

STEP-IN SECURITY AGREEMENT

DATED 2002

BETWEEN

TRANSJAMAICAN HIGHWAY LIMITED

- and -

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

ALLEN & OVERY

London
PG:222243.6

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THIS DEED is dated

2002 between:

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED a company wholly owned by the Government of Jamaica (the "**Grantor**"); and

TRANSJAMAICAN HIGHWAY LIMITED (a company duly registered under the Jamaican Companies Act), with its registered office at 50, Knutsford Boulevard, 2nd Floor, Kingston 5, Jamaica (the "**Developer**").

BACKGROUND:

- (A) The Developer enters into this Deed in connection with the Concession Agreement (as defined below).
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"Concession Agreement"

means the Agreement dated 21st November, 2001 entered into by the Developer and the Grantor for the design, construction, operation, maintenance and financing of the Highway 2000 toll road.

"Enforcement Event"

means the occurrence of any event which entitles the Grantor to terminate the Concession Agreement.

"Insolvency Event"

has the meaning it is given in the Concession Agreement.

"Secured Liabilities"

means all present and future payment obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Developer to the Grantor under each Grantor Document. The term "Concession Agreement" includes all amendments and supplements to the Concession Agreement.

"Security Assets"

means all assets, undertaking and rights, both present and future, of the Developer including, without limitation, all of the Developer's rights pursuant to the Grantor Documents.

"Security Period"

means the period beginning on the date of this Deed and ending on the date on which the Grantor has confirmed in writing (such confirmation not to be unreasonably withheld or delayed) that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

1.2 Construction

- (a) Capitalised terms defined in the Concession Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.
- (b) The provisions of Clause 1 (Interpretation) of the Concession Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Concession Agreement are to be construed as references to this Deed.
- (c) If an amount paid by the Developer to the Grantor under a Grantor Document is capable of being avoided or otherwise set aside on the liquidation or administration of the Developer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

2. FLOATING CHARGE**2.1 Creation of floating charge**

- (a) The Developer, as security for the payment of all of the Secured Liabilities, charges in favour of the Grantor by way of a floating charge all of the Security Assets, subject to the security hereby created being subordinated in point of priority to any security granted by the Developer pursuant to any Financing Agreement.
- (b) The Grantor undertakes that it will, at the reasonable request of any lender under the Phase 1A Financing Agreements or Phase 1B Financing Agreements, enter into subordination arrangements which are substantially similar to the arrangements which apply in relation to its rights hereunder with respect to the Bridging Financing Agreements, for the purposes of the Phase 1A Financing Agreements or Phase 1B Financing Agreements as the case may be.

2.2 Conversion

The Grantor may by notice to the Developer on the occurrence of an Enforcement Event or an Insolvency Event convert the floating charge created by this Deed into a fixed charge as regards all or any of the Developer's assets specified in the notice.

3. REPRESENTATIONS AND WARRANTIES**3.1 Representations and Warranties**

The Developer makes the representations and warranties set out in this Clause 3 to the Grantor.

3.2 Concession Agreement

The Developer hereby represents and warrants to the Grantor on the same terms as it represents and warrants to the Grantor in the Concession Agreement as if those provisions were set out in full herein.

3.3 Security

Subject to applicable law, this Deed creates those security interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Developer or otherwise.

3.4 Times for making representations and warranties

The representations and warranties set out in this Clause 3 are made on the date of this Deed and are deemed to be repeated by the Developer on each date during the Security Period with reference to the facts and circumstances then existing.

4. NEGATIVE PLEDGE

Throughout the Security Period, the Developer shall not, without the Grantor's consent, create or permit to subsist any Security Interest on any Security Asset other than any Security Interest created by this Deed or any Security Interest created pursuant to the Financing Agreements.

5. WHEN SECURITY BECOMES ENFORCEABLE

The security constituted by this Deed shall become immediately enforceable upon the occurrence of an Enforcement Event or an Insolvency Event. Subject to clause 2.1 above, after the security constituted by this Deed has become enforceable, the Grantor may in its absolute discretion enforce all or any part of the security in any manner it sees fit, subject to the rights of the Lenders under the Financing Agreements.

6. APPLICATION OF PROCEEDS

Any moneys received by the Grantor after the security constituted by this Deed has become enforceable shall be applied in the following order of priority (but without prejudice to the right of the Grantor to recover any shortfall from the Developer):

- (a) in satisfaction of or provision for any costs and expenses incurred by the Grantor with respect to which the Developer has an obligation under any Grantor Document to reimburse or indemnify the Grantor;
- (b) in or towards payment of the Secured Liabilities or such part of them as is then due and payable; and
- (c) in payment of the surplus (if any) to the Developer or other person entitled to it.

