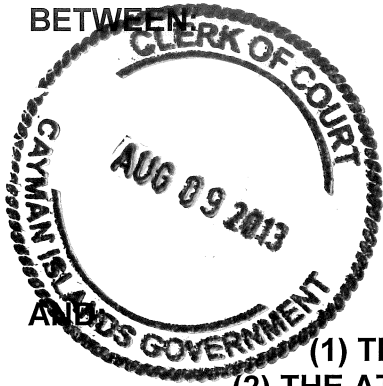


BETWEEN



- (1) ALICE MAE COE
- (2) ANNIE MULTON
- (3) EZMIE SMITH
- (4) BETTY EBANKS



Plaintiffs

- (1) THE GOVERNOR OF THE CAYMAN ISLANDS
- (2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
- (3) MINISTER FOR FINANCE, DISTRICT ADMINISTRATION, WORKS,  
LANDS & AGRICULTURE
- (4) NATIONAL ROADS AUTHORITY (NRA)

Defendants

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**AMENDED WRIT OF  
SUMMONS**

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**TO: The Governor, Attorney General, Minister for Works, and NRA c/o Legal Department, George Town, Grand Cayman;**

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within (14 Days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and Judgment may be entered against you forthwith without further notice.

Re-Issued this 9 August ~~25 February~~ 2013

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

**IMPORTANT** Directions for Acknowledgment of Service are given with the accompanying form.

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**AMENDED STATEMENT  
OF CLAIM**

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1. The First Defendant, the Governor of the Cayman Islands, holds all Crown lands in the Cayman Islands in trust for Her Majesty under the Governor (Vesting of Lands) Law (2005 Revision) ("Crown Lands Law"), and has the power to dispose of such Crown land under the Crown Lands Law, and under Section 38 of the Cayman Islands Constitution Order 2009 (the "Constitution"). The First Defendant is also bound by Part II of the Constitution Section 31 (2) to exercise his or her functions in accordance with the Constitution and any other law. The following claim will refer to the Governor as the First Defendant except when referencing statute whereupon the terms Governor and Governor in Cabinet will be used as distinguished in the specific statute referred to.
2. The Second Defendant under Section 56 of the Constitution is the principal legal advisor to the Government of the Cayman Islands, responsible for and defending the integrity of all legislation, as well as responding to declaratory relief with respect to legislation including with respect to its constitutionality and is required to be named as a defendant in any action for declaratory relief.
3. The Third Defendant, is the Minister responsible for Finance, District Administration, Works, Lands & Agriculture and under the National Roads Authority Law (2006 Revision), is the Minister responsible for Roads, and for the provision of directives and policy to the Fourth Defendant. The Third Defendant for the purposes of these proceedings is a 'public official' under Section 19 of the Constitution, as well as a member of the Cayman Islands Cabinet and a member of the legislature.
4. The Fourth Defendant was at all material times a body corporate (a company which the core government has an equity investment in) answerable to the Third Defendant on matters of policy and the recipient of directives from the Third Defendant, and is established under Section 3 of the National Roads Authority Law (2005 Revision), (the "Roads Authority Law"). The Fourth Defendant is also a 'public official' under Section 19 of the Constitution.
5. The Plaintiffs are all Caymanians by birth and reside in the Cayman Islands.
6. The Plaintiffs bring these proceedings unless otherwise stated under Part 1, Section 26. of the Constitution, Enforcement of Rights & Freedoms ...*Any person may apply to the Grand Court to claim that government has breached or*

*threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.*

7. The rights and freedoms said to be breached by the First, Third and Fourth Defendants are legally recognised rights of way and or passage over the West Bay Road, a public road, and legally recognised beach access along a portion of the said public road which is to be closed and disposed of to a developer by the First, Third and Fourth Defendants.

## **Introduction and overview**

### The Agreement

8. According to an agreement dated 15 December 2011 (the "Agreement"), between the Government of the Cayman Islands represented by the Cabinet Secretary, ("Cabinet"), (acting on behalf of the Third Defendant and Cabinet generally), the National Roads Authority (Fourth Defendant) and Dart Realty (Cayman) Ltd, a private developer ("DRCL"), Government has committed itself to allowing 4,290 feet of public beach front road owned by the Crown, ("the Road"), to be transferred ('closed and disposed') (the "Disposition") to DRCL for the purpose of DRCL expanding its beach front land in the area already owned by DRCL.
9. DRCL expects the Road Disposition to significantly increase its beach front property in the area which in turn will enhance the marketability of, and value of, a new nearby proposed hotel also owned by DRCL, and a number of other beach front investments planned by DRCL including major condominium development in the area.
10. Although the Agreement is said to be a component of a larger partnership entered into by DRCL and Government which is claimed will to spur economic growth and create jobs, the Agreement is ~~also said~~ alleged to be a 'standalone' agreement meaning that it does not require other aspects of the partnership with government to take place, before it is activated by the parties.

### The Agreement Issues

11. The Road in question is a stretch of the West Bay Road of some ~~several hundred~~ four thousand two hundred and ninety feet running several hundred feet north of ~~from~~ the intersection between West Bay Road and Yacht Drive through to the intersection between the now relocated Governor's Way and West Bay Road. This stretch of West Bay Road contains one of the more scenic uninterrupted

12. stretches of beach front road left in the Cayman Islands, and perhaps the last piece of the internationally famous Seven Mile Beach (the "Beach"), (other than the public beach), encompassing several pedestrian and vehicular access points to the beach and sea, with a spectacular view of the Beach, north to south.
13. The Plaintiffs themselves by way of utilising the only road from West Bay to George Town and beyond, have each travelled the Road for over 50 years and it is common knowledge that the West Bay Road has been used as a right of passage for the people of West Bay and other Island residents and visitors, to access other parts of the Island, and of course *vice versa* for access to West Bay and its national landmark Beach.
14. For over 100 years starting with horses and donkeys in the 19<sup>th</sup> century, the general public have enjoyed a right of way and passage over the Road in question, without interruption, to the present day vehicular right of passage between West Bay to George Town and beyond. The Colonial Report 1925 documents that "roads greatly improved in recent years suitable for motor traffic to connect the settlements..." The Colonial Report 1933 reports that "In Grand Cayman a motorable road runs from North West Point to Bodden Town a distance of about 20 miles..." The Colonial Report 1957-58 noted that asphaltting of the main road from West Bay to George Town began on 1<sup>st</sup> November 1957.
15. Caymanians have utilised the Road to access and enjoy various Beach entrance and exit points along the Road for the purpose of fishing, bathing and recreation for many generations.
16. Historical Beach access points all over Grand Cayman Island including those identified along the stretch of Road to be closed and disposed of were officially recognised by government in 2003 by the Island's Chief Surveyor. A process was outlined by the Chief Surveyor in a report ("Chief Surveyor Report"), whereby these access points were to be formally recognised and thereafter policed by Governments Public Works Department.
17. The Report by the Chief Surveyor was prompted by the Plaintiffs amongst others so there was an expectation even a legitimate expectation or substantive legitimate expectation on the part of the Plaintiffs and others that the Beach access points identified in the Report would be enshrined in law in perpetuity for future generations to enjoy.
18. The Plaintiffs claim that these rights of passage over the road with its view of the Beach, and direct access points to the Beach, are in any event enshrined in both Common law, and the Prescription Law (1997 Revision), which identifies rights of

way over land and beach access for over 20 years without interruption, culminating in an absolute and indefeasible right to use them.

