

17

No. 20 OF 1971

In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

THE CROSS-HARBOUR TUNNEL COMPANY LIMITED *Appellants*

AND

THE COLLECTOR OF STAMP REVENUE *Respondent*

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
10 MAY 1973
25 RUSSELL SQUARE
LONDON W.C.1

Solicitors for the Respondent.

Solicitors for the Appellants.

No. **20** OF **1971**
..... of 197.....

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ON APPEAL

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BETWEEN

THE CROSS-HARBOUR TUNNEL COMPANY LIMITED Appellants

AND

THE COLLECTOR OF STAMP REVENUE Respondent

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IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

STAMP APPEAL NO.1 OF 1970

In the Supreme Court of Hong Kong Original Jurisdiction

BETWEEN

No. 1 Case Stated

THE CROSS-HARBOUR TUNNEL COMPANY LIMITED Appellants

AND

THE COLLECTOR OF STAMP REVENUE Respondent

No. 1

CASE STATED

20

1. By an Agreement (a copy of which is annexed hereto and marked Exhibit No.1) dated the 17th July, 1969 and made between Lloyds Bank Limited (hereinafter called "Lloyds") of the one part and The Cross-Harbour Tunnel Company Limited (hereinafter called "the Tunnel Company") of the other part it was agreed inter alia:-

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continued*

- (a) By Clause 1(A)(6) that for the purpose of Exhibit No.1 and the Appendices thereto "Debenture" meant the charge to be executed by the Tunnel Company in favour of Lloyds in the form set out in Appendix H to Exhibit No.1.
- (b) By Clause 2 thereof that Lloyds would make sums not exceeding £14,750,000 available to the Tunnel Company from time to time by the purchase of the Tunnel Company's Promissory Notes (hereinafter called "the Notes").
- (c) By Clause 3 thereof that the Tunnel Company would make the Notes payable in sterling in London to the order of Lloyds. 10
- (d) By Clause 4A(1)(f) that it was a condition which must have been fulfilled to the satisfaction of Lloyds before any Note would be purchased in the manner provided in Exhibit No.1 and sums made available to the Tunnel Company under Exhibit No.1 that the Tunnel Company should have provided Lloyds with the Debenture duly stamped and registered in accordance with the Laws of Hong Kong.
- (e) By Clause 21(1) that the execution and performance of Exhibit No.1 should be carried out in London and governed by and construed in accordance with English Law. 20

2. On the 11th August, 1969 the Tunnel Company executed the Debenture which was described as a collateral security to secure liability under certain promissory notes to the extent of £14,750,000 (a copy of which is annexed hereto and marked Exhibit No.2).

3. On the same day the Debenture was presented by the Appellants to the Collector of Stamp Revenue (hereinafter referred to as "the Collector") under the provisions of section 17 of the Stamp Ordinance for the opinion of the Collector as to the amount of duty with which it is chargeable.

3A. On the 24th July 1969 the Notes in the form set out in Appendix B as particularized in Appendix C Exhibit 1 were issued and deposited with Lloyds pursuant to clause 3(3) of Exhibit 1. 30

3B. On the 11th August 1969 Appendix D, E, and F were executed.

3C. On the 17th July 1969 Appendix G was executed by each of the Subscribers.

4. On the 13th August, 1969 the Collector assessed the duty with which the Debenture is chargeable as follows:-

Under Head 37(1) in the Schedule to the Stamp Ordinance,
Cap.117 £14,750,000 at \$14.55 per £ = HK\$214,612,500 @ 20c
per \$100 or part thereof \$429,225.

5. On the same day the Appellants paid to the Collector the sum of \$429,225 in satisfaction of the duty as aforesaid.

6. On the 2nd September, 1969 being dissatisfied with the assessment the Appellants appealed against the assessment in accordance with section 18 of the Ordinance.

7. On the 6th December, 1969 Messrs. Johnson, Stokes and Master, as Solicitors for the Appellants, formally required the Collector to state and sign a case.

8. I, the Collector, am of the opinion that:—

- 10 (a) It is a question of fact as to whether the Debenture is a principal security or a collateral security.
- (b) The Debenture, which by Clause 1(a) thereof created a liability on the Tunnel Company to repay to Lloyds a sum not exceeding £14,750,000, comes first in time before any notes are issued or purchased by Lloyds. In other words at the time of the execution of the Debenture there was no existing liability to be backed up or for which the Debenture could be a collateral security.
- 20 (c) Even when the Notes were purchased Lloyds could not sue on them in Hong Kong. There never would be any security other than the Debenture existing in Hong Kong which could be realised or enforced by Lloyds.
- (d) The Debenture cannot be stamped as a deed with \$20 under Head 23, as this head of charge applies to a deed of any kind whatsoever not described in the Schedule to the Ordinance.
- (e) The Debenture, being the principal security in pursuance of the financial arrangement under the said agreement, is therefore chargeable with duty under Head 37(1).

9. The Appellants having duly expressed their dissatisfaction with my decision as being erroneous in point of law on the grounds:—

- 30 (a) That Exhibit No.2 is not the only or principal or primary security within the meaning of Head 37(1) of the Schedule to the Stamp Ordinance.
- (b) That Exhibit No.1 and not Exhibit No.2 created the liability of the Tunnel Company to repay to Lloyds Bank Limited sums not exceeding £14,750,000.00.
- (i) That Exhibit No.2 is a collateral or auxiliary or additional security; and

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- (ii) that the principal security namely Exhibit No.1 and/or its Appendices (save Appendix "H") being duly stamped, Exhibit No.2 is chargeable under Head 37(2) of the Schedule.
- (d) Alternatively, that Exhibit No.2 is chargeable under Head 23 of the Schedule.

I, the Collector, do hereby state and sign this case accordingly.

10. The questions submitted for the opinion of the court are:—

- (i) whether the Debenture is chargeable with duty as assessed by the Collector; and
- (ii) if not, with what duty it is chargeable. 10

Dated this 15th day of April 1970.

*(Sgd.) A.D. Duffy
Collector of Stamp Revenue*

We, Messrs. Johnson, Stokes & Master of Hong Kong and Shanghai Bank Building, Hong Kong, Solicitors for the within named Appellants acknowledge that a Case Stated, of which the within written copy is a true copy, has been delivered to us in accordance with the provisions of Section 18 of the Stamp Ordinance, Cap.117.

Dated this 17th day of April 1970.

*(Sgd.) Johnson, Stokes & Master
Solicitors for the Appellants* 20

No. 2
Sumons
inter parties
17th April
1970.

**No. 2
SUMMONS INTER PARTES**

To The Collector of Stamp Revenue.

YOU ARE HEREBY SUMMONED to appear before His Honour District Judge at Victoria District Court, Hong Kong at his Chambers at the said Court at 10.30 o'clock in the fore-noon on Saturday the 18th day of April 1970 on the hearing of an application on the part of Appellant for an Order that this appeal be transferred to the Supreme Court for hearing and determination.

Dated the 17th day of April, 1970. 30

*(Sgd.) C. M. LEUNG (L.S.)
Deputy Registrar.*

And you are to take notice that if you do not appear the Court may consider and deal with the application in a summary way.

This summons was taken out by Messrs. Johnson, Stokes & Master of Rooms 403-413, Hongkong & Shanghai Bank Building, Victoria, Hong Kong, Solicitors for the Applicants.

(*Sd.*) Johnson, Stokes & Master

No. 3
ORDER OF THE HONOURABLE MR. JUDGE CONS
Dated 18th April 1970

**DIRECTING APPEAL TO BE TRANSFERRED TO
THE SUPREME COURT**

*In the
Supreme
Court of
Hong Kong
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No. 3
Order directing
Appeal to
be transferred
to the
Supreme
Court
18th April
1970.

10 **JUDGE'S NOTES**

18th April, 1970.

Coram: Cons, D.J. in Court.
B.S. McElney (J.S.M.) for applicant.
E. Thistlethwaite, C.C., for respondent.

Mr. McElney:

Invite Court to transfer of its own motion as was done in the World Magnet Case (1969) H.K.L.R. 67, which involved similar sections and provisions.

20 This case involves a large amount of money and certain points of considerable importance to both sides.

In answer to Court:

That case does not say why it was transferred, but once in the Supreme Court it was transferred to the Full Court for hearing.

In the present case there is also a dearth of authority, at least in Hong Kong. There is some authority in the House of Lords on something similar.

The Collector also wants a transfer.

Thistlethwaite:

It is certain that the Collector would appeal further if the case went against him in the District Court.

30 **Mr. McElney:**

It is very probable that the Applicant would also appeal again if the decision were adverse in this Court.

Thistlethwaite:

The Collector would like a transfer as well.

ORDER:

This appeal to be transferred to the Supreme Court; costs in cause.

Sd. D. Cons
District Judge
Victoria District Court
18th April, 1970.

*In the
Supreme
Court of
Hong Kong
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No. 4

**JUDGMENT OF THE HONOURABLE MR. JUSTICE
BLAIR-KERR, PRESIDENT OF THE FULL COURT**

No. 4
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Mr. Justice
Blair-Kerr
President of
the Full Court
27th November
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On 26th June 1969, the appellants entered into a contract (hereinafter referred to as "the construction contract") for the construction of a four-lane vehicular tunnel between Hongkong Island and Kowloon, the contract price being HK\$272,533,333. Work was to commence on 1st September 1969 or "on the date the contract shall become operative whichever is the later"; and the work was to be completed within 36 months from the date when the contract became operative. Assuming that the contract became operative on 1st September 1969, the parties appear to have contemplated that the tunnel would be completed by 1st September 1972; but the contract made provision for extending the time for completion in certain circumstances. On 26th September 1969 the appellants entered into a further contract (hereinafter referred to as "the engineer's contract") with a firm of consulting engineers for consultancy and site supervision services in connection with the construction of the tunnel. The engineer's fees are stated to be HK\$14,600,000. Converting these two sums into sterling (taking £1 as being equivalent to HK\$14.55), the total contract price for the construction of the tunnel would appear to be £19,741,000.

On the 17th July 1969, the appellants entered into an agreement (hereinafter referred to as "the financial agreement") with Lloyds Bank Limited (hereinafter referred to as "Lloyds") in which, after reciting the fact that the construction contract had been entered into, and that they wished to enter into the engineer's contract, it was recited that Lloyds had agreed with the appellants to make sums available to assist the financing of the construction and engineer's contracts "on the terms and conditions hereinafter appearing."

Various expressions used throughout the financial agreement are defined in clause 1 as follows:—

“ ‘debenture’ means the charge to be executed by (the appellants) in favour of Lloyds in the form set out in Appendix H hereto.

‘note’ means a promissory note made by (the appellants) in accordance with this agreement.

‘several guarantees’ means the guarantees of payment to be given by the subscribers in favour of Lloyds in the form set out in Appendix G hereto.

'subscribers' means: Wheelock Marden & Co. Ltd., Hutchison International Ltd., The Government of Hong Kong, The Hongkong & Shanghai Banking Corporation, Kwong Wan Ltd., and Sir Elly Kadoorie Successors Ltd.

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'Trustee Letter' means the letter to be written by (the appellants) to Lloyds in the form set out in Appendix D hereto.

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'valid claims' means claims made (by the contractors)."

Clause 2, so far as relevant to this appeal, reads:-

continued

10

"2. To assist (the appellants) in making payments to (the various contractors and engineers who are parties to the construction and engineer's contracts) Lloyds shall made sums available to the (appellants) from time to time by the purchase of the (appellants') notes provided always that, (2) unless Lloyds otherwise agree, no note shall be purchased by Lloyds after the 31st December 1973; (3) the total principal amount of notes purchased in connection with the construction contract shall not exceed £14,000,000 (5) the total principal amount of notes purchased in connection with the engineer's contract shall not exceed £750,000."

20 The intention of the parties appears to have been that Lloyds would finance the construction of the tunnel to the extent of approximately 75% of the total cost thereof.

Clause 3 reads:-

"3. (1) (The appellants) will make the notes payable in sterling in London to the order of Lloyds.

(2) The notes shall be in the form set out in Appendix B hereto."

Appendix B reads:-

30

"On demand, we promise to pay (Lloyds) or order at the Hongkong and Shanghai Banking Corporation London the sum of pounds sterling for value received"

Clause 3(3) reads:-

"(The appellants) shall deposit the notes with Lloyds to be dealt with in accordance with the terms of the trustee letter."

The trustee letter reads:-

"To Lloyds Bank Limited

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continued

Dear Sirs,

In consideration of the sum of £1 we hereby irrevocably appoint you on the following terms and conditions as our trustee to hold and deal on our behalf with the notes which we shall make in accordance with the provisions of (the financial agreement) upon presentation of valid claims by (the contractors in the construction contract) you are hereby irrevocably authorised to release notes for purchase up to the amount of such claims the proceeds of the purchase of notes shall be paid to (the contractors) in accordance with paragraph 7 of (the financial agreement).” 10

The letter authorises Lloyds to deal similarly with notes in regard to claims made under the engineer’s contract.

