

Date 21st November, 2001

BOUYGUES TRAVAUX PUBLICS

as Shareholder

- and -

TRANSJAMAICAN HIGHWAY LIMITED

as Developer

and

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

as Grantor

SHAREHOLDER'S EQUITY UNDERTAKING

INDEX

Clause		Page
1.	DEFINITIONS AND INTERPRETATION	2
2.	OBLIGATION TO SUBSCRIBE	5
3.	NATURE OF SUBSCRIPTIONS	6
4	DISTRIBUTIONS	7
5	CASH WATERFALL	7
7	NEW SHAREHOLDERS	9
9.	LAW AND JURISDICTION	10

THIS SHAREHOLDER'S EQUITY UNDERTAKING is made the 21st day of November, 2001

BETWEEN:

- (1) **BOUYGUES TRAVAUX PUBLICS** (a company duly incorporated under the Laws of France) (the "**Shareholder**")
- (2) **TRANSJAMAICAN HIGHWAY LIMITED** (a company duly registered under the Jamaican Companies Act) with registered offices by Hart, Muirhead Fatta, 2 St Lucia Avenue, Kingston 5, Jamaica, (the "**Developer**"); and
- (3) **NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED** a company wholly owned by the Government of Jamaica with registered offices at 11a-15 Oxford Road, Kingston 5, Jamaica (the "**Grantor**"); and

WHEREAS

- (A) The Grantor has, on the date hereof, entered into a Concession Agreement with the Developer for the design, construction, operation, maintenance and financing of the Highway 2000 toll road in Jamaica.
- (B) The Project is to be implemented in Phases described as the Early Project, Phase 1A and Phase 1B.
- (C) The Shareholder wishes to subscribe for Equity in the Developer in an amount of up to US\$40,500,000 without deduction for any amount of tax to assist in the funding of the implementation of the Project including US\$15,000,000 without deduction for any amount of tax in respect of the Early Project Construction Works; US\$5,000,000 with respect to the remainder of Phase 1A and US\$ 20,500,000 without deduction for any amount of tax in respect of the Phase 1B Construction Works, to be subscribed upon and subject to the terms and conditions contained in this Agreement.
- (D) The parties to this Agreement ("**Parties**") have agreed the funding mechanism in Clause 24A of the Concession Agreement.

WHEREBY IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

"Cash Available" has the meaning given in Clause 5 hereof;

"Cash Available for Distributions" means with respect to any Payment Period the Cash Available less the interest and principal payment due under the GPD Loan Agreement and the interest and principal payment due under the Subordinated Debt Agreement for that period.

"Cash Available for GPD and Subordinated Debt Service" has the meaning given in Clause 5 hereof;

"Cash Available for GPD Debt Service" has the meaning given in Clause 5;

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

"Distributions" means dividends or other similar distributions;

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

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

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

"First Distribution Date" has the meaning set out in Clause 4.2;

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

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

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

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

"Subscription" means the principal amount of each payment which the Shareholder shall pay to the Developer pursuant to Clause 4 hereof and Clause 24A of the Concession Agreement, or the principal amount outstanding of that payment;

"Subscription Date" means the date a Subscription is subscribed.

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

1.4 In this Agreement:

- (a) Clause headings are inserted for convenience only and shall not affect the construction of this Agreement and unless otherwise specified, all references to Clauses and Appendices are to Clauses of, and Appendices to, this Agreement;
- (b) unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
- (c) references to persons include bodies corporate and unincorporate;

- (d) references to assets include property, rights and assets of every description;
- (e) references to any document are to be construed as references to such document as amended, supplemented or re-stated from time to time; and
- (f) references to any enactment include re-enactments, amendments and extensions thereof.

2. OBLIGATION TO SUBSCRIBE

2.1 The Developer shall be entitled to receive and the Shareholder agrees with the Developer and the Grantor to make Subscriptions for ordinary shares in the Developer up to a maximum aggregate principal amount of US\$15,000,000 (Fifteen Million United States Dollars) without deduction for any amount of tax with respect to the Early Project and the Early Studies ("**Early Project Subscription Commitment**"), up to a maximum aggregate principal amount of US\$5,000,000 (Five Million, United States Dollars) without deduction for any amount of tax with respect to the remainder of Phase 1A (the "**Phase 1A Subscription Commitment**") and (subject to the occurrence of Financial Close 1B) a maximum aggregate principal amount of US\$20,500,000 (Twenty Million, Five Hundred Thousand United States Dollars) without deduction for any amount of tax with respect to Phase 1B (the "**Phase 1B Subscription Commitment**"), subject to the terms and conditions contained in this Agreement.

2.2 The Shareholders will deliver to the Developer immediately prior to:

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

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

2.3 The liabilities of the Shareholder under this Agreement are subject to the conditions that:

- (a) the Shareholder will have received a Monthly Certificate not later than 5 Business Days before the proposed date of the Subscription;
- (b) no Termination Event will have occurred or would occur as a result of the Subscription, and no event shall have occurred which entitles the Grantor to issue a Grantor Termination Notice under the Concession Agreement;

- (c) no amount payable under the GPD Loan Agreement with respect to a previous Monthly Certificate is due and not paid.
- 2.4 The liability of the Shareholder to subscribe for the Early Project Subscription Commitment is subject to the Grantor having satisfied the EFC Grantor Conditions Subsequent not later than 5 Business Days before the proposed date of the EFC First Payment;
- 2.5 The liability of the Shareholder to subscribe for the Phase 1A Subscription Commitment is subject to the Grantor having satisfied the Phase 1A Grantor Conditions Subsequent not later than 5 Business Days before the proposed date of the first Subscription for Phase 1A; and
- 2.6 The liability of the Shareholder to subscribe for the Phase 1B Subscription Commitment is subject to the Grantor having satisfied the Phase 1B Grantor Conditions Subsequent not later than 5 Business Days before the proposed date of the Phase 1B First Payment;

3. NATURE OF SUBSCRIPTIONS

3.1 Timing: Each Subscription will be made by the Shareholders to the Developer as follows:

- (a) with respect to the Preliminary Payment, within ten (10) Business Days after the execution of the Concession Agreement; and
- (b) with respect to the EFC First Payment and the FC1B First Payment, within five (5) Business Days after the Early Financial Close and Financial Close 1B respectively; and
- (c) with respect to each Monthly Payment, within 5 Business Days after receipt by the Shareholders of the relevant Monthly Certificate.

3.2 Amount:

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

3.3 Currency:

The whole amount of each Subscription shall be paid in US Dollars.

3.4 Majority Shareholder:

The Shareholder undertakes with the Grantor to remain the majority shareholder in the Developer until the earlier of the date falling two years after the Phase 1B Handover Date or four years after the Phase 1A Handover Date.

4 DISTRIBUTIONS

4.1 Distribution:

- (a) Without prejudice to the operation of Clause 33 of the Concession Agreement, Distributions may not be made by the Developer to the extent that they conflict with the provisions of this Agreement.
- (b) The first Distribution shall be paid (provided this is permissible under Jamaican law) on the First Distribution Date and each Distribution thereafter shall be paid on 30th November and 30th May in each year thereafter together with interest accrued due to the date of payment in an amount equal to the Cash Available for Distributions for that Payment Period.

4.2 Commencement and Subordination:

- (a) The First Distribution shall be due and payable on the Phase 1A Handover Date (the "**First Distribution Date**").
- (b) For the avoidance of doubt and without prejudice to the provisions of the Concession Agreement, in no Payment Period shall Distributions paid by the Developer exceed 50% of the Cash Available for that period for as long as the sums due under the GPD Loan Agreement and/or the Subordinated Debt Agreement remain outstanding.