19. At common law, the Plaintiffs claim that passage over the Road in question was granted to them historically by grant i.e. the Road was dedicated to the public by Her Majesty or Her representative government, and especially under the rule 'Lost Modern Grant' where the courts give effect to rights of way and easements of more than 20 years of continuous, uninterrupted enjoyment.
20. The Plaintiffs also claim that unregistered rights of way and beach access easements including some equitable easements are protected in the Lands Register by Section 28 of the Registered lands Law (2005 Revision) as unregistered overriding interests which means that rights of way and easements (if legally recognised as such) cannot be disturbed.
21. The Plaintiffs claim that these basic rights of passage and identifiable Beach access points supported by law, being cultural in nature and an essential part of Cayman's heritage, (the Beach is a national treasure), are identifiable and protected within the Constitution;
  - "A country protective of traditional Caymanian Heritage and the family unit";
  - A country that manages growth and maintains prosperity, while protecting its social and natural environment;
  - A country that respects, protects and defends its environment and natural resources as the basis of its existence. (emphasis added).

See ... Schedule to the Constitution (Forms of Oaths and Affirmations).

22. The beach access points identifiable in the Chief Surveyors report recognised as such are ;
  - (i) Either one of #27 or #28 i.e. Block 11b Parcel 83 ;
  - (ii) #29 Block 11b Parcel 61
  - (iii) #37 Block 11b Parcel 17
  - (iv) #38 Block 11b Parcel 17
  - (v) #41 Block 10E Parcel 54
23. The only reference to legal rights of way in the Agreement is at clause 16 where it speaks of beach access for those recognised proprietors of property and established businesses along the Road in question.

24. Part 1 Bill of Rights, Freedoms and Responsibilities

(2) (a) *This part of the constitution recognises the distinct history, culture, Christian values and socio-economic framework of the Cayman Islands and it affirms the rule of law and the democratic values of human dignity, equality and freedom;*(emphasis added).

(b) *Confirms or creates certain responsibilities of the government and corresponding rights of every person against the government...including public officials as defined in s.28 of the Constitution and the legislature.*

25. The Plaintiffs claim that S.18 Protection of the Environment protects their rights of way/passage and Beach access described above in that the rights claimed by the Plaintiffs have been encapsulated in the Caymanian environment and culture for generations, and are recognised by both common law and by The Prescription Law (1997 Revision).

26. The Plaintiffs further claim that in order to interfere with and or remove these rights, government generally, and certainly public officials as defined under the Constitution, must comply with Section 19 of the Constitution, i.e. Lawful Administrative Action.

27. The Plaintiffs claim that the First, Third and Fourth Defendants have not complied with Sections 19 and 24 of the Constitution, and claim this may be an arbitrary abuse of state power.

Lack of Transparency

28. In a speech to civil servants published in Cayman Net News 10 May 2013, the Governor of the Cayman Islands the Honourable Duncan Taylor... “ *We must reassure the public that government is not extravagant or corrupt. Good governance is about having clear open, objective and transparent process in place and ensuring that they are followed*”. Surprisingly the Governor told civil servants that... “*while he has constitutional responsibility for promoting good governance, he has limited power to enforce it, relying on influencing public servants to do the right thing*”...

29. The Plaintiffs bring these proceedings on the basis that the Agreement which removes their rights of way/passage and beach access, and the way it is being implemented is unconstitutional for a number of reasons, and point to the fact that the Legislature, and by inference the citizens of the Cayman Islands, has had never been fully informed of the details of the Agreement to close the Road

and to have it absorbed into DRCL beach land until it was leaked to the public in July of 2012.

30. Clause 149 of the Agreement states *inter alia* that... *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).*
31. The Plaintiffs claim that the Legislature has never been given a copy of the Agreement for review with their constituents.
32. At 189.4 of the Agreement... *Government is acting within the Constitution of the Cayman Islands in entering into and discharging its obligation under this Agreement.*
33. Again the Plaintiffs claim that because of the complete lack of transparency including the lack of information provided to the Legislature, 'Government' cannot be said to be acting within the Constitution.
34. The Plaintiffs claim therefore that the Agreement is in breach of the Constitution under Sections 18, 19 and 24 in that *all decisions of public officials must be lawful, rational, proportionate and procedurally fair, and ...it is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless public official is required to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified.*
35. Under Section 6 (1) & (2) National Roads Law (2006 Revision)...  
  
*"The Third defendant may give lawful directions in written form as to the policy to be followed by the Fourth Defendant in the performance of its responsibilities, functions and duties and the Board shall give effect to such directions, however under section 6 (2) it states that any direction given or decision made by the Third Defendant which affects the members of the public and which are not of an internal or administrative nature **shall** be published in the Gazette; but no such direction shall apply in respect of a matter pending before the Fourth Defendant on the day on which the directions are published". There was never any directions published in a government gazette regarding the Road project which clearly affected members of the public*
36. *There is no mention of the Agreement signed on 15 December 2011 in the Third Defendants Annual Report ("NRA Report") for the 2010/2011 Financial Year,*

*(ending 30 June 2011), even though the proposal was discussed at a meeting on 14 June 2011. However it is interesting at this point that the Auditor General's report on the NRA Report remarking on its Financial Statements points to the fact that ..."he (the Auditor General) was unable to determine the entity's (Fourth Defendant's) compliance with the standard (International Accounting Standards (IAS 24), due to the absence of related party representation by all members of the Board of Directors (of the Fourth Defendant).*

37. *At the time of these submissions, the Fourth Defendants report for the Financial Year 2011/2012 is not available.*
38. *Interestingly, The Auditor General in the Cayman Islands Journal July 2013 at page 9, stated..."As a part of a larger review of perceived problems within public sector statutory authorities and government-owned companies, I have identified a number of instances where politically appointed Boards of Directors overstepped their bounds or government or government ministers engaged in questionable activities. "We found examples where the Boards are getting involved in the day-to-day operations of the entities rather than letting the executive management run the business for which they are remunerated, he states in the report. "I also have significant concerns about how Board members, are chosen for various roles that they are required to perform".*
39. It is against this background that the Plaintiffs bring these proceedings.