7. EXPENSES AND INDEMNITY

The Developer shall forthwith on demand pay all costs and expenses (including legal fees) incurred in connection with the enforcement of the provisions of this Deed by the Grantor or any attorney, manager, agent or other person appointed by the Grantor under this Deed, and

keep each of them indemnified against any failure or delay in paying the same. Each party shall bear its own legal fees in connection with the preparation of this Deed.

8. DELEGATION

The Grantor may delegate by power of attorney or otherwise by instrument in writing (a copy of which shall be delivered to the Developer) to any person any right, power or discretion exercisable by them under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate, by instrument in writing, a copy of which shall be delivered to the Developer) and subject to any regulations which the Grantor may think fit.

9. FURTHER ASSURANCES

The Developer shall, at its own expense, take whatever action the Grantor may require for:

- (a) perfecting or protecting the security intended to be created by this Deed over any Security Asset;
- (b) facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable, by the Grantor or any of its delegates or sub-delegates in respect of any Security Asset,

including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Grantor or to its nominees, and the giving of any notice, order or direction and the making of any registration, which in any such case, the Grantor may think expedient, subject however in all respects to the provisions of clause 2.1 above.

10. POWER OF ATTORNEY

The Developer, by way of security, irrevocably and severally appoints the Grantor and any of its delegates or sub-delegates to be its attorney to take any action which the Developer is obliged to take under this Deed, including under Clause 9 (Further Assurances). The Developer ratifies and confirms whatever any attorney does pursuant to its appointment under this Clause.

11. MISCELLANEOUS

11.1 Covenant to pay

The Developer shall pay or discharge the Secured Liabilities in the manner provided for in the relevant Grantor Document.

11.2 Continuing security

The security constituted by this Deed is continuing and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

11.3 Additional security

The security constituted by this Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Grantor for any Secured Liability.

11.4 Waiver of defences

- (a) During the Security Period the liability of the Developer will not be affected by any act, omission, circumstance, matter or thing which but for this provision would release or prejudice any of its obligations hereunder or prejudice or diminish such obligations in whole or in part, including without limitation and whether or not known to the Developer, the Grantor or any other person whatsoever:
- (i) any time or waiver granted to, or composition with, the Developer or any other person; or
 - (ii) the taking, variation, compromise, exchange, renewal or release or refusal or neglect to perfect, take up or enforce any rights against, or security over the assets of any the Developer or any other person or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any other security; or
 - (iii) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of, the Developer or any other person; or
 - (iv) any variation (however fundamental) or replacement of the Concession Agreement or any other document or security; or
 - (v) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any other document or security, to the intent that the Developer's obligations under this Deed shall remain in full force, and this Deed be construed accordingly, as if there were no unenforceability, illegality or invalidity; or
 - (vi) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Developer under the Concession Agreement resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Developer's obligations under this Deed be construed as if there were no such circumstance.

The Grantor shall not be concerned to see or investigate the powers or authorities of the Developer or its respective officers or agents.

11.5 Immediate recourse

The Developer waives any right it may have of first requiring the Grantor to proceed against or enforce any other rights or security or claim payment from any other person before enforcing the security constituted hereby.

11.6 Appropriations

Until all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full the Grantor may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of the Secured Liabilities or apply (subject to clause 6 above) and enforce the same in such manner and order as it sees fit (whether against the
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Secured Liabilities or otherwise) and the Developer shall not be entitled to the benefit of the same; and

- (b) hold in a suspense account any moneys received from the Developer or on account of the Developer's liability in respect of the Secured Liabilities. Amounts standing to the credit of any such suspense account shall bear interest at a fair market rate.

11.7 Reinstatement

- (a) Where any discharge (whether in respect of the obligations of the Developer or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Developer under this Deed shall continue as if the discharge or arrangement had not occurred.
- (b) The Grantor may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

12. RELEASE

Upon the expiry of the Security Period (but not otherwise), the Grantor shall, at the request and cost of the Developer, take whatever action is necessary to release the Security Assets from the security constituted by this Deed.

13. COUNTERPARTS

This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

14. NOTICES

14.1 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
50 Knutsford Boulevard, 2nd Floor
Kingston 5, Jamaica
- (b) in the case of the Grantor: Dr Wayne Reid
11a-15 Oxford Road
Kingston 5, Jamaica
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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.

15. ENGLISH LANGUAGE

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

16. GOVERNING LAW

This Agreement is governed by Jamaican law.

17. ENFORCEMENT

17.1 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.

17.2 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.

17.3 Enforcement

With respect to any proceedings for enforcement of an award pursuant to Clause 17.1 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 Developer appoints Bouygues UK Ltd of Elisabeth House, 39 York Road London SE1 7NQ to receive for and on its behalf service of process in such jurisdiction 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 17.1.
- (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.

This Deed has been entered into as a deed on the date stated at the beginning of this Deed.

SIGNATORIES

THE COMMON SEAL of)
TRANSJAMAICAN HIGHWAY)
LIMITED was)
affixed to this deed in the)
presence of)

Director

Director/Secretary

The Grantor

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

By:
