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A.I.D. Loan Number 690-W-006 ²⁹.

690046

LOAN AGREEMENT

Between

GOVERNMENT OF THE REPUBLIC OF MALAWI

and the

UNITED STATES OF AMERICA

for

MALAWI ROADS - PHASE II

Dated: July 31, 1974

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LOAN AGREEMENT dated July 31, 1974, between the Minister of Finance acting for and on behalf of the GOVERNMENT OF THE REPUBLIC OF MALAWI (the Borrower) and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

ARTICLE I

THE LOAN

Section 1.01. The Loan. A.I.D. agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed eleven million four hundred thousand United States Dollars (\$11,400,000) ("Loan") to assist the Borrower in carrying out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance Foreign Exchange costs of goods and services required for the Project ("Foreign Exchange Costs") and local currency costs of goods and services required for the Project ("Local Currency Costs"). The aggregate amount of disbursements under the Loan is hereunder referred to as "Principal".

Section 1.02. The Project. The Project shall consist of construction and construction supervision services for approximately seventy eight miles of road construction from Lilongwe through Mchinji to the Malawi-Zambia border.

Section 1.03. Use of Funds Generated by Other United States' Assistance. The Borrower shall use for the Project in lieu of any United States dollars that would otherwise be disbursed under the Loan to finance the local currency costs of the Project, any currencies

other than United States dollars that may become available to the Borrower after the date of this Agreement in connection with assistance (other than the Loan) provided by the United States of America to the Borrower to the extent and in the manner that A.I.D. and the Borrower may agree in writing. Any such funds used for the Project shall reduce the amount of the Loan (to the extent that it shall not then have been disbursed) by the equivalent amount of United States dollars computed, as of the date of the Agreement between A.I.D. and the Borrower as to the use of such funds, at the rate of exchange most favorable to the dollar then lawfully existing in Malawi.

ARTICLE II

LOAN TERMS

Section 2.01. Interest. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 6.04) and shall be computed on the basis of a 365-day year. Interest shall be payable semi-annually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder on a date to be specified by A.I.D.

Section 2.02. Repayment. The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty one (61) approximately equal semiannual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half ($9\frac{1}{2}$) years after the date on which the first interest payment is due in accordance with Section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this section after the final disbursement under the Loan.

Section 2.03. Application, Currency and Place of Payments. All payments of interest and Principal hereunder shall be made in United States dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Office of Financial Management, Agency for International Development, Washington, D. C., U.S.A., and shall be deemed made when received by the Office of Financial Management.

Section 2.04. Prepayment. Upon payment of all interest and refunds then due and payable, the Borrower may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

Section 2.05. Renegotiation of the Terms of the Loan. The Borrower agrees to negotiate with A.I.D. at such time or times as A.I.D. may request, an acceleration of the repayment of the Loan

in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the Borrower.

ARTICLE III

CONDITIONS PRECEDENT TO DISBURSEMENT

Section 3.01. General Conditions Precedent. Prior to any disbursement or to the issuance of any Letter of Commitment under the Loan, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of the Attorney General of the Borrower or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation to the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 8.02 and a specimen signature of each person specified in such statement;

(c) Evidence of the source and availability, on a timely basis, of funds and contributions in kind for the Borrower's contribution to the Project required under Section 4.10(a);

(d) Final plans and specifications, bid documents, cost estimates and time schedules for carrying out the construction of the road;

(e) An executed contract for construction or other services for the road with a firm acceptable to A.I.D.;

(f) An executed contract for supervisory engineering services for construction of the road with a firm acceptable to A.I.D.;

(g) Evidence that Borrower has taken all steps necessary to acquire all land and easements necessary to carry out the construction of the road;

(h) Such other information as A.I.D. may reasonably request with respect to the Project.

Section 3.02. Terminal Date for Meeting Conditions Precedent to Disbursement. If all conditions specified in Section 3.01 shall not have been met within three hundred (300) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D. at its option may terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

Section 3.03. Notification of Meeting Conditions Precedent to Disbursement. A.I.D. shall notify the Borrower upon determination by A.I.D. that the conditions precedent to disbursement specified in Section 3.01 have been met.