#### Fiscal Responsibility and Good Governance

40. In return for the 4,290 feet comprising the Road, the Agreement calls for DRCL to construct an extension to the Easterly Tibbett's Highway (ETH Extension) which would run approximately parallel to the Road but much further to the East away from the famous seven mile beach area, and to provide immediately on signing of the Agreement, the sum of US\$5,000,000.00 for Government to utilise on Government programs.
41. There is no estimate of the cost of the ETH Extension provided in the Agreement, but a DRCL press release quotes a likely cost to DRCL of around US\$35,000,000 for completion of the extension.
42. It is also public knowledge that the ETH Extension will also open up other development properties owned by DRCL particularly along the Road portion to be closed, in the West Bay area of the Island and along the ETH Extension itself.
43. There are also investment and development incentives provided under the Agreement for a variety of DRCL projects in the Cayman Islands including 100%

import duty concessions to the value of US\$24,000,000 in the Agreement itself, and a substantial share 50% of tourism taxes associated with DRCL to be kept by DRCL ventures for periods of 10 years and more.

44. Estimates of the value of the closure of the Road and its disposition into DRCL beach property again have not been determined in the Agreement but some sources opine that an independent valuation would exceed CI\$500,000,000 because of the high development value placed on seven mile beach land.
45. To date the Plaintiffs are unaware of any attempt to obtain at least two Independent valuations of the Road to be closed including the beach access points described above, even after the Price Waterhouse Cooper Independent Report has been released, ( see Section 10 of the Governor (Vesting of Lands Law).
46. It is difficult for the Plaintiffs to see how fiscal responsibility and good governance could have been arrived at without the Price Waterhouse Cooper Independent Report ("Independent Report"), called for under the Agreement and which was only introduced to the public by a press release (not tabled in the legislative assembly for discussion), on 10 May 2013. The Independent Report (actually two reports, one dated 12 October 2012, and the other dated May 2013 in draft form confirms that the question of who benefits remains in the air.
47. For example as posted on CNS, The Independent Report warns that if DRCL directs all its new concessions towards Camana Bay and there is nothing in the deal (Agreement) to prevent that, the result would be significantly lower economic benefits than those estimated from the hotel/tourism focused projects. Clear rules should be developed the Independent Report states concerning eligibility of projects for the hotel tax rebate, including a demonstration of the projects economic benefits for the Cayman Islands.
48. Against this background ~~To date only Cabinet has seen the Report, but~~ according to a recent press briefing by the former Cabinet Minister (not the Third Defendant responsible for roads and for submitting policy decisions to the Fourth Defendant), the Minister claimed the Report showed good value for money for the Government, and that there ~~is~~ was now no barrier to the closing of the Road which the Minister stated ~~is estimated~~ was due to take place sometime before the end of February 2013. The closure of this stretch of the road was actually accomplished on 13<sup>th</sup> March 2013 by Extraordinary Gazette No. 22/2013.
49. At the time of the first Road closure ~~To date~~ the Plaintiffs claim, the former Third Defendant ~~has~~ had not informed the Legislature or explained to the general public of which the Plaintiffs are members, exactly how value for money ~~hasd~~

been arrived at under the Agreement in terms that the general public can understand, perhaps because there has been no independent valuation of the Road to be disposed to DRCL, and the whole Agreement has been shrouded in secrecy.

50. Construction of the ETH Extension commenced in September of 2011 the Agreement calling for Phase 1 of the Agreement, (the ETH Extension) to commence within 30 days of the signing of the Agreement, despite the fact that certain amendments were sought by the former Cabinet, the third of which apparently has not been agreed on, leaving the Agreement between the Defendants currently stalled. ~~now recently been agreed on i.e. the apparent provision of a new 'second public beach, and other Government ventures throughout the Island.~~
51. As of August 2013, the ETH Extension has just about been completed, and 1000 to 1,500 feet of the Road has been closed by the dumping of approximately 5,000 tons of imported "sand" from Columbia (crushed shells and pulverised rock) which has been severely criticised by the Department of the Environment particularly in regard to natural turtle nesting in the area.

#### Independent Review

52. As stated above, At clause 127, the Agreement called for an 'independent review' (the "Review") of the terms and objectives of the Agreement during a review 'period' by a qualified entity appointed by Government and approved by DRCL i.e. 'Price Water House Cooper' Independent Report. The purpose of the Review at 127 1.1... *shall be 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 the Agreement to the Cayman Islands...*, and provides a list of references produced by DRCL, as to how the Review should assess Government's Framework for Fiscal Responsibility, and the entities general terms of reference.
53. The Plaintiffs aver that the Governor himself when Cabinet signed the Agreement stated that the Agreement must abide by the terms of the so called Framework for Fiscal Responsibility as promoted by the UK Government.
54. At 127.3.2 of the Agreement, one of the terms of reference for the Review is *Government receiving value for money*.
55. In the event that Government or DRCL were not satisfied with the written Independent Report of the observations and conclusions of the entity which carried out the independent Review and or not satisfied that the terms of

reference for the Review have been carried out, either entity were entitled to terminate the Agreement in writing.

56. At 128 of the Agreement, ... *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 DCRL, failing which Government shall be entitled at any time during the Review Period to terminate this Agreement, unless agreed otherwise.*
57. The report (the "Independent Report"), emanating from the Review was initially to be finalised within 3 weeks of the date of the Agreement, but this was continuously extended for reasons the public is not aware of. The Plaintiffs understand that the Independent Report by Price Waterhouse Coopers was handed to Cabinet and DRCL on 14 February 2013, the general public seeing it for the first time on 10<sup>th</sup> May 2013 as an attachment to a Cayman News Service online article.
58. According to a press briefing on 14 February 2013, the former Cabinet had decided to allow the first portion of the Road to be closed, but is were determined not to release the Independent Report to the public or the Legislature until the first stretch of road closure had taken place, a *fait accompli*.
59. We now have a situation where a new Government and Cabinet with a partial road closure and disposition to DRCL in place and there is yet to be any official word on whether or not they will be renegotiating or terminating any, or all, of the remaining components/aspects of the Agreement in relation to good governance and or fiscal responsibility, or indeed any other reference.
60. The Plaintiffs claim that neither themselves nor the general public, either through the media or through its Legislative members, ~~have~~ had a chance to review the Independent Report, prior to the filing of these proceedings, and the release of the Independent report in May 2013 and that the Agreement was never published for public scrutiny and review, and was only initially brought into the public arena by a member of the Legislature who was anonymously given a copy in confidence and secrecy.
61. The Plaintiffs claim that the lack of transparency surrounding the Agreement is unconstitutional and point to the Schedule of the Constitution which *inter alia* calls for a *country with open, responsible and accountable government that*

*includes a working partnership with the private sector and continuing beneficial ties with the United Kingdom.*

#### Other Issues

62. The Plaintiffs are also concerned that an alternative and 'second' road to the present West Bay Road was always intended and desirable in the event of a natural disaster in West Bay such as a major hurricane or some other catastrophe which would close a single road for indefinite periods, and that therefore closing one road and opening up another is illogical and dangerous and does not make environmental and or economic sense for the people of the Cayman Islands.
63. Neither has there been any environmental studies undertaken by any of the Defendants with respect to the cutting through of pristine mangrove for the new Easterly Tibbett's highway, its effect on wild life and bio-diversity generally, and the effect of potential storm damage to the new road.
64. Neither has a traffic study been attempted by the Fourth Defendant to justify the closure of the Road.
65. The Plaintiffs believe that under the Agreement to close the Road, the people of the Cayman Islands stand to lose culturally, environmentally and economically especially since there is no dire need for DRCL to close and absorb the Road, as there are other alternatives available to the developer DRCL.

#### Legal clarifications of existing laws and procedures by the First, Third and Fourth Defendants.

66. There are a number of other legal anomalies associated with the Agreement including the actual or intended 'disposition' of the Road by the First Defendant and or Governor in Cabinet under the Governor (Vesting of Lands) Law (2005 Revision), ("Crown Lands Law"), i.e. under Section 9 of the Crown Lands Law and then by way of the so called 'waiver' under Section 10 (3) of the Crown Lands Law, (see paragraph 70 37 through 83 49 below). The Plaintiffs claim that the disposition of the Road to DRCL whenever it takes place must be considered a procedural impropriety and as such *ultra vires* and void, for the following reasons;
  - (i) The Road in question is a public Road, whether or not it was registered as such in the land registry, and according to section 2 of the National Roads Authority Law (2006 Revision) includes the land on which the road was built.

- (ii) According to Section 21 Roads law (2005 Revision) ...any public road existing at 1<sup>st</sup> July 2004 shall be an asset of the government and accounted for in the financial statements of the core government in accordance with the Public Management and Finance law (2005 Revision) ("PMF Law"), as amended in 2010, (emphasis added).
  - (iii) The West Bay Road therefore is classed not only as Crown land, but an Executive asset for the purposes of the PMF Law and any changes to executive assets have to be dealt with under the relevant requirements of the PMF Law.
  - (iv) The Road to be closed and disposed to DRCL is Crown land and an executive government asset. If it is not Crown Land and an Executive government asset the Plaintiffs seek to know to whom the land belongs to.
  - (v) If the Road falls to be Crown Land and an executive asset under the Roads Law (2005 Revision) when it is not disposed of under Section 14, it must fall to be Crown Land and an executive asset when it is closed and deposited to DRCL under the same Section 14, and should be accounted for as an executive asset for the purposes of government financial statements, and more importantly, for the Governor in Counsel to make a proper decision under Section 14 ((4) (b) Roads law(2005 revision).
  - (vi) Obviously there are anomalies between The Fourth Dependant being able to advise the Governor in Counsel to close and dispose of a portion of a public road under Section 14 of the Roads Law (2005 Revision), the Governor (Vesting of Lands) Law (2005 Revision) and the reporting requirements of the PMF Law.
67. In any event the Plaintiffs claim that the Waiver in section 10 (3) of the Crown Lands Law is unconstitutional for implementation in major mult million development projects, which it was not designed for, and should be declared so by the Court under Section 23 and 25 of the Constitution.
68. The Plaintiffs also claim that the Fourth Defendant being a party to the Agreement has illegally fettered its discretionary aspects of the Agreement particularly in light of its interaction with the Third Defendant on policy and directives, and its orders under the Agreement, and has acted illegally under the Agreement with respect to recommending the closure of the Road to the First Defendant and or Governor in Cabinet and its disposition to DRCL, by *inter alia* not adhering to the Crown Lands Law in its entirety including the requirements of the waiver under section 10 (3) of that law, and the fact that the road is a government asset by law, to be accounted for in the countries financial statements.

69. The Plaintiffs therefore claim that the lack of transparency throughout is unconstitutional and under Section 19 and 24 of the Constitution, the First Defendant and or Governor in Cabinet, and the Third and Fourth Defendants, have not acted lawfully, and therefore unconstitutionally, in any event have acted irrationally, and have proceeded unfairly and disproportionately.
70. ~~Irrationally for the purposes of these proceedings is defined as ...so unreasonable that no public body or public official could have come to the decision...~~

### PARTICULARS OF CLAIM

#### **The *Ultra Vires* transfer of Crown Land to DRCL**

71. Crown Land is governed statutorily by the Governor (Vesting of Lands) Law (2005 Revision), (the "Crown Lands Law
72. A "disposition" under the Crown Lands Law for the purposes of these proceedings means *a conveyance or transfer of a freehold.*
73. By Section 2 of the Crown Lands Law, *all lands, tenements and hereditaments in the Islands, belonging to or held in trust for her Majesty or acquired for the use of the Government, and which have not been sold, alienated or parted with, are declared to be vested in the Governor and held by him and his successors in the said office in trust for her Majesty, for the purposes for which the same were authorised or directed by any law, or in accordance with the terms of any conveyance, lease, will or other assurance executed in relation thereto.*
74. Section 6 of the Crown Lands Law states that the Governor, not the Governor in Cabinet, *may sell, exchange, grant or devise any of the lands tenements or hereditaments which shall be so vested in him in trust, and to do any other act, in relation to any such lands, tenements and hereditaments which he shall deem beneficial for the public service or for the better management thereof,* (emphasis
75. *added), provided that except under the authority of some law, or under the terms of the trust affecting the same under any such conveyance, lease, will or other assurance as aforesaid or under Section 9, the Governor shall not sell, exchange or grant any of the said lands tenements or hereditaments so vested or to be vested in and held by him in trust as aforesaid.*
76. Section 9 of the Crown Lands Law states that *the Governor in Cabinet may* (emphasis added) *sell convey grant or devise any of the lands tenements or hereditaments respectively vested in the Governor under this Law, etc...provided that in cases where a sum of money is the consideration for the sale of any lands under this section, no conveyance shall be executed until such sum shall have been paid into the office of the Financial Secretary and his receipt endorsed upon*

*the agreement of such conveyance and his certificate thereof lodged in the office of the Governor.*

77. Section 10 of the Crown Lands Law sets out the requirements of the Law before a disposition can be lawful. Section 10(1) A disposition by the Governor under Section 6 or by the Governor in Cabinet under Section 9, is void... unless, prior to the completion of such disposition (emphasis added):-

*Section 10(1) (a) full details of the land of which it is proposed to dispose, and of the terms of the proposed disposition, have been advertised in a newspaper circulating in the Islands and in the Gazette;*

*(b) a report, accompanied by the documents specified in subsection (2) and recommending the proposed disposition has been laid on the Table of the legislative Assembly for twenty-one days by the **Minister** responsible for lands; and*

*(c) a motion to reject the report has not been made within the period that the report is on the Table of the Legislative Assembly; or if such a motion has been validly made, it has been voted on and negatived by the Legislative Assembly.*

*Section 10(2) the report laid on the Table of the legislative Assembly under subsection (1) shall be accompanied by –*

*(a) a report by the proper officer in the ministry responsible for lands containing all the details and terms of the proposed disposition and the reasons for proposing it;*

*(b) a copy of the report of the survey required by paragraph 12(1) of the Cayman Islands Royal Instructions, 1972;*

*(c) a valuation by the Government's valuer of the land of which it is proposed to dispose;*

*(d) valuations by two independent licensed valuers of the land which it is proposed to dispose;*

*(e) a copy of the resolution of Cabinet approving the terms of the proposed disposition; and*

*(f) a copy of the advertisement of the proposed disposition published under subsection (1) (a)*

78. In 2005 an amendment to Section 10 of the Crown Lands Law, was introduced by the Legislative Assembly at section 10 (3) (an error in the amending document itself describes the section as 10 (2) A).

79. Section 10(3) of the March 2005 amendment states ... *Where, pursuant to section 9, the Governor in Cabinet proposes to sell, convey, grant or devise any lands, tenements or hereditaments –*
- (a) *to a statutory authority or government company ; or*
  - (b) *to any legal entity, in the public interest and for the purpose of agriculture, education, health, housing or any other similar purpose;(emphasis added).*

*the Governor in Cabinet **may** (full emphasis added), waive any of the requirements of subsection (1) and (2). It doesn't say that the Governor in Counsel shall wave the requirements.*

80. Section 10 (3) appears to allow the Governor in Cabinet to waive (**at his discretion**) any of the numerous requirements set out in sections 10 (1) and (2) of the Crown Lands Law that would have forced Government (Cabinet) to bring a proper valuation by two independent licensed valuers of the road portion to be disposed of, and the Third Defendant to bring a full report to the Legislative Assembly for public consultation before any transfer took place and to ensure that no motion to reject the disposition had been made and voted on by the Legislative Assembly.
81. The Plaintiffs claim that the requirements under Section 10 (1) and (2) can be said to be minimum adequate safeguards that Crown Land is not to be disposed of does not appear to the public to be subjected to unscrupulous deals between members of Government, their friends and eager developers as was found to be the case in the Turks & Caicos Islands, and would in any event be approved of under the terms of good governance by the United Kingdom Government.
82. The Plaintiffs aver that the Governor in Cabinet has in fact waived under section 10 (3) the portion of Road that has been closed (or intends to waive once the remaining portion of the road closure is gazetted) the requirements under Section 10 (1) and (2) of the Crown Lands Law which has allowed the former Cabinet to proceed with the Agreement without any of the safeguards necessary for the transparent and fiscally responsible accounting of Crown Land, and without the availability *inter alia* of the publishing of the Independent Report, and which has partially led to these proceedings.
83. However it is not at all clear to the Plaintiffs how under the Section 10 (3) waiver the Governor in Cabinet legally intends to proceed since the transfer is void under the Crown Lands Law if the conditions of section 10 (3) are not met, and we have already stated that the Road is an Executive asset to be accounted for financially.
84. For e.g. DRCL the entity to receive the disposition is (a) not a *statutory authority*, not a *government company*, and (b) the Agreement with DRCL is not for the *purposes of agriculture, education, housing or any other similar purpose*, as

called for under Section 10 (3), and the Agreement does not call for the Road to be transferred to the Fourth Defendant, before being disposed to DRCL.

85. The Plaintiffs insist that the Fourth Defendant while it has the power to recommend roads to be closed in the ordinary conduct of its mandate under the Roads Authority Law, it does not have the statutory power to recommend a road closure on the basis of the Agreement, i.e. based on a decision that to do so would be good for the Cayman Islands economy and certainly does not have the power to recommend that the First Defendant and or Governor in Cabinet ignore the Crown Lands Law when disposing the Road to DRCL, on the basis of an multimillion far reaching development project in partnership with government.

### **The Plaintiffs Constitutional and Common Law Claims**

86. As stated, the Plaintiffs proceed under section 26 of the Constitution, and specifically sections 18, 19 and 31 of the Constitution, and by common law and statutory rights where indicated.

Under S.18 of the Constitution, the Plaintiffs claim that the First Defendant has not given constitutional consideration to the interests of the Caymanian people when he considered the closing and disposition of the Road which the Plaintiffs claim is a national heritage site, and of cultural importance.

