommendation of the NRA to the alignment/layout of the new public roads, publish a declaration in respect of the layout of such new public roads in the Cayman Islands Gazette and the Caymanian Compass and/or otherwise comply with the notice requirements under the Roads Law.
- 30.4. Within thirty (30) days of the date of receipt of the recommendation of the NRA to the alignment/layout of the new public roads, authorize DRCL in writing to enter at any reasonable times upon lands for the purpose of making such surveys as may be necessary to enable DRCL to make plans of the proposed works.
- 31. DRCL shall have the right to have any land surveying required in order to complete the gazetting of any public road and the inclusion of such road in the schedule of public roads, completed by a Cayman Islands licensed land surveyor retained and paid by it, and Government shall accept all such surveys prepared by such land surveyor, subject always to receipt of a fully compliant survey prepared in accordance with the Land Surveyors Law and any regulations promulgated thereunder and approved by the Chief Surveyor, and use same for all such purposes. Government shall forthwith complete the preparation, within thirty (30) days from the date from which a Prescribed Composite Map is received from DRCL's land surveyor, a new Registry Map in respect of the affected land which shall include, without limitation, the addition of the new public road and shall otherwise provide its Reasonable Assistance in the completion and processing of any surveying works required in relation to the gazetting of any road as a public road as contemplated under the terms of this Agreement.
- 32. Where the Government has agreed under this Agreement to make a Public Road Declaration, in the event that it has not done so prior to the date of this Agreement, the NRA shall do the following:
  - 32.1. within thirty (30) days of the date of this Agreement, the Board shall consult with the Minister and make any necessary recommendations to the Minister regarding the Proposed Road Gazettals;
  - 32.2. promptly comply with and execute any direction or policy given by the Minister to the NRA pursuant to section 6(1) of the NRA Law regarding the Proposed Road Gazettals.

#### **Road Works**

- 33. Where it is proposed under the terms of this Agreement for DRCL to carry out Proposed Road Works, the NRA shall do the following:
  - 33.1. within thirty (30) days of the date of this Agreement, the Board shall consult with the Minister and make any necessary recommendations to the Minister regarding the Proposed Road Works;
  - 33.2. having reviewed and considered the Proposed Road Works, advise the Minister pursuant to the NRA Law to allow DRCL to proceed with the Proposed Road Works;

- 33.3. promptly comply with and execute any direction or policy given by the Minister to the NRA under the NRA Law regarding the Proposed Road Works;
  - 33.4. permit DRCL to enter at all reasonable times on any lands under the ownership or control of the NRA which DRCL may need to enter for the purpose of conducting surveys and inspections as may be necessary to prepare for and execute the Proposed Road Works subject to any prior notice required under the Roads Law having been given by DRCL.
34. In relation to the completion of the Proposed Road Works by DRCL, the NRA represents and warrants:
- 34.1. by entering into this Agreement, the NRA is not in breach of the NRA Law;
  - 34.2. this Agreement, including the completion of the Proposed Works by DRCL on behalf of the NRA, is advantageous to the NRA in connection with the performance of its responsibilities, functions and duties under the NRA Law; and
  - 34.3. the obligation of the NRA under the NRA Law to maintain public roads and related road works will apply to the Proposed Road Works after Construction of the Proposed Road Works has been completed by DRCL under this Agreement.

#### **Road Works Design**

- 35. Notwithstanding that Government and the NRA have adopted the right of way corridor of the ETH Extension as set out herein, the full engineering aspects of the ETH will continue to be designed following the date of this Agreement and will be subject to the prior written approval of the NRA.
- 36. Notwithstanding the recommendations of AASHTO for road and street design, the NRA agrees to reasonably accommodate within its road design criteria for parts of the ETH Extension to permit ingress and egress by DRCL in order to accommodate the development of its land proximate to the ETH Extension.
- 37. In order to complete Phase 1 and Phase 2 within the timeframe desired by the Parties, Construction of Proposed Road Works will be completed on a design-build format and DRCL shall release components of the design as they are required. Upon each such release, and otherwise at any time DRCL requests the NRA to do so, within seven (7) days of receipt thereof, the NRA shall review, comment upon and, if appropriate, certify to DRCL in writing that the design released is in accordance with the specifications and standards provided hereunder and required by the NRA. In the event that the NRA has not certified to DRCL within seven days of a request from DRCL that the component has been designed to a standard acceptable to the NRA, the NRA shall issue comprehensive detailed written reports clearly outlining its reasons for not certifying the relevant components of the design completed by DRCL and clearly outlining design changes or other action required in order for it to certify such design.

### **Road Works Design & Construction Specifications and Standards**

38. Road design shall be subject to NRA approval, but shall generally comply with AASHTO "A Policy on Geometric Design of Highways and Streets" as amended by Government and NRA practices to date for an urban four lane divided arterial road such as the existing ETH north of Galleria loop. Specific project criterion will include the following:
  - 38.1. Road signage and marking shall be in accordance with the UK Design Manual for Roads and Bridges, and the Manual of Uniform Traffic Control Devices as amended for consistency with the Cayman Islands Traffic Law 2003; and
  - 38.2. Highway structures shall be designed and built in accordance with the Florida Department of Transportation's Structures Manual, Topic No. 625-020-018, latest as amended by Government and the NRA.

### **Sub-Contracting Roadway Construction Works**

39. Subject to clause 40 below, whenever possible, DRCL shall contract or sub-contract any road Construction works contemplated under the terms of this Agreement. Whenever DRCL contracts or sub-contracts such road Construction works, it shall whenever possible procure the provision of labour and or materials and/or works from a broad cross-section of qualified and competent Caymanians or Caymanian owned firms.
40. Notwithstanding the foregoing, nothing herein shall fetter the right of DRCL to contract or sub-contract works contemplated under the terms of this Agreement as it deems necessary and appropriate in order to complete Phase 1 or Phase 2; provided always that DRCL shall ensure that any contractor or subcontractor shall be competent and suitably qualified for the purpose for which he is engaged.

### **Utilities Coordination & Installation**

41. Government and the NRA shall request the reasonable assistance of all utility providers in providing any information regarding the location and size of utilities which DRCL requires in order to complete the Construction of Proposed Road Works, such utility providers including, without limitation, Water Authority, CUC, Water Company, LIME, LOGIC, West Star and TeleCayman.
42. Government and the NRA shall provide Reasonable Assistance in requesting the cooperation of all providers of utilities to install, align or remove necessary or existing infrastructure in a timely and coordinated fashion to ensure there are no delays in completion of Phase 1 or Phase 2 and to provide its Reasonable Assistance to ensure utility providers do not re-excavate any part of Phase 1 or Phase 2 in respect of which road Construction has been completed.

43. Upon request by DRCL, Government and the NRA shall request the reasonable assistance of such utility provider to execute its infrastructure works in a manner and within a period of time reasonably required by DRCL.
44. DRCL shall have the option of installing conduits at its sole expense under or across the ETH or any other road Constructed in connection with this Agreement. Such conduits may, subject to the approval of the NRA (not to be unreasonably withheld), be placed, across the ETH or any other road Constructed in connection with this Agreement to provide or maintain services to DRCL properties separated by public roads or DRCL properties remote from each other. In respect of any such conduits under or across the ETH, Government shall grant to DRCL an easement respecting any such conduit. Such easement shall be registered as an appurtenance on the relevant land register and shall include the right of DRCL to, without limitation, maintain and replace such conduit.
45. In the event of any damage to the road surface as a result of the installation of any road conduits, DRCL shall at its sole cost and expense take such steps as are necessary to restore the road surface to its former state.
46. Government shall Reasonably Assist in ensuring that Water Authority makes all matters relating to the Proposed Road Works its first priority.
47. As a result of the West Bay Road Legal Closure, Government shall request the reasonable assistance of CUC in moving its overhead transmission and distribution lines and poles to the ETH between Governor's Way and Yacht Drive, and erecting its main feeder poles no closer than four feet (4') from the face of the curb of any part of the ETH. Neither Government nor the NRA shall be responsible for any costs in relation to the relocation of any transmission and distribution lines and poles as provided herein.
48. In order to accommodate for future utility services, DRCL shall be permitted to install conduits under the ETH Extension, Phase 1, Phase 2, Raleigh Quay, Governor's Way, Reverend Blackman Drive Extension and any part of the ETH which it Constructs. Any such utility conduits installed by DRCL shall remain the property of DRCL and it shall be entitled to licence for a fee such conduits to any utility providers. Government and the NRA shall require utility providers other than CUC, Water Company and Water Authority to use such DRCL conduits in the event they need to install services along the ETH. Any licence fees DRCL charges to utility providers to use such conduits shall be fair and reasonable in all respects. In the event that DRCL installs conduits which may be used by CUC, Water Company or Water Authority and negotiates the licensing of such conduits to those utility providers, DRCL shall be entitled to recover only its capital costs in respect of the installation of those conduits from CUC, Water Company or Water Authority; provided CUC, Water Company and Water Authority shall not be under any obligation to use any conduits installed by DRCL.

49. Unless otherwise provided herein or unless otherwise agreed by DRCL, nothing herein shall create an obligation on the part of DRCL to be responsible for the installation or costs of installation of any utilities with respect to any Proposed Road Works.

**Supervision and Completion of any Proposed Road Works**

50. Throughout Construction of Phase 1 and Phase 2, the NRA shall perform sufficient periodic inspections as it deems appropriate and necessary in order for it to certify to DRCL that any Proposed Road Works completed by DRCL have been completed in accordance with the specifications and standards provided under the terms of this Agreement.
51. Promptly upon completion of Phase 1 or Phase 2, or any part thereof, and otherwise at any time DRCL reasonably requests the NRA to do so, the NRA shall, if appropriate, certify in writing to DRCL that the works completed to the date thereof have been completed in accordance with the specifications and standards provided hereunder and otherwise required by the NRA.
52. Within two (2) days of any inspection of any works by the NRA in respect of which it is unable to certify to DRCL that the works have been completed to a standard acceptable to the NRA, the NRA shall provide a brief oral or written reports outlining its reasons for not certifying works completed by DRCL and measures required in order for it to certify such works.
53. Within fourteen (14) days of any inspection of any works by the NRA in respect of which it is unable to certify to DRCL that the works have been completed to a standard acceptable to the NRA, the NRA shall issue comprehensive detailed written reports clearly outlining its reasons for not certifying works completed by DRCL and all measures required in order for it to certify such works. In such event, DRCL shall take reasonably expeditious steps to have those measures carried out and shall notify the NRA when such measures have been completed whereupon the NRA shall re-inspect the Proposed Road Works and either issue its written certification or issue a report as aforesaid.
54. In the event that:
- 54.1. the NRA does not inspect and/or does not provide a detailed written report clearly outlining its reasons for not certifying the Completion of Phase 1 within fourteen (14) days of a request by DRCL to do so, or within fourteen (14) days of its inspection, as the case may be, or
- 54.2. DRCL acting reasonably is not satisfied with the decision of the NRA not to certify Completion of Proposed Road Works,

DRCL may notify the Engineer of Record that the relevant Proposed Road Works are completed whereupon the Engineer of Record shall either certify the Completion of the Proposed Road Works or identify deficiencies which are required to be addressed prior to such certification. Prior to inspecting the Proposed Road Works the Engineer of Record may request from the NRA, the basis for its failure to certify the Completion of the Proposed Road Works. After review of

the written report of the NRA and inspection of the Proposed Road Works completed by DRCL, the Engineer of Record may either certify the Completion of Proposed Road Works or issue a comprehensive detailed written report clearly outlining its reasons for not certifying completion of the Proposed Road Works and identifying the measures required in order for it to certify the Completion thereof. In such event, DRCL shall take reasonably expeditious steps to have those measures carried out and shall notify the NRA or the Engineer of Record when such measures have been completed whereupon the NRA or the Engineer of Record shall re-inspect the Proposed Road Works and either issue its written certification or issue a report as aforesaid. The above procedure shall be repeated until either the NRA or the Engineer of Record issues its written certification of the Completion of Phase 1.

55. Once any part of any road construction works are completed as determined by the NRA (or the Engineer of Record) in respect of any part of Phase 1 or Phase 2 in accordance with DRCL's Construction schedule, DRCL shall not be responsible for any further works required to be done or redone or otherwise any costs or expenses associated with a utility provider carrying on works on, under or adjacent to such completed road construction works.

#### **Completion of Phase 1**

56. Upon notice given by DRCL that the relevant Proposed Road Works are completed, the NRA shall inspect and certify the Completion of Phase 1 in accordance with the terms of this Agreement.
57. Within two (2) days of such inspection in respect of which it has not certified Completion of Phase 1, the NRA shall provide a brief oral or written report outlining its reasons for not certifying works completed by DRCL and measures required in order for it to certify Completion of Phase 1.
58. Within seven (7) days of such inspection in respect of which it has not certified Completion of Phase 1, the NRA shall issue a comprehensive detailed written report clearly outlining its reasons for not certifying Completion of Phase 1 and the measures required in order for it to certify the Completion of Phase 1. In such event, DRCL shall take reasonably expeditious steps to have those measures carried out and shall notify the NRA when such measures have been completed whereupon the NRA shall re-inspect the Proposed Road Works and either issue its written certification or issue a report as aforesaid.
59. In the event that:
  - 59.1. the NRA does not inspect and/or does not provide a detailed written report clearly outlining its reasons for not certifying the Completion of Phase 1 within seven days of a request by DRCL to do so, or within seven days of its inspection, as the case may be, or
  - 59.2. DRCL acting reasonably is not satisfied with the decision of the NRA not to certify Completion of Phase 1,



DRCL may notify the Engineer of Record that the relevant Proposed Road Works are completed whereupon the Engineer of Record shall either certify the Completion of Phase 1 or identify deficiencies which are required to be addressed prior to such certification. Prior to inspecting the Proposed Road Works the Engineer of Record may request from the NRA, the basis for its failure to certify the Completion of Phase 1. After review of the written report of the NRA and inspection of the works completed by DRCL, the Engineer of Record may either certify the Completion of Phase 1 or issue a comprehensive detailed written report clearly outlining its reasons for not certifying completion of Phase 1 and identifying the measures required in order for it to certify the Completion of Phase 1. In such event, DRCL shall take reasonably expeditious steps to have those measures carried out and shall notify the NRA or the Engineer of Record when such measures have been completed whereupon the NRA or the Engineer of Record shall inspect the Proposed Road Works and either issue its written certification or issue a report as aforesaid. The above procedure shall be repeated until either the NRA or the Engineer of Record issues its written certification of the Completion of Phase 1.