ARTICLE IV

GENERAL COVENANTS AND WARRANTIES

Section 4.01. Execution of the Project.

(a) The Borrower shall carry out the Project with due diligence and efficiency, and in conformity with sound engineering, construction, financial and administrative practices. In this connection, the Borrower shall at all times employ suitably qualified and experienced consultants to be professionally responsible for the design and

execution of the Project and suitably qualified and competent construction contractors to carry out the Project.

(b) The Borrower shall cause the Project to be carried out in conformity with all of the Implementation Letters, plans, specifications, contracts, schedules and other arrangements and with all modifications therein, issued or approved by A.I.D. pursuant to this Agreement.

Section 4.02. Continuing Consultation. The Borrower and A.I.D. shall from time to time, at the request of any party, exchange views through their representatives with regard to the progress of the Project, the performance by the Borrower of its obligations under this Agreement, the performance of the consultants, contractors and suppliers engaged on the Project and other matters relating to the Project.

Section 4.03. Disclosure of Material Facts and Circumstances. The Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it has disclosed to A.I.D. accurately and completely, all facts and circumstances that might materially affect the Project and the discharge of its obligations under this Agreement. The Borrower agrees to promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the Project or the discharge of the Borrower's obligations under this Agreement.

Section 4.04. Commissions, Fees and Other Payments.

(a) The Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commission, fees, other payments of any kind, except as regular compensation to the Borrower's full-time officers and employees or as compensation for bonafide professional, technical or comparable services. The Borrower shall promptly report to A.I.D. any payment or Agreement to pay for such bonafide professional, technical or comparable services to which it is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount or any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(b) The Borrower warrants and covenants that no payments have been or will be received by the Borrower, or any official of the Borrower, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in Malawi.

Section 4.05. Maintenance and Audit of Records. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting practices and principles consistently applied, books and records relating to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

- (a) The receipt and use made of goods and services acquired with funds disbursed pursuant to this Agreement;
- (b) The nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (c) The basis of the award of contracts and orders to successful bidders; and
- (d) The progress of the Project.

Such books and records shall be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as A.I.D. may require, and shall be maintained for five (5) years after the date of the last disbursement by A.I.D. or until all sums due A.I.D. under this Agreement have been paid, whichever date shall first occur.

Section 4.06. Reports. The Borrower shall furnish to A.I.D. such information and reports relating to the Loan and to the Project as A.I.D. may reasonably request.

Section 4.07. Inspection and Audit. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect and audit the carrying out of the Project, the utilization of all goods and services financed under the Loan, and the Borrower's books, records and other documents relating to the Project and the Loan. The Borrower shall cooperate with A.I.D. to facilitate such inspections and permit representatives of A.I.D. to visit any part of Malawi for any purpose relating to the Loan.

Section 4.08. Continuance of Representation and Materials Furnished to Satisfy Conditions Precedent. Unless A.I.D. otherwise agrees in writing, the Borrower shall continue in force and effect for the life of this Agreement, exactly as originally made or furnished, any representation made or opinion or agreement furnished to satisfy a Condition Precedent under this Agreement.

Section 4.09. Taxation. The Agreement, the Loan, and any evidence of indebtedness issued in connection herewith shall be free from, and the Principal and interest under the Loan shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within Malawi. No taxes, tariffs, duties or levies of any nature whatsoever shall be imposed on commodities or materials financed under the Loan.

To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts and (b) any commodity procurement transaction financed under the Loan, are not exempt from identifiable taxes, tariffs, duties and other levies imposed under the laws in effect in Malawi, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 4.10(b) of this Agreement with funds other than those provided under the Loan.

Section 4.10. Funds and Other Resources to be Provided by the Borrower.

(a) Borrower shall make contributions to the Project equal in value to at least three million one hundred sixty two thousand five hundred

Kwacha (K3,162,500) consisting of a cash contribution of at least one million eight hundred seventy four thousand two hundred Kwacha (K1,874,200) and a contribution in kind of at least one million two hundred eighty eight thousand three hundred Kwacha (K1,288,300). Such contribution in kind shall include the right-of-way for the road, housing and crop compensation for persons displaced by the acquisition of the right-of-way, a Government project engineer to be assigned to the Project during construction, Government financial management services, and construction materials.

(b) In addition to its required contribution under Section 4.10(a) hereof, the Borrower shall provide promptly as needed all funds, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project.

Section 4.11. Management. The Borrower shall provide qualified and experienced management for the Project and it shall train such staff as may be appropriate for the maintenance and operation of the Project.

Section 4.12. Operation and Maintenance. The Borrower shall operate, maintain and repair the Project in conformity with sound engineering, financial and administrative practices and in such a manner so as to insure the continuing and successful achievement of the purposes of the Project.

Section 4.13. Utilization of Goods and Services.

(a) Goods and services financed under the Loan shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Project, or at such other time as

goods financed under the Loan can no longer usefully be employed for the Project, the Borrower may use or dispose of such goods in such a manner as A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Loan shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 4.14. Investment Guaranty Project Approval by Borrower. The Borrower agrees that the construction work to be financed under this Agreement is a project approved by the Borrower pursuant to the agreement between the Government of Malawi and the United States of America on the subject of investment guaranties and no further approval by the Government of Malawi shall be required to permit the United States under that agreement to issue investment guaranties covering a contractor's investment in that project.

Section 4.15. Validity of Agreement. The Borrower represents that the making and performance of this Loan Agreement have been duly authorized by all necessary governmental authorities and does not contravene any law, regulation or contractual restriction binding to the Borrower.

Section 4.16. Vehicle Weight Limitation. The Borrower covenants and agrees to use its best efforts to ensure that vehicles utilizing the road do not exceed a 24,000 pound axle load limitation

ARTICLE V

PROCUREMENT

Section 5.01. Procurement from Code 941 Countries. Unless A.I.D. otherwise agrees in writing, disbursements made pursuant to Section 6.01 shall be used exclusively to finance the procurement for the Project of goods and services having both their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor, except for petroleum, oil and lubricants (POL) products and bituminous materials which may be procured from either Code 941 or 935 countries. Ocean shipping shall qualify as an eligible service provided the vessel furnishing the transportation services is registered in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

Section 5.02. Procurement from Malawi and Code 941 Countries. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 6.02 shall be used exclusively to finance the procurement for the Project of goods and services having their source in Malawi and their origin in Malawi or in any country included in A.I.D. Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor.

Section 5.03. Eligibility Date. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders firmly placed or contracts entered into prior to the date of this Agreement.

Section 5.04. Goods and Services not Financed under Loan.

Goods and services procured for the Project, but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 5.05. Implementation of Procurement Requirements.

The definitions applicable to the eligibility requirements of Sections 5.01, 5.02, and 5.04 will be set forth in detail in Implementation Letters.

Section 5.06. Plans, Specifications and Contracts.

(a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D. promptly upon preparation, all plans, specifications, construction schedules, bid documents and contracts relating to the Project and any modifications therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all the plans, specifications, construction schedules, furnished pursuant to subsection (a) above shall be approved by A.I.D. in writing.

(c) Except as A.I.D. may otherwise agree in writing, all bid documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. All plans, specifications and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) The following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution:

- (i) contracts for engineering and other professional services;
- (ii) contracts for construction services;
- (iii) contracts for such other services as A.I.D. may specify; and
- (iv) contracts for such equipment and materials as A.I.D. may specify.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing the contractor and such contractor personnel as A.I.D. may specify. Material modifications in any of such contracts and changes in any such personnel shall also be approved by A.I.D. in writing prior to their becoming effective.

(e) Consulting firms used by the Borrower for the Project but not financed under the Loan, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Borrower for the Project but not financed under the Loan shall be acceptable to A.I.D.

Section 5.07. Reasonable Price. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in the Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in the Implementation Letters.

Section 5.08. Employment of Third Country Nationals Under Construction Contracts. The employment of personnel to perform services under construction contracts financed under the Loan shall be subject to requirements with respect to third-country nationals prescribed in the Implementation Letters.

Section 5.09. Shipping and Insurance.

(a) Goods financed under the Loan shall be transported to Malawi on flag carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) Unless A.I.D. shall determine that privately-owned United States-flag commercial vessels are not available at a fair and reasonable rate for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods financed under the Loan, computed separately for dry bulk carriers, dry cargo liners and tankers, and transported on ocean vessels shall be transported on privately-owned United States flag commercial vessels, and (ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported on dry cargo liners shall be paid to or for the benefit of privately-owned United States commercial vessels;

(c) No such goods may be transported on any ocean vessel (or aircraft), (i) which A.I.D., in a notice to the Borrower, has designated as ineligible to carry A.I.D. financed goods, or (ii) which has been chartered for the carriage of A.I.D. financed goods unless such charter has been approved by A.I.D.

(d) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, Malawi, by statute, decree, rule or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, goods procured from the United States and financed under the Loan shall during the continuance of such discrimination be

insured against marine risks in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America;

(e) Unless A.I.D. otherwise agrees in writing, Borrower shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms consistent with sound commercial practice and cover the full value of the goods, and the proceeds thereof shall be payable in United States dollars or in other freely convertible currency. Any indemnification received by Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse Borrower for the replacement or repair of such goods. Any such replacement shall have their source and origin as specified in Sections 5.01 or 5.02 and otherwise be subject to the provisions of this Agreement.

Section 5.10. Notification to Potential Suppliers. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

Section 5.11. United States Government-Owned Excess Property. The Borrower shall utilize, with respect to goods financed under the Loan to which the Borrower takes title at the time of procurement, such reconditioned United States Government-owned excess property as may be consistent with requirements of the Project and as may be available within a reasonable period of time. The Borrower shall

seek assistance from A.I.D. and A.I.D. will assist the Borrower in ascertaining the availability of and in obtaining such excess property. A.I.D. will make arrangements for any necessary inspection of such property by the Borrower or its representative. The cost of inspection and of acquisition, and all charges incident to the transfer to the Borrower of such excess property, may be financed under the Loan. Prior to the procurement of any goods, other than excess property, financed under the Loan and after having sought such A.I.D. assistance, the Borrower shall indicate to A.I.D. in writing, on the basis of information then available to it, either that such goods cannot be made available from reconditioned United States Government-owned excess property on a timely basis or that the goods that can be made available are not technically suitable for use on the Project.

Section 5.12. Information and Marking. The Borrower shall give publicity to the Loan and the Project as a program of United States aid, identify the Project site, and mark goods financed under the Loan, as prescribed in the Implementation Letters.

ARTICLE VI

DISBURSEMENTS

Section 6.01. Disbursement for Foreign Exchange Costs - Letters of Commitment to United States Banks. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specific amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through

the use of Letters of Credit or otherwise, for Foreign Exchange costs of goods and services provided for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

Section 6.02. Disbursement for Local Currency Costs. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by A.I.D. of local currency for Local Currency Costs of goods and services procured for the Project, in accordance with the terms and conditions of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D., at its option, may make such disbursements from Malawi local currency owned by the United States Government or obtained by A.I.D. with United States dollars.

The United States dollar equivalent of the local currency made available hereunder will be the amount of United States dollars required by A.I.D. to obtain Malawi currency if purchased; or if otherwise obtained, the dollar equivalent of the funds disbursed on the date of disbursement using the most favorable exchange rate to the dollar then lawfully existing in Malawi.

Section 6.03. Other Forms of Disbursement. Disbursements of the Loan may be made through such other means as the Borrower and A.I.D. may agree to in writing.

Section 6.04. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur:

(a) In the case of disbursements pursuant to Section 6.01 on the date on which A.I.D. makes a disbursement to the Borrower, to its designee or to a banking institution pursuant to a Letter of Commitment, and

(b) in the case of disbursements pursuant to Section 6.02, on the date on which A.I.D. disburses the local currency to the Borrower or its designee.

Section 6.05. Terminal Date for Disbursement. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for by another form of disbursement under Section 6.03, or amendment thereto shall be issued in response to requests received by A.I.D. after December 31, 1977, and no disbursement shall be made against documentation received by A.I.D. or any bank described in Section 6.01 after June 30, 1978. A.I.D. at its option, may at any time or times after June 30, 1978, reduce the Loan by all or any part thereof for which documentation was not received by such date.

ARTICLE VII

CANCELLATION AND SUSPENSION

Section 7.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan, (i) which, prior to the giving of such

notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not been utilized through the issuance of irrevocable Letters of Credit.

Section 7.02. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

(a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;

(b) The Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the obligation to carry out the Project with due diligence and efficiency;

(c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D., or any of its predecessor agencies, then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 7.03. Suspension of Disbursements. In the event that at any time:

- (a) An Event of Default has occurred;

(b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its obligations under this Agreement; or

(c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(d) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies;

Then A.I.D. may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents;
- (iv) at A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D., if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from the Principal.

Section 7.04. Cancellation by A.I.D. Following any suspension of disbursements pursuant to Section 7.03, if the cause or causes for

such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 7.05. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursements or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

Section 7.06. Refunds.

(a) In the case of any disbursement not supported by valid documentation in accordance with the terms of the Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D. notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States dollars to A.I.D. within thirty (30) days after receipt of a request therefor. However, in the event that such disbursement was originally made in local currency and if A.I.D. determines that the amount of such refund can be used to pay the Local Currency Costs of other goods and services approved for financing under the Loan, A.I.D. will accept such refund in local currency. Refunds under this Section shall be made available first for the cost of goods and services procured for the Project hereunder, to the extent justified; the

remainder, if any, shall be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursements under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan shall be reduced by the amount of such remainder.

Section 7.07. Expenses of Collection. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 7.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 7.08. Nonwaiver of Remedies. No delay in exercising or omission to exercise any right, power or remedy accruing to A.I.D.

under this Agreement shall be construed as a waiver of any of such rights, powers or remedies.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Communications. Any notice, request, document or other communication given, made or sent by the Borrower or A.I.D. pursuant to this Agreement shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable or radio-gram at the following addresses:

To Borrower:

Mail Address: Secretary to the Treasury
P. O. Box 53
Zomba, Malawi

Cable Address: FINANCE ZOMBA, MALAWI

TO A.I.D.:

Mail Address: Director, REDSO/EA
c/o U.S. Embassy
P. O. Box 30261
Nairobi, Kenya

Cable Address: U.S. EMBASSY, NAIROBI

Borrower, in addition, shall provide the U.S. Embassy in Malawi with a copy of each communication sent to A.I.D. Other addresses may be substituted for the above upon the giving of notice. All notices, requests, communications and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 8.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of the Secretary to the Treasury and A.I.D. will be represented by the individual holding or acting in the office of the Director, Regional Economic Development Services Office/East Africa (REDSO/EA) in Nairobi. Such individuals shall have authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

Section 8.03. Implementation Letters. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

Section 8.04. Promissory Notes. At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or other evidence of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

Section 8.05. Termination Upon Full Payment. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligation of the Borrower and A.I.D. under this Loan Agreement shall terminate.

IN WITNESS WHEREOF, Borrower and the United States of America, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

GOVERNMENT OF THE REPUBLIC OF MALAWI

BY

D. J. Materije

TITLE Minister of Finance

UNITED STATES OF AMERICA

BY

James P. Lahn

TITLE Charge d'Affaires ad interim

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UNITED STATES OF AMERICA
AGENCY FOR INTERNATIONAL DEVELOPMENT
EAST AFRICA REGIONAL ECONOMIC DEVELOPMENT SERVICES OFFICE

UNITED STATES POSTAL ADDRESS
NAIROBI (ID)
DEPARTMENT OF STATE
WASHINGTON, D. C., 20520

INTERNATIONAL POSTAL ADDRESS
POST OFFICE BOX 30261
NAIROBI, KENYA

R - A

November 14, 1977

Mr. C. L. Mphande
Secretary to the Treasury
Box 30049
Lilongwe, Malawi

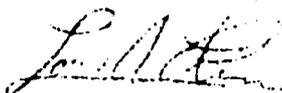
Subject: A.I.D. Loan 690-W-006 (690)1231(0046)
Malawi Roads Phase II
Lilongwe-Mchinji Road
Implementation Letter No. 6

Dear Mr. Mphande:

In response to your letter dated 8 October 1977, we are pleased to advise that a Direct Reimbursement Authorization (DRA) in the amount of \$2,500,000 has been established under the subject loan. A.I.D. will reimburse 50 percent of the eligible local costs of vouchers submitted by Daniel, Mann, Johnson and Mendenhall (DMJM) and Nello Teer Co., the supervision and construction contractors respectively, until the Government of Malawi (GOM) Kwacha 1,870,200 cash contribution is achieved. Thereafter, A.I.D. will reimburse at a rate of 100 percent. Items which are ineligible for financing under A.I.D.'s DRA or from the GOM's cash contribution are presented in Section 4.10 of the Loan Agreement. These items constitute the GOM's in-kind contribution.

If you have any questions relating to this arrangement, we will be pleased to discuss them with you.

Sincerely yours,



Louis A. Cohen
Director

UNITED STATES OF AMERICA
AGENCY FOR INTERNATIONAL DEVELOPMENT
EAST AFRICA REGIONAL ECONOMIC DEVELOPMENT SERVICES OFFICE

UNITED STATES POSTAL ADDRESS
NAIROBI (ID)
DEPARTMENT OF STATE
WASHINGTON, D. C., 20520

INTERNATIONAL POSTAL ADDRESS
POST OFFICE BOX 30261
NAIROBI, KENYA

May 18, 1978

Mr. C. L. Mphande
Secretary to the Treasury
Box 30049
Capital City
Lilongwe, Malawi

Subject: A.I.D. Loan 690-W-006
Malawi Roads Phase II
Implementation Letter No. 8

Dear Mr. Mphande:

The purpose of this Implementation Letter is to indicate what must be done to implement the survey and design of the Lilongwe connector roads, and the construction of the Northern Lilongwe connector road, which were authorized under the First Amendment to Loan Agreement 690-W-006, executed by your Government and the Government of the United States of America on May 17, 1978.

Before requesting disbursement of loan funds for the purposes stated above, the Borrower (Government of the Republic of Malawi) shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

1. An executed contract amendment for the survey and design of the Lilongwe connector roads and the supervision of construction of the Northern Lilongwe connector road. We understand that you intend to amend the current Daniel, Mann, Johnson & Mendenhall contract for this purpose.

2. An executed contract amendment for the construction of the Northern Lilongwe connector road. We understand that you intend to amend the Nello L. Teer contract for this purpose.

3. A detailed financial plan to show the planned utilization of the A.I.D. loan funds and the Government of the Republic of Malawi's contributions. This financial plan should detail the cost of:

- (a) the construction and supervision of the Lilongwe-Mchinji road to complement
- (b) the design of the two Lilongwe connector roads and
- (c) the construction and supervision of the Northern Lilongwe connector roads.

The financial plan should contain analysis and justification for any contract cost increase.

4. An implementation plan to show the current completion date for the Lilongwe-Mchinji road and the start and completion date of the Northern Lilongwe connector road.

In order to complete this project within the terminal disbursement date established for this loan, the above four stated conditions precedent, prior to request for disbursement, shall be fulfilled within thirty (30) days after the date that the First Amendment was executed, i.e., prior to June 16, 1978.

For the purpose of providing adequate time for the preparation and execution of the necessary contracts and to process the reimbursement requests, the terminal date after which A.I.D. or any bank will not accept request for disbursement is hereby changed from June 30, 1978 as established by Implementation Letter No. 7 to June 30, 1979.

For the purpose of providing adequate time for construction and the processing of final invoices, the terminal disbursement date of the loan as stated in Section 6.05 of the Loan Agreement, is hereby changed to June 30, 1979.

We wish to bring your attention to the fact that the original Loan Agreement was executed on July 31, 1974 and that by extending the terminal disbursement date to June 30, 1979, the "life" of this project is now one month short of five years. We urge you to impress upon those responsible for project execution, that the project must be completed and final invoices processed by June 30, 1979. To extend this project beyond five years would be extremely difficult

to justify and could only be approved by AID/Washington. It is thus critical that all parties involved in the execution of this project, the Ministry of Works and Supplies, your consultants and contractor, agree that nine months beginning July 1, 1978 is adequate time to complete the project and that this be so reflected in the contract amendments.

If you have any questions or comments relating to this Implementation Letter, I suggest that the Ministry of Works and Supplies personnel contact our REDSO office directly.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert H. Bell".

Robert H. Bell
Acting Director