# The Loans (Mount St. John's Hospital Construction and Equipping) Act, 1998.

ANTIGUA AND BARBUDA

[ L.S. ]



I Assent,

## James B. Carlisle, Governor-General.

17th July, 1998.

### ANTIGUA AND BARBUDA

### No. 8 of 1998

AN ACT to make provisions for the borrowing of money for the purposes of constructing and equipping a new hospital at Mount St. John's.

[ 30th July, 1998 ]

ENACTED by the Parliament of Antigua and Barbuda as follows—

**1.** This Act may be cited **as** the Loans (Mount St. John's Hospital Construction and Equipping) Act 1998.

Short tide.

- 2. Notwithstanding the provisions of any other Act, the Minister responsible for Finance is authorised to borrow the sums of money specified in column 2 of Schedule 1 not exceeding an aggregate sum of Thirty-one Million dollars in currency of the United States of America from the Banks and Institutions specified in column 1 of Schedule 1 (in this Act referred to as the lenders) on such terms and conditions as may be agreed upon between the Minister responsible for Finance and the lenders.
- Minister is authorised to borrow Thirty-one Million in United States Currency.

**3.** The money borrowed under the authority of **this** Act shall be applied to the construction and equipping of Mount St. John's Hospital in Antigua.

Application of money borrowed.

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Power to authorise payment and to exempt from taxes.

**4.** (1) The Minister responsible for Health may, from time to time, authorise the Board of the Medical Benefits Scheme to transfer funds from its general account into a special account under the control of the Accountant General for the purpose of giving effect to the terms of any agreement entered into by the Minister responsible for Finance with the lenders in respect of the money borrowed under the authority of this Act.

Cap. 140.

(2) The Cabinet may approve the remission in whole or in part of a y stamp duty or fee payable under any Stamp Act where he considers such remission necessary to give full effect to any agreement, instrument, guarantee or under-taking under this Act.

Exemption from Exchange Control Act.

5. The Exchange Control Act does not apply to any transaction required to effect payment of any sum in accordance with the terms of any agreement, promissory note, instrument, guarantee or undertalung under this Act.

Principal and interest charged on the Consolidated Fund.

**6.** The principal sum borrowed under the authority of this Act and the interest thereon are charged upon and payable out of the Consolidated Fund.

Ratification of terms and condition.

7. The terms and conditions of the Loan agreed to between the Minister and the Lenders and set out in Schedule II are hereby ratified.

### **SCHEDULE I**

Column I Column II

Lenders Sums

Bank of Antigua US\$2,000,000.00

Stanford Financial Group Ltd., and its Affiliated Companies and Syndicated Participants

US\$29,000,000.00

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AND

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## Exhibit A

Registration Section: Ottos New Town

Block: 610 1791B

Parcels: 50, 54 and 78

### SCHEDULE II

February 3, 1998

Honourable John St. Luce Minister of Finance Ministry of Finance Government of Antigua and Barbuda High Street St. John's Antigua, W.I.

Dear Minister St. Luce:

## Re: Loan of Proposed Medical Center for Antigua and Barbuda

We wish to advise you that bank of Antigua Limited (the "Agent") together with a consortium of financial institutions (hereinafter collectively referred to **as** the "Lenders") has approved your request for a construction loan in the amount of US\$31,000,000.00 (the "Loan"), such loan to be made in accordance with the Lenders' procedures and subject to the following:

1. BORROWING ENTITY: Government of Antigua and Barbuda and the Medical Benefits Board of Control (hereinafter collectively referred to **as** the "Borrower").

#### 2. TERMS OF THE LOAN:

A. AMOUNT: US \$31,000,000.00

B. TERM: Thirty (30) years

C. INTERESTRATE: Interest for the loan shall be computed at the annual

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rate of 9.8%. All interest will be calculated on the basis of a 360-day calendar year.