What appears to be contemplated by clauses 7 and 8 is that upon presentation of valid claims under the construction and engineer’s contracts, the trustee department of Lloyds will release promissory notes, and Lloyds will “purchase” these notes for the principal sums shown thereon. The trustee department will then pay the contractors and consulting engineers the amounts of their claims under the two contracts out of the proceeds of the “purchase”. The value of the notes which Lloyds are obliged to purchase is limited in the manner specified in Appendix A. For example, unless Lloyds “otherwise” agree, they are only bound to purchase notes to the value of £2,000,000 during the first six months after the construction contract becomes operative; a further £3,000,000 during the succeeding six months, a further £4,000,000 during the succeeding six months, and so on till 36 months after the construction contract became operative, by which time notes to the total value of £14,750,000 may have been purchased. 20

The financial agreement provides that Lloyds will hold the notes until they fall due, on which dates they will be presented to the Hongkong and Shanghai Banking Corporation for payment. Appendix C gives details of the numbers of the notes, their value, and the dates of presentment. The first group of notes fall due for payment on 1st March 1973, and further groups fall due at six-monthly intervals thereafter, as follows:— 30

Date	Amount	
1st March 1973	£1,155,000	
1st September 1973	£1,155,000	
1st March 1974	£1,155,000	
1st September 1974	£1,155,000	
1st March 1975	£1,155,000	
1st September 1975	£1,155,000	40
1st March 1976	£1,155,000	
1st September 1976	£1,155,000	
1st March 1977	£1,155,000	
1st September 1977	£1,155,000	

1st March 1978	£ 800,000
1st September 1978	£ 800,000
1st March 1979	£ 800,000
1st September 1979	<u>£ 800,000</u>
	Total <u>£14,750,000</u>

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10 Therefore, if the construction contract did in fact become operative on 1st September 1969 and the construction of the tunnel were to be completed by 1st September 1972, Lloyds may well have advanced the full amount of £14,750,000 before any of the promissory notes fall due; and the last group of notes to the value of £800,000 would not fall due until 7 years after the construction of the tunnel has been completed.

Clause 4 of the financial agreement reads:-

“(A) The following conditions in this sub-paragraph must have been fulfilled to the satisfaction of Lloyds before any note will be purchased in the manner hereinafter provided and sums made available to (the appellants) under this agreement:-

- (1) (The appellants) shall have:-
 - (a) delivered the trustee letter to Lloyds together with the notes
 - (b) handed to Lloyds a letter of instruction in the form set out in Appendix E
 - (c) handed to Lloyds a letter of instruction in the form set out in Appendix F
 - (d) provided Lloyds with the several guarantees by the subscribers.....
 - (e) satisfied Lloyds that the trust fund referred to in paragraph 10 hereof has been duly constituted on terms and conditions approved by Lloyds
 - (f) provided Lloyds with the debenture,”

20

30 The letter (appendix E) is a letter to be written by the appellants to the various contractors who are parties to the construction contract. IT READS:-

“Dear Sirs,

Until you shall have been informed in writing by (Lloyds) that all principal amounts of and interest in connection with any note purchased by themhave been paid and no notes remain to be purchased and in order to furnish to Lloyds

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further and collateral security for the due payment of all principal amounts and interest payable on such notes, we hereby irrevocably authorise you to pay to (Lloyds) all sums which you may become due to pay to us under the construction contract including sums arising from an arbitration award."

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In this letter the appellants appear to be saying, in effect, to the contractors:—

"If, for example, you break your contract and thereby become liable to us under an order of court awarding us damages against you, or if there should be an arbitration award in our favour, you need not pay us until Lloyds have told you that all our promissory notes have been honoured. To the extent to which we may be indebted to Lloyds, we authorise you to pay Lloyds any sums you may be owing to us."

10

The letter (Appendix F) is a letter to be addressed by the appellants to Lloyds. It reads:—

"Dear Sirs,

Whereas in accordance with the terms of the construction contract you have entered into a performance bond for the due fulfilment of and observance of the obligations of the contractors under the construction contract We hereby agree that until all moneys and interest which may be or become payable to you under the financial agreement or the notes issued pursuant thereto have been fully paid and satisfied such moneys as would otherwise be payable to us under the said performance bond shall be retained by you and shall be applied in accordance with para. 9 of the financial agreement.

20

One of the terms of the construction contract was that the contractors would obtain "the guarantee of an insurance company or bank" to be bound jointly and severally with the contractors to the appellants in the sum of HK\$10,000,000 for the due performance of the construction contract. The only evidence before this court that Lloyds have agreed to be bound jointly with the contractors to the appellants is a statement in the contractors' tender addressed to the appellants in which they say that Lloyds have "indicated their willingness" to act as surety for the due performance of the construction contract.

30

What the appellants appear to be saying to Lloyds in this letter (Appendix F) is:

"If, under the performance bond, you should become liable, by virtue of your guarantee, to pay any sum up to the maximum of HK\$10 million, you may retain such sum towards the discharge of any liability we may incur to you under our promissory notes, the total principal value of which will be £14,750,000."

40

Clause 1 of the guarantee (Appendix G) reads:-

“In consideration of Lloyds making sums available in pursuance of (the financial agreement) and in accordance with the terms thereof, the guarantor hereby guarantees that should (the appellants) fail to pay any amounts in sterling due to Lloyds under (the financial agreement) or due upon the promissory notes to be purchased by Lloyds in accordance with the terms of (the financial agreement) then the guarantor will pay to Lloyds.”

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Appendix G states that the guarantors shall guarantee payment on all notes
10 purchased by Lloyds in the following proportions:-

Wheelock Marden & Co. Ltd.	29.5%
Hutchison International Ltd.	29.5%
The Government of Hong Kong	25 %
The Hong Kong & Shanghai Banking Corporation	10 %
Kwong Wan Ltd.	5 %
Sir Elly Kadoorie Successors Ltd.	1 %

The promissory notes were issued and deposited with Lloyds on 24th
20 July 1969. The documents referred to in Appendices D, E and F were executed
on 11th August 1969; and the guarantees referred to in Appendix G were
executed by the subscribers on 17th July 1969.

Clause 10(1) provides that the appellants “will appoint” The Hongkong
& Shanghai Bank (Trustee) Ltd. to hold a trust fund; and clause 10(2) states
that the appellants “agrees with Lloyds” to make various payments into this
fund out of “surplus revenue”. The payments into the Fund are not to
commence until the tunnel has been constructed and has been certified fit for
use by the Director of Public Works; and “surplus revenue” is defined as:-

30 “the revenue of the (appellants) after payment of taxes, royalties,
operating expenses and principal and interest under this agreement
or on the notes.”

Clause 16(1) of the financial agreement enumerates some 12 “events of
default”. These include:-

“the failure of (the appellant) to pay in sterling in London on their
respective presentment dates the full amount of principal of any
note purchased by Lloyds in accordance with this agreement
.”

But there are a number of other events of default which do not involve the
failure by the appellants to honour the notes when they fall due.

If an event of default occurs, Lloyds may send a notice to the
appellants; and clause 16(3) reads:-

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“If the event of default continues unremedied for a period of 10 days from the date receipt of the said notice, . . . a written demand may be made upon (the appellants) and subscribers by Lloyds and upon the date of issue of the said demand in addition to any amount which has become due on any note the principal amounts of all the notes purchased by Lloyds and not presented for payment shall immediately become due and payable and such notes may be immediately presented for payment and the amounts of principal and interest shall be recoverable from (the appellants) or from the subscribers in accordance with the terms of the several guarantees” 10

The debenture referred to in the financial agreement was executed on 11th August, 1969. It commences thus:

“Issue of a collateral debenture to secure liability under certain promissory notes”

The debenture recites that:

“. it was a term of the treaty for the financial agreement that (the appellants) should furnish to (Lloyds) further and collateral security for the due payment of all principal moneys and interest payable under the said notes in accordance with the terms and conditions contained in the financial agreement” 20

Clauses 1 and 2 read:—

“1(a) In pursuance of the financial agreement and in consideration of (Lloyds) purchasing the notes in accordance with and subject to the terms and conditions thereof (the appellants) hereby covenant with (Lloyds) that (they) will pay to (Lloyds) all principal moneys not exceeding in the aggregate £14,750,000, which may be or become payable to (Lloyds) under or by virtue of the said notes together with interest thereon 30 which moneys and interest shall be payable in sterling in London by (the appellants) to (Lloyds) in accordance with the terms and provisions of the said notes and of the financial agreement.

(b)

(c) This debenture being by way of collateral security for the said notes, any payment of principal and/or interest hereunder shall discharge pro tanto the corresponding liability of (the appellants) under the notes.

2. In further pursuance of the said financial agreement and in order to 40

provide (Lloyds) with further security for due payment of all amounts which may be or become payable to (Lloyds) under or by virtue of the said notes, (the appellants) Doth Hereby Charge with Payment to (Lloyds) of all principal moneys and interest which may be or become payable in accordance with the provisions of clause 1 hereof so that the charge hereby created shall be a floating charge and a continuing security all that its undertaking property and assets whatsoever and wheresoever both present and future including its uncalled capital for the time being."

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10 Clause 7 states that the debenture is issued subject to and "with the benefit of" a number of "conditions" endorsed on the debenture and which are deemed to be part of it. The first "condition" is that the appellants may not, without Lloyds' consent, create any charge on their property and assets to rank "in priority to or pari passu with the charge hereby created". The second "condition" reads as follows:—

"2. The principal moneys hereby secured shall immediately become payable on demand by (Lloyds):—

(a) If (the appellants) make default in payment of any monies which by the terms of this debenture are expressed to be payable by (the appellants);

(b) If (the appellants) make default in performance or observance of any of the covenants and conditions binding upon (them) by virtue of the financial agreement or any other event of default occurs as defined in paragraph 16 of the financial agreement;

(c) If (the appellants) suspend (their) business or makes any composition with creditors or if an order is made for the compulsory winding up of (the appellants);

(d) If (the appellants) commit any breach of any of the covenants terms and conditions contained in this debenture including these conditions."

The third "condition" is to the effect that "after the principal moneys hereby secured become payable" Lloyds may appoint a receiver or manager of the property and assets of the appellants charged by the debenture.

The appellants sought the opinion of the Collector under S.17 of the Stamp Ordinance as to the duty chargeable on the debenture. The Collector assessed the stamp duty under Head 37(1) of the Schedule. Taking the Hong Kong dollar equivalent of £14,750,000 to be \$214,612,500 (i.e. \$14.55 as being equivalent to £1 sterling), at 20 cents per \$100, the Collector assessed the stamp duty at \$429,225. The appellants have paid this sum; but, being

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dissatisfied with the assessment, they now appeal by way of case stated to this court.

The grounds of appeal are:

- (1) that the debenture is not the “only or principal or primary security” within the meaning of Head 37(1) of the Schedule to the Stamp Ordinance;
- (2) that it was the financial agreement which created the liability of the appellants to repay Lloyds sums not exceeding £14,750,000; and
- (3) that the debenture is “a collateral or auxiliary or additional security” within the meaning of Head 37(2) of the Schedule. 10

Mr. Litton’s submission on behalf of the appellants may be summarised thus:—

It is not true to say that the financial agreement merely expressed the intention of the parties to enter into binding obligations. The execution and issue of the promissory notes was not a condition precedent to the incurring of any obligation on the part of the appellants. Upon the execution of the financial agreement, the parties entered into binding obligations. The issue of the promissory notes was merely an incident or part of the machinery in the performance by the appellants of an obligation incurred by them upon execution of the financial agreement. The trustee letter was also part of the machinery for carrying out the appellants’ obligations. But the letters of instruction (Appendices E and F) and the guarantees (Appendix G) constitute collateral securities for the due performance by the appellants of their obligations. The trust fund is not merely a statement to the effect that the appellants will limit payments of dividend in a certain way. The fact that they say that they will create the trust fund constitutes further collateral security. The debenture is merely one more form of collateral security; and it is a matter of commercial judgment as to which of the various collateral securities is more valuable. For example, a letter of guarantee by the Hong Kong Government might be considered by Lloyds to be more valuable than a floating charge on the appellants entire undertaking. The promissory notes may also be regarded as security for the appellants’ performance of their obligations under the financial agreement because the notes are bills of exchange and negotiable. The financial agreement is not negotiable; and, therefore, to that extent the promissory notes themselves constitute security. 20 30 40

Mr. Litton relied heavily on the decision of the House of Lords in *I.R.C. v. Ansbacher & Co.*⁽¹⁾

(1) (1963) A.C. P. 191

Mr. Thistlethwaite's submissions on behalf of the respondent may be summarised thus:—

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10

There is nothing in the financial agreement which could be construed as imposing upon the appellants an obligation to repay to Lloyds any sums which the latter may advance, nor does Lloyds undertake to advance sums not exceeding £14,750,000 or indeed any sums. Shorn of what counsel described as 'its mumbo-jumbo', the financial agreement is nothing more than an agreement by Lloyds to purchase the appellants' promissory notes (as and when the notes are released by their trustee department) for the amounts stated on the notes, and the agreement makes provision for Lloyds presenting the notes to the Hong Kong & Shanghai Banking Corporation for payment. For that obligation, the appellants agree to pay commission (clause 19) taxes (clause 17) and other expenses (clause 18). The financial agreement makes provision for certain safeguards designed to ensure that any notes which may have been purchased will be honoured when presented, and the trust fund is an example of such a safeguard. Clause 16(3) merely says that if the appellants default, and notes which may have been purchased by Lloyds fall due for payment, the dates of presentment, (as enumerated in Appendix C), being advanced to enable Lloyds to sue upon the notes or to exercise such rights as they may have under the guarantees (Appendix G). The appellants' obligation to pay is created by the promissory notes themselves. The financial agreement is not a security for the repayment of money advanced by Lloyds by the purchase of the notes. The notes are the security. Upon any default on the part of the appellants, Lloyds could not sue upon the financial agreement; they could only sue the appellants upon the notes. The financial agreement is nothing but a 'master plan' for the financing of the contractors by Lloyds, a plan executed by the various instruments enumerated in the various appendices to the agreement. The facts in the *Ansbacher*⁽¹⁾ case were quite different in that, under clause 2 of the contract of sale in that case, a definite obligation to pay 61 shillings for every 1 shilling of ordinary stock was created, and the agreement was undoubtedly a 'security' which could have been sued on in the courts. *National Telephone Co. Ltd. v. C.I.R.*⁽²⁾ is also distinguishable in that the agreement in that case was a security for the payment of £12. The appellants are liable on the debenture quite independently and irrespective of their liability on the promissory notes. Under the debenture (clause 1) the appellants covenanted with Lloyds to pay all moneys (up to a maximum of £14,750,000) which 'may be or become' payable to Lloyds 'under the notes', that is to say on notes purchased and due for presentment (but not yet presented) and on notes purchased but not yet due for presentment. The debenture creates an obligation on the part of the appellants to pay before any money is due on the notes themselves. The debenture therefore creates a 'primary obligation'; and that primary obligation is secured

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(2) (1899) I.Q.B. P. 250

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by the floating charge created by clause 2 of the debenture. The guarantees (Appendix G) are truly collateral security, but collateral to the obligations under the promissory notes, and they only come into operation upon a failure to pay on the notes.

In the event of the court holding against him on his main submission, Mr. Thistlethwaite's alternative submission was this:—

It is conceded that the promissory notes are a security; but they are merely promises in writing to pay backed up by the guarantees should the notes be dishonoured. In the debenture the appellants not only covenant to pay, but their covenant is backed up by the floating charge which covers their entire undertaking including their uncalled capital. The ordinary meaning of the word 'principal' is 'first in importance' (vide Shorter Oxford Dictionary); and there can be no doubt that the debenture in this case is Lloyds' principal security.

10

The financial agreement is not under seal; and we were informed that it has been stamped under Head 3 as an agreement under hand with a \$3 stamp. In England, the stamp duty on such an agreement is 6d. It is not known where the promissory notes were stamped. In England since 1961 a promissory note only requires to be stamped with a 2d. stamp. Therefore, the cost of stamping 700 promissory notes would be rather less than £6. In Hong Kong, promissory notes fall under Head 11 of the Schedule (25 cents for every \$1,000). Taking \$214,612,500 as being equivalent to £14,750,000, the stamp duty in Hong Kong would be \$53,653. A debenture executed by way of collateral security attracts stamp duty of 10 cents for every \$100. But the maximum stamp duty on such documents is \$20. If the deed is one which does not fall under any other Head in the Schedule, it attracts a stamp duty of \$20 under Head 23.

20

I have no doubt that the financial agreement was drawn up by an experienced solicitor who had the legislation relating to stamp duty very much in mind. I would be very surprised if it were otherwise. The saving of stamp duty, especially in transactions of any magnitude, is a matter which every conscientious solicitor regards as a matter of duty to his clients, and rightly so; and if the appellants are correct in their contention that it was the financial agreement which created their liability to repay to Lloyds any sums which may be advanced by them up to maximum of £14,750,000 (stamp duty \$3) and that the debenture should be regarded as collateral security (stamp duty \$20), the solicitor who drew up these documents has certainly done his duty to his clients.

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There is no doubt that the financial agreement deals with the whole scheme whereby the appellants and Lloyds sought to provide for the latter financing the tunnel project to the extent of 75% of its total cost. But although, under clause 3(3), the appellants are obliged to deposit the

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promissory notes with Lloyds, Lloyds are under no obligation to purchase any of those notes until the appellants have

- (1) provided Lloyds with the debenture signed by the appellants charging all their property and assets;
- (2) provided Lloyds with the guarantees duly executed by the subscribers;
- (3) complied with the other provisions of clause 4; and
- (4) a valid claim by the contractors or the engineer has been made.

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Of course, if, upon the so-called "conditions" in clause 4 being complied with,
10 Lloyds were to refuse to purchase the appellants' notes upon receiving a valid
claim, no doubt the appellants could sue Lloyds for specific performance of the
obligation incurred by them under clauses 2 and 7 of the financial agreement.
But, until the debenture charging the whole of the appellants' undertaking, and
the guarantees have all been duly executed and delivered to Lloyds, and a valid
claim has been made by the contractors or engineer, Lloyds are under no
obligation to advance a single penny. No obligation to purchase any promissory
notes arose upon the execution of the financial agreement.

Nor did the appellants, by the mere execution of the financial agree-
ment, undertake to repay any sums which Lloyds might advance. There is
20 no clause to that effect. The appellants' obligations to repay arose under the
promissory notes. Upon signing each note, the appellants undertook that they
would pay the sum promised when the note would be presented on due date.
In regard to any particular promissory note, if the appellants were to fail to
honour their obligation to pay upon presentment on due date, Lloyds' cause of
action would arise upon that note.

However, the question of Lloyds suing on any individual promissory
note is never likely to arise. If the construction contract became operative on
1st September 1969 and (allowing for a reasonable extension of time) the
tunnel shall be constructed, say, during the early part of 1973, Lloyds may
30 well, by then, have purchased all the appellants' promissory notes. If the
appellants should fail to honour their obligations when the first group of
promissory notes (valued at £1,155,000) are presented for payment on 1st
March 1973, upon receipt of a written demand such as is referred to in clause
16(3) of the financial agreement, the principal amounts of all other notes
purchased by Lloyds, (the total value of which might amount to £13,595,000)
shall also become due for payment. In other words, the due dates as
enumerated in Schedule C, extending over the period March 1973/September
1979, shall be advanced to, say, 15th March 1973. Lloyds would then be in a
position to sue on all the promissory notes which they have purchased. In
40 doing so, they would have to plead clause 16 of the financial agreement. In a
sense, their cause of action would rest upon both the notes and clause 16; but
they could not possibly sue on the financial agreement alone. It is the notes on

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which they would sue, the due dates of many of the notes having been advanced by virtue of the operation of clause 16.

In such a contingency as is described above, Lloyds would also be in a position to sue the subscribers under their guarantees for the full value of all notes purchased; the subscribers' obligations would arise upon the appellants' failure to pay the amounts due on the notes, although Lloyds would be compelled to plead clause 16 of the financial agreement; but, again, Lloyds could not sue on clause 16 of the agreement. Their cause of action against the guarantors would arise upon the appellants' failure to pay the principal value of the notes, the due dates of a number having been advanced by operation of clause 16.

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As regards the debenture, the appellants' covenant to pay is in respect of notes which have actually been purchased by Lloyds. Under clause 1(a) this covenant is in respect of principal moneys which may extend to £14,750,000 "which may be or become payable to (Lloyds) under or by virtue of the..... notes". However, under clause 7, the debenture is declared to be "with the benefit of the conditions" endorsed upon it. Lloyds clearly is the party benefitting from those conditions; and condition 2(a) states in the clearest possible language that the "principal moneys hereby secured" (i.e. in the words of clause 2, "all amounts which may be or become payable to (Lloyds) under or by virtue of the notes") shall *immediately become payable* on demand by Lloyds if the appellants make default in payment of *any* monies which by the terms of the debenture are expressed to be payable by the appellants. The monies which, by the terms of the debenture are expressed to be payable by the appellants, are the principal moneys which may be or become payable to Lloyds under the promissory notes purchased by them; and condition 2(a) states that if the appellants make default in payment of *any* of such monies, then the "principal moneys hereby secured", (i.e. "all amounts which may be or become payable to (Lloyds) under or by virtue of the said notes") shall immediately become payable on demand by Lloyds.

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Condition 2 envisages three other sets of circumstances any one of which would result in all the principal monies becoming immediately payable on demand by Lloyds. Condition 2(b) appears to incorporate into the debenture the 12 events of default enumerated in clause 16 of the financial agreement in as full a sense as if those 12 events had been enumerated seriatim in condition 2(b). Under the debenture there is no necessity for any "written notice" or "written demand" such as are mentioned in sub-clauses(2) and (3) of clause 16 of the financial agreement. The principal moneys *immediately* become payable *on the occurrence* of any one of the 12 events of default. Upon such an occurrence, Lloyds are entitled to sue *on the debenture*, pleading condition 2(b) which incorporates by reference the 12 events of default in clause 16 of the financial agreement and makes them part of the debenture itself.

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That being so, under the debenture the principal moneys on the promissory notes may immediately become payable for reasons other than the fact that the appellants may fail to honour any particular group of promissory

notes when presented for payment on due date. For example, the principal moneys on all the notes would immediately become payable if the appellants, without the consent of Lloyds, were to charge their assets for the benefit of any creditor, or if a notice under s. 51(1) of the Cross Harbour Tunnel Ordinance Cap. 203 has been served on the appellants.

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10 I do not agree with the respondent's submission that the appellants are liable on the debenture quite independently and irrespective of their liability on the promissory notes. In a sense, it is true to say (as Mr. Thistlethwaite submitted) that the debenture "creates an obligation on the part of the appellants to pay before any money is due on the notes themselves." In a sense, so does clause 16 of the financial agreement. But, without the promissory notes no liability of any kind could arise. The notes are the core of the whole scheme. In my view, therefore, the debenture can not be said to be the primary security. The promissory notes are the primary security. And, although it is perhaps putting too low a value on the financial agreement to describe it as nothing but a "master plan", from Lloyds' point of view, it is in no sense of the term a security of any kind for the repayment of money advanced.

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20 In my view, the debenture is unquestionably the principal security. Upon any act of default (as defined in clause 16 of the financial agreement,) or in any other set of circumstances which fall within the ambit of the "conditions" in the debenture, the moneys secured by the debenture (i.e. "all amounts which may be or become payable under or by virtue of the notes") immediately become payable; and thereafter a receiver may be appointed under condition 3. The floating charge crystallises and attaches to all the property and assets of the appellants, including their uncalled capital; and Lloyds will have priority over other creditors of the appellants whether secured or unsecured.

30 I agree with the Collector that the debenture is chargeable with Stamp Duty under Head 37(1); and I would myself dismiss this appeal.

27th November, 1970

(W.A. Blair-Kerr)
President

**No. 5
ORDER OF THE FULL COURT
DISMISSING THE APPEAL
Dated the 27th day of November 1970**

BEFORE THE HONOURABLE

MR. JUSTICE BLAIR-KERR, THE HONOURABLE

40 **MR. JUSTICE BRIGGS AND THE HONOURABLE**

MR. JUSTICE McMULLIN, IN COURT

No. 5
Order of
the Full
Court
dismissing
the appeal
dated the
27th day
of November
1970.

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No. 5
Order of
the Full
Court
dismissing
the appeal
dated the
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of November
1970.

ORDER

Upon reading the Case Stated dated the 15th day of April, 1970 and upon hearing Counsel for the Appellants and Counsel for the Respondent, IT IS ORDERED that this appeal be dismissed with costs to the Respondent.

Dated the 27th day of November, 1970.

(L.S.) B.L. Jones
Assistant Registrar

No. 6
Notice of
motion for
leave to
appeal to
Privy Council
11th Council
11th December
1970.