60. No use by the public of any road shall be permitted by any Party until the NRA or the Engineer of Record has certified that the relevant Proposed Road Works are completed and fit for use as a public road and any use by the public authorized or permitted by Government or the NRA shall be deemed as certification by the NRA that the Proposed Road Works are completed and fit for use as a public road.

#### **Camana Bay Road Crossings and Intersections**

61. Government and the NRA hereby approve the Construction by DRCL at its sole cost and expense, on behalf of the NRA, of an in-road warning-light pedestrian crossing, demarcated with alternate road surfacing at ETH and Camana Way, similar to the pedestrian crossing depicted in the Esterley Tibbetts Highway at Camana Way Pedestrian Crossing Improvements Plan.
62. Following completion of Construction of the above mentioned pedestrian crossing at ETH and Camana Way the NRA and DRCL shall monitor its use and function to determine whether alterations should be made in order to deal with safety or traffic congestion concerns which may result therefrom.
63. Government and the NRA hereby approve the Construction by DRCL at its sole cost and expense, on behalf of the NRA, of an in-road warning-light pedestrian crossing, demarcated with alternate road surfacing at West Bay Road and Camana Way, similar to the pedestrian crossing depicted in the West Bay Road at Camana Way Pedestrian Crossing Improvements Plan.
64. Government and the NRA hereby approve the Construction by DRCL at its sole cost and expense, on behalf of the NRA, of a roundabout at West Bay Road and Camana Way in accordance with the West Bay Road & Camana Way Roundabout Plan at a date to be determined by DRCL. DRCL shall give Government and NRA 3 months notice of its intention to commence Construction of this roundabout whereupon Government shall make a Public Road Declaration in respect of the roundabout at West Bay Road and Camana Way.

65. DRCL and its Affiliates hereby irrevocably waive any right that they may have as registered proprietor of the land required for the Construction of the above referenced roundabout to claim compensation under the Roads Law or by means of any other proceedings of any kind, at any time.
66. Pending Construction of the above mentioned roundabout, Government and the NRA hereby approve the Construction by DRCL at its sole cost and expense, on behalf of the NRA, of an in-road warning-light pedestrian crossing, similar to the pedestrian crossing depicted on the West Bay Road at Camana Way Pedestrian Crossing Improvements Plan.
67. Government and the NRA hereby approve two left on/left off intersections to the ETH between LTBR1 and ACRR1 as identified in the ETH Plan at Camana Bay; provided these intersections shall not be constructed until after the ETH is widened to a four lane divided arterial road.

#### **Batabano Roundabout**

68. Notwithstanding that Government intends in due course to make a Public Road Declaration in respect of a roundabout at the intersection of the ETH and Batabano Road, DRCL shall not Construct or otherwise be responsible for any costs or expenses whatsoever with respect to the Construction of the proposed roundabout.
69. Provided and conditional upon the West Bay Road Legal Closure and Raleigh Quay Legal Closure being completed (including for the avoidance of doubt the addition of the portions of West Bay Road and Raleigh Quay Legally Closed to the adjacent or proximate land owned by DRCL), DRCL and its Affiliates hereby irrevocably waive any right that they may have as registered proprietor of the land which it owns and which is required in respect of the proposed roundabout at the intersection of ETH and Batabano Road to claim for compensation under the Roads Law or by means of any proceedings of any kind, at any time.

#### **Reverend Blackman Drive Extension**

70. DRCL shall Construct, at its cost and expense, that part of the Reverend Blackman Drive Extension as shown on the ETH Extension Plan.
71. Provided and conditional upon the West Bay Road Legal Closure and Raleigh Quay Legal Closure being completed (including for the avoidance of doubt the addition of the portions of West Bay Road and Raleigh Quay Legally Closed to the adjacent or proximate land owned by DRCL), DRCL shall not pursue a claim for compensation under the Roads Law, or otherwise in respect of the land which it owns and which is required in respect of the Reverend Blackman Drive Extension.

#### **ETHR2 Roundabouts**

72. Notwithstanding the Construction of accesses provided under clause 4, DRCL shall have the right, at a time in its discretion, to Construct up to two ETHR2 Roundabouts along the ETH between ETHR1 and ETHR3 not less than 1320 feet on centre with any other roundabout along

the ETH. In the event that DRCL wishes to Construct an ETHR2 Roundabout it shall inform Government of its intentions and the planning, design and Construction of the ETHR2 Roundabout will occur subject to the following:

- 72.1. DRCL shall provide design plans to the NRA for its review and approval which shall not be unreasonably withheld. The design and quality of an ETHR2 Roundabout shall be consistent with existing roundabouts on the Esterley Tibbetts Highway;
- 72.2. Government shall make a Public Road Declaration in respect of such ETHR2 Roundabout as set out in the ETHR2 Roundabout Gazette Plan;
- 72.3. DRCL shall, at its cost and expense, carry out the design and Construction of the ETHR2 Roundabout;
- 73. Where any land owned by DRCL or an Affiliate is used for the purpose of Construction of an ETHR2 Roundabout, clauses 12 to 15 (Compensation), shall also apply to such ETHR2 Roundabout.
- 74. All other provisions of this Agreement shall apply to an ETHR2 Roundabout, including, without limitation, provisions relating to landscaping, signage, road design and Construction and in the event an ETHR2 Roundabout is Constructed by DRCL, it shall be deemed in all respects to be a part of the Proposed Road Works.

#### **Airport Connector Road**

- 75. Government and the NRA hereby approve not less than one Full Road Access and two left in left off accesses onto and off of the ACR between ACRR1 and ACRR2, as marked on the ETH Plan at Camana Bay.
- 76. DRCL and its Affiliates hereby irrevocably waive any right that they may have as registered proprietor of land required for the ACR, to claim for compensation under the Roads Law or by means of any proceedings of any kind, at any time if Government makes a Public Road Declaration in respect of the proposed road:
  - 76.1. in accordance with a design and alignment satisfactory to DRCL; and
  - 76.2. within 4 years following the date of this Agreement.
- 77. Pending the gazetting of the ACR by Government, Government shall Reasonably Assist DRCL in planning its development of Camana Bay by exercising its powers under section 26 of the Roads Law and, upon receipt of recommendations of the NRA and the Central Planning Authority, designating a road corridor for the ACR in accordance with a design and alignment satisfactory to DRCL as outlined on the ETH Plan at Camana Bay.

### **Vehicular Bridges**

78. DRCL, at its cost and expense, shall be entitled to Construct, on behalf of and subject to the approval of the NRA, such approval not to be unreasonably withheld, Vehicular Bridges at points along the ETH Extension to connect portions of the ETH Extension where it is to pass over any waterways or access roads servicing and related to DRCL's proposed development at any of its adjacent properties.
79. In respect of any waterway or access road passing under any Vehicular Bridge, Government shall grant to DRCL an easement in favour of the relevant land owner and user respecting any such waterways or access roads to pass under the Vehicular Bridge. Such easement shall be registered as an appurtenance on the relevant land register and shall also contain provisions respecting a licence to authorize DRCL to develop and maintain the waterways and access roads and to constitute DRCL as Government's agent for purposes of ejecting trespassers, abating nuisance and/or commencing legal action in respect thereof.

### **Pedestrian Bridges**

80. Subject to the approval of the NRA, such approval not to be unreasonably withheld, DRCL, at its cost and expense, shall be entitled to Construct Pedestrian Bridges at points along the ETH through its property between the SMB Hotel and Batabano Road to connect structures to be built on DRCL's land or pathways on DRCL's land.
81. In respect of any Pedestrian Bridge passing over the ETH, Government shall grant to DRCL an easement in favour of the relevant land owner and user respecting any such bridge. Such easement shall be registered as an appurtenance on the relevant land register and shall also contain provisions respecting a licence to authorize DRCL to develop and maintain the bridge and to constitute DRCL as Government's agent for purposes of ejecting trespassers, abating nuisance and/or commencing legal action in respect thereof.

### **Ongoing Maintenance Responsibility**

82. Notwithstanding the terms of any licence granted or contemplated under the terms of this Agreement following the completion of any road Construction works by or on behalf of DRCL, Government or NRA shall retain their obligations, including obligations under the NRA Law, to maintain all aspects of the ETH or any other public road, including, without limitation, the road surface, curbing, Vehicular Bridges, underpasses, drainage and other engineered constructs relating to the ETH and, unless otherwise agreed hereunder, all lighting, signage and landscaping.

### **Barkers**

83. In order to facilitate access to Barkers Park and to other land owners on the Barkers peninsula, Government and the NRA shall commence and complete all steps required to review, approve and make a Public Road Declaration in respect of the design by DRCL of the New Barkers Road as

a public road and hereby adopts the right of way corridor of the New Barkers Road, in accordance with the Barkers Plan.

84. Government and the NRA hereby approve the Construction by DRCL or a designated Affiliate of that part of the New Barkers Road indicated in solid blue on the Barkers Plan.
85. Upon receipt of the necessary approvals and licences for the Construction of the above mentioned portion of the New Barkers Road, and conditional upon DRCL approving the location of the New Barkers Road, DRCL shall, on behalf of the NRA, Construct the New Barkers Road indicated in solid blue on the Barkers Plan, at its cost and expense subject to the following:
  - 85.1. the final road surface shall be chip and spray;
  - 85.2. the final alignment and design of the New Barkers Road shall be in accordance with the Barkers Plan.
86. Immediately upon completion of Construction by DRCL of that portion of the New Barkers Road on the Barkers Plan, Government shall commence and complete all steps required to Legally Close the Old Barkers Road and, where any part of such road was adjacent to any part of the Barkers DRCL Land, and where any part of such road was adjacent to any part of the Barkers DRCL Land, vest the land comprised therein in DRCL.

#### **Concessions and Investment & Development Incentives**

87. Government shall and hereby grants the following concessions in relation to Government duties and fees:
  - 87.1. a waiver of 100% of all Import Duties on materials, goods and equipment imported by DRCL or its Affiliates, contractors and sub-contractors in relation to the Proposed Road Works and any Construction of Public Infrastructure directly related to the Proposed Road Works as aforesaid; provided, the waivers referred to in this sub-clause shall cease upon the later of:
    - 87.1.1. completion of the Proposed Road Works and Construction of Public Infrastructure directly related to the Proposed Road Works as aforesaid, and
    - 87.1.2. certification by the NRA that the Proposed Road Works and any Construction of any Public Infrastructure has met all of the NRA's standards and specifications, all defects have been remedied to the NRA's satisfaction and the Proposed Road Works and Public Infrastructure are fit for public use.
88. Any concessions granted by Government under the above clause shall be available to other contractors and subcontractors in relation to works undertaken on behalf of, or on the instructions of, DRCL for the purposes of this Agreement only. The grant of such concessions to

contractors and subcontractors is subject to proof to Government's satisfaction of contracts entered into between DRCL and a contractor or subcontractor for the purpose of carrying out any work for which DRCL is responsible under the terms of this Agreement.

89. Government hereby agrees and hereby grants DRCL and Affiliates the concessions, waivers and abatements in relation to Development Fees, Import Duties, DRCL Related Stamp Duty and other taxes and fees in accordance with the Investment and Development Incentives Schedule which shall not be subject to a time limit unless otherwise specified.
90. Any Concession Rights granted by Government under or by operation of the Investment and Development Incentives Schedule shall be, at the discretion of DRCL or Affiliate, assignable and thereby pass to persons or entities acquiring, developing, leasing or operating properties in relation to which Concession Rights have been granted. DRCL and Affiliates are entitled to sell or lease to third parties properties subject to Concession Rights and retain all Concession Rights for any work done on such sold or assigned properties. In the event that DRCL performs work on the sold or leased properties, DRCL shall be entitled to all Concession Rights granted by this Agreement as if the said property was not sold or leased.
91. Any concessions granted by Government under this Agreement shall be available to other developers, contractors and subcontractors in relation to works undertaken on behalf of, or on the instructions of DRCL or any person or entity which has acquired Concession Rights pursuant to an assignment made by DRCL or Affiliate.
92. Upon any request by DRCL to do so, Government shall provide written confirmation of any concessions granted under this Agreement to enable DRCL or any Affiliate to have any application or waiver processed by any Authority or Department.

#### **DRCL Obligations**

93. DRCL will undertake its obligations at its own cost and risk in accordance with the provisions of this Agreement. Neither Government nor the NRA shall provide any guarantee or support to DRCL except as otherwise specifically provided herein and in any event, only to the extent permitted by law. This Agreement shall not be deemed to grant DRCL any right or impose any obligations on Government and the NRA except as specifically stated in this Agreement or as otherwise available in law.

#### **Entry onto Land by DRCL**

94. Where DRCL or any employee, servant, agent, contractor or subcontractor thereof enters land pursuant to this Agreement, DRCL shall promptly notify the proprietor or person in charge of such land prior to such entry and inform such person of the reason for its presence. Neither DRCL, nor anyone on behalf of DRCL, shall represent or commit either Government or the NRA in any way with regard to such entry and DRCL shall indemnify Government and NRA for all costs, expenses, loss and liabilities incurred by either of them in any legal proceedings or

compensation to owners or users of the property as a result of any loss, damage or injury arising from such entry onto the land by DRCL. DRCL shall repair or pay compensation to the owners or users of such property for any damage caused by the exercise of its entry.

#### **Physical Conditions**

95. DRCL shall bear all risks and costs with regard to:
- 95.1. Any weather conditions, including, without limitation, floods;
  - 95.2. Any pollution, contamination or other damage to the sites of the Proposed Road Works; and
  - 95.3. The physical conditions or obstructions on the sites of the Proposed Road Works (both above ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered during Construction or otherwise.

#### **Indemnity/Liability**

94. DRCL shall indemnify Government and NRA, their respective employees, servants, officers, directors, officers and agents against, and hold them harmless from and shall otherwise be responsible to third parties for:
- 94.1. any claim, liability, loss or cost of any kind whatsoever (including attorney's fees) incurred by either Government or NRA which arises as a result of any negligence or default of DRCL, its Affiliates or their respective employees, officers, servants, agents, contractors, sub-contractors or developers or failure by DRCL to comply with any of its obligations under this Agreement; and
  - 94.2. any claim arising from or related to the failure of DRCL or any Affiliate to pay for any services, materials, labour, equipment, taxes, duties, fees of any kind or any obligations furnished or incurred for or in connection with the performance of its obligations under this Agreement.
95. Without limiting the generality of the foregoing section, DRCL shall, except as provided in clause 96 below, indemnify Government and the NRA against all losses and claims in respect of:
- 95.1. death, sickness or injury to any person; and
  - 95.2. loss of, or damage to any property (including any property owned by Government or the NRA)

which may arise out of or in consequence of any negligence or default of DRCL, its Affiliates, and their employees, servants, officers, directors, officers and agents and against all claims, proceedings, liabilities, costs, charges and expenses whatsoever incurred or suffered by Government or the NRA in respect thereof or in relation thereto.

96. It is acknowledged and agreed that the provisions of clauses 94 and 95 above, do not apply:
- 96.1. to costs, expenses and liabilities incurred by Government or NRA in discharging its obligations under this Agreement except to the extent that any such cost, expense or liability arises as a result of any negligence or default on the part of DRCL, its Affiliate or any Responsible Person; or
  - 96.2. to the extent that any such cost, expense, loss or liability arises as a result of the negligence or default on the part of Government or the NRA or any of their respective Responsible Persons.
97. If any legal action is brought or claim is made against Government or the NRA and they are entitled to be indemnified pursuant to clause 94 and 95 above, DRCL shall be entitled at its own expense to take conduct of, or settle any such action or claim and Government and the NRA shall notify DRCL of any claims or threatened claims and take such action as DRCL may reasonably direct. If DRCL fails to defend, deal with or negotiate any such claim or action diligently, Government or the NRA may, after first giving DRCL reasonable notice to so act, settle such action or claim without the consent of DRCL and without relieving DRCL of the obligation to indemnify Government or the NRA as provided in clause 94 and 95 above.
98. Neither Government nor the NRA shall not be liable for or in respect of any claim for damages or compensation by or in consequence of any accident or injury to any workman or other person engaged or in the employment of DRCL, any Affiliate or contractor or subcontractor engaged thereby and DRCL shall indemnify, defend and hold harmless at its own expense Government and the NRA, its servants or agents from and against any and all potential or actual claims, demands, and proceedings in respect of any death, injury, loss or damage howsoever caused.

#### **Insurance**

99. Without prejudice to its obligations to indemnify Government and the NRA under this Agreement, DRCL shall at its own expense and during any period of time it carries out Construction of Proposed Road Works under the terms of this Agreement, effect and maintain, or require to be effected and maintained, in force the following minimum insurance coverage:
- 99.1. Public liability insurance or commercial general liability insurance on a per occurrence basis in the amount of US\$5,000,000 per occurrence and in the annual aggregate in respect of claims arising out of the performance of the Agreement, and shall include contractual liability. The policy shall be applicable to all sites where Construction is being, or will be carried out. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts) and blanket contractual, products;



- 99.2. Workmen's Compensation— the minimum limit for such insurance shall be in accordance with the requirements of the selected governing jurisdiction in which DRCL effects such insurance coverage;
- 99.3. Professional indemnity insurance by professional engineers retained by it in respect of the design of the Proposed Road Works with coverage for any liability arising from or related to errors or omissions in the design and/or the negligent performance of design services; and
- 99.4. Employer's Liability insurance with minimum limits of US\$1,000,000 per occurrence and US\$2,000,000 in the annual aggregate exclusively in respect of this Agreement.

Such insurance coverage shall be procured and maintained prior to commencement of any of the Proposed Road Works and with a reputable insurance company.

100. Government and the NRA shall be named as additional insureds under the policies referred to above. DRCL shall on the request of Government at any time, provide Government with copies of all insurance policies and shall periodically review the extent and adequacy of the coverage provided by such insurance and the then prevailing local conditions in the Cayman Islands.
101. Any insurance carried by Government and the NRA shall be excess and not in any way contributory insurance to that provided by DRCL.
102. For the avoidance of doubt, the Parties agree and acknowledge that nothing in this Agreement regarding insurance shall relieve DRCL from the diligent performance of any of its obligations hereunder.
103. DRCL shall be solely responsible for any deductible losses under any of the above policies of insurance.
104. DRCL shall require each of its contractors or subcontractors to procure and maintain similar insurance coverage as that required of DRCL for their own operations.
105. Each and every insurance policy effected by DRCL in accordance with this Agreement shall include worldwide jurisdiction and not in any way exclude the Cayman Islands as a covered jurisdiction.
106. If, without the approval of Government or the NRA, DRCL fails to effect and/or maintain any required insurance coverage in accordance with the terms of this Agreement, or fails to provide evidence of such coverage within five (5) days of a request to do so, Government or the NRA may, but shall not be required to, procure and maintain such coverage and invoice and recover such cost from DRCL.
107. DRCL shall not, without prior written approval of Government settle or compromise with any insurer any claim which DRCL may have against the insurer and which relates to an actual or

potential claim by Government or the NRA against DRCL, and shall not, by any act or omission, lose or prejudice DRCL's and/or Government's right to make or proceed with any claim against the insurer.

#### **DRCL Without Ownership Interest in Land**

108. Government agrees to allow DRCL to use sub-soil and top soil (excluding sand) from the sites of the Proposed Road Works for the Construction of such works. For the avoidance of doubt, the provisions of this clause do not confer any airspace or sub-surface rights on DRCL for the purpose of carrying out any developments not provided for in this Agreement, including but not limited to industrial parks, health and sport facilities, commercial facilities, buildings relating to parking and other similar facilities not directly related to the Proposed Road Works.

#### **Disruption to Existing Traffic**

109. Where applicable, DRCL shall ensure that Construction does not cause any disruption to existing traffic nor to activities on adjoining land except to the extent that such disruption cannot reasonably be avoided as a result of such Construction being carried out. In that event, DRCL shall ensure that appropriate traffic management measures are implemented, subject to the prior approval of the NRA and where applicable the Royal Cayman Islands Police, to minimize the effect of any such disruption on road users or adjoining land holders.

109.1. Government and the NRA shall Reasonably Assist DRCL, including making necessary requests to the Royal Cayman Islands Police to devote necessary police resources in implementing appropriate traffic management measures, including, without limitation, temporarily closing roads, and otherwise Reasonably Assist in the management of traffic where it is necessary to disrupt existing traffic in order to carry out any Proposed Road Works.

#### **Information Relating to Proposed Road Works**

110. DRCL shall furnish to Government and NRA or any of their designated representatives all such reports and other information relating to the engineering and design of Proposed Road Works as they may reasonably request from time to time and DRCL shall furnish them with such information promptly; provided, this shall not create an obligation on DRCL to create a report which it does not otherwise produce.

#### **Periodic Reports**

111. DRCL shall furnish to the Government Representative as soon as practicable but in any event not later than sixty (60) days after the end of each financial year a report on the implementation and progress of its obligations under this Agreement, containing such information as Government may reasonably require and disclosing any factors of which DRCL is aware which materially and adversely affect, or which would be otherwise likely to materially and adversely affect, the Completion of any of the Proposed Road Works.

112. Each of the Parties shall immediately report to the other Parties details of the following events:
- 112.1. Any charge, lien or other instrument imposed on any of its property, and any seizure thereof which charge, lien or other instrument, attachment or seizure will have a material adverse effect on the ability of the Party to perform its obligations under the Agreement;
  - 112.2. any matter which might influence the validity of this Agreement or any matter that constitutes a material breach, including without limitation, any possible termination event, the circumstances thereof, and possible results as viewed by the Party; and
  - 112.3. any claim brought or threatened which is reasonably likely to have a material adverse affect on the Party or its ability to perform its obligations hereunder.

#### **Third Party Contracts**

113. DRCL may use a third party or third parties to carry out all or part of its obligations under this Agreement. The terms of any such contracts or sub-contracts shall, in material respects, reflect the provisions of this Agreement to the extent necessary, but in no instance will the engagement of a third party release DRCL from any of its obligations hereunder.

#### **Educational, Community and Training Programs**

114. DRCL shall facilitate sponsorship of the following Government programs to an aggregate value of US\$5 million as follows:
- 114.1. a residential mortgage arrears assistance program available to qualified Caymanians in the sum of US\$2.5 million; and
  - 114.2. education, parks and housing in the sum of US\$2.5 million.
115. The funding for the above US\$5 million shall be paid to Government upon execution of this Agreement.
116. Government shall be responsible for all funding of the above programs in excess of the contributions set out above.
117. DRCL shall be entitled to a schedule or plan detailing the intended application by Government of the US\$2.5 million in respect of education, parks and housing prior to paying such funds to Government.
118. The Parties shall coordinate and schedule suitable publicity for each distribution made under the Release of Funds Schedule.

## **SMB Hotel**

119. Within twelve (12) months of the date of this Agreement DRCL shall commence construction of the SMB Hotel and, but for an event of force majeure, shall continue construction works uninterrupted until the SMB Hotel is re-opened.

## **Force Majeure**

120. Subject to clause 122 below, "Force Majeure" means any event or circumstance:
- 120.1. that prevents a Party from performing its obligations under this Agreement;
  - 120.2. was not anticipated as at the date of this Agreement;
  - 120.3. is not within the reasonable control of, or the result of the negligence of, that Party; and
  - 120.4. which, by the exercise of due diligence, that Party is unable to overcome or avoid or cause to be avoided.
121. Events of Force Majeure include, but are not limited to, war, earthquake, hurricane, flood or such other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the powers of the Party invoking Force Majeure) and any injunctive relief of any kind that may be awarded by any court with jurisdiction in the Cayman Islands.
122. A cause, event, condition or circumstance that (i) affects the costs of any Party complying with its obligations under this Agreement or, (ii) merely causes an economic hardship to a Party, is not an event of Force Majeure.
123. A Party affected by an event of Force Majeure shall:
- 123.1. take all reasonable measures to remove that Party's inability to fulfill its obligations under this Agreement with a minimum of delay;
  - 123.2. notify the other Party in writing of that event as soon as reasonably possible, and in any event, not later than fourteen (14) days following the occurrence of that event, providing evidence of the nature and cause of that event and the extent to which the event suspends the affected Party's obligations under this Agreement.;
  - 123.3. notify the other Party in writing of the restoration of normal conditions as soon as possible; and
  - 123.4. resume performance of its obligations as soon as possible once the Force Majeure event no longer exists.

124. Any Party affected by the occurrence of the event of Force Majeure shall be excused from the performance of its obligations under the Agreement to the extent that it is unable to perform those obligations as a result thereof and no Party shall be entitled to:
- 124.1. terminate this Agreement on account of such occurrence other; and/or
  - 124.2. claim damages or other compensation from the affected Party as a result of any failure to perform its obligations.
125. Where an event of Force Majeure has occurred, the Parties will promptly meet to discuss the basis and terms upon which the arrangements set out in this Agreement may be continued to their mutual satisfaction, and may agree to suspend performance of the Agreement until the Force Majeure event comes to an end.
126. The foregoing provisions shall not excuse or release the Party claiming Force Majeure from obligations due or performance, or compliance required under this Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure, or payment obligations to any Party or obligations not affected by the event of Force Majeure.

#### **Independent Review**

127. An independent review of the terms and objectives of this Agreement shall be conducted during the Review Period by a qualified entity appointed by Government and approved by DRCL, subject to the following:
- 127.1. The purposes of the independent review shall be:
    - 127.1.1. to ensure Government's compliance with its Framework for Fiscal Responsibility; and
    - 127.1.2. to provide Government with adequate information to assess the value of this Agreement to the Cayman Islands.
  - 127.2. Compliance with Government's Framework for Fiscal Responsibility shall be assessed by the entity conducting the independent review in terms of Government's fiscal strategy consisting of the following five components:
    - 127.2.1. controlling Government expenditure;
    - 127.2.2. limiting new borrowings;
    - 127.2.3. re-aligning the revenue base;
    - 127.2.4. improving the performance of statutory authorities and Government owned companies; and
    - 127.2.5. reducing costs by working in partnership with the private sector.

- 127.3. The value of this Agreement to the Cayman Islands shall be assessed by the entity conducting the independent review in terms of, and the terms of reference of the independent review shall require it to consider, the following:
- 127.3.1. the current economic, social and infrastructure needs of the Cayman Islands;
  - 127.3.2. the ability of Government to deliver in an effective and timely manner on the promises it has made to the people of the Cayman Islands, including:
    - 127.3.2.1. creating a vibrant and sustainable economy;
    - 127.3.2.2. enhancing and developing high end tourism;
    - 127.3.2.3. creating employment and other opportunities for Caymanians;
    - 127.3.2.4. raising the quality and availability of education and training of Caymanians;
    - 127.3.2.5. delivering valuable community programs and enhancements;
    - 127.3.2.6. contributing to solutions to social problems facing the Cayman Islands, including crime; and
    - 127.3.2.7. the effective, practical and alternative means of funding each of the above matters.
  - 127.3.3. Government receiving value for money.
- 127.4. Both Government and DRCL shall be entitled to make representations to each other during the fourteen (14) day period following the date of this Agreement for purposes of finalizing terms of reference for the said independent review; provided that Government alone shall be entitled to set the said terms of reference;
- 127.5. The terms of reference, and the request for proposals, for the independent review shall:
- 127.5.1. provide that the purpose of the independent review is as outlined in this clause;
  - 127.5.2. be finalized within three (3) weeks of the date of this Agreement and a copy provided to all Parties;
  - 127.5.3. include a requirement that the entity conducting the review do so strictly in accordance with the terms of reference provided to it;
- 127.6. In the event that either Government or DRCL are not satisfied with the final terms of reference for the independent review, it shall be entitled to terminate this Agreement

by written notice to the other given in accordance with the terms of this Agreement within seven (7) days of receipt by it of a copy of the final terms of reference;

- 127.7. In the event that DRCL terminates the agreement, the independent review of the terms of this Agreement shall not be conducted;
  - 127.8. Upon the agreement of the terms of reference, the independent review of the terms of this Agreement shall be conducted strictly in accordance with the terms of reference;
  - 127.9. Upon completion of its review, and in any event on or before the expiry of the Review Period, the entity selected to conduct the independent review shall issue a written report of its observations and conclusions;
  - 127.10. Government and DRCL shall be contemporaneously provided with the report of the entity which has conducted the independent review.
128. Upon receipt thereof, Government shall be entitled to consider the written report of the observations and conclusions of the entity which has carried out the independent review and, if it deems it appropriate, propose new and/or revised terms to this Agreement up to the expiry of the Review Period which shall be subject to agreement by DRCL, failing which Government shall be entitled at any time during the Review Period to terminate this Agreement, unless agreed otherwise.
129. In the event that either DRCL or Government:
- 129.1. is not satisfied with the written report of the observations and conclusions of the entity which has carried out the independent review, or
  - 129.2. is of the view that the entity which has carried out the independent review has not conducted its review in accordance with the terms of reference provided to it
- either Government or DRCL shall be entitled at any time during the Review Period to terminate this Agreement by notice in writing delivered to the other, failing which this Agreement shall, without any further action required by the Parties, be deemed to be in full force and effect and thereby ratified and confirmed by the Parties.
130. In the event written notice of termination of this Agreement is delivered by Government to DRCL under the above clauses 128 or 129 at any time during the Review Period:
- 130.1. DRCL shall be entitled to payment from Government of a sum equivalent to all costs and expenses it has incurred with respect to works carried out prior to the expiration of the Review Period pursuant to or in contemplation of this Agreement;
  - 130.2. DRCL shall be entitled to a refund of the US\$5 million paid by it to Government under the Educational, Community and Training Programs provisions of this Agreement;

- 130.3. DRCL shall be entitled to claim for compensation under the Roads Law in respect of any of its land included in Boundary Plan 534 and any other boundary plan prepared with respect to the road works contemplated under the terms of this Agreement; and
- 130.4. this Agreement shall thereupon without more be terminated and, subject to the above sub-clauses and the below paragraph, no Party hereto shall thereafter have any further rights of action or claim of any nature against any other Party hereto in respect hereof.
131. The obligations by Government to refund DRCL in respect of payments made to Government under the Educational, Community and Training Programs or in respect of the costs and expenses DRCL has incurred with respect to works it has carried out prior to the expiration of the Review Period shall be satisfied by Government granting to DRCL the waivers, concessions and incentives as set out in under the Investment and Development Incentives Schedule of this Agreement.

#### **Termination by Government or the NRA**

132. Government or the NRA shall have the right to terminate this Agreement with immediate effect upon the occurrence of any of the following events in relation to DRCL in any jurisdiction:
- 132.1. DRCL becomes insolvent or suspends payment of its debts or makes or enters into any assignment of its assets for the benefit of its creditors (other than a bona fide corporate re-organisation that is not for debtor relief), convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up;
- 132.2. DRCL commences voluntary liquidation proceedings;
- 132.3. DRCL has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator;
- 132.4. if Government is not satisfied, acting reasonably, that DRCL is in financial good standing or able to finance any part of its obligations under this Agreement, or it is of the opinion acting reasonably, that any legal governmental or regulatory investigation, action, suit or proceeding to which DRCL or any Affiliate is or may be subject, if determined adversely to DRCL or any Affiliate, could have a material adverse effect on the financial condition of DRCL or its ability to perform its obligations under this Agreement; or
- 132.5. where DRCL has failed to remedy any material breach of the Agreement within sixty (60) days of receipt of written notice setting out sufficient details of such breach and requiring DRCL to remedy it.

#### **Termination by DRCL**

133. DRCL may terminate this Agreement if Government or the NRA is still in breach of the terms of this Agreement following sixty (60) days prior written notice to Government or the NRA



specifying the nature of the material breach with sufficient details of such to permit the Government or the NRA a genuine opportunity to remedy the alleged breach.

134. Neither Government nor DRCL may terminate this Agreement for any breach of the terms of this Agreement that is capable of being remedied without first giving prior written notice.
135. Any such notice to DRCL shall specify the alleged breach with sufficient detail to permit DRCL a genuine reasonable opportunity to remedy the alleged breach.
136. DRCL shall be permitted a period of three months after its receipt of such notice to remedy any such alleged breach.
137. In the event that any such breach is not cured within such three months, the Party delivering the notice may terminate the Agreement by delivering a written notice of termination. In the event that the breach is remedied, the notice to terminate shall be deemed to be void.

#### **Effect of Termination**

138. In the event of termination of this Agreement by Government or the NRA, DRCL will be liable to pay the aggregate of:
  - 138.1. all arrears of fees, duties and other financial liabilities which would otherwise have been payable by DRCL and any contractor or subcontractor as of the date of termination had the incentives and concessions set out in clause 87 not been established by this Agreement; plus
  - 138.2. all costs, expenses and charges of any kind (administrative or otherwise) reasonably incurred by Government and the NRA for the purpose of performing its obligations under this Agreement as at the date of termination; plus
  - 138.3. an amount equivalent to any increase in the value of any property or interest of any kind owned by DRCL and its Affiliates as a result of any works, procedures, gazettals, instructions, directives or other action of any kind whatsoever done pursuant to this Agreement as at the date of termination; less
  - 138.4. the value of any Public Infrastructure Constructed by DRCL pursuant to this Agreement.
139. In the event of termination of this Agreement by DRCL for breach by Government, the liability of Government shall be aggregate of:
  - 139.1. the value of Public Infrastructure Constructed by DRCL under the terms of this Agreement as of the date of the termination; and
  - 139.2. any property damage or other loss which DRCL or an Affiliate may establish as having been sustained as a result of the breach giving right of termination; and

139.3. all costs, expenses and charges of any kind (administrative or otherwise) reasonably incurred by DRCL for the purpose of performing its obligations under this Agreement as at the date of termination.

Each Party hereby agrees to take all reasonable measures to mitigate any loss it may suffer from the termination of any contracts, agreements, orders of any kind which may result from termination of this Agreement for any reason.

140. The Parties agree that the liabilities set out in the above clauses are a genuine pre-estimation of losses and do not constitute a penalty.
141. If Government or the NRA is unable to meet any of its obligations by reason of any matter or thing beyond its control such as, without limitation (i) a law of the United Kingdom that is extended to the Cayman Islands by Order in Council or (ii) a directive, measure, action or order from the United Kingdom, or an obligation arising from any international treaty, convention or other instrument that is extended to the Cayman Islands, the Government shall not be deemed to be in breach of this Agreement, and DRCL may terminate this Agreement by notice in writing. For the avoidance of doubt, the provisions of clauses 133 and 139 shall apply to any termination pursuant to this clause 141.
142. The Parties' indemnity obligation herein shall survive the termination of this Agreement for any reason whatsoever.
143. Termination of this Agreement for whatever reason shall not affect the accrued rights of the Parties arising in any way out of this Agreement as at the date of termination and, in particular but without limitation, the right to recover damages against the other and all provisions which are expressed to survive this Agreement shall remain in force and effect.

#### **DRCL Priority**

144. Government acknowledges and agrees that in order to meet its obligations under the terms of this Agreement, it will be required for it and its Departments and staff to deal with the matters contemplated under this Agreement involving DRCL or any Affiliate in an expeditious manner and to give such matters priority attention and consideration.
145. Government shall direct its relevant Departments and staff in writing to give such matters contemplated under this Agreement such priority attention and consideration as is necessary to achieve the objectives and timeframes provided under this Agreement and such Departments and staff shall use their best endeavours to deal with such matters in an expeditious manner.
146. The NRA acknowledges and agrees that in order to meet its obligations under the terms of this Agreement, it will be required for it and its staff to deal with the matters contemplated under this Agreement involving DRCL in an expeditious manner and at all times to give such matters priority attention and consideration.

## **Further Assurances**

147. Government shall request relevant Authorities and direct its Departments that, consistent with historical practice, Construction of public roads by and/or on behalf of the NRA is not development requiring the approval of the Central Planning Authority or any other Department or Authority.
148. Each Party shall at its own expense promptly execute all documents and use its best efforts to cause a third party to do all acts or things as may be required from time to time in order to give full effect to, perfect or complete this Agreement and all transactions incidental to it.
149. Government shall Reasonably Assist in passing, amending, or issuing any regulation, direction, instructions, directives, Order in Council or any other measures which are necessary to give effect to the terms of this Agreement. However, the Parties accept and agree that nothing contained in this Agreement shall in any way fetter, or is to be deemed as attempting to fetter, the exercise of legislative power of the Legislature of the Cayman Islands (as defined in the Cayman Islands Constitution Order 2009).

## **Confidentiality**

150. In relation to the Confidential Information of any Party, each Party undertakes to maintain the same in confidence and to use it only for the purposes of this Agreement and for no other purpose including, without limitation, commercial use or other use for the benefit of itself or any third party other than as permitted by this Agreement.
151. In relation to the Confidential Information of a Party, each Party undertakes not to copy, reproduce, reduce to writing any part thereof except as may be reasonably necessary for the purpose of giving effect to the Agreement and any copies, reproductions or reductions to writing so made are at all times be the property of the disclosing Party.
152. All Confidential Information received must be returned to the disclosing Party together with any copies at any time on request and in any event on the expiration or termination of this Agreement.
153. No Party may disclose Confidential Information of another Party to its employees or to third parties except in confidence to those of its employees, directors or third party advisors who require that information for the performance of its undertakings pursuant to this Agreement and on the following conditions:
  - 153.1. those employees, directors and third party advisors are obliged by their contracts of employment or service not to disclose the same; and
  - 153.2. the receiving Party must enforce those obligations at its expense and at the request of the disclosing Party in so far as breach of those obligations relates to the disclosing Party's Confidential Information.

154. The receiving Party is responsible for the performance of the obligations relating to Confidential Information on the part of its employees, directors and third party advisors to whom the Confidential Information is disclosed pursuant to the above clause.
155. The Parties shall use all reasonable efforts to ensure that all appropriate precautionary measures are put in place to protect the Confidential Information of the any other Party from unauthorised disclosure, copying or use.
156. The obligations of confidentiality do not apply to any Confidential Information disclosed with respect to which the receiving Party can prove:
- 156.1. is in the public domain without any breach by any of the Parties of any obligation relating to Confidential Information;
  - 156.2. was in its possession prior to any disclosure by the other Party and that this occurred without any breach by any of the Parties of the provisions of any obligation relating to Confidential Information;
  - 156.3. was disclosed to a professional advisor who is bound by strict obligations of confidentiality;
  - 156.4. was disclosed with the consent of the other Parties to this Agreement; or
  - 156.5. that such Confidential Information is or was required to be disclosed by any applicable law, any governmental agency or instrumentality or any regulatory or other supervisory body requesting or requiring such disclosure or any stock exchange requirement, regulation or listing requirement.
157. The obligations referred to in clauses 150-155 shall continue in force notwithstanding the completion or termination of this Agreement.

#### **Publicity**

158. Neither DRCL nor Government may make press or other announcements or releases relating to this Agreement and the transactions which are the subject of this Agreement, without the prior approval of the other party (acting reasonably) to the form and manner of the announcement or release.
159. The NRA may not make press or other announcements or releases relating to this Agreement and the transactions which are the subject of this Agreement, without the approval of both DRCL and Government.
160. Prior to completing or publishing any boundary plan or making a Public Road Declaration relating to matters contemplated under this Agreement, Government and the NRA shall provide such boundary plans or gazette notices to DRCL.

## Dispute Resolution

161. If a dispute arises between Government and/or and DRCL in connection with or arising out of this Agreement, then an attempt shall be made by the Parties to settle such dispute amicably by discussions and negotiations in good faith and in recognition of their mutual interests. If such dispute or difference arising out of or in connection with this Agreement has not been resolved within ninety (90) days of the date of such good faith discussions, the dispute shall be determined by arbitration.
162. The seat, or legal place, of the arbitration shall be as follows:
  - 162.1. If, at the time the arbitration is initiated, the Arbitration Law (2001 Revision) has been replaced by a new Arbitration Law in the form or substantially the form of the Arbitration Bill 2011, the seat of the arbitration shall be the Cayman Islands and the arbitration shall be conducted in accordance with the new Arbitration Law.
  - 162.2. If, at the time the arbitration is initiated, the Arbitration Law (2001 Revision) has not been replaced, or if it has been replaced by a new Arbitration Law which is not substantially in the form of the Arbitration Bill 2011, the seat of the arbitration shall be London and the arbitration shall be conducted in accordance with the Arbitration Act 1996, or any amendments thereto.
163. The language of the arbitration shall be English.
164. The arbitration shall be conducted in accordance with the Rules of International Chamber of Commerce which Rules are deemed to be incorporated by reference into this clause, save:
  - 164.1. to the extent necessary to give effect to the provisions of clauses 172-174 of this Agreement; or
  - 164.2. as modified by mutual agreement of the Parties.
165. Either Party may initiate an arbitration by serving the other Party a notice to arbitrate setting out:
  - 165.1. The time and date of a proposed arbitration;
  - 165.2. The specific issue or dispute to be arbitrated;
  - 165.3. The identity of a proposed arbitrator; and
  - 165.4. The location of the arbitration, which shall be held in Grand Cayman subject to clause 162.2, unless another location is mutually agreed upon.
166. The arbitration is to be effected by a single arbitrator agreed by the Parties. If the Parties are unable to agree on an arbitrator within seven (7) days of receipt of the notice referred in clause

165, either Party may apply in writing to the President of the Royal Institution of Chartered Surveyors, to appoint the arbitrator.

- 167. The decision of the arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law and the Parties consent to the jurisdiction of such court. The arbitrator's decision shall not be appealable, and shall not allow for trial de novo on the same issues.
- 168. The Parties hereby agree to any consolidation or joinder with respect to any arbitration proceedings involving or arising out of this Agreement.
- 169. The costs and expenses of arbitration proceedings under this Agreement and the apportionment of such costs and expenses between the Parties shall be determined by the arbitrator in his or her award or decision.
- 170. The Parties hereby agree to any consolidation or joinder with respect to any arbitration proceedings involving or arising out of this Agreement.
- 171. Notwithstanding any of the foregoing provisions, any Party may at any time commence litigation where that Party seeks urgent interlocutory or declaratory relief.

#### **Law and Jurisdiction**

- 172. Any legislation, regulation, code or other law referred to in this Agreement includes any consolidation, amendment, re-enactment or replacement of such law.
- 173. This Agreement is governed by the laws of the Cayman Islands and the Parties agree to submit to the jurisdiction of the Cayman Islands with regard to the appointment of an arbitrator failing agreement.
- 174. The Parties acknowledge that except for the appointment of an arbitrator or the reference of any legal issue which an arbitrator may refer to the Grand Court of the Cayman Islands, any dispute arising in connection with this Agreement shall be determined by arbitration as provided for in this Agreement.

#### **Waiver of Sovereign Immunity**

- 175. The Government hereby irrevocably waives and agrees not to assert as a defence or otherwise, in any court, arbitral or other dispute resolution proceedings in the Cayman Islands courts or any other venue arising out of or relating to this Agreement any claim that it is immune from or not personally subject to the jurisdiction of the Cayman Islands courts.
- 176. In addition, Government and the NRA hereby irrevocably waive and agree not to assert as a defense or otherwise, or in any court or other judicial proceeding, the purpose of which is to enforce any arbitral, judicial or other award in any venue, arising out of or relating to this

Agreement, and not assert as a defense or otherwise in any court or other judicial proceeding in the Cayman Islands courts:

176.1. that the proceedings are brought in an inconvenient forum; or

176.2. that the venue of the proceedings is improper;

177. Each party to this Agreement shall pay to the other party the amount of all reasonable expenses incurred by the other party in connection with any step taken by the other party with a view to or in connection with its protection, exercise or enforcement of any right or interest created by this Agreement or as a result of a breach by such party of this Agreement. There shall be recoverable under this clause the full amount of all legal expenses on a full indemnity basis both before and after any judgment, whether or not such would be allowed under rules of court or any taxation or other procedure carried out under such rules.

#### **Severance of Sections**

178. Should any provision of this Agreement be declared invalid or unenforceable for any reason by any court or other competent authority, then such provision shall be deemed to be a separate, distinct and independent provision, and such declaration shall not affect the remaining provisions of this Agreement which shall continue in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

#### **Notice to Parties**

179. Any notice, approval, election or other communication given or made pursuant to this Agreement shall be in writing and may be sent by hand, registered post, email, facsimile as follows:

180. To DRCL at the following:

Dart Realty (Cayman) Ltd.  
P. O. Box 30611  
Grand Cayman, KY1-1108  
Fax: 345-640-3441  
Attention Ward Sykes  
Email: [ward.sykes@dartcayman.com](mailto:ward.sykes@dartcayman.com)

With a copy to:

Appleby  
P. O. Box 190  
Grand Cayman, KY1-1104  
Fax: 345-949-4901  
Attention Norman Klein

Email: nklein@applebyglobal.com

181. to the **NRA** at the following:

The Chairman  
National Roads Authority  
P. O. Box 10426  
370 North Sound Road Grand Cayman KY1-1004

182. to **Government** at the following:

Cabinet Secretary of the Cayman Islands  
Government Administration Building  
Box 102  
133 Elgin Avenue  
Grand Cayman KY1-900

With a copy to:  
Attorney General's Chambers  
Attention: Attorney-General

Or at any substitute address subsequently communicated to the sending Party prior to sending the relevant communication hereunder; provided that, if delivered by post, then it shall be deemed to have been duly delivered only when actually received by or on behalf of the addressee and, if delivered by email, it shall be deemed to have been duly delivered on the day after it is so sent and if delivered personally, it shall be deemed to have been duly delivered on the date of delivery.

#### **No Third Party Beneficiaries**

183. This Agreement is made exclusively for the benefit of the Parties (including Affiliates) and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof except as may be expressly provided herein.

#### **Representatives**

184. The Parties shall be represented by the following:

DRCL

Government

NRA

or such other representatives as shall from time to time be notified to the Parties.



## **Costs**

185. Each Party agrees to pay its own expenses (including but not limited to legal, accounting and other professional services) in connection with all negotiations, studies and other actions taken for the preparation of this Agreement and all costs of preparing and implementing the terms of this Agreement.

## **Entire Agreement**

186. This Agreement together with the Plans referred to in it contain everything the Parties have agreed in relation to the subject matter they deal with and supercedes all prior negotiations, understandings and agreements between them with respect to the subject matter hereto. No Party may rely on an earlier written document or anything said or done by or on behalf of another Party before this Agreement and those other documents were executed.

## **Variations**

187. No variation of this Agreement will be of any force or effect unless it is in writing and signed by or on behalf of each Party.

## **No Waiver of Terms**

188. In the absence of a written agreement to the contrary, no neglect omission or forbearance on the part of any Party to take advantage of or to enforce any right or power or remedy arising out of any breach, non-observance or non-performance by the other Party hereto of any term, covenants, condition or stipulation herein shall operate as (or be deemed to be) a general waiver of such term, covenants, condition or stipulation herein contained or by law implied shall be deemed to be or operate as a general waiver of such right or power either original or recurring.

## **Representations and Warranties**

189. Government and the NRA each represent and warrant to DRCL as follows:
- 189.1. It has full legal right, power and authority to enter into and perform its obligations under this Agreement.
- 189.2. There is no action, suit or proceeding pending, or to the best of its knowledge, threatened, against it or any Department which would have a material adverse effect on its ability to perform obligations under this Agreement.
- 189.3. The obligations of Government under this Agreement will constitute the direct, irrevocable unconditional and general obligations of Government for which the full faith and credit of the Government is solemnly pledged, and the obligations of Government under this Agreement will, until discharged in full, rank *pari passu* in all respects with all other debts and obligations of the Government now or hereafter outstanding.

- 189.4. Government is acting within the Constitution of the Cayman Islands in entering into and discharging its obligations under this Agreement.
- 189.5. The execution, delivery and performance by Government and the NRA of this Agreement, does not and will not conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to or binding on Government or the NRA or violate any provision of any statute or other rule or regulation of any Authority of or applicable to the Government.
- 189.6. The NRA enters into this Agreement with the Board having properly considered its duties and powers under the National Roads Authority Law (2006 Revision) as amended.
190. DRCL hereby represents and warrants to Government and the NRA as follows:
- 190.1. DRCL is a limited liability company that is duly incorporated in accordance with the laws of the Cayman Islands, and shall remain validly incorporated for the duration of the Agreement, with all requisite corporate power to carry out its obligations under this Agreement and to execute and deliver this Agreement;
- 190.2. This Agreement has been duly authorized by all necessary corporate action, is legally valid and binding upon DRCL and does not require approval in any form in order to give full effect thereto;
- 190.3. DRCL is not prevented or restrained legally, commercially or otherwise from entering into and undertaking the provisions of this Agreement in accordance with its terms;
- 190.4. DRCL has fully familiarized itself with all aspects of the Proposed Road Works and has all the knowledge, experience, ability (particularly financial ability) to carry out its obligations under the Agreement in accordance with the terms herein and all relevant laws and regulations;
- 190.5. DRCL has reviewed and checked the sites for the Proposed Road Works, their surroundings and physical conditions and pursuant to such review, finds the sites suitable for the fulfillment of its obligations and undertakings under the Agreement, including without limitation, the completion of the design and construction;
- 190.6. There are no pending legal, governmental or regulatory investigations, actions, suits or proceedings to which DRCL or any Affiliate is or may be the subject that, individually or in the aggregate, if determined adversely to DRCL or Affiliate, could reasonably be expected to have (i) a material adverse effect on the financial condition or prospects of DRCL or Affiliate or (ii) the ability of DRCL or Affiliate to perform its obligations under this Agreement;

- 190.7. In performing its obligations under this Agreement, DRCL will comply with all laws, regulations and standards, directions or directives having the force of law, of the Cayman Islands;
- 190.8. It will use equipment and materials that are fit for their intended purpose and free of defects and deficiencies, and that it will provide sufficient suitably qualified and competent servants, employees, agents, contractors and subcontractors for the performance of this Agreement;
- 190.9. DRCL shall ensure compliance by its contractors or subcontractors with the terms of this Agreement;
- 190.10. DRCL shall comply with, and its obligations (as applicable) shall be carried out in conformity with the terms of this Agreement; and
- 190.11. DRCL shall confirm the identity of any Affiliate with respect to which it has assigned responsibility for performing any obligations under the terms of this Agreement (and in the event such Affiliate is formed or acquired after execution of this Agreement, DRCL shall identify such Affiliate upon it being formed or acquired).

#### **Stamp Duty**

191. The Government acknowledges and warrants to DRCL that there is no stamp duty payable in relation to any land referred to in this Agreement which may be vested in DRCL.

#### **No Partnership, Agency or Joint Venture**

192. Save as to the extent provided herein, Nothing expressed or implied in this Agreement nor any act by any Party is to be construed as creating the relationship of partners, principal and agent, or joint ventures as between either Government or NRA and DRCL or in relation to all Parties. Accordingly, no Party has any right or authority to act on behalf of any other Party, nor bind the other Party by contract or otherwise.

#### **Interpretation**

193. Terms defined herein and not otherwise defined in the Plans and other attachments hereto shall have the same meaning in the Plans and other attachments hereto.
194. References in this Agreement to a particular Plan means the relevant Plan attached to this Agreement which bears the same name as the Plan referred to in the body of this Agreement.
195. The Plans to this Agreement are hereby incorporated by reference and made a part of this Agreement.
196. All Departments referred to in this Agreement are Departments within Government and Government shall be responsible for any act, omission or default by a Department.

197. Any obligation of Government to do an act or thing herein shall be deemed to include an obligation to ensure that any relevant Department does such act or thing herein described.
198. Any legislation, regulation, code or other law referred to in this Agreement includes any consolidation, amendment, re-enactment or replacement of such law.
199. Any reference to "day" shall mean calendar day, unless otherwise provided.
200. Singular words include plural and vice versa.
201. Words of one gender include any other gender.
202. In the event of any conflict between the terms of the body of this Agreement and the terms of any Plan or Schedule annexed to this Agreement, the terms of this Agreement shall prevail.
203. Clause headings are included only for convenience and have no legal effect.
204. Except as herein otherwise provided, whenever in this Agreement the approval of any Party is required, such approval shall not be unreasonably withheld or delayed.
205. Any provision under this Agreement for a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another party.

#### Definitions

All definitions set out in the below Dictionary are applicable in all Plans to this Agreement.

Dictionary	
ACR	Means the planned public road to be Constructed between the ORIA and the ETH on lands through or adjacent to Camana Bay and the George Town Landfill and otherwise known as the Airport Connector Road.
Affiliates	Means any company (or where the context permits any person) which owns or is owned or controlled by (or under common control of) DRCL either directly or indirectly, in whole or in part, or having the same direct or indirect ownership (including ultimate beneficial ownership) or control as DRCL and in the case of an individual, means any person or persons having a direct or indirect ownership (including ultimate beneficial ownership) or control of DRCL or any Affiliate; provided, any companies which are either formed or acquired after the execution of this Agreement shall be Affiliates if meeting the above definition and any individual acquiring direct or indirect

	ownership in whole or in part of DRCL after the execution of this Agreement shall be an Affiliate if meeting the above definition.
Agreement	Means this agreement executed as a deed by the Parties together with the Plans attached hereto.
AASHTO	Means the American Association of State Highway and Transportation Officials
Annual NPV Abatements	Means the net present value of the incentives received by DRCL or any Affiliate under the Investment and Development Incentives Schedule during each calendar year, discounted from December 31st of that year back to the date of this Agreement using a 10% discount rate, compounded annually, to be calculated annually as of 31 December and the result added to the Net Present Value Sum.
Authority	Means any authority now established or which in the future is established by Cayman Islands legislation.
Barkers DRCL Land	Means all properties contained in the area marked as DRCL Land on the Barkers Plan.
Barkers Plan	Means the plan marked as the Barkers Plan and attached to this Agreement.
Board	Means the board of directors of the NRA.
Camana Bay	Means the area set out in the Camana Bay Lands Plan and other lands acquired by DRCL or any Affiliate contiguous or proximate to land identified as Camana Bay in the referred to Plan attached to this Agreement.
Completion of Phase 1	Means:  (1) the certification in accordance with the terms of this Agreement by the NRA that Construction of Phase 1 has met the standards and specifications required by the NRA and under the terms of this Agreement, or  (2) the certification in accordance with the terms of this Agreement by the Engineer or Record that Construction of Phase 1 has met all of the standards and specifications required

	<p>under the terms of this Agreement,</p> <p>and in any event further means that all defects have been remedied to the satisfaction of the NRA or the Engineer of Record, as the case may be, Phase 1 is fit for public use and that Phase 1 has otherwise been completed in accordance with the terms of this Agreement.</p>
Completion of Road Works	<p>Means:</p> <p>(1) the certification in accordance with the terms of this Agreement by the NRA that the Construction of any Proposed Road Works have met the standards and specifications required by the NRA and under the terms of this Agreement, or</p> <p>(2) the certification in accordance with the terms of this Agreement by the Engineer or Record that Construction of any Proposed Road Works have met all of the standards and specifications required under the terms of this Agreement,</p> <p>and in any event further means that all defects have been remedied to the satisfaction of the NRA or the Engineer of Record, as the case may be, the Proposed Road Works are fit for public use and that such Proposed Road Works have otherwise in all respects been completed in accordance with the terms of this Agreement.</p>
Composite Map	Has the meaning prescribed under the Roads Law.
Concession Rights	Means all development incentives, abatements, rebates, waivers, concessions, grants, permits, licenses of any nature granted or agreed to in this Agreement.
Confidential Information	Means all information or data (including all oral and visual information or data and all information or data recorded in writing or in any other medium or by any other method) owned by a Party, including, without limitation, any information relating to that Party's operations, processes, plans, know how (being technical, marketing or commercial information), design rights, trade secrets, technical information, financial plans and records, business operations and procedures, business affairs and intellectual property; provided, the existence and nature of this Agreement and its terms and conditions are not

	Confidential Information
Construct, Constructs, Constructing, Constructed or Construction	Means to design and build.
CUC	Means Caribbean Utilities Company, Ltd.
Department	Means any department, portfolio, unit, section or other office of Government with responsibility for any aspect of Government policy or administration.
Development Fees	<p>Means all fees paid or payable by or on behalf of DRCL and/or an Affiliate, including but not limited to:</p> <ul style="list-style-type: none"> <li>• all fees pursuant to The Development and Planning (Amendment) Law, 2010, Development and Planning Law (2008 Revision) as amended and The Development and Planning (Amendment) Regulations, 2006 and 2010 and any other Regulations made pursuant to the Development and Planning Law as amended from time to time;</li> <li>• for Water Authority Permits and Licences, including without limitation for ground and sea water extraction and disposal;</li> </ul> <p>all other fees or sums payable to the Cayman Islands Government or any Authority in respect of development and planning of land in the Cayman Islands.</p>
DRCL Related Stamp Duty	Means Stamp Duty or sums payable or paid by DRCL pursuant to the Stamp Duty Law (2007 Revision) or the Land Holding Companies Share Transfer Tax Law (2007 Revision)
Engineer of Record	Means a professionally qualified civil engineer (with professional or chartered registration in jurisdictions recognized by the National Society of Professional Engineers in the United States of America, the Canadian Council of Professional Engineers, or the European Federation of National Engineering Association) experienced in road Construction appointed by the Parties within thirty (30) days of the date of this Agreement and whose fees and other costs shall be paid by DRCL.
ETH	Means the Esterley Tibbetts Highway on Grand Cayman.