- D. DEFAULT RATE: From and after the occurrence and during the continuation of any event of default under the Loan, at Lender's sole discretion, and regardless of whether Lender also elects any other remedies under the Loan, the entire unpaid principal balance of the Loan and any other sums owing shall bear interest at an augmented annual rate (the "Default Rate") equal to 10.8%.
- E. PAYMENT: Monthly payments of accrued interest only for the period terminating the earlier of (i) two (2) years from the date of the first advance under the Loan; or (ii) substantial completion of the Project (as will be defined in the loan documentation). Thereafter equal monthly payments of principal and interest, in an amount that would be sufficient to repay the outstanding debt in fall in thirty (30) years from the date of the Loan. The outstanding balance of any sums due shall be payable at maturity. To the extent funds may be available therein, payments shall be automatically debited by Agent from the current account established by the Medical Benefits Board of Control pursuant to article 2.G.ii) below, for that purpose.
- F. PREPAYMENT: The Loan may be prepaid in part or in whole at anytime without prepayment penalties.

### G. ESTABLISHMENT OF BANK ACCOUNTS:

- i) COMPENSATING BALANCES: Borrower shall at all times during the term of the Loan maintain compensating balances with the Agent in an amount not less than U.S. \$1,481,482.00.
- ii) CURRENT ACCOUNT: In addition to the compensating balances referred to immediately above, Borrower shall during the term of the Loan maintain a current account with the Agent to which Borrower shall make the following deposit: an amount equal to the greater of (i) U.S. \$271,000.00 or (ii) the total amount collected by Borrower pursuant to the increased two precent (2%) Medical Benefits Levy since the last such deposit. Borrower may, so long as the Loan is not in default, withdraw such amounts in the current account in excess of U.S. \$271,000.00. In no event, shall the minimum balance in the current account be less than U.S. \$271,000.00 at any time other than as a result of any payment made on the Loan.

LATE PAYMENT: Any payment not made within ten (10) days after H. such payment is due shall be subject to a late charge of U.S. \$500.00. The foregoing is without prejudice to the Lenders' right to charge interest on the Loan at the Default Rate set forth for defaults in article 2.D above. However, in the event of such a delinquency, the application of the Default Rate will not be imposed until after 30 days of delinquency has passed. Should a payment be delinquent for more than 30 days, then, at Agent's sole discretion, the Default Rate may be imposed. If agent does elect to enforce this penalty, it shall apply retroactively from the beginning of said delinquency and against the entire loan balance during the period of default.

Act, 1998.

- 3. LOAN PURPOSE: Financing the construction of a medical center for Antigua and Barbuda (the "Medical Center") located at St. John's, Antigua and to repay the interim loan facility extended by Bank of Antigua, as evidenced by that certain promissory note dated September 1, 1997 in the amount of E.C. \$14,000,000.00.
  - 4. SECURITY: The Loan shall be evidenced and secured by the following:
    - A. A Loan Agreement among the Lenders and Borrower and a Note in the principal amount of the Loan to be given by the Borrower to the Agent on behalf of the Lenders.
    - B. A first-ranking pledge and security interest over all funds collected by the Medical Benefits Board of Control pursuant to the increased two percent (2%) Medical Benefit Levy.
    - C. A first-ranking pledge and security interest over all accounts established pursuant to article 2.G above.
    - D. A full, first-ranking charge and caution over the property described on Exhibit A hereto, and any buildings and improvement thereon (hereinafter the "Property").
    - E. A security interest which shall be first-ranking (other than any purchasemoney security interest) on all of the items of personal property of the Borrower to be placed upon and used in connection with the Property during the term of the Loan. The personal property of the Borrower to be so granted as security shall include, but not be limited to, furniture, equipment, fixtures, supplies, and materials, now or hereafter located on the Property or utilized in the operation or construction of any improve-

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ments on the Property.

- F. An assignment to Lenders of Borrower's rights and title to all architect's plans, architect's contracts, construction contracts, permits and security deposits and all other legal documents and agreements relating to the Property or the construction of any building or improvements thereon.
- **G.** A first-ranlung security interest in all contract rights, general intangibles and payment rights of Borrower relating to or arising from the Medical Center over the entire term of the Loan.
- H. Such insurance coverage in favor of the Lenders as Lenders may request for the replacement value of the property described at 4. D and 4. E above.
- I. Such other agreements and instruments as shall be required by Agent, Lenders or their respective counsel, including, but not limited to, those documents set forth in Exhibit B attached hereto entitled Hospital Loan Document Checklist. Notwithstanding the foregoing, however, Lenders shall agree that none of the aforementioned items under this article 4 shall encumber any such real property owned or operated by the Medical Benefits Board of Control that are not specifically included herein, and if so requested, Lenders will release such assets from any claim or charge which they may exercise. Lenders further agree that the real property owned or operated by the Medical Benefits Board of Control and not specifically included herein shall not be subjected by the Lenders to any lien, writ, order or any other encumbrancefor the purpose of enforcing any judgement that the Lenders may obtain against the Medical Benefits Board of Control in respect of this transaction.
- 5. BORROWER'S REPRESENTATIONS: This commitment has been issued to Borrower on the basis of information, data and other materials submitted by Borrower. Any misinformation, misrepresentations or withholding of material information related to Borrower's application for the Loan shall, at the option of Agent, entitle Lenders to cancel this commitment and terminate their obligation hereunder.
- **6.** COMMITMENT TO SURVIVE LOAN CLOSING: This commitment shall survive the Loan closing and none of the obligations and undertakings hereunder shall cease and terminate until the entire Loan, together with all interest and fees due and other amounts which may accrue pursuant hereto and/or to the Loan documents executed in connection herewith, shall have been paid in full and until all obligations and undertakings of the Borrower have been completed in full and discharged.
  - 7. CONDITIONS TO THIS COMMITMENT: Any obligation of the Agent and

the Lenders to proceed with the Loan evidenced by this commitment shall be subject to the preparation and execution of Loan documentation in form and substance satisfactory to the Lenders and their legal counsel in their sole discretion. In addition, the Agent and Lenders and their legal counsel must be satisfied in their sole discretion with all matters pertaining to the construction of the Medical Center, including without limitation all plans, contracts and circumstances relating thereto, and all necessary third-party and governmental actions must have been duly taken.

- **8.** LOAN DOCUMENTS TO GOVERN: This commitmentshall be incorporated by reference in the Loan documents and the terms hereof shall be deemed **as binding** as if fully set forth therein. Should there be any apparent or evident contradiction between the terms of this commitment and any of the terms of the Loan documents, the Loan documents shall govern. It is understood that, in addition to the various provisions contemplated in this letter, the Loan documents will include representation and warranties, events of defaults, covenants, and negative covenants by the Borrower, **as** well as other provisions, which the Lenders in their discretion believe to be reasonable and appropriate for a credit such as the Loan.
- **9.** GENERAL CONDITIONS: There are attached hereto and made a part hereof certain additional general conditions of the commitment which general conditions shall apply with the same force and effect as all of the other terms and conditions contained herein.
- **10.** MODIFICATIONS: No change or modification of this commitment shall be valid unless such change or modification is made in writing and signed by the parties hereto. This commitment contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties, or representations, either written or oral, expressed or implied, between the parties other than as set forth herein.
- **11.** AVAILABILITY AND DISBURSEMENT OF LOAN FUNDS: Loan funds will be disbursed only upon satisfaction of all conditions **as** set forth in the Loan documentation.
- **12.** GOVERNINGLAW AND JURISDICTION: This commitment letter is, and the Loan and Loan documentation shall be, governed by the laws of Antigua and Barbuda. For any dispute or disagreement relating to this letter, the Loan or the Loan documentation, the Borrower submits to the nonexclusive jurisdiction of the **courts** of Antigua and Barbuda, waives any claim that such court is an inconvenient forum,

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waives any claim or right to immunity the Borrower or its property may now or hereafter enjoy, waives trial by jury, and agrees that service of process may be effected, in addition to any other manner permitted by applicable law, by mailing a copy of the summons and complaint to the Borrower by any form of **registered** or certified mail at the address of the Borrower set forth above, such process to be effective 15 days after posting.