**NO. 6
NOTICE OF MOTION
FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL
DATED THE 11TH DAY OF December, 1970**

10

TAKE NOTICE that the Supreme Court of Hong Kong in Victoria, Hong Kong will be moved on Tuesday and 22nd day of December 1970, at 9.45 a.m. at the sitting of the Court, or so soon thereafter as counsel can be heard, by counsel on behalf of the Appellants The Cross-Harbour Tunnel Company Limited for leave to appeal to Her Majesty in Her Privy Council from the decision and the judgment of this Honourable Court pronounced by the Full Court on the 27th day of November 1970 The Appellants undertaking to comply with the provisions of the Rules and Instructions concerning Appeals to Her Majesty the Queen in Her Privy Council.

(Dated the 11th day of December 1970.)

(L.S.) J. R. OLIVER
REGISTRAR
*(Sd.) Johnson, Stokes & Master
Solicitors for the Appellants.*

20

To the above-named Respondents The Collector of Stamp Revenue and to Attorney General.

No. 7
Order giving
Provisional
leave to
appeal to the
Privy Council
22nd December
1970.

**No. 7
ORDER OF THE FULL COURT
GIVING PROVISIONAL LEAVE TO APPEAL
Dated the 22nd day of December 1970**

UPON reading the Notice of Motion on behalf of the abovementioned Appellants dated the 11th day of December 1970 and upon hearing Counsel for the Appellants and Counsel for the Respondents IT IS ORDERED that leave be granted to the Appellants to appeal to Her Majesty the Queen in Council against the judgment of the Full Court herein dated the 27th day of November, 1970 conditional upon the Appellants within three months from to-day entering into good and sufficient security in the sum of \$5,000.00 either by payment in cash or provision of security to the satisfaction of the Registrar of

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this Court for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellants not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of HER Majesty in Council ordering the Appellants to pay the Respondents costs of the Appeal (as the case may be). AND IT IS FURTHER ORDERED that the said Appellants shall prepare and dispatch to England the record of these proceedings within a period of three months from to-day.. AND IT IS FURTHER ORDERED that costs of this application be costs in the cause.

*In the
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Court of
Hong Kong
Original
Jurisdiction*

No. 7
Notice of
motion
15th March
1971.
continued

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(*Sgd.*) B.L. Jones
(L.S.) *Assistant Registrar.*

**No. 8
NOTICE OF MOTION
Dated 15th March 1971**

No. 8
Notice of
motion
15th March
1971.

TAKE NOTICE that the Court will be moved on Friday the 19th day of March, 1971 at 2.30 o'clock in the afternoon or so soon thereafter as counsel can be heard, by counsel on behalf of the Appellants The Cross-Habour Tunnel Company Limited for leave to extend the time for preparing and dispatching the record of these proceedings to England for a further period of three months as from the 22nd day of March, 1971.

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Dated the 15th day of March, 1971.

(L.S.) J. R. OLIVER
REGISTRAR

(*Sd.*) Johnson, Stokes & Master
Solicitors for the Appellants.

To the above-named Respondents The Collector of Stamp Revenue and to The Attorney General.

**No. 9
AFFIDAVIT OF BRIAN SHANE McELNEY
Dated 15th March 1971**

No. 9
Affidavit of
Brian Shane
McElney
15th March
1971.

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I, BRIAN SHANE McELNEY of Flat 304 Rockmount, 39 Conduit Road, in the Colony of Hong Kong, solicitor, make oath and say as follows:--

1. I am a partner in the firm of Messrs. Johnson, Stokes & Master and am the solicitor having the conduct of the proceeding herein on the part of the Appellants.
2. By an Order of the Full Court dated 22nd day of December, 1970, the Appellants were granted provisional leave to appeal to the Privy Council and the Appellants were further ordered to pay into Court as security the sum of \$5,000.00 and to prepare and dispatch to

England the record of these proceedings within three months thereof.

No. 9
Affidavit of
Brian Shane
McElney
15th March
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3. Pursuant to the said Order, the Appellants have duly entered and paid into Court the sum of HK\$5,000.00 as security for the due prosecution of the appeal.
4. Since the date of the Order advice on the appeal has been sought from London Counsel and considerable delay has been experienced in obtaining such advice because of the postal strike.
5. I have also approached the printer to prepare the record and he informed me and I verily believe that he requires eighty days for arranging and printing the record of these proceedings, such is the pressure and volume of other work he has on hand. The papers are now in the printer's hands for preparation of the record.
6. In these circumstances, I respectfully ask for an extension of the time for preparing and dispatching the record for a further period of three months as from the 22nd day of March 1971.

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Sworn, etc.

No. 10.
ORDER
Dated 19th March 1971

No. 10
Order
19th March 1971.

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UPON hearing the Counsel for the Appellants and Counsel for the Respondent and upon reading the affidavit of Brian Shane McElney filed herein on the 15th day of March 1971 IT IS ORDERED that the time for preparing and dispatching the record of these proceedings to England be extended for a further period of three months as from the 22nd day of March 1971 and that the costs of this application be costs in the cause of the appeal.

Dated the 19th day of March 1971.

(L.S.) B.L. Jones
Assistant Registrar

EXHIBIT A1

AGREEMENT

Between

LLOYDS BANK LIMITED

LONDON

and

THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

HONG KONG

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

Exhibits

 Exhibit A1
 Agreement
 between
 Lloyds Bank
 Limited London
 and The
 Cross-Harbour
 Tunnel Company
 Limited
 Hongkong
 19th July 1969

Referred to in
 Doc. No. 1.
continued

FINANCIAL AGREEMENT DATED 17TH JULY, 1969,
 BETWEEN LLOYDS BANK LIMITED AND THE
 CROSS-HARBOUR TUNNEL COMPANY LIMITED
 HONG KONG

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Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
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Hongkong
19th July 1969

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Hong Kong Stamp Duty Paid
\$3

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
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and The
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Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.

THIS AGREEMENT is made the 17TH day of JULY 1969 between LLOYDS BANK LIMITED (hereinafter called "Lloyds") of 71 Lombard Street, London, E.C. 3 of the one part and THE CROSS-HARBOUR TUNNEL COMPANY LIMITED (hereinafter called "the Tunnel Company") of 12th Floor, Union House, Hong Kong of the other part.

WHEREAS

- (1) The Tunnel Company has entered into a contract dated the 26th day of June, 1969, with Costain International Limited (hereinafter called "Costains") of La Motte Chambers, St. Helier, Jersey, Channel Islands, Raymond International Inc. of 2 Pennsylvania Plaza, New York, N.Y. 10001, U.S.A. Paul Y Construction Company Limited of Bank of Canton Building, 18th Floor, Des Voeux Road Central, Hong Kong (which three companies shall be together hereinafter called "the Contractors") and Richard Costain Limited for the construction of a four-lane vehicular tunnel between Wan Chai and Hung Hom for a total price of HK\$272,533,333 of which approximately HK\$176,000,000 is in respect of U.K. goods and services and approximately HK\$85,000,000 is in respect of local goods and services; 10
- (2) The Tunnel Company wishes to enter into a further contract with Scott Wilson Kirkpatrick & Partners of 5 Winsley Street, London, W.1, (hereinafter called "Scott Wilson" which expression shall include the partners for the time being in the said firm and their successors and assigns) (in association with Freeman Fox & Partners of 25 Victoria Street (South Block), London, S.W.1) for the provision of consultancy and site supervision services in connection with the construction of the aforesaid vehicular tunnel for a total price of HK\$14,600,000 of which approximately HK\$8,965,000 is in respect of U.K. services and approximately HK\$5,635,000 is in respect of local services; and 30
- (3) Lloyds have agreed with the Tunnel Company to make sums available to assist the financing of the two aforesaid contracts on the terms and conditions hereinafter appearing

NOW THEREFORE it is hereby agreed by and between the parties hereto as follows:—

1. DEFINITIONS

(A) For the purpose of this Agreement and the Appendices hereto:—

- (1) "Authorised Signatory (Costains)" means a director secretary or

other officer of Costains whose name and specimens of whose signature have been supplied to Lloyds by Costains as being authorised by Costains to sign Valid Claims and whose authority at material times has not been revoked by notice in writing received by Lloyds

Exhibits

Exhibit A1
Agreement
between
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10 (2) "Authorised Signatory (Scott Wilson)" means a partner, secretary or other officer of Scott Wilson whose name and specimens of whose signature have been supplied to Lloyds by Scott Wilson as being authorised by Scott Wilson to sign Valid Claims in respect of the Engineer's Contract and whose authority at material times has not been revoked by notice in writing received by Lloyds.

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continued

20 (3) "Authorised Signatory (Tunnel Company)" means a director secretary or other officer of the Tunnel Company whose name and specimens of whose signature have been supplied to Lloyds by the Tunnel Company as being authorised by the Tunnel Company to countersign Valid Claims in respect of the Engineer's Contract and the statement referred to in paragraph 6(A)(2)(ii) hereof and whose authority at material times has not been revoked by notice in writing received by Lloyds

(4) "Construction Contract" means the contract specified in Recital (1) hereof together with any amendment thereto as may from time to time be made between the parties thereto provided that such amendment is made (except in the circumstances of paragraph 22(2) hereof) with the written consent of Lloyds

(5) "Contracts" means the Construction Contract and the Engineer's Contract

30 (6) "Debenture" means the charge to be executed by the Tunnel Company in favour of Lloyds in the form set out in Appendix H hereto

(7) "Engineer" means Scott Wilson or other Engineer for the time being appointed in respect of the Construction Contract by the Tunnel Company with the Approval of Lloyds

(8) "Engineer's Contract" means the contract specified in Recital (2) hereof together with any amendment thereto as may from time to time be made between the parties thereto provided that such amendment is made (except in the circumstances of paragraph 22(2) hereof) with the written consent of Lloyds

40 (9) "Interest Due Date" means the 1st day of March and 1st day of September the first of such dates being the first day of March 1970

Exhibits

Exhibit A1
Agreement
between
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and The
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Limited
Hongkong
19th July 1969

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- (10) “Local Goods” means sand gravel cement and other basic building materials approved by Lloyds wholly produced or processed in Hong Kong
- (11) “Local Services” means services which are rendered by persons ordinarily resident or carrying on business in Hong Kong
- (12) “Note” means a Promissory Note made by the Tunnel Company in accordance with this Agreement
- (13) “Presentment Date” means the date on which each note falls due for presentment by Lloyds for payment of principal in accordance with Appendix C hereto subject to the proviso for 10 earlier payment in paragraph 3(2) hereof
- (14) “Several Guarantees” means the guarantees of payment to be given by the Subscribers in favour of Lloyds in the form set out in Appendix G hereto
- (15) “Subscribers” means:
- Wheelock Marden & Co. Ltd.,
Hutchison International Ltd.,
The Government of Hong Kong,
The Hongkong and Shanghai Banking Corporation,
Kwong Wan Ltd., and
Sir Elly Kadoorie Successors Ltd. 20
- (16) “Trustee Letter” means the letter to be written by the Tunnel Company to Lloyds in the form set out in Appendix D hereto
- (17) “Tunnel” means the tunnel referred to in Recital (1) hereof
- (18) “U.K. goods” means goods wholly produced or manufactured in the United Kingdom the Channel Islands or the Isle of Man
- (19) “U.K. services” means services rendered by persons ordinarily resident or carrying on business in the United Kingdom the Channel Islands or the Isle of Man
- (20) “Valid Claims” means claims made by Costains or Scott Wilson 30 to Lloyds in the manner specified in paragraph 6 hereof
- (B) Where the context of this Agreement so allows words importing the singular include the plural and vice versa.

2. PURPOSE AND AMOUNT OF FINANCE

To assist the Tunnel Company in making payments to Costains and Scott Wilson in respect of U.K. and local goods and services Lloyds shall make sums available to the Tunnel Company from time to time by the purchase of the Tunnel Company's Notes

PROVIDED ALWAYS THAT

- (1) no Note shall be purchased by Lloyds under this Agreement before 1st September 1969 or such later date as Lloyds and the Tunnel Company may agree in writing before 1st September 1969
- 10 (2) unless Lloyds otherwise agree no Note shall be purchased by Lloyds after the 31st day of December 1973
- (3) the total principal amount of Notes purchased in connection with the Construction Contract shall not exceed £14,000,000
- (4) the total principal amount of Notes purchased in connection with the Construction Contract during each period specified in column 1 of Part 1 of Appendix A hereto shall not unless Lloyds otherwise agree exceed the total specified in column 2 in relation to that period
- 20 (5) the total principal amount of Notes purchased in connection with the Engineer's Contract shall not exceed £750,000
- (6) the total principal amount of Notes purchased in connection with the Engineer's Contract during each period specified in column 1 of Part 2 of Appendix A hereto shall not unless Lloyds otherwise agree exceed the total specified in column 2 in relation to that period.

3. THE NOTES

- (1) The Tunnel Company will make the Notes payable in sterling in London to the order of Lloyds.
- (2) The Notes shall be in the form set out in Appendix B hereto and shall be in three series as follows:—
 - 30 (a) Notes of Series 1 (relating to U. K. goods and services provided under the Construction Contract) shall not exceed an aggregate principal amount of £11,200,000
 - (b) Notes of Series 2 (relating to local goods and services provided under the Construction Contract) shall not exceed an aggregate principal amount of £2,800,000

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(c) Notes of Series 3 (relating to the Engineer's Contract) shall not exceed an aggregate principal amount of £750,000

Details of the principal amounts of the Notes and the dates on which (subject to the proviso for earlier payment set out below) the Notes of Series 1, 2 and 3 are to be presented for payment are more particularly set out in Parts 1, 2 and 3 respectively of Appendix C hereto.

PROVIDED however that notwithstanding the foregoing, all of the said Notes then purchased and outstanding together with all interest which has accrued thereon shall become immediately payable and may be presented for payment by Lloyds if an event of default (as defined in paragraph 16 hereof) continues unremedied and a written demand is made by Lloyds in accordance with the provisions of sub-paragraph (3) of paragraph 16 of this Agreement. 10

- (3) The Tunnel Company shall deposit the Notes with Lloyds to be dealt with in accordance with the terms of the Trustee Letter.
- (4) The Notes will be governed by and construed in accordance with English Law in all respects.
- (5) The Tunnel Company agrees that any Note signed by any person whose name and specimen signature has been supplied by the Tunnel Company to Lloyds as a person duly authorised so to sign shall be valid and binding upon the Tunnel Company notwithstanding any subsequent revocation or limitation of the authority of such person. 20

4. CONDITIONS

(A) The following conditions in this sub-paragraph must have been fulfilled to the satisfaction of Lloyds before any Note will be purchased in the manner hereinafter provided and sums made available to the Tunnel Company under this Agreement:—

(1) The Tunnel Company shall have:—

- (a) delivered the Trustee Letter to Lloyds together with the Notes of Series 1 and 2 listed in parts 1 and 2 of Appendix C hereto duly stamped together with the name and specimen signature of the person duly authorised to sign those notes on behalf of the Tunnel Company
- (b) handed to Lloyds an irrevocable Letter of Instruction in the form set out in Part 1 of Appendix E hereto duly stamped and registered 30

- (c) handed to Lloyds an irrevocable Letter of Instruction in the form set out in Appendix F hereto
- (d) provided Lloyds with the Several Guarantees by the Subscribers duly stamped
- (e) satisfied Lloyds that the Trust Fund referred to in paragraph 10 hereof has been duly constituted on terms and conditions approved by Lloyds
- (f) provided Lloyds with the Debenture duly stamped and registered in accordance with the Laws of Hong Kong
- 10 (g) provided Lloyds with an undertaking in the form of Appendix J hereto
- (h) satisfied Lloyds that the Government of Hong Kong has agreed to make available to the Tunnel Company all land necessary for the construction of the Tunnel
- (j) satisfied Lloyds that all agreements approvals and steps necessary under the Cross Harbour Tunnel Ordinance 1969 have been given and taken to enable the Tunnel Company to begin work on the Tunnel
- 20 (k) satisfied Lloyds that it has obtained all consents licences permits and authorities and fulfilled all conditions of all Governmental and other authorities in Hong Kong necessary to enable the Tunnel Company to enter into this Agreement to grant the Debenture and to enable the Subscribers to enter into their Several Guarantees and to make payment of all sums which may become due from the Tunnel Company under this Agreement and on the Notes and under the Debenture and to constitute the Trust Fund referred to in paragraph 10 hereof and from the Subscribers under the Several Guarantees
- 30 (l) satisfied Lloyds that they have obtained all consents licences permits and authorities (if any) and fulfilled all other conditions of all relevant Governmental and other authorities in Hong Kong covering the purchases and importation of the goods to be sold and the services to be rendered to the Tunnel Company in accordance with the terms of the Construction Contract and the payment therefor
- (m) paid to Lloyds the commitment and negotiation commissions referred to in paragraph 19(1) hereof

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- (n) complied with the provisions of paragraph 5(2) hereof
- (p) provided Lloyds with the name and specimen signature of the Authorised Signatory (Tunnel Company)
- (q) satisfied Lloyds that the legal charges referred to in paragraph 18(1) hereof have been paid
- (2) Costains shall have handed to Lloyds a policy of marine insurance containing Institute Cargo Clauses (all risks) including War Strikes Riots and Civil Commotion Clauses on all goods to be shipped under the Construction Contract and evidence satisfactory to Lloyds of on site insurance covering all risks normally insured against until final acceptance of the Tunnel by the Tunnel Company. The said policies will be for full replacement value and such proceeds as are in respect of the Works defined in that Contract and goods for incorporation therein have been made payable to Lloyds. The said policies of insurance will be effected in sterling with an insurer or insurers carrying on business in the United Kingdom approved by Lloyds. 10
- (3) Messrs Deacons, Solicitors of Union House, Hong Kong shall have confirmed in writing to Lloyds that 20
 - (a) the person or persons who have signed on behalf of the Tunnel Company
 - (i) this Agreement,
 - (ii) the Letters in the terms set out in Appendix D, Part 1 of Appendix E, Appendix F and Appendix J hereto,
 - (iii) the Debenture,
 - (iv) the document constituting the Trust Fund referred to in paragraph 10 hereof, and
 - (v) the Construction Contract
 - (b) the persons who have respectively signed on behalf of the Subscribers the Several Guarantees 30

were duly authorised in that behalf and as so signed those documents form legally valid and binding obligations of the Hong Kong Government or the corporations on whose behalf they have been signed which those corporations are fully qualified and empowered to undertake under their respective statures, or as the case may be Memoranda and Articles of Association and in accordance with the law of Hong Kong.

(c) the Notes of Series 1 and 2 have been signed by a person or persons duly authorised in that behalf and will when bought from the Tunnel Company by Lloyds in the manner hereinafter provided constitute legally valid and binding obligations of the Tunnel Company enforceable in Hong Kong in accordance with their terms

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(d) all the Subscribers have duly executed the Agreement with the Tunnel Company in the form set out in Appendix K hereto and that the total amount of Ordinary shares and Convertible Unsecured Loan Stock which the Subscribers have undertaken to subscribe under that Agreement is not less than HK\$110,000,000

(e) the irrevocable Letter of Instruction and the Debenture respectively referred to in sub-paragraphs 4(A)(1)(b) and 4(A)(1)(f) hereof have been duly stamped and registered in accordance with the laws of Hong Kong and that the Several Guarantees referred to in sub-paragraph 4(A)(1)(d) hereof have been duly stamped in accordance with the laws of Hong Kong

(4) Lloyds shall have:—

(a) received unconditionally for the account of Costains the direct payment in cash of £1,866,667 due on or before the 31st day of August, 1969, or on such later date as is agreed by Costains and the Tunnel Company as the date on which the Construction Contract shall become operative and

(b) been satisfied that the Performance Bond referred to in Clause 10 of the Conditions of Contract of the Construction Contract has been duly executed in the terms designated in the Tender forming part of that Contract.

(B) In addition to the conditions specified in sub-paragraph (A) of this paragraph the following conditions must also have been fulfilled to the satisfaction of Lloyds before any Note of Series 3 will be purchased in the manner hereinafter provided and sums made available to the Tunnel Company under this Agreement for the financing of the Engineer's Contract:—

(1) Lloyds shall have given notice to the Tunnel Company and to Scott Wilson to the effect that the Engineer's Contract has been signed or shall have been signed before 26th September, 1969, or within such longer period as may be agreed between Lloyds and Scott Wilson in a form approved by Lloyds (which approval Lloyds may grant or withhold at their absolute

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- discretion) and that finance will be provided under the terms of this Agreement subject to the due fulfilment of the conditions thereof;
- (2) The Tunnel Company shall have:—
- (a) delivered to Lloyds the Notes of Series 3 listed in Part 3 of Appendix C hereto duly stamped together with the name and specimen signature of the person duly authorised to sign those Notes on behalf of the Tunnel Company
 - (b) handed to Lloyds an irrevocable Letter of Instruction in the form set out in Part 2 of Appendix E hereto (or in such other form as Lloyds may agree) duly stamped and registered 10
 - (c) satisfied Lloyds that they have obtained all consents licences permits and authorities and fulfilled all other conditions of all relevant governmental and other authorities in Hong Kong covering the services to be rendered to the Tunnel Company in accordance with the terms of the Engineer's Contract and the payment therefor
- (3) Scott Wilson shall have confirmed in writing to Lloyds that they have received from the Tunnel Company the direct payment in cash of £100,000 due on signature of the Engineer's Contract; 20
- (4) Messrs Deacons, Solicitors of Union House, Hong Kong shall have confirmed in writing to Lloyds that
- (a) the person or persons who have signed the Engineer's Contract and the Letter in the terms set out in Part 2 of Appendix E hereto on behalf of the Tunnel Company were duly authorised in that behalf and as so signed that Contract and that Letter form legally valid and binding obligations of the Tunnel Company which that Company is fully qualified and empowered to undertake under its Memorandum and Articles of Association and in accordance with the laws of Hong Kong 30
 - (b) the Notes of Series 3 have been signed by a person or persons duly authorised in that behalf and will when bought from the Tunnel Company by Lloyds in the manner hereinafter provided constitute legally valid and binding obligations of the Tunnel Company enforceable in Hong Kong in accordance with their terms
 - (c) the irrevocable Letter of Instruction referred to in 40

sub-paragraph 4(B)(2)(b) hereof has been duly stamped and registered in accordance with the laws of Hong Kong.

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5. **ENGINEER TO CONSTRUCTION CONTRACT**

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- 10 (1) Messrs, Scott Wilson, Kirkpatrick & Partners of 5 Winsley Street, London, W.1, or such new appointee as is referred to in sub-paragraph (3) of this paragraph shall act as Engineer for the purpose of countersigning the Qualifying Certificates and Statements referred to in paragraph 6(A) hereof.
- (2) The Tunnel Company will procure for Lloyds a certified copy of the authority of the Engineer appointing an individual or individuals to countersign the said Qualifying Certificates and statements together with specimens of the signatures of those individuals.
- 20 (3) If at any time during the currency of this Agreement any change be made in the identity of the Engineer the new appointee shall be an individual or a body of persons approved by Lloyds and carrying on business in the United Kingdom and Lloyds will only recognise the new appointment when they have received notice in writing thereof and have acknowledged such notification in writing to the Tunnel Company and to Costains and when they have received from the newly appointed Engineer a certified copy of the authority appointing and individual or individuals to countersign the said Qualifying Certificates and Statements together with specimen signatures of those individuals.

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6. **VALID CLAIMS**

(A) CONSTRUCTION CONTRACT

- 30 (1) From time to time Costains may make claims to Lloyds in the manner hereinafter specified and the Tunnel Company hereby agrees that the sums so claimed will constitute Valid Claims by Costains against the Tunnel Company PROVIDED THAT the amounts claimed in Hong Kong dollars shall be converted into sterling at the rate of 14.60 H.K. dollars to one pound sterling for the purpose of calculating the sterling amounts to be paid to Costains.
- (2) A Valid Claim shall be a claim made in one of the following ways:-
- 40 (i) In respect of sums due under clauses 62, 93 (except sub-clauses (1) and (6) of clause 93), 98, 104, 105, 106 and 114 of the Conditions of Contract of the Construction Contract the Claim shall be made by submitting to Lloyds a Claim in the form set out in Appendix L hereto signed by an Authorised Signatory (Costains) together with a

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Qualifying Certificate in the form set out in Appendix M hereto signed by the Engineer or in such other forms as Lloyds may agree;

- (ii) In respect of a sum due in the circumstances specified in paragraph 14(A) hereof the claim shall be made by Costains submitting to Lloyds a statement of the amount agreed in writing by the Tunnel Company (evidenced by the signature thereon of an Authorised Signatory (Tunnel Company)) as being due to Costains certified by the Engineer and accompanied by a statement from Costains that the matters to which the certificate relates have not been submitted to arbitration and that to the best of Costains' belief the Tunnel Company does not intend to submit any of these matters to arbitration, together with an undertaking by Costains that the Contractors will not submit any such matters to arbitration; the claim shall be for an amount equal to 75% of the amount due to Costains. In the event that a further claim is made in circumstances specified in paragraph 14(A) hereof in respect of a sum not paid from any other source (as provided in Clause 93(11) of the Conditions of Contract of the Construction Contract) such claim shall be made by Costains in a form agreed by Lloyds and accompanied by a statement certified by the Engineer of the amount due to Costains. The amount to be paid to Costains in respect of such further claim shall be such amount as Lloyds may agree;
- 10
- 20
- (iii) In respect of a sum due on an arbitration award referred to in paragraph 15 hereof the claim shall be made by submitting to Lloyds a duly authenticated copy of such arbitration award; the claim shall be for an amount equal to 75% of the amount due to Costains. In the event that a further claim is made in respect of a sum due under an arbitration award referred to in paragraph 15 hereof in respect of a sum not paid from any other source (as provided in Clause 93(11) of the Conditions of Contracts of the Construction Contract) such claim shall be made by Costains in a form agreed by Lloyds and accompanied by a statement certified by the Engineer of the amount due to Costains. The amount to be paid to Costains in respect of such further claim shall be such amount as Lloyds may agree.
- 30
- 40

(B) ENGINEER'S CONTRACT

- (1) From time to time Scott Wilson may make claims to Lloyds in

he manner hereinafter specified and the Tunnel Company hereby agrees that the sums so claimed will constitute Valid Claims by Scott Wilson against the Tunnel Company PROVIDED THAT the amounts claimed in Hong Kong dollars shall be converted into sterling at the rate of 14.60 H.K. dollars to one pound sterling for the purpose of calculating the sterling amounts to be paid to Scott Wilson.

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(2) A Valid Claim shall be a claim made in one of the following ways:-

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(i) In respect of sums due (other than in the circumstances specified in paragraph 14(B) or 15 hereof) in respect of services performed under the Engineer's Contract the claim shall be made by the submission to Lloyds of a Qualifying Certificate in such form or forms as shall have been agreed by Lloyds signed by an Authorised Signatory (Scott Wilson); and counter-signed by an Authorised Signatory (Tunnel Company);

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(ii) In respect of a sum due in the circumstances specified in paragraph 14(B) hereof the claim shall be made by submitting to Lloyds a statement of the amount agreed in writing by the Tunnel Company (evidenced by the signature thereon of an Authorised Signatory (Tunnel Company)) as being due to Scott Wilson certified by the independent Chartered/Certified Accountants referred to in that paragraph accompanied by a statement from Scott Wilson that the matters to which the certificate relates have not been submitted to arbitration and that to the best of Scott Wilson's belief the Tunnel Company does not intend to submit any of those matters to arbitration together with an undertaking by Scott Wilson not to submit any such matters to arbitration; the claim shall be for an amount equal to 75% of the amount due to Scott Wilson;

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(iii) In respect of a sum due on an arbitration award referred to in paragraph 15 hereof the claim shall be made by submitting to Lloyds a duly authenticated copy of such arbitration award; the claim shall be for an amount equal to 75% of the amount due to Scott Wilson.

7. PAYMENTS TO COSTAINS AND SCOTT WILSON

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(1) Upon presentation by Costains of a Valid Claim, Lloyds will in accordance with the terms of the Trustee Letter release Notes of Series 1 and 2 and will, subject to the provisions of this Agreement, buy such Notes for their respective principal amounts and apply the proceeds in making payments to Costains in sterling in or towards the amount of the Valid Claim

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- (2) Upon presentation by Scott Wilson of a Valid Claim, Lloyds will in accordance with the terms of the Trustee Letter release Notes of Series 3 and will, subject to the provisions of this Agreement, buy such Notes for their respective principal amounts and apply the proceeds in making payments to Scott Wilson in sterling in or towards the amount of the Valid Claim.

PAYMENT OF NOTES

- (1) Lloyds will present the Notes to The Hongkong and Shanghai Banking Corporation, 9 Gracechurch Street, London, E. C. 3, for the payment of interest on each Interest Due Date and payment of principal on their respective Presentment Dates. If there is any delay in payment of interest or principal on any individual Note the Tunnel Company shall on demand pay interest on the amount of interest or principal due on that Note at the rate which that Note bears in the case of interest from the Interest Due Date and in the case of principal from the Presentment Date to the date of the receipt of the amount in sterling in London by Lloyds. 10
- (2) The liability of the Tunnel Company to discharge the principal amount of any Note on its Presentment Date or any interest due on any Note is in no way conditional upon the performance of the Construction Contract on the part of the Contractors or Richard Costain Limited or the Engineer's Contract on the part of Scott Wilson and will not be affected in any way by reason of any claim which the Tunnel Company may have or may consider that the Tunnel Company has against the Contractors or Richard Costain Limited or Scott Wilson or by any other reason whatsoever. 20

9. SUMS TO BE PAID TO THE TUNNEL COMPANY

Whilst the principal amount of or interest on any Note purchased in accordance with the terms of this Agreement remains outstanding or any Note remains to be purchased 30

- (1) any sums which the Contractors or Richard Costain Limited or Scott Wilson may be found liable to pay to the Tunnel Company in accordance with the terms of the Construction Contract or the Engineer's Contract including sums arising from an arbitration award but excluding sums payable under sub-clauses (5) and (6) of clause 64 of the Conditions of Contract of the Construction Contract shall be paid to Lloyds and such sums together with
- (2) any amounts received by Lloyds by virtue of the Letter of Instruction referred to in paragraph 4(A)(1)(c) hereof shall be applied forthwith by Lloyds firstly in or towards payment of the principal moneys secured by the Notes in the order of their 40

Presentment Dates (irrespective of series) as set out in Appendix C hereto and secondly in or towards payment of interest on the Notes in the like order.

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10. TRUST FUND

- 10 (1) The Tunnel Company will appoint The Hongkong and Shanghai Bank (Trustee) Limited of 9 Gracechurch Street, London, E. C. 3, to hold a Trust Fund (hereinafter called "the Fund") in Euro-dollars or in another currency acceptable to Lloyds (any of which currencies are hereinafter included under the designation "Approved Currency") and on terms satisfactory to Lloyds which will include power to make payments to the Tunnel Company in the circumstances specified in sub-paragraph (3) of this paragraph and power to make payments in satisfaction of the Tunnel Company's obligations to Lloyds under this Agreement or on the Notes in the circumstances specified in sub-paragraphs (4) and (5) of this paragraph or in the event of the Tunnel Company having defaulted in any of its obligations to Lloyds under this Agreement or upon the Notes and
- 20 (a) any one of the Subscribers having defaulted in any of its obligations to Lloyds under its Guarantee referred to in paragraph 4(A)(1)(d) hereof, or
- (b) the Several Guarantees referred to in paragraph 4(A)(1)(d) or any of them becoming unenforceable.
- (2) The Tunnel Company agrees with Lloyds to make payments into the Fund as follows:—
- 30 (a) In respect of the thirty-six months immediately following the issue of the first certificate by the Director of Public Works of the Government of Hong Kong under Section 31 of the Cross-Harbour Tunnel Ordinance 1969 (hereinafter in this paragraph called "the Certificate") an annual amount equivalent to 5% of the Tunnel Company's surplus revenue in each preceding twelve-month period subject to a minimum annual payment into the Fund of £100,000 sterling or the equivalent in Approved Currency calculated at the middle rate of exchange current in London on the due date of such payment into the Fund or an amount equivalent to such surplus revenue whichever is the less;
- 40 (b) In respect of the period beginning thirty-six months and ending sixty months after the issue of the Certificate an annual amount equivalent to 25% of the Tunnel Company's surplus revenue in each preceding twelve-month period subject to a minimum annual payment into the Fund of £100,000 sterling

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- or the equivalent in Approved Currency Calculated as aforesaid or an amount equivalent to such surplus revenue whichever is the less;
- (c) In respect of the period beginning sixty months after the issue of the Certificate and ending on the date on which the aggregate amount of the annual payments into the Fund made in accordance with this sub-paragraph and sub-paragraphs (2)(a) and (2)(b) of this paragraph is equivalent to the aggregate of the principal amounts of all the Notes purchased outstanding and unpaid and interest thereon calculated at the rate payable on such Notes from the last interest due date up to the respective Presentment Dates of such Notes an annual amount equivalent to 5% of the Tunnel Company's surplus revenue in each preceding twelve-month period subject to a minimum annual payment into the Fund of £100,000 sterling or the equivalent in Approved Currency calculated as aforesaid or an amount equivalent to such surplus revenue whichever is the less; 10
- (d) For the purposes of sub-paragraphs (2)(a), (2)(b) and (2)(c) of this paragraph the term "surplus revenue" means the revenue of the Tunnel Company after payment of taxes royalties operating expenses and principal and interest under this Agreement or on the Notes. 20
- (3) So long as any Notes purchased remain outstanding and unpaid where at the end of any year of accounting there shall be monies earned during that year under the control of the Tunnel Company after payment of all expenses (including taxes royalties operating expenses principal and interest under this Agreement or on the Notes and the Fund payments detailed in sub-paragraph (2) of this paragraph) the Tunnel Company shall be entitled to retain out of such monies a sum equivalent to a dividend on the paid up capital of the Tunnel Company at a rate as shall bring the average annual rate of such dividend, calculated over such period following the issue of the Certificate as the Tunnel shall then have been operating up to but not in excess of 25% per annum on the amount of the paid up capital to be applied either by way of dividend or otherwise as the Tunnel Company may decide and shall pay any balance of such monies remaining after such retention into the Fund PROVIDED ALWAYS that if in any year of accounting the monies as defined in this sub-paragraph retained by the Tunnel Company fall short of the sum equivalent to a dividend on the paid up capital at the rate of 25% then and in that case the Tunnel Company shall be entitled to call upon the Trustee Bank to repay the amount of such shortfall to the Tunnel Company out of the Fund to the extent only of the previous payments made 30 40

under the provisions of this sub-paragraph by the Tunnel Company to the Trustee Bank.

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- 10 (4) When the total value of the assets held in the Fund arising from payments made into the Fund under the provisions of sub-paragraphs (2) and (3) of this paragraph is equal to or exceeds the aggregate of the principal amounts of all the Notes purchased outstanding and unpaid together with interest calculated at the rate payable on such Notes up to the date of repayment or at any time thereafter the Trustee Bank shall have power at the option of the Tunnel Company to make immediate repayment of all Notes Purchased outstanding and unpaid together with interest at the same rate up to the date of such repayment.
- 20 (5) When the aggregate amount of payments into the Fund made under the provisions of sub-paragraphs (2)(a), (2)(b) and (2)(c) of this paragraph is equal to the aggregate of the Principal amount of all the Notes purchased outstanding and unpaid together with interest calculated at the rate payable on such Notes up to the Presentment Date of each such Note the obligation of the Tunnel Company to make further payments into the Fund under this Agreement shall cease and the Trustee Bank shall thereafter have power at the option of the Tunnel Company to meet the principal amounts of Notes as they fall due for payment together with interest thereon as afrosaid.
- (6) Lloyds shall inform the Trustee Bank when no further Notes are to be purchased and all payments due to be made to Lloyds under this Agreement or in respect of the Notes have been received by Lloyds and the Trustee Bank may then repay to the Tunnel Company any amount remaining in the Fund.
- 30 (7) Amounts deposited in the Fund may be left in bank deposit accounts or if the Tunnel Company so elect invested in first-class securities approved in writing by Lloyds. All interest on such accounts and dividends on such securities and any other benefits derived from such accounts or securities shall be paid into the Fund.

11. INFORMATION REQUIRED BY LLOYDS

The Tunnel Company shall supply to Lloyds

- 40 (1) copies of every provisional and audited Balance Sheet Profit and Loss Account and Report presented or issued to the shareholders or stockholders of the Tunnel Company at the time of its presentation or issue to such shareholders or stockholders,

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- (2) on or before the tenth day of each calendar month a statement of gross revenue in respect of the previous month, and
- (3) such other information in such form and at such times as Lloyds may in writing require regarding the operation of the Tunnel Company.

12. APPLICATION OF INSURANCE PAYMENTS

- (1) Lloyds will pay any insurance monies received by them from the insurers under the policies referred to in paragraph 4(A)(2) hereof the Costains upon the receipt of evidence satisfactory to Lloyds that the Contractors have made good with goods and/or services approved by Lloyds the loss or damage the occurrence of which had given rise to the payment. 10

EXCEPT THAT

- (a) failing the receipt of such evidence within a reasonable time Lloyds will apply such insurance monies in or towards payment of principal of the Notes in the order of their Presentment Dates (irrespective of series) as set out in Appendix C and thereafter in or towards payments of interest on the Notes in the like order
- (b) if at the time Lloyds receive any such insurance monies the Tunnel Company are in default in the payment of any interest due on or principal sum of any Note or have asked for the postponement of the payment of any Note or of the interest thereon, Lloyds shall have the option of declaring whether the loss or damage shall be made good and the insurance monies paid to Costains as aforesaid or whether those monies shall be applied in or towards payment of the principal or interest due on any defaulted Notes in the order of their Presentment Dates (irrespective of series) as set out in Appendix C and thereafter in or towards payment of principal or interest on the remaining Notes outstanding in the like order. 20 30
- (2) If any balance of such insurance monies remains after all the Notes and interest thereon outstanding have been paid Lloyds shall pay such balance to Costains.
- (3) Notwithstanding the provisions of sub-paragraph (1)(b) of this paragraph before the application of insurance monies as therein provided such monies shall firstly be applied in re-imbursing Costains for the work done prior to the date of default in respect of the replacement of goods or services to which the insurance monies relate. 40

13. EARLY PAYMENT OF NOTES

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Should the Tunnel Company wish to pay before the Presentment Date the principal amount of any Note purchased in accordance with the terms of this Agreement Lloyds will accept payment of such principal amount together with all the interest accrued thereon at the contractual rate to the date of receipt by Lloyds in sterling in London of such principal amount PROVIDED THAT

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- 10 (a) on such date all principal amounts and interest then or previously due on all other Notes purchased in accordance with the terms of this Agreement or due under this Agreement have been paid by the Tunnel Company; and
- (b) the Tunnel Company shall have given to Lloyds in writing not less than one month's notice of its intention to make such early payment except where the early payment of any Note derives from the receipt Lloyds of either insurance monies mentioned in paragraph 12 hereof or any sum which the Contractors or Richard Costain Limited or Scott Wilson may be found liable to pay to Lloyds in accordance with the provisions of the Construction Contract of the Engineer's Contract

20 In the event that Lloyds accept early payment of any Note such Note will be cancelled by Lloyds and held at the disposal of the Tunnel Company.

14. TERMINATION OF CONTRACTS

(A) CONSTRUCTION CONTRACT

30 If the Construction Contract is terminated by the Contractors or the Tunnel Company in the circumstances specified in clause 101, 107, 108 or 112 of the Conditions of Contract thereof the amount due to Costains under that Contract will be agreed between the parties thereto and certified by the Engineer as being a fair and reasonable amount having regard to all the circumstances of the case or if the Contractors or the Tunnel Company so require will be determined by an arbitration award made in accordance with the terms of the Construction Contract.

Upon termination Costains will notify Lloyds immediately. The Tunnel Company hereby agrees that the information so provided by Costains shall require no confirmation by the Tunnel Company.

(B) ENGINEER'S CONTRACT

40 (1) If the Engineer's Contract is terminated by Scott Wilson or

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the Tunnel Company in accordance with any provision thereof the amount due to Scott Wilson under that Contract will be agreed between the parties thereto and certified as being a fair and reasonable amount having regard to all the circumstances of the case by a firm of independent Chartered/Certified Accountants carrying on business in the United Kingdom appointed by the President of the Law Society in London or appointed by any other person or body of persons approved by Lloyds for that purpose

10

- (2) Upon termination Scott Wilson will
 - (a) notify Lloyds immediately,
 - (b) advise Lloyds of the appointment of the firm of independent Chartered/Certified Accountants and provide Lloyds with a copy of their appointment, and
 - (c) Provide Lloyds with specimens of the signatures of individuals authorised to sign on behalf of the Chartered/Certified Accountants.
- (3) The Tunnel Company hereby agrees that the information so provided by Scott Wilson shall require no confirmation by 20 the Tunnel Company
- (4) Notwithstanding the provision of sub-paragraph (B)(1) of this paragraph is Scott Wilson or the Tunnel Company so require or they fail to reach agreement over the amount due to Scott Wilson as provided in sub-paragraph (B)(1) of this paragraph the matter will be determined by an arbitration award made in accordance with the terms of the Engineer's Contract.

15. PAYMENT OF AN ARBITRATION AWARD

In the event that the Contractors or the Tunnel Company resort to arbitration as provided for in Clause 110 of the Conditions of Contract of the Construction Contract or in the event that Scott Wilson or the Tunnel Company resort to arbitration as provided for in the Engineer's Contract Costains or Scott Wilson (as the case may be) will immediately 30

- (1) notify Lloyds that such arbitration has been initiated, and
- (2) advise Lloyds of the identity of the appointed arbitrator(s).

After such resort to arbitration as aforesaid no claim presented to Lloyds in respect of the matter referred to arbitration will be a Valid Claim except the duly authenticated copy of the arbitration award referred

to in paragraph 6(A)(2)(iii) or 6(B)(2)(iii) (as the case may be) of this Agreement.

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During the time that arbitration in respect of any matter is in progress Qualifying Certificates relating to the relevant contract which do not relate to that matter must when presented to Lloyds bear a statement to that effect signed by the Engineer in the case of the Construction Contract or by an Authorised Signatory (Tunnel Company) in the case of the Engineer's Contract.

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10 Upon termination of the arbitration Costains or Scott Wilson (as the case may be) shall notify Lloyds to that effect.

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16. DEFAULT

(1) For the purposes of this paragraph any of the following events shall be an event of default:—

(a) (i) The failure of the Tunnel Company to pay in sterling in London on their respective Presentment Dates the full amount of principal of any Note purchased by Lloyds in accordance with this Agreement or any interest payable under any such Note on the due date for payment of such interest

20

(ii) The failure of any of the Subscribers to meet any of its obligations under the terms of the relevant Several Guarantees.

(b) The failure of the Tunnel Company in the performance or observance of any of its obligations hereunder.

(c) The failure of the Tunnel Company to comply with the undertaking contained in Appendix J hereto.

(d) If an order is made or a resolution is passed for the winding up of the Tunnel Company or the Tunnel Company becomes insolvent or makes a general assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due.

30

(e) If the Government of Hong Kong has taken over the operation of the Tunnel Company except where such take-over is in accordance with Section 38 of the Cross-Harbour Tunnel Ordinance 1969 and the period of take-over does not exceed 90 days (or such longer period as Lloyds may agree) in the 12 monthly period commencing on the first day of such take-over.

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- (f) If the notice specified in section 51(1) of the Cross-Harbour Tunnel Ordinance 1969 has been served on the Tunnel Company.
- (g) If the Tunnel Company without the prior consent in writing of Lloyds issues a debenture or gives a mortgage or charge over its assets for the benefit of any creditor.
- (h) If a receiver and/or manager is appointed for the benefit of debenture holders or other creditors of the Tunnel Company.
- (j) If the Tunnel Company without the prior written consent 10
of Lloyds sells the whole or any substantial part of its undertaking or of its assets or suspends or threatens to suspend all or any substantial part of its operations except where suspension is in accordance with Section 37 of the said Ordinance or is imposed by the Government of Hong Kong under Section 38 thereof and the period of suspension does not exceed 90 days (or such longer period as Lloyds may agree) in the 12 monthly period commencing on the first day of such suspension.
- (k) If any governmental or other authority having jurisdiction 20
shall have taken or instituted any action or proceedings for the dissolution, disestablishment or nationalization of the Tunnel Company or for the suspension of its operations or shall have taken any action which would prevent the Tunnel Company from carrying on its operations or any substantial part thereof for a period exceeding 90 days (or such longer period as Lloyds may agree) in the 12 monthly period commencing on the first day of such action or proceedings.
- (l) In the event of the occupation of the Crown Colony of Hong Kong or in the event of the Government of the said 30
Colony ceasing to exercise effective de facto control whether as a result of such occupation or otherwise for other than a very temporary period.
- (2) If an event of default occurs a written notice to that effect (hereinafter in this paragraph called "the said Notice") may at any time before such event of default is remedied to the satisfaction of Lloyds be sent by Lloyds to the Tunnel Company and (subject to the terms of the Several Guarantees) to the Subscribers.
- (3) If the event of default continues unremedied for a period of 10 40
days from the date of receipt of the said Notice by the Tunnel Company and the Subscribers if received by them on the same

10 date or if received by them on different dates from the latest of such dates a written demand (hereinafter referred to as "the said Demand") may be made upon the Tunnel Company and (subject to the terms of the Several Guarantees) the Subscribers by Lloyds at any time so long as the event of default continues unremedied and then upon the date of issue of the said Demand in addition to any amount which has become due on any Note the principal amounts of all the Notes purchased by Lloyds and not presented for payment at the date of issue of such Demand together with all interest of which the due date has not then arrived accrued on the said Notes up to the date of the said Demand shall immediately become due and payable and such Notes may be immediately presented for payment and the amounts of principal and interest thereof shall be recoverable from the Tunnel Company or from the Subscribers and in the case of Subscribers in accordance with and subject to the terms of the Several Guarantees. The Tunnel Company will also pay to Lloyds interest at the rate of 5½% per annum on the amount of principal and interest which has become due from the date of the said Demand to the date of the receipt of the said amount in sterling in London by Lloyds.

20 (4) On the occurrence of any of the events of default the obligations of Lloyds to make further sums available hereunder and purchase any further Notes shall immediately cease but Lloyds may at their option continue to purchase Notes in the manner provided in paragraph 7 hereof and to pay the proceeds to Costains and/or Scott Wilson.

30 (5) If there is a delay in making payment of the principal or interest due on any Note and Lloyds are satisfied by the Tunnel Company that the delay is attributable to administrative causes Lloyds may without prejudice to the foregoing allow the Tunnel Company 30 days in which to make the payments which have become due.

40 (6) If in accordance with the terms of this Agreement further Notes are purchased by Lloyds after the said Demand has been made then notwithstanding the provisions of paragraph 3 and Appendix C hereof the full amount of such Notes together with interest at the rate payable on such Notes to the date of receipt thereof by Lloyds in sterling in London shall immediately become due and payable and such Notes may be immediately presented for payment and the amounts of principal and interest thereof shall be recoverable by Lloyds from the Tunnel Company or the Subscribers and in the case of the Subscribers in accordance with and subject to the terms of the Several Guarantees.

(7) When all principal and interest payable to Lloyds in connection with any Note has been received by Lloyds in sterling in London,

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Lloyds will cancel such Note and return it to the Tunnel Company.

17. TAXES

All income withholding and other taxes charges stamp duties and penalties for the late payment of any of the foregoing levied in Hong Kong in relation to the Notes this Agreement the Several Guarantees the Debenture and the document setting up the Trust Fund referred to in paragraph 4(A)(1)(e) hereof or upon the operation thereof and any other document required to be made or entered into in pursuance of this Agreement shall be borne and paid by the Tunnel Company who hereby indemnify Lloyds in respect of any claims which may be made against them in respect thereof and Tunnel Company hereby undertakes that Lloyds shall receive in sterling in London the full amount of any principal or interest expressed to be payable on a Note on the Presentment Date or Interest Due Date thereof (as the case may be) and any amount of principal or interest expressed to be payable under this Agreement on the date provided herein for the payment thereof in all cases without any deduction whatsoever. 10

18. EXPENSES

- (1) The Tunnel Company shall pay to Lloyds on demand the legal charges reasonably and properly incurred by Lloyds in connection with the preparation and due execution of this Agreement the Notes and the Appendices hereto and in connection with the preparation and execution of the documents and fulfilment of the conditions specified in paragraph 4 hereof; 20
- (2) The Tunnel Company shall likewise pay to Lloyds on demand all monies whatsoever which Lloyds may expend or become liable for in demanding suing for recovering and receiving payment of any sum or sums of money due to them hereunder or on the Notes or under the Several Guarantees or under the Debenture or under the provisions of the Trust Fund referred to in paragraph 10 hereof. 30

19. COMMISSIONS

The Tunnel Company will pay to Lloyds

- (1) within 15 days of the date of signature of this Agreement
 - (a) a commitment commission amounting to £147,500 being 1% of £14,750,000
 - (b) a negotiation commission amounting to £29,500 being 2 per mille of £14,750,000

- (2) a management commission of £7,375 being ½ per mille of £14,750,000 on 1st September, 1970, and a similar payment on 1st September in each succeeding year while the interest on or principal amount of any Notes purchased by Lloyds remains outstanding and a similar payment on the date when all outstanding amounts of interest on or principal of the Notes are finally paid unless this date is the 1st September in any year.

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20. DEPOSIT INTEREST

10 All monies held by Lloyds in terms of this Agreement which are not to be applied by Lloyds in terms hereof within 7 days from the date of receipt shall be placed by Lloyds on deposit as soon as possible after receipt and interest shall be payable thereon calculated on a day to day basis at United Kingdom Clearing Banks Deposit Rate maximum 5½ per cent per annum. The interest payable on such deposit shall be applied by Lloyds firstly in or towards payment of principal of the Notes in the order of their Presentment Dates and secondly in or towards payment of interest on the Notes in the like order.