Section.18 of the Constitution, Part I, Protection of the environment;

- (1) *Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to*
- (2) *the health or well-being of present and future generations while promoting justifiable economic and social development;*
- (3) *to this end Government should adopt reasonable legislative measures to protect heritage (emphasis added), and wildlife and*
- (4) *the land and sea biodiversity of the Cayman islands that (a) limit pollution and ecological degradation; (b) promote conservation and biodiversity, (c) secure ecologically sustainable development and use of natural resources.*

87. The dictionary definition of heritage for the purpose of these proceedings is as follows, *valued objects and qualities such as cultural tradition, unspoiled countryside and historic buildings that have been passed down.*

*“Cultural heritage is what we value from the past reflecting what we value or reject in our present surroundings, and anticipate for the future”, Davison G. 1991 ‘The Meaning of Heritage’.*

*One of the dictionary definitions of environment is the ...aggregate of social and cultural conditions that influence the life of an individual or community...”*

### Common Law and Statute

88. The Plaintiffs claim the West Bay Road (including the Road) was dedicated to the people of the Cayman Islands by Royal Grant for the benefit of the Cayman Islands people, as a right of way and right of passage with numerous access points to the beach and sea, and that continuous uninterrupted use of the Road and public beach access points for over 100 years has given the public of the Cayman Islands an easement either by common law prescription, the Prescription Law (1997 Revised), or by lost modern grant. The Plaintiffs claim that regardless of how the easement is arrived at, and because of the dedication of the road as a right of way and right of passage, including the beach access points illustrated above the easements takes preference over the ability of the First Defendant or the Governor in Cabinet to dispose of the Road under the Crown Lands Law or any other law.
89. The Plaintiffs further claim that the sea view and beach access from the Road utilised by Caymanians and visitors alike is a natural heritage of the Cayman Islands and should be preserved as such.
90. On 12 December 2011 members of the public including the Plaintiffs provided the First Defendant with a petition containing some 4,500 signatures from citizens and residents from all over the Island who felt the road was a natural heritage and that the people of the Cayman Islands have enjoyed a right of way and right of passage over the Road and beach access points for over 100 years.
91. The Plaintiffs note that the Governor passed the petition to the then Premier of the Cayman Islands after making the comment to the Plaintiffs that issues regarding development are in the hands of elected officials. The then Premier of the Cayman Islands as head of Cabinet according to the media, accepted the petition and then proceeded to ignore it.
92. The Plaintiffs claim that before the said disposition of the Road can get as far as the First Defendant acting in his capacity as Governor in Cabinet, i.e. under section 9 of the Crown Lands Law, the First Defendant must have acted personally under Section 6 in his capacity as a representative of Her Majesty in ensuring that the disposition of the Road, was, under section 6, of the law, *beneficial for the public service or for the better management thereof:*

93. For the First Defendant to agree in his personal capacity acting on behalf of Her Majesty, the Plaintiffs conclude that the First Defendant must have been familiar with the Agreement with the Cabinet and DCRL and its lack of an Independent Review and has completely ignored the petition and the petitioners who claim the Road as a natural heritage site, and has given the Governor in Cabinet his own personal blessing to dispose the portion of Road in dispute ~~the Road~~ under Section 9 of the Crown Lands Law and as we have seen earlier in this claim, without the safeguards set out in subsections (1) and (2) of Section 10 of the Crown Lands Law.
94. In this regard, the Plaintiffs say that the Governor, and Governor in Council has acted unconstitutionally under Section 31 (2) and (3) of the Constitution.

## Constitution

### The First Defendant

95. The Plaintiffs claim that the First Defendant and or Governor in Cabinet was, and is, obligated under Part II Section 31 (2) and (3) of the Constitution which states;
- (2) *The Governor shall exercise his or her functions in accordance with this Constitution and any other Law and, subject thereto, in accordance with such instructions (if any) as may be addressed to the Governor by or on behalf of her Majesty,*
- (3) *In the exercise of his or her functions under subsection (2) the Governor shall endeavour to promote good governance and to act in the best interests of the Cayman Islands (emphasis added), so far as such interests are consistent with the interests of the United Kingdom.*
96. The Plaintiffs therefore claim that the First Defendant under section 6 of the Crown Lands Law, when proceeding to dispose of land under section 9 as Governor in Cabinet, given the lack of transparency of the Agreement, and the large number of petitions received by Cabinet could not have arrived at a conclusion that the disposition of the Road to DRCL under the Crown Lands Law, *was beneficial for the public service...*, or *...for the better management thereof*, without having ~~an~~ a complete understanding of the Agreement and has therefore not acted in accordance with the Constitution in promoting *good governance and in the best interests of the Cayman Islands*.
97. If this is the case, the Plaintiffs claim that the First Defendant and or Governor in Cabinet has abdicated or will abdicate, his responsibility under the Crown Lands Law and under the Constitution in so approving the disposition of the Road to DRCL (a) by not giving due regard to the Plaintiffs and the Cayman Islands public's concerns with regard to their claimed right of way/passage over the Road and its beach /sea access, and (b) without the safeguards listed under section 10 (1) and (2) of the Crown Lands Law which would have resulted in the tabling of a report to the Legislature by Cabinet recommending the Agreement with DRCL,

and his responsibility for the safe guarding of Executive assets for the purposes of the PMF Law.

98. Likewise the Plaintiffs claim that the Third Defendant has also abdicated his/her responsibility under Section 10 (1) and (2) of the Crown Lands Law and has not proceeded fairly as a result.

#### The Third Defendant

99. The Third Defendant under 54 (5) of the Constitution is collectively responsible to the Legislative Assembly with respect to any matter for which a Minister is responsible under that section.
100. Under Section 10 (1) (b) the Third Defendant has responsibility under the Governor (Vesting of Lands) Law (2005 Revision) to lay a report of the land to be disposed of with his/her recommendations on the Table of the Legislative Assembly for 21 days, so that the Legislative Assembly can vote on the report and recommendation.
101. This was never done.
102. Under Section 6(1) of the National Roads Authority Law (2006 Revision) the Third Defendant *may, after consultation with the Board (Fourth Defendant) give such general and lawful directions in written form as to the policy to be followed by the Authority in the performance of its responsibilities, functions and duties, and the Board shall give effect to such directions.*
103. Under Section 6 (2) *Any directions given or decision made by the Minister which affects the members of the public and which is not of an internal or administrative nature, shall be published in the Gazette, but no such direction shall apply in respect of a matter pending before the Authority on the day on which the directions are published.*
104. In any event for the Third Defendant to deny access to the agreement and Independent Report from the legislature and to recommend the first portion of the Road closure and disposal to DRCL in March of 2013 was procedurally improper and unfair, and incompatible with Sections 19 and 24 of the Constitution. It was also disproportionate given all the circumstances.

#### Fourth Defendants involvement with the Agreement

105. Under paragraph 27.2 of the Agreement... *Having considered the benefits of the West Bay Road and ETH Extension Plan and other terms of this Agreement, the NRA (Fourth Defendant), does hereby recommend and endorse the West Bay Road Legal Closure and the Raleigh Quay Legal Closure.*
106. The Plaintiffs claim that the Fourth Defendant has no mandate, expertise nor jurisdiction under either the Roads Law or the National Roads Authority Law

(2005 Revision) to consider the economic benefits of the proposed Road 'legal' closure and its disposition to DRCL under the Agreement and to endorse and recommend the legal closure ~~on the basis of terms of reference called for under the Agreement by an~~ without an independent review of the Agreement, and has acted purely on the directives of the Third Defendant and Cabinet.

107. The Plaintiffs aver that the Fourth Defendant under its mandate provided under section 5 (2) of the National Roads Authority Law (2006 Revision) had no business in agreeing to section 27.7 of the Agreement on behalf of Government...*"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 effect of re-instating the road or portion of road which has been legally closed"*.
108. *The Plaintiffs aver that governments cannot bind future governments or future statutory boards or government companies, for that matter.*
109. *Nor can the Fourth Defendant under its mandate under the National Roads Authority Law (2006 Revision) in any agreement, be ordered to do certain things under the agreement which amount to direction government to do certain things, see clause 29 of the Agreement ...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 (Fourth Defendant) shall do the following;*
- 29.1 Within 30 days of the date of the Agreement, the Board shall consult with the Minister, and make any necessary recommendations to the Minister regarding the proposed road Legal Closure;*
- 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 Closure;*
- 29.3 promptly comply with and execute any direction or policy given by the Minister to the NRA (Fourth Defendant) regarding the proposed Road Legal Closure.*
110. The Plaintiffs aver that it is fundamental that the Directors of a principal government company such as the Fourth Defendant have a duty not to declare themselves for or against a major multi-million dollar private/government development project, and it is illegal for any decision maker to abdicate its responsibility when exercising power by taking orders from other bodies such as DRCL, especially when that power is in fact illusionary.

111. According to the Agreement at paragraphs 127.3...the value of the Agreement to the Cayman Islands, and 127.3.3 ...*government receiving value for money*... the value of the Agreement to the Cayman Islands shall be assessed by the entity conducting the Independent Review in the Agreement, i.e. The Price Waterhouse Cooper Review.
112. The Plaintiffs claim therefore that the Fourth Defendant is not only illegally fettering its apparent discretionary power to approve the legal road closure and disposition to DRCL under the Agreement, and to recommend to the First Defendant closure under the Roads Law, but would in any event fetter any discretionary decision it would make under the terms of the Agreement because of its direct policy and directive involvement with the Third Defendant responsible for roads (and by implication, for the support of the Agreement generally within Cabinet), under section 6 of the National Roads Authority Law (2006 Revision).
113. The Fourth Defendant the Plaintiffs claim, must be seen to have acted impartially in its relationship with Government in order to avoid any question of bias since its mandate when it was created, was to administer, manage, develop and maintain the Islands public roads and related facilities, such as signals, storm water facilities, roadway lighting and directional signage. In other words the Plaintiffs claim, the Fourth Defendant should not in fact be a party to the Agreement except for its technical expertise in obtaining approved designs, specifications, drawings, including construction material inspections in full compliance with the agreed drawings in accordance with published Fourth directives for roads of this magnitude and national purpose i.e. the building and maintaining of public roads.
114. When a recommendation from the Fourth Defendant has been received by the Governor in Cabinet under section 14 of the Roads Law, under sub sections (3) and (4) it would appear that the Governor in Cabinet must exercise his decision to dispose land which hitherto had been a public road to the owners of land adjacent to the road in question, (in our scenario to DRCL), fairly and justly and in a manner and to such a degree as he thinks appropriate, (emphasis added). Surely this can only be accomplished the Plaintiffs claim, by strict adherence to the Crown Lands law, and the safeguards outlined under Section 10 of that law, and the requirements of the Public Management & Finance Law, with regards to government assets.
115. The Third Defendant and by implication Cabinet including the Governor in Cabinet and the Fourth Defendant are clearly attempting to illegally or mistakenly or misguidedly side step the requirements of ~~the Crown Lands Law~~ various laws under the guise of proceeding with the Agreement under Section 14 of the Roads Law.
116. Section 19. of the Constitution reads as follows;

- (1) *All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.*
- (2) *Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.*

The definition of “public official” for the purposes of s.19 above is provided at s.28 (c) of the Constitution... *...includes a public or government body, including a statutory body or company or association in which the Cayman islands has an interest and which performs a public function or duty, (d) includes any organisation or person carrying out a public function or duty, including the Governor, except where the nature of their act is private.*

#### Monetary value

117. The Plaintiffs further claim that even a disposition of the a Public Road under Section 9 of the Crown Lands Law, has a monetary value to the people of the Cayman Islands, irrespective of its cultural value, and this Section forbids a conveyance of Crown land unless monies have been paid into the Office of the Financial Secretary and his receipt endorsed upon the agreement of such conveyance and his certificate thereof lodged in the office of the Governor.
118. In fact, as stated above, all public roads existing before 1<sup>st</sup> July 2004 shall be an asset of the Government and accounted for in the financial statements of the core government in accordance with the Public Management & Finance Law.
119. The Plaintiffs claim that this is the reason why an independent valuation of the land is required even if cash is not changing hands, if for no other reason than for the Financial Secretary to be able to make adjustments to the balance sheet of the Cayman Islands in order to comply with the Crown Lands Law under s.9., and the PMF Law.
120. No attempt has been made before or after the Agreement was signed up until the commencement of these proceedings, to place an official monetary value on the road for the purposes of the law.

#### Law's incompatible with the Constitution.

121. The Plaintiffs under Section 23 of the Constitution also claim that the discretionary waiver under s.10 (3) of the Crown Lands Law as drafted when being utilised for multi-million dollar development projects with or without government private sector partnership deals, is incompatible. ~~with Sections 18, 19 and 24 of the Constitution~~ and a declaration to this effect is sought. Under the circumstances, under Section 23 Constitution, section 14 of the Roads law (2005 Revision) also has to be revised for its incompatibility with other laws i.e. the Crown Lands Law, and the PMF Law and declared by the Court to be incompatible.