- 13. FULL FAITH AND CREDIT: The loan must enjoy the full faith and credit of the State of Antigua and Barbuda. In the event of any change, which the Lenders in their discretion deem detrimental to the Medical Benefits Levy referred to in this letter, the Lenders may declare the Loan in default and all sums outstanding immediately due and owing.
- **14.** DOLLAR TRANSACTION: This is an international credit transaction in which the borrowing in United States dollars and the payments and repayments in such currency and in the United States are of the essence, and no payment or repayment in any other currency or jurisdiction will be adequate or acceptable.
- 15. PLACE AND METHOD OF PAYMENT: All payments in connection with the Loan shall be made in good and immediately available in United States dollars by credit to the account of the Agent, as Agent may in writing instruct Borrower. All such payments shall be free and clear of all deductions, withholdings, taxes, charges, fees, set-offs or counterclaims of any nature whatsoever in the State of Antigua and Barbuda, all of which shall be for the sole account of the Borrower. To the extent, the Loan (or the Agent or any Lender in respect of the Loan) shall, for any reason whatsoever, become subject to any such deduction, withholding, tax charge, fee, set-off or counterclaims the Borrower shall pay such additional amount(s) as may be necessary so that the net amount of such payment actually received by Lenders shall be the same as if such tax, charge, etc. had not been applicable.
- **16.** NO BROKERAGE FEE: The borrower represents and warrants it has not engaged the services of any broker or consultant to whom a fee is due or has been paid in respect of the Loan.
- **17.** LEGAL FEES AND EXPENSES OF COUNSELFOR THE AGENT: For the account of the Borrower.
- **18.** ENTRY INTO EFFECT AND TERMINATION OF THE COMMITMENT: This commitment shall be valid when accepted by the Borrower

and delivered to Agent within 60 days **from** the date hereof, together with a check in the amount of U.S. **\$92,500.00** payable to the Agent representing a non-refundable commitment fee. Acceptance of this commitment by the Borrower on or prior to that date constitutes agreement to comply with the terms and conditions contained herein. From and after execution of this commitment, the Borrower shall be obligated to reimburse the reasonable fees and expenses of legal counsel to the Agent and the Lenders, including the connection with the preparation and execution of both this letter and the Loan documentation, regardless of whether the loan documentation is ever executed or the Loan is made. This commitment shall remain in full force and effect until May **31, 1998.** If the Borrower fails for any reason whatsoever to comply with **all** the terms and conditions contained herein or attached hereto or fails to close the Loan by May **31,1998**, the commitment letter shall be null and void without further obligation or notice by agent or Lenders.

This letter supersedes our letter to you dated December **19**, **1997**, Please indicate your acceptance of this commitment by signing and returning to us the attached copy.

Sincerely,
Bank of Antigua Limited.

by: Kenny Byron,

President and CEO

The undersigned accept and agree to all of the terms and conditions set forth therein.

BORROWER:

Government of Antigua and Barbuda

By: Date: 13 Feb. 1998

Name: **John** E. St. **Luce**,

Title: Minister of Finance, Agriculture, Land,

Fisheries, Planning & Co-operatives

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The Loans (Mount St. John's Hospital Construction and Equipping) Act, 1998. No. 8 of 1998.

MEDICAL BENEFITS BOARD OF CONTROL

By: Date: 24 Feb. 1998

Name: Hilroy A. Willet,

Title: Chairman

MEDICAL BENEFITS BOARD OF CONTROL

cc: Prime Minister Lester Bird Honourable Robin Yearwood Honourable Sam Aymer Jeff Smith Arnold Knoche R. Allen Stanford

Passed the House of Representatives this 5th day of June, 1998.

Passed the Senate this 18th day of June, 1998.

B. Harris, *Speaker*.

(Sen.) L. Smith, Vice President.

S. Walker, Clerk to the House of Representatives. S. Walker, Clerk to the Senate.