5 CASH WATERFALL

The Shareholders, the Grantor and the Developer hereby agree that with respect to each Payment Period, the Developer shall apply Cash in the following order of priority:

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

- (2). Operating Expenditure and taxes (if any) which is due and payable in that Payment Period;
- (3) interest, principal and other amounts under the Financing Agreements which is due and payable in that Payment Period;
- (4) amounts required to fund or to restore the required balance of any debt service reserve and maintenance reserve under the Financing Agreements and the repayment of any amounts drawn under the Grantor Working Capital Reserve Agreement each of which is due and payable in that Payment Period;
- (5) Capital Expenditure incurred with respect to Expansion Schemes which is due and payable in that Payment Period

To the extent that there is any Cash left after the liabilities set out in items (1) - (5) above have been satisfied, ("**Cash Available**"), 50% will be used to pay Distributions to Shareholders of the Developer (without prejudice of Clause 33.3 of the Concession Agreement) until full payment of the interest and principal payment due under the GPD Loan Agreement and the interest and principal payment due under the Subordinated Debt Agreement. The remaining 50% ("**Cash Available for GPD and Subordinated Debt Service**") is to be applied in the following order:

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

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

- (7) payment of interest under the GPD Loan Agreement which is due and payable in that Payment Period and (after repayment of the principal under the Financing Agreements), repayments of principal under the GPD Loan Agreement which is due and payable in that Payment Period.

6 TERMINATION

- 6.1** Upon vesting of the Toll Road in the Grantor and the other events set out in Clause 32 of the Concession Agreement occurring after termination of the Concession Agreement, this Agreement shall terminate forthwith.

6.2 Events: The termination of the Concession Agreement and the occurrence of an Insolvency Event shall each constitute a Termination Event under this Agreement.

6.3 Consequences: Immediately on, or at any time after the occurrence of a Termination Event, the Shareholder may, by written notice to the Developer and the Grantor, terminate all or any of its liabilities to the Developer and/or the Grantor.

7 NEW SHAREHOLDERS

If, pursuant to Clause 33 of the Concession Agreement, the Shareholder transfers any shares in the Developer, and if the transferee ("**Transferee**") is a company having an equal or better credit standing in comparison with the Shareholder, then the Grantor, the Developer, the Shareholder and the Transferee shall enter into such arrangements as are necessary at no expense to the Grantor or the Developer, to transfer to the Transferee obligations under this Agreement as are proportionate to the percentage of shares in the Developer which it has acquired.

8. COMMUNICATIONS

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

(a) in the case of the Developer: Mr Pascal Radde
c/o Hart Muirhead Fatta,
2 St Lucia Avenue, 3rd floor
Kingston 5, Jamaica

(b) in the case of the Shareholders: The General Secretary
Challenger - 1,
av. Eugene Freyssinet
Guyancourt
78065 St-Quentin-en-Yvelines
Cedex
France

(c) in the case of the Grantor:

Dr Wayne Reid
11a-15 Oxford Road
Kingston 5, Jamaica

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

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

9. LAW AND JURISDICTION

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

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

9.3 Disputes: The provisions of Clause 47 (Dispute Resolution and Expert Determination) 48 (Arbitration) and 49 (Joinder) of the Concession Agreement are applicable *mutatis mutandis* to this Agreement as if they were incorporated herein in full.

9.4 Enforcement

With respect to any proceedings for enforcement of an award pursuant to Clause 9.3 against assets of either Party brought in the courts of England:

- (a) the Grantor appoints the High Commissioner of Jamaica in England at 1 Prince Consort Road, London SW7 2BZ, to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings.
- (b) the Shareholder and the Developer shall each appoint an agent (to be notified in writing to the Grantor by not later than Early Financial Close) to

receive for and on its behalf service of process in the United Kingdom in any such enforcement proceedings.

- (c) each Party agrees to maintain in England duly appointed process agents, notified to the other Party, for the purpose of Clause 9.3.
- (d) each Party agrees that failure by any such process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

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

SIGNED by Mr. Christian GAZAIGNES
on behalf of
BOUYGUES TRAVAUX PUBLICS

in the presence of:
Mr. Thibault Cheyroud
Witness

SIGNED by Mr. Pascal Radde]
on behalf of
TRANSJAMAICAN HIGHWAY LIMITED

in the presence of:
Mr. Emmanuel Rollin
Witness

SIGNED by Mr. Kingsley Thomas and Dr. Wayne Reid
on behalf of
NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

in the presence of:
Miss Candice Rochester
Witness