## The Constitutional claims

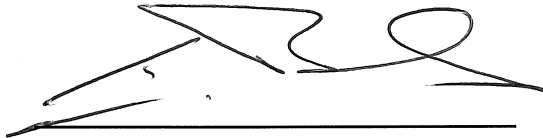
122. The Plaintiffs claim therefore that the Agreement as it currently stands, between Cabinet, DCRL and the Fourth Defendant calling for the disposition of the Road cannot possibly promote good governance in its present lack of transparency (at least at the time these proceedings were filed), and that the First Defendant and or Governor in Cabinet in exercising his discretion to ignore the requirements of section 10 (1) and (2) of the Crown Lands Law, has not acted in the best interests of the Cayman Islands as he is required to do under Section 31 of the Constitution, and because of the lack of transparency, the decision is not fiscally responsible with regard to United Kingdom directives.
123. In conclusion therefore, the Plaintiffs claim *inter alia* that under Section 19 of the Constitution, the First Defendant, Third Defendant and Fourth Defendant have not acted lawfully, have acted irrationally, and have not been procedurally fair in agreeing to and actioning the Road closure and disposition requirements of the Agreement with DCRL, and have abdicated their statutory and constitutional duties in doing so. In fact the Plaintiffs aver that the actions of the First, Third and Second Defendants in the context of lawful administrative action have been disproportionate when looked at from the point of view of good governance and sound fiscal management. The Plaintiffs also argue that the Defendants have acted disproportionately in relation to the complete lack of initial transparency generally, and the lack of direct consultation with those citizens who have provided a petition against certain aspects of the Agreement such as the Plaintiffs and the taking away of recognised legal rights of way and easements. The Plaintiffs seek declarations from the Court to this effect, and a declaration that the Agreement itself as a standalone contract is flawed and *ultra vires* for all the reasons given above.
124. The Plaintiffs also claim that the First Defendant and or Governor in Cabinet has breached sections 18, and 31 of the Constitution and seek declarations to this effect.
125. According to a recent press release by a Government Minister, the Second Defendant has approved the Report or at least the legal aspects of it. If this is true, the Plaintiffs ask for a declaration that the Second Defendant should in the interests of transparency, submit a report of his legal findings to the Legislative Assembly ~~along with his Defence to these proceedings~~ at the earliest opportunity.
126. In conclusion the Plaintiffs seek a Protective Cost Order to cover these proceedings on the basis that the Plaintiffs are ordinary citizens of the Cayman Islands with no access to large financial resources and the fact that the proceedings are of extreme 'public interest and importance' and that the public interest requires the issues in these proceedings to be resolved.

## And the Plaintiff's claim

- (a) A declaration that the Plaintiffs together with the people of the Cayman Islands enjoy a common law prescriptive right of way and right of passage over the Road and its beach access points by way of dedication by Royal grant to the people of the Cayman Islands, and/or by the doctrine of Lost Modern Grant.
- (b) A declaration that the Plaintiffs and the people of the Cayman Islands enjoy a prescriptive easement i.e. a right of way and or right of passage over the Road to be closed either by (i) virtue of the Prescription Law (1997 Revision), ~~(ii) the doctrine of lost modern grant,~~ ~~(iii)~~ (ii) unregistered equitable easement under Section 70 (a) and (f) of the Registered Land Law (2004 Revision).
- (c) A declaration that the Agreement between Cabinet (represented by the Third Defendant), DRCL and the Fourth Defendant as described above in the body of the claim which calls for the closure and Disposition of the Road to DRCL is *ultra vires* and void under sections 19 and 24 of the Constitution for the statutory and constitutional reasons given above in the body of the claim, namely *inter alia* the illegal fettering of the Agreement by the Fourth Defendant and the non-adherence to the Crown Lands Law and PMF Law by the Governor in Cabinet and Third Defendant;
- (d) A declaration that the First Defendant and or Governor in Cabinet has acted in breach of sections 18,19 and 31 of the Constitution, and the Third and Fourth Defendant has acted in breach of Section 19 of the Constitution as defined above in the body of the claim;
- (e) A declaration under Section 23 and 25 Cayman Islands Constitution Order 2009 that Section 10 (3) (a) (b) of the Governor (Vesting of Lands) Law (2005 Revision) is incompatible with Sections 18,19 and 24 as it ignores the importance of transparency and fiscal responsibility in the disposing of Crown land and the interests of good governance. Likewise a declaration that the requirements of Section 14 Roads Law as currently drafted is also incompatible with the Constitution as defined in sections 23 and 25 of the Constitution.
- (f) A declaration that any disposition of Crown Land to DRCL under the Agreement by way of the Governor in Cabinet approving the transfer under Section 9 of the Governor (Vesting of Lands) Law (2005 Revision) is void if in fact the requirements of Sections 10 (1) and (2) and (3) of that law are not followed, and that any disposition sought

under the Roads Law Section 14 is likewise void unless the requirements of Section 10 (1) and(2) are followed;

- (g) A declaration that the Second Defendant reaffirm publicly his support for the legality of the Independent Report and by extension, the Agreement, ~~on or before the Defence is due in these proceedings~~; as soon as possible
- (h) An inhibition on the Cayman Islands Land Registry restricting any transfer of the Crown land described above in the body of the claim as the Road, until further order of the Court;
- (i) A Protective Cost order;
- (j) Court fees and Legal fees;
- (k) Further or other relief as this Honourable Court deems fit.



**IRVIN BANKS**  
**Attorney-at-law for the Plaintiffs**  
~~25 February 2013~~  
9<sup>th</sup> August 2013

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO:                      OF 2013**

**BETWEEN:                      (1) ALICE MAE COE**  
**(2) ANNIE MULTON**  
**(3) EZMIE SMITH**  
**(4) BETTY EBANKS**

**Plaintiffs**

**AND:                              (1) THE GOVERNOR OF THE CAYMAN ISLANDS**  
**(2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**  
**(3) MINISTER FOR FINANCE, DISTRICT ADMINISTRATION, WORKS,**  
**LANDS & AGRICULTURE**  
**(4) NATIONAL ROADS AUTHORITY (NRA)**

**Defendants**

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**ACKNOWLEDGMENT OF SERVICE  
OF AMENDED WRIT OF SUMMONS**

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in Judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

---

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes     No

---

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a Stay of Execution against any judgment entered by the Plaintiff (tick box)

Yes     No

Service of the Writ of Summons is acknowledged accordingly

**(Signed)** \_\_\_\_\_  
**Attorney for the Defendant or Defendant in person**

**NOTE ON ADDRESS FOR SERVICE**

**Attorney:** *Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.*

**Defendant in person:** *where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.*

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

Irvin Banks  
Attorney-at-Law  
14 Rosemont Close  
George Town  
P.O. Box 1643  
Grand Cayman, KY1-1109  
Cayman Islands

Tel: 345 325 6395  
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irvin.banks@candw.ky

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF  
WRIT OF SUMMONS**

1. The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the Proceedings ***must also serve a Defence*** on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for Judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter Judgment against him without further notice.

3. A ***Stay of Execution*** against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any Judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a Stay, Execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, ***issue a Summons*** for a Stay of Execution, supported by an Affidavit of his Means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

***See over for Notes of Guidance***

## Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words “sued as (*the name stated on the Writ of Summons*)”.
4. Where the Defendant is a **FIRM** and an Attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description “Partner in the firm of (.....)” after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description “trading as (.....)” after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.