ETH Extension	Means the extension to the ETH from its present northern termination point at Raleigh Quay through to a "T" junction with Batabano Road in West Bay, including Phase 1 and Phase 2 as outlined on and in accordance with the West Bay Road and ETH Extension Plan.
Esterley Tibbetts Highway at Camana Way Pedestrian Crossing Improvements Plan	Means the plan marked as Esterley Tibbetts Highway at Camana Way Pedestrian Crossing Improvements Plan and attached to this Agreement.
ETH Plan at Camana Bay	Means the plan marked as ETH Plan at Camana Bay and attached to this Agreement.
ETHR2 Roundabout	Means a roundabout intersection marked conceptually as ETHR2 on the ETHR2 Roundabout Gazette Plan, the precise locations of which being between ETHR1 and ETHR3 on the West Bay Road and ETH Extension Plan spaced not less than 1320 on centre with any other roundabout along the ETH Extension.
ETHR2 Roundabout Gazette Plan	Means the plan attached to this Agreement marked as the ETHR2 Roundabout Gazette Plan.
Full Road Access	Means a road intersection which is not a roundabout and which permits both left and right turns when entering or exiting the intersection from any direction.
Heads of Terms	Means the non-binding heads of terms reached between Government and DRCL dated 12 April 2011.
Import Duty or Duties	Means duty or duties levied and payable to the Cayman Islands Government under the Customs Law (2007 Revision) or the Customs Tariff Law (2002 Revision), as amended from time to time, upon the importation of goods into the Cayman Islands.
Legally Close, Legal Closing, Legal Closure	Means, in relation to a public road, or portion of a public road, the discontinuance and closing thereof in accordance with section 14 of the Roads Law, and to publish or the publishing of a declaration in the Cayman Islands Gazette that such road is to be discontinued pursuant to which such road shall cease to be a public road and all public rights of way over it shall cease (on the date specified in the declaration) and, in accordance with



	section 14 of the Roads Law, the addition of the land over which the former public road or portion of road passed in such land parcels as provided under the terms of this Agreement.
LIME	Means Cable and Wireless (Cayman Islands) Limited trading as "LIME".
LOGIC	Means Logic Communications Limited.
Minister	Means the Member of Cabinet for the time being charged with responsibility for roads.
Net Present Value Sum	Means the cumulative sum of the Annual NPV Abatements.
New Barkers Road	Means the new public road in Barkers in respect of which a Public Road Declaration is to be made in accordance with the alignment set out in the Barkers Plan.
NRA Law	Means the National Roads Authority Law (2006 Revision).
Old Barkers Road	Means the partially constructed existing public road in Barkers as of the date of this Agreement commencing at Villas Pappagallo aligned along the north coast of the Barkers Peninsula of West Bay as outlined on the Barkers Plan.
ORIA	Means the Owen Roberts International Airport on Grand Cayman.
Pedestrian Bridge	Means a structure built over or under a public road for the purposes of moving pedestrian traffic from one side of the public road to the other side of the public road.
Phase 1	Means the extension to the ETH from its present northern termination point at Raleigh Quay to ETHR1 and Yacht Drive from ETHR1 to a junction with West Bay Road as outlined on and in accordance with the West Bay Road and ETH Extension Plan and in accordance with Boundary Plan 534.
Phase 2	Means the extension of the ETH from ETHR1 to a T junction with Batabano Road and the Reverend Blackman Drive Extension as outlined on and in accordance with the West Bay Road and ETH

	Extension Plan.
Plan	Means a plan attached to this Agreement.
Prescribed Composite Map	Means the Composite Maps on which roads or proposed roads are defined.
Proposed Road Legal Closure	Means any road Legal Closure contemplated under the terms of this Agreement.
Proposed Road Gazettal	Means any road gazettal contemplated under the terms of this Agreement.
Proposed Road Works	Means all road works and Public Infrastructure contemplated under the terms of this Agreement to be carried out by DRCL, including, without limitation, new road Construction, in-road warning light pedestrian road crossings, Vehicular Bridges, signage, traffic signals, roundabouts, egress or access points and any other works contemplated under the terms of this Agreement.
Public Infrastructure	Means transportation infrastructure contemplated under the terms of this Agreement and available for use by or for the general public on a no charge or municipal basis including roads, roundabouts, Vehicular Bridges, Pedestrian Bridges, sidewalks, culverts, retaining walls, curbs, landscaping, bike paths, lighting and all utilities relating to any of these items.
Public Road Declaration	Means a declaration by Government of a new public road or the widening or diverting of an existing public road under section 3 of the Roads Law and all necessary and ancillary notices, publications and boundary plans in respect of the laying out and construction of the declared roadway corridor.
Raleigh Quay Legal Closure	Means the Legal Closure of that portion of Raleigh Quay identified as West Bay Beach North Block 11B Parcel 60 and that part of Parcel 59REM1 as indicated on the West Bay Road & ETH Plan and the land comprised therein added to the adjacent or proximate land owned by, and thereby vested in, DRCL.
Reasonably Assist or	Means to do (or to provide) everything within its lawful authority and to make best efforts to fulfill obligations under

Reasonable Assistance	<p>the terms of this Agreement and or to assist in achieving the objectives under the terms of this Agreement and in any event, to assist (or to provide assistance); provided, where Government agrees or undertakes anywhere in this Agreement to subdivide, re-parcel, combine or otherwise survey any land, including completing any Prescribed Composite Map it shall within 30 days of the date of this Agreement engage a licensed land surveyor to carry out and complete the necessary surveying of the subject land and in any event instruct the Director of Lands &amp; Survey Department, the Registrar of Lands and the Chief Surveyor to expedite the processing of any such survey works under this Agreement; where Government agrees or undertakes anywhere in this Agreement to Reasonably Assist DRCL or any Affiliate to obtain any subdivision, reparation, combination or other surveying of land, it shall, without limiting the generality of the foregoing, instruct the Director of the Lands &amp; Survey Department, the Registrar of Lands and the Chief Surveyor that any application for subdivision, re-parcellation, combination or other surveying of land submitted by or on behalf of DRCL shall be processed on an expedited basis; where Government agrees or undertakes anywhere in this Agreement to "Reasonably Assist" DRCL or any Affiliate to obtain Planning permission in respect of any matter contemplated under the terms of this Agreement, the Governor-in-Cabinet shall, without limiting the generality of the foregoing, write to the Central Planning Authority endorsing the relevant application for Planning permission submitted by or on behalf of DRCL and request the Central Planning Authority in writing to consider the application submitted by or on behalf of DRCL within 30 days of the date on which such application was submitted and further provided where Government undertakes anywhere in this Agreement to "Reasonably Assist" DRCL in obtaining any required Authority, Department, regulatory or other consent, permission, approval, licence, concession, waiver, permit or processing of any application, Government shall, without limiting the generality of the foregoing request relevant Authorities and direct its relevant Departments, portfolios or agencies in writing to process and/or consider any DRCL application on a priority basis and in any event in a fair and expeditious manner consistent with the terms of this Agreement and confirm in writing to any relevant Authorities,</p>
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	or its relevant Departments, portfolios or agencies the covenants made and the concessions granted under the terms of this Agreement.
Registry Map	Means the map or series of maps referred to and defined under the Registered Land Law (2004 Revision).
Review Period	Means the period commencing on the date of this Agreement and terminating at 5:00 p.m. on 16 March 2012.
Reverend Blackman Drive Extension	Means that part of Phase 2 comprising the extension to the public road on Grand Cayman known as Reverend Blackman Drive shown on the West Bay Road and ETH Extension Plan.
Roads Law	Means the Roads Law (2005 Revision).
Salt Creek	Means the residential subdivision continuing to be developed by DRCL or an Affiliate on the land described as title to Cayman Islands Parcels 61, 63, 64 of Block 10E in the West Bay Beach North Registration Section of Grand Cayman.
SMB Hotel	Means the land and buildings on Parcels 82, 83 and 84 of Block 11B in the West Bay Beach North Registration Section of Grand Cayman (Parcel 83 of which being the former Courtyard Marriott).
TeleCayman	Means TeleCayman Limited.
Transfer of Land	Means the form prescribed under the Registered Land Rules (2003 Revision) used to transfer legal title to land in the Cayman Islands and in the case of any land to be transferred by one party to the other means such a form in registerable form fully executed by or on behalf of the transferor.
Vehicular Bridge	Means a structure incorporated into a public road and built over a waterway, access road or pedestrian pathway.
Water Authority	Means the body corporate established under the Water Authority Law (1996 Revision) called the Water Authority under that law.

Water Company	Means Consolidated Water Co. Ltd. trading as Cayman Water Co.
West Bay Properties	Means the properties identified as “West Bay Properties” in the West Bay Properties Plan plus Salt Creek and properties acquired by DRCL pursuant to the Barkers Plan.
West Bay Road	Means that public road on Grand Cayman known as West Bay Road.
West Bay Road at Camana Way Pedestrian Crossing Improvements Plan	Means the plan marked as West Bay Road at Camana Way Pedestrian Crossing Improvements Plan.
West Bay Road & Camana Way Roundabout Plan	Means the plan marked as West Bay Road & Camana Way Roundabout Plan and attached to this Agreement.
West Bay Road and ETH Extension Plan	Means the plan attached to this Agreement and marked as the West Bay Road and ETH Extension Plan.
West Bay Road Legal Closure	Means the Legal Closure of that portion of West Bay Road identified as being Legally Closed under the West Bay Road and ETH Extension Plan and the entirety of the land comprised therein added to the adjacent or proximate land owned by, and thereby vested in, DRCL.
West Star	Means West Star TV Ltd.
Yacht Club	Means the properties located in Block 10A and historically known as the Cayman Islands Yacht Club as further identified as “Yacht Club” in the Yacht Club Plan.
Yacht Drive	Means the private road located on or comprised in Block 10A, Parcels 36, 101, 241 and 69REM owned by DRCL or an Affiliate, which intersects with West Bay Road at its most westerly point.

IN WITNESS whereof the Parties hereto have executed this Agreement as a deed this 15 day of December 2011.

SIGNED for and on behalf of Dart Realty (Cayman) Ltd. in the presence of:

Dart Realty (Cayman) Ltd.

Signature of Witness

Name: NORMAN KLEIN  
Address: PO BOX 190  
Occupation: ATTORNEY AT LAW

Jackie Doak, Director & Chief Operating Officer

SIGNED for and on behalf of The Government of the Cayman Islands in the presence of:

Signature of Witness

Name: NORMAN KLEIN  
Address: PO BOX 190  
Occupation: ATTORNEY AT LAW

Orrett Connor MBE, JP, Cabinet Secretary

SIGNED for and on behalf of the National Roads Authority in the presence of:

Signature of Witness

Name: NORMAN KLEIN  
Address: PO BOX 190  
Occupation: ATTORNEY AT LAW

Troy Whittaker, Deputy Chairman

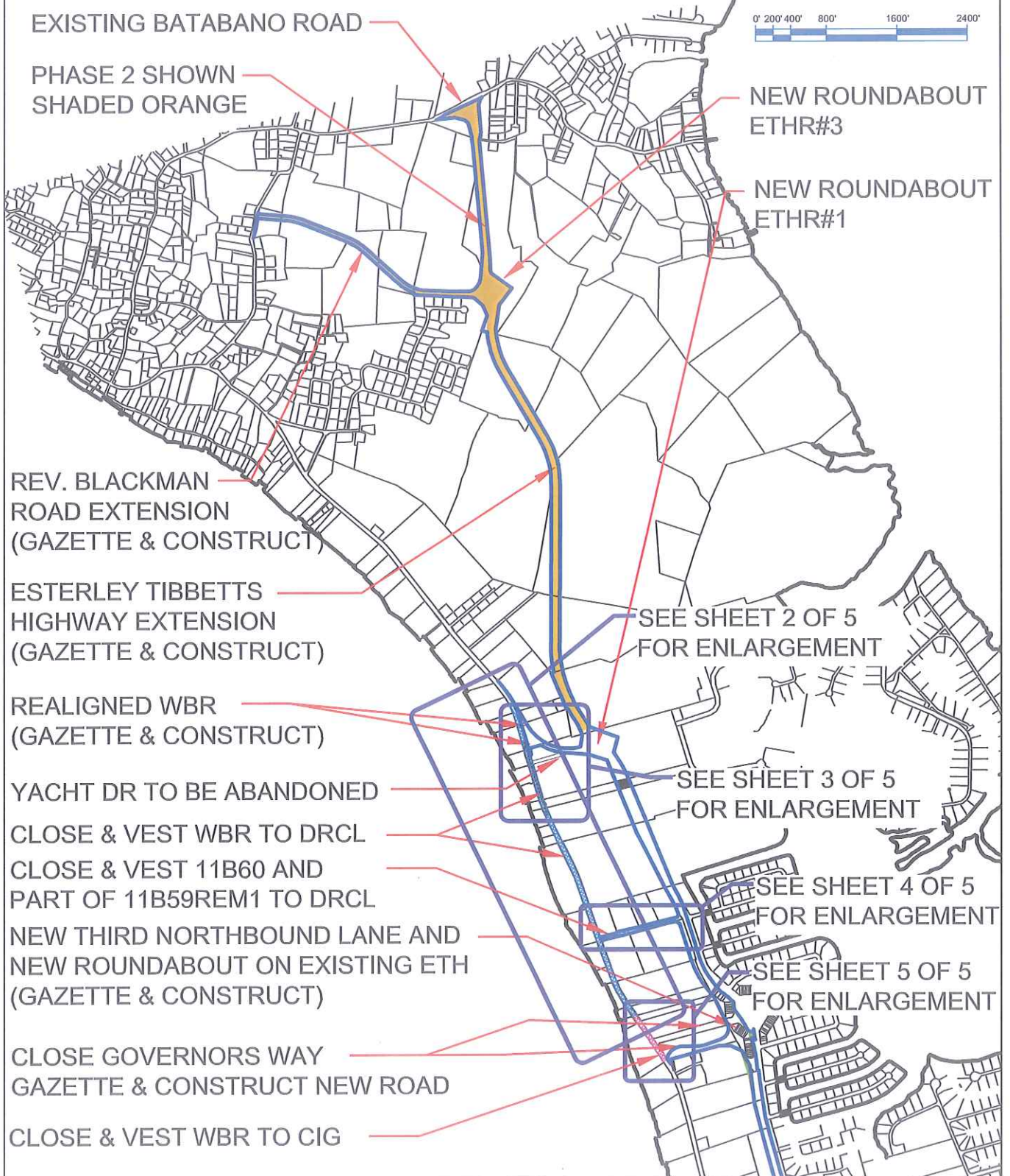


# WEST BAY ROAD & ETH EXTENSION PLAN

## OVERALL PLAN

SHEET 1 OF 5

13.DECEMBER.2011



# WEST BAY ROAD & ETH EXTENSION PLAN

## CLOSE & VEST WBR TO DRCL SHEET 2 OF 5

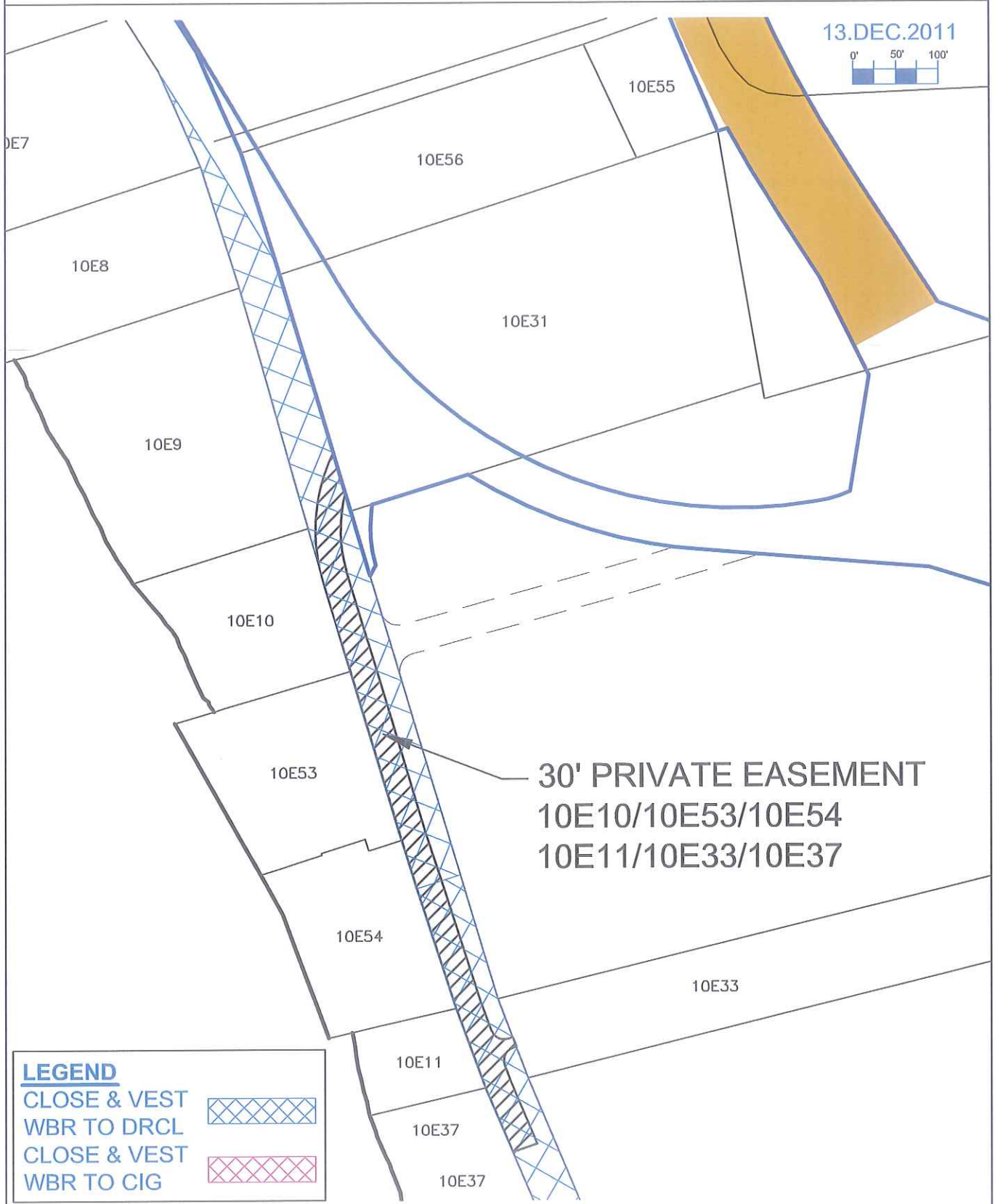




# WEST BAY ROAD & ETH EXTENSION PLAN

## WBR & YACHT DRIVE

### SHEET 3 OF 5



# WEST BAY ROAD & ETH EXTENSION PLAN

## WBR & RALEIGH QUAY

### SHEET 4 OF 5

13.DEC.2011



#### LEGEND

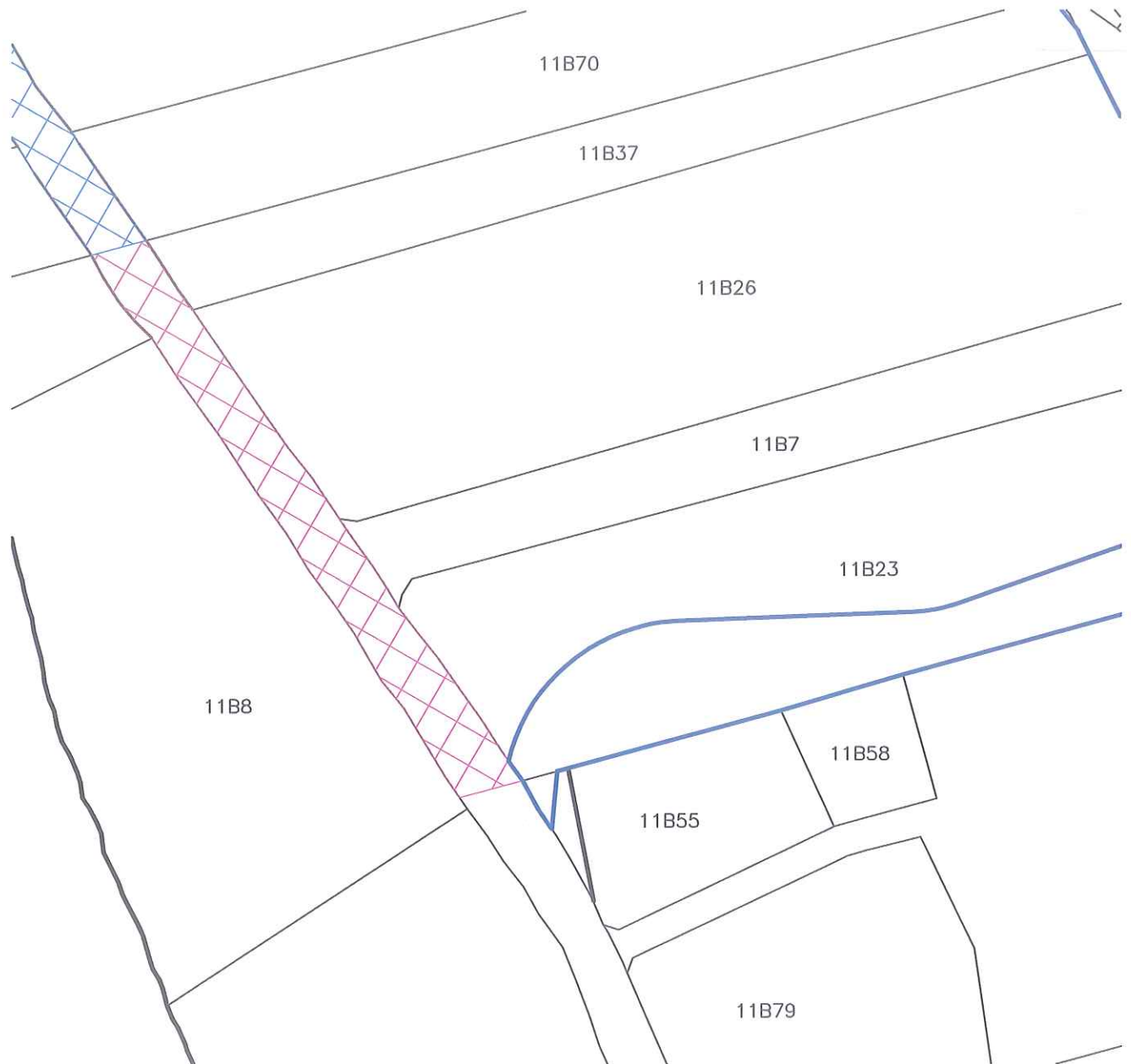
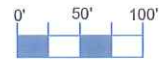
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CLOSE & VEST WBR TO CIG



# WEST BAY ROAD & ETH EXTENSION PLAN

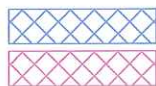
## WBR & GOVERNOR'S WAY SHEET 5 OF 5

13.DEC.2011



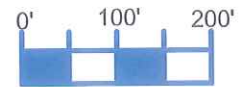
### LEGEND

CLOSE & VEST WBR TO DRCL  
CLOSE & VEST WBR TO CIG



# ETHR2 ROUNDABOUT GAZETTE PLAN

2.DEC.2011



ESTERLEY TIBBETTS  
HIGHWAY EXTENSION

ETHR#2 ROUNDABOUT GAZETTE

ADDITIONAL AREA TO BE  
GAZETTED FOR UP TO TWO  
FUTURE ETH ROUNDABOUTS = 67,606sq.ft





# WEST BAY PROPERTIES



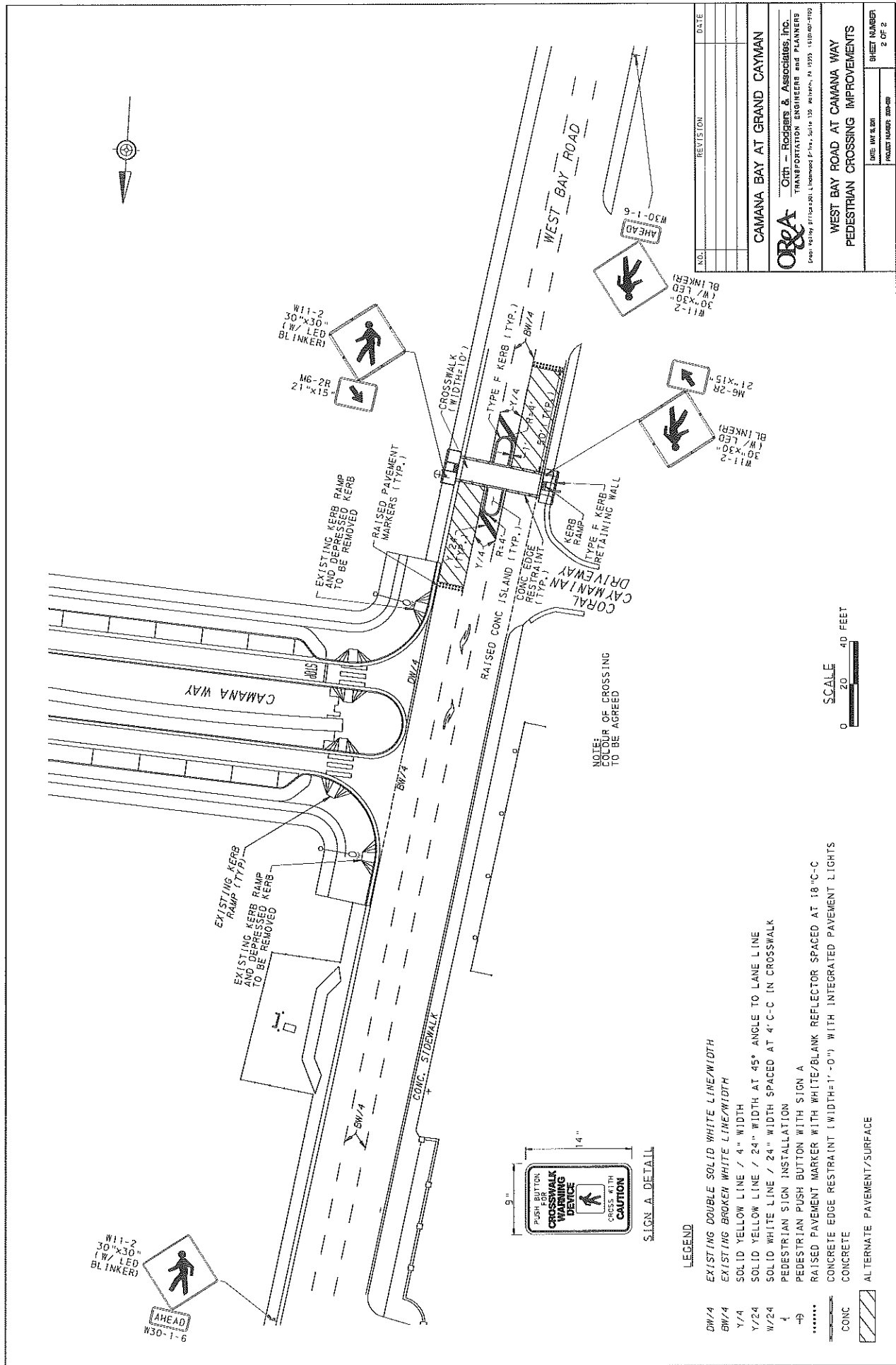
Lands and Survey Department © Cayman Islands Government.

1:39,093


**CAYMAN LAND INFO**  
 Lands & Survey Department  
 P.O. Box 1089, Grand Cayman KY1-1102, CI  
 Tel: (345) 244-2426 Fax: (345) 949-2187  
[www.caymanlandinfo.ky](http://www.caymanlandinfo.ky)

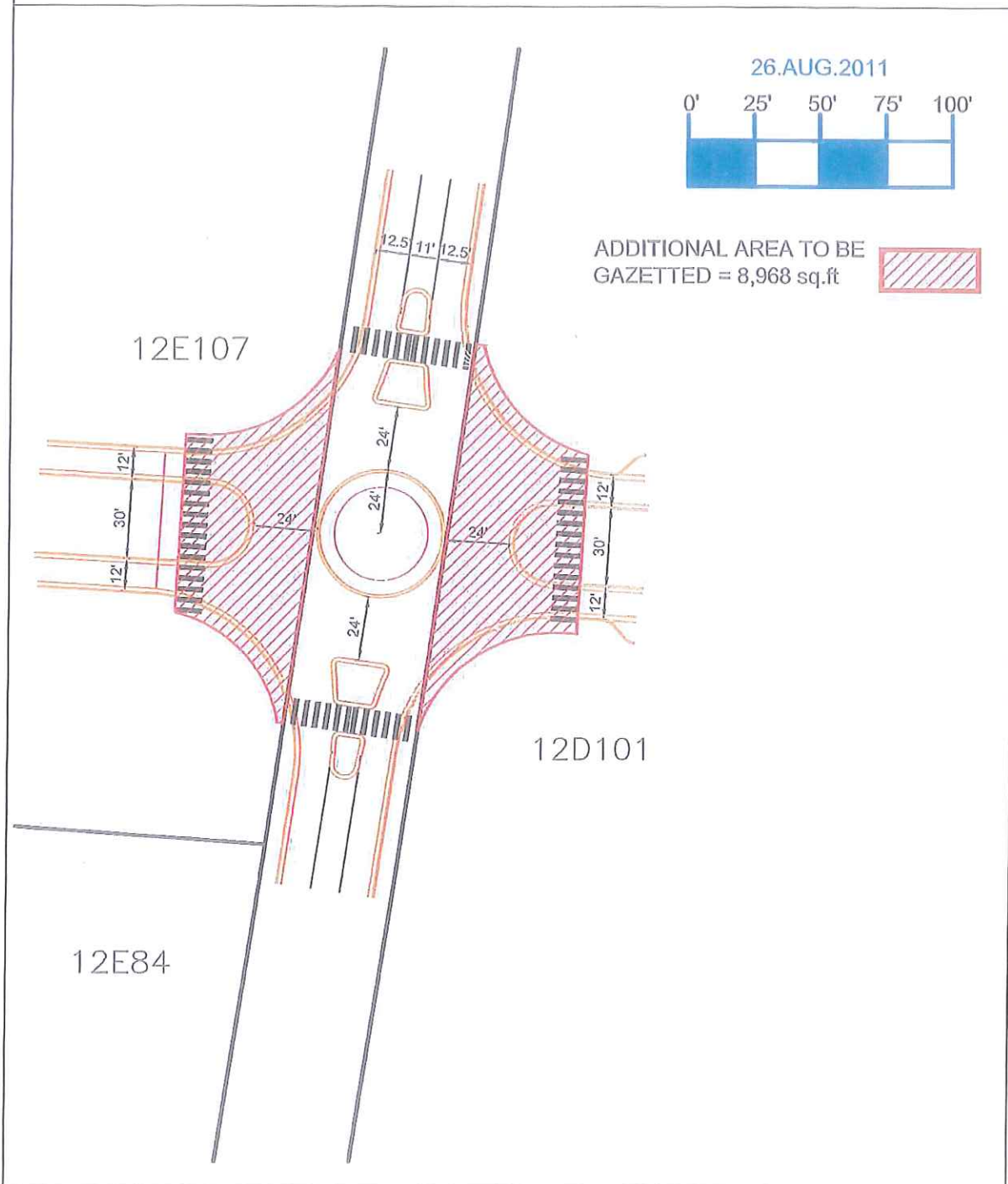
13, JULY, 2011





# WEST BAY ROAD & CAMANA WAY ROUNDBABOUT PLAN NRA AGREEMENT

SHEET 1 OF 1





# ETH PLAN AT CAMANA BAY

29, Aug. 11





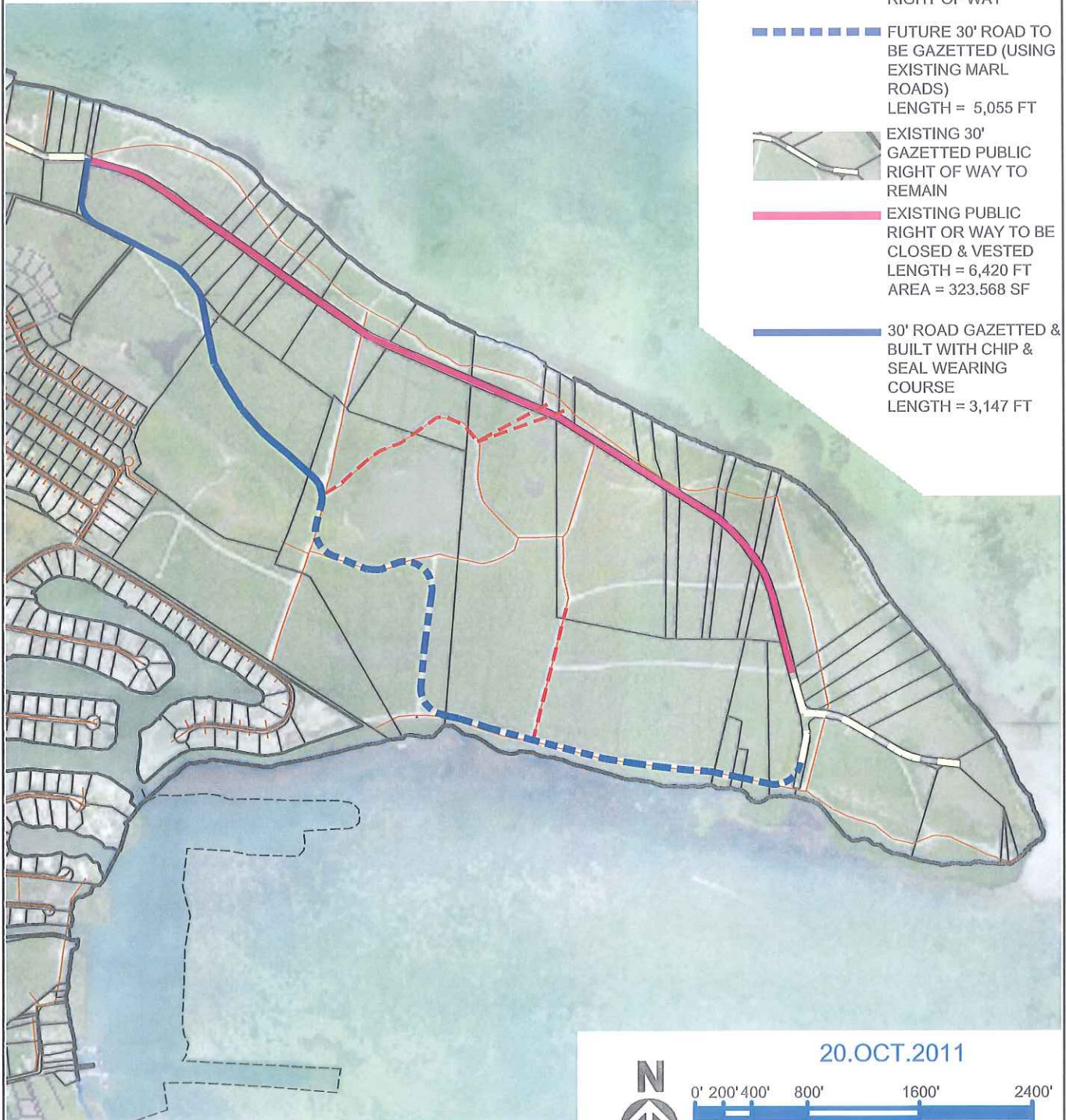
# BARKERS PLAN

NRA AGREEMENT

SHEET 1 OF 1

## LEGEND

-  EXISTING PRIVATE RIGHT OF WAY
-  PROPOSED PRIVATE RIGHT OF WAY
-  FUTURE 30' ROAD TO BE GAZETTED (USING EXISTING MARL ROADS)  
LENGTH = 5,055 FT
-  EXISTING 30' GAZETTED PUBLIC RIGHT OF WAY TO REMAIN
-  EXISTING PUBLIC RIGHT OR WAY TO BE CLOSED & VESTED  
LENGTH = 6,420 FT  
AREA = 323,568 SF
-  30' ROAD GAZETTED & BUILT WITH CHIP & SEAL WEARING COURSE  
LENGTH = 3,147 FT



20.OCT.2011

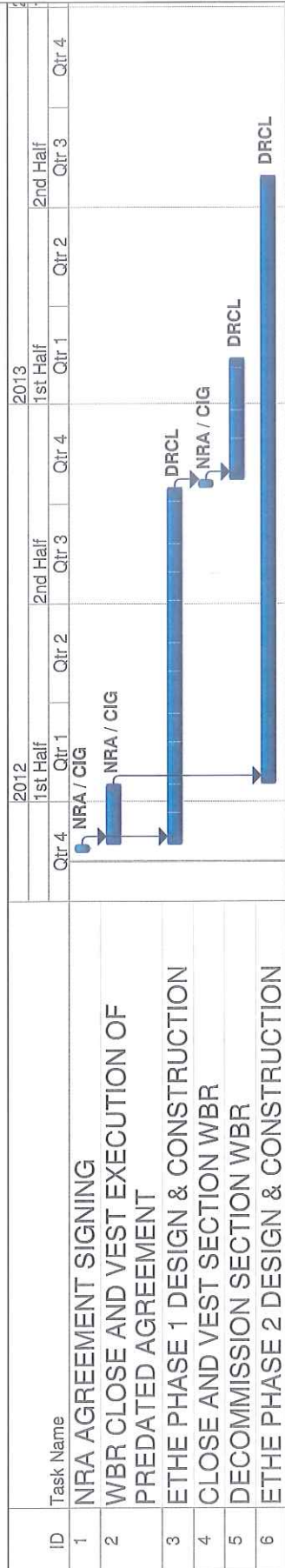




# CAMANA BAY LANDS



# ETH EXTENSION PLAN CONSTRUCTION SCHEDULE NRA SCHEDULE



Task

Split

Milestone

Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Progress

Deadline

Project: 11010 NRA AGREEMENT CO

Date: Mon 11/7/11



## INVESTMENT AND DEVELOPMENT INCENTIVES SCHEDULE

*Bold Text = Defined term outlined in the Dictionary*

### FEES SUBJECT TO NET PRESENT VALUE CALCULATION

Incentive Category	Description
Stamp Duty, Development Fees & Import Duties	<p>1) DRCL and its Affiliates / Assignees may exercise the following incentives until the agreed upon <b>Net Present Value Sum</b> reaches the agreed amount of USD\$24 Million.</p> <ul style="list-style-type: none"> <li>- 100% abatement/waiver of <b>Development Fees</b> which otherwise would be payable in regard to all development at <b>Camana Bay</b> or the <b>West Bay Properties</b> or other property of DRCL or its Affiliates.</li> </ul> <p>100% Abatement/waiver of <b>Import Duties</b></p> <ul style="list-style-type: none"> <li>- 100% Abatement/waiver of <b>DRCL Related Stamp Duty</b></li> <li>- 50% abatement/waiver of stamp duty payable at the then applicable rates in respect of all leases in <b>Camana Bay</b> and the <b>West Bay Properties</b>;</li> </ul> <p>2) For the avoidance of doubt: the incentives listed above are the only amounts that shall be included in the calculation of the <b>Net Present Value Sum</b>.</p> <p>The above incentives shall not be construed to prevent DRCL and/or its assignees from paying any of the government fees referenced in this section, or any portion of said fees. For the avoidance of doubt, in the event such fees are paid, they shall not be included in the calculation of the <b>Net Present Value Sum</b>.</p>

INVESTMENT & DEVELOPMENT INCENTIVES NOT SUBJECT TO NET PRESENT VALUE CALCULATION		
Incentive Category	Details	Duration of Incentive
Hotel Tax Rebate	<p>1) Government agrees and hereby grants the following tax rebates:</p> <ul style="list-style-type: none"> <li>- 50% rebate of all taxes levied pursuant to the Tourist Accommodation (Taxation) Law for all hotels developed, acquired, redeveloped, renovated or refurbished by DRCL or Affiliate for a period of 10 years after each hotel is opened, reopened, or renovations or refurbishments are completed.</li> <li>- 50% rebate of all taxes levied pursuant to the Tourist Accommodation (Taxation) Law during the first ten (10) years following the reopening of the <b>SMB Hotel</b> (provided, for clarity, DRCL shall collect 100% of the said tax and receive a rebate of 50% of the collected tax from Government within 30 days of the tendering of the tax receipts).</li> </ul> <p>2) In respect of the rebates in (1) above, DRCL shall collect 100% of the said tax and receive a rebate of 50% of the collected tax from Government within thirty (30) days of tendering the receipts in respect of such paid tax.</p>	<p>Applicable to hotels developed, acquired, redeveloped, renovated or refurbished within 30 years of the date of this Agreement.</p> <p>For the avoidance of doubt, the tax rebate shall be valid for a full 10 years of hotel operations, even if the rebate period commences within years 20-30.</p> <p>In the event a hotel is temporarily closed as a result of <b>Force Majeure</b>, the rebate period shall be extended by the amount of time the hotel was inoperable.</p>
SMB Hotel	Government agrees and hereby grants a 100% reduction of all <b>Development Fees</b> and <b>Import Duties</b> on all materials, goods, supplies, including, without limitation, all fixtures, furniture and equipment imported by DRCL for the refurbishment, repair, expansion or re-development of the <b>SMB Hotel</b>	Applicable until the completion of the reconstruction / redevelopment / refurbishment of the SMB Hotel
Stamp Duty for Caymanian Purchasers and Public Infrastructure	<p>Government agrees and hereby grants the following concessions, waivers/abatements in relation to the following duties, fees, taxes and other Government assessments:</p> <ul style="list-style-type: none"> <li>- stamp duty payable by Caymanian purchasers of residential and commercial property in <b>Camana Bay</b> and the <b>West Bay Properties</b> shall be the lesser of 50% of the then applicable stamp duty rates or 4%; and</li> <li>- 100% reduction of all <b>Development Fees</b> and <b>Import Duties</b> on materials, goods and equipment imported by DRCL, its contractors or sub-contractors in relation to development or construction of <b>Public Infrastructure</b>.</li> </ul>	Applicable for a period of 30 years from the date of this Agreement