21. JURISDICTION

- 20 (1) The contracting parties hereby declare that they have received from the competent authorities of their respective countries all the authorisation necessary for the execution and performance of this Agreement which shall be carried out in London and governed by and construed in accordance with English Law.
- 30 (2) All disputes arising in connection with this Agreement shall be finally settled in London in accordance with the Arbitration Act 1950 (as the same applies to England) by one or more arbitrators appointed by the President of the Law Society in London, unless the parties hereto within a period of 42 days from the date of written notice of the dispute being given by either party hereto to the other can agree mutually as to the appointment of an arbitrator or arbitrators.
- (3) Judgement upon the award rendered may be entered in any Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 40 (4) Notwithstanding the foregoing Lloyds reserve the right in the event of any default hereunder or on any of the Notes to commence proceedings either in the English Courts or in the Courts of Hong Kong. For the purposes of arbitration and legal proceedings the Tunnel Company hereby irrevocably agrees to be represented by Wheelock Marden & Company (London) Limited, 16, Finsbury Circus, London, E. C. 2, for the purpose of

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accepting service and entering an appearance with all necessary powers including power to appear before any arbitration tribunal or before the English Courts.

- (5) Pursuant to the foregoing provisions of this paragraph the Tunnel Company hereby irrevocably submits to the jurisdiction of the High Court of Justice in England.

22. ALTERATION TO THE CONTRACTS

- (1) Lloyds' obligation to purchase Notes and to make further sums available hereunder shall cease if any alteration of or amendment to or departure from the terms of either the Construction Contract or the Engineer's Contract is made or agreed without the consent of Lloyds. 10

- (2) For the purposes of this paragraph the expression "alteration of or amendment to or departure from the terms of either the Construction Contract or the Engineer's Contract" shall not include any variation to the technical specifications of goods or services to be supplied or rendered under either Contract which does not affect the total price (including any allowance for contingencies) set out in the case of the Construction Contract in Recital (1) of this Agreement and in the case of the Engineer's Contract in Recital (2) of this Agreement and does not involve a material change in the scope or objects of the relative Contract. 20

23. NOTICES

Any notice required to be given hereunder or in relation to this Agreement or the Notes or the Several Guarantees shall be sufficiently served in the case of notice to

- (1) Lloyds if left against receipt at or sent by registered air or inland mail to the office of Lloyds at their Overseas Department, 6, Eastcheap, London, E. C. 3. 30
- (2) The Tunnel Company if left against receipt at or sent by registered air or inland mail to the registered office of the Tunnel Company at Room 1234, 12th Floor, Union House, Hong Kong.
- (3) Any of the Subscribers with the exception of the Government of Hong Kong if left against receipt at or sent by registered air or inland mail to the registered office of the relevant Subscriber as follows:—

Wheelock Marden & Company Limited,
12th Floor, Union House, Hong Kong.

The Hongkong and Shanghai Banking Corporation,
1, Queen's Road, Central, Hong Kong.

Kwong Wan Limited,
25th Floor, Prince's Building, Hong Kong.

Sir Elly Kadoorie Successors Limited,
St. George's Building, Hong Kong.

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- 10 (4) The Government of Hong Kong if left against receipt at or sent by registered air or inland mail to the Financial Secretary of the Government of Hong Kong, Colonial Secretariat, Lower Albert Road, Hong Kong.

PROVIDED THAT in the event of there being no registered air mail service from London to Hong Kong at the time when any such notice is required to be given hereunder service upon the Tunnel Company and the Subscribers or any of them may be effected by leaving against receipt at or sending by registered inland mail to The Hongkong and Shanghai Banking Corporation, 9, Gracechurch Street, London, E. C. 3.

20 Any notice sent by inland mail shall be deemed to have been received three days following the posting thereof and any notice sent by air mail shall be deemed to have been received 7 days following the posting thereof. In the case of notices sent by air mail a duplicate shall be posted not less than two nor more than four days after the posting of the original.

24. TERMINATION

This Agreement shall cease to have effect three months after the date of signing the Construction Contract or on such later date as may be agreed between the parties hereto unless before that date Lloyds shall have confirmed in writing to the Tunnel Company that all the conditions set out in paragraph 4(A) hereof have been fulfilled.

30 IN WITNESS WHEREOF the original and one copy of this Financial Agreement have been signed on behalf of the parties hereto by persons duly authorised the day and year first above written.

Witness to the signature of

Signed
on behalf of THE CROSS-HARBOUR
TUNNEL COMPANY LIMITED

.....

Signed: J. D. Clague

Witness to the signature of

Signed
on behalf of LLOYDS BANK LIMITED

.....

Signed: D. E. Bedford

Signed

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APPENDIX A
DRAWINGS SCHEDULE

PART 1
CONSTRUCTION CONTRACT

**Column 1
Period**

**Column 2
Total Drawings**

From operative date of construction
contract to 6 calendar months after
operative date of construction contract.

£2,000,000.

From operative date of construction
contract to 12 calendar months after
operative date of construction contract.

£5,000,000.

10

From operative date of construction
contract to 18 calendar months after
operative date of construction contract.

£9,000,000.

From operative date of construction
contract to 24 calendar months after
operative date of construction contract.

£12,100,000.

From operative date of construction
contract to 30 calendar months after
operative date of construction contract.

£13,700,000.

20

From operative date of construction
contract to 36 calendar months after
operative date of construction contract.

£14,000,000.

APPENDIX A
DRAWINGS SCHEDULE
PART 2
ENGINEER'S CONTRACT

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Column 1 Period	Column 2 Total Drawings
From operative date of construction contract to 6 calendar months after operative date of construction contract.	£ 10,000.
10 From operative date of construction contract to 12 calendar months after operative date of construction contract.	£ 160,000.
From operative date of construction contract to 18 calendar months after operative date of construction contract.	£ 340,000.
From operative date of construction contract to 24 calendar months after operative date of construction contract.	£ 510,000.
20 From operative date of construction contract to 30 calendar months after operative date of construction contract.	£ 620,000.
From operative date of construction contract to 36 calendar months after operative date of construction contract.	£ 750,000.

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£

APPENDIX B

FORM OF PROMISSORY NOTES

Place London
Date (of signing)

On demand, we promise to pay Lloyds Bank Limited or order at The Hongkong and Shanghai Banking Corporation, 9, Gracechurch Street, London, E.C.3., the sum of Pounds Sterling for value received and to pay at the said The Hongkong and Shanghai Banking Corporation interest thereon 10 at the rate of 5½% per annum, such interest being calculated as from the * day of and payable half yearly on every successive First day of March and First day of September except that the final payment of interest will be calculated to and made on the date on which the said sum of £ ≠ Sterling is paid in full.

Any arrears of interest will also carry interest at the rate of 5½% per annum from the date on which such interest falls due for payment until actually paid and any amount, whether of principal or interest, which falls due for payment on a day which is a Saturday or a non-business day in London will be paid on the next succeeding business day not being a Saturday. 20

For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

* Insert date of purchase
≠ Insert principal amount of Note

APPENDIX C

PART 1 : NOTES OF SERIES 1

			<i>Exhibits</i>	

Presentment Date	Note Numbers	Individual Principal Amounts	Total	Exhibit A1 Agreement between Lloyds Bank Limited London and The Cross-Harbour Tunnel Company Limited Hongkong 19th July 1969 ----- Referred to in Doc. No. 1. <i>continued</i>
10	1.3.1973	1/1, 1/2	100,000	200,000
	1.3.1973	1/3, 1/4, 1/5	70,000	210,000
	1.3.1973	1/6, 1/7, 1/8	50,000	150,000
	1.3.1973	1/9, 1/10, 1/11	35,000	105,000
	1.3.1973	1/12, 1/13, 1/14	20,000	60,000
	1.3.1973	1/15, 1/16	15,000	30,000
	1.3.1973	1/17, 1/18	10,000	20,000
	1.3.1973	1/19, 1/20, 1/21		
		1/22, 1/23	5,000	25,000
			£ 800,000	
20	1.9.1973	1/24, 1/30, 1/31	100,000	300,000
	1.9.1973	1/25, 1/32, 1/33	70,000	210,000
	1.9.1973	1/26, 1/27	50,000	100,000
	1.9.1973	1/28, 1/34	35,000	70,000
	1.9.1973	1/35, 1/36	20,000	40,000
	1.9.1973	1/29, 1/37, 1/38	15,000	45,000
	1.9.1973	1/39, 1/40	10,000	20,000
	1.9.1973	1/41, 1/42, 1/43	5,000	15,000
			£ 800,000	
30	1.3.1974	1/44, 1/45	100,000	200,000
	1.3.1974	1/46, 1/47, 1/61	70,000	210,000
	1.3.1974	1/48, 1/49, 1/50, 1/62	50,000	200,000
	1.3.1974	1/51, 1/52	35,000	70,000
	1.3.1974	1/53, 1/54	20,000	40,000
	1.3.1974	1/55, 1/56, 1/63	15,000	45,000
	1.3.1974	1/57, 1/64	10,000	20,000
1.3.1974	1/58, 1/59, 1/60	5,000	15,000	
			£ 800,000	
40	1.9.1974	1/65, 1/66, 1/67	100,000	300,000
	1.9.1974	1/68, 1/69, 1/84	70,000	210,000
	1.9.1974	1/70, 1/71	50,000	100,000
	1.9.1974	1/72, 1/73	35,000	70,000
	1.9.1974	1/74, 1/75	20,000	40,000
	1.9.1974	1/76, 1/77, 1/78	15,000	45,000
	1.9.1974	1/79, 1/80	10,000	20,000
	1.9.1974	1/81, 1/82, 1/83	5,000	15,000
			£ 800,000	
1.3.1975	1/92, 1/93, 1/94	100,000	300,000	
1.3.1975	1/95, 1/96	70,000	140,000	
1.3.1975	1/85, 1/97, 1/98	50,000	150,000	
1.3.1975	1/86, 1/99, 1/100	35,000	105,000	
1.3.1975	1/87, 1/88, 1/101	20,000	60,000	
1.3.1975	1/89	15,000	15,000	
1.3.1975	1/90, 1/91	10,000	20,000	

<i>Exhibits</i> -----	Presentment Date	Note Numbers	Individual Principal Amounts	Total	
Exhibit A1 Agreement between Lloyds Bank Limited London and The Cross-Harbour Tunnel Company Limited Hongkong 19th July 1969 ----- Referred to in Doc. No. 1. <i>continued</i>	1.3.1975 1.9.1975 1.9.1975 1.9.1975 1.9.1975 1.9.1975 1.9.1975 1.9.1975 1.9.1975	1/102, 1/103 1/104, 1/120, 1/121 1/105, 1/106, 1/122 1/107, 1/123 1/108 1/109, 1/110, 1/111 1/112, 1/113, 1/114, 1/115 1/116, 1/117, 1/118 1/119	5,000 100,000 70,000 50,000 35,000 20,000 15,000 10,000 5,000	10,000 300,000 210,000 100,000 35,000 60,000 60,000 30,000 5,000	10
				£800,000	
	1.3.1976 1.3.1976 1.3.1976 1.3.1976 1.3.1976 1.3.1976 1.3.1976 1.3.1976	1/124, 1/125 1/126, 1/127, 1/128 1/129, 1/130 1/131, 1/132, 1/133 1/134, 1/135, 1/136, 1/137 1/138, 1/139, 1/140, 1/141 1/142, 1/143, 1/144 1/145, 1/146, 1/147	100,000 70,000 50,000 35,000 20,000 15,000 10,000 5,000	200,000 210,000 100,000 105,000 80,000 60,000 30,000 15,000	20
				£800,000	
	1.9.1976 1.9.1976 1.9.1976 1.9.1976 1.9.1976 1.9.1976 1.9.1976 1.9.1976 1.9.1976	1/148, 1/149 1/150, 1/151, 1/152 1/153, 1/154, 1/155 1/156, 1/157, 1/158 1/159, 1/160, 1/161 1/162, 1/163 1/164, 1/165 1/166, 1/167, 1/168, 1/169, 1/170	100,000 70,000 50,000 35,000 20,000 15,000 10,000 5,000	200,000 210,000 150,000 105,000 60,000 30,000 20,000 25,000	30
				£800,000	
	1.3.1977 1.3.1977 1.3.1977 1.3.1977 1.3.1977 1.3.1977 1.3.1977 1.3.1977	1/171, 1/177, 1/178 1/172, 1/179, 1/180 1/173, 1/174 1/175, 1/181 1/182, 1/183 1/176, 1/184, 1/185 1/186, 1/187 1/188, 1/189, 1/190	100,000 70,000 50,000 35,000 20,000 15,000 10,000 5,000	300,000 210,000 100,000 70,000 40,000 45,000 20,000 15,000	40
				£800,000	
	1.9.1977 1.9.1977 1.9.1977	1/191, 1/192 1/193, 1/194, 1/208 1/195, 1/196, 1/197, 1/209	100,000 70,000 50,000	200,000 210,000 200,000	

	Presentment Date	Note Numbers	Individual Principal Amounts	<i>Exhibits</i>	
				Total	Exhibit A1 Agreement between
	1.7.1977	1/198, 1/199	35,000	70,000	Lloyds Bank
	1.9.1977	1/200, 1/201	20,000	40,000	Limited London
	1.9.1977	1/202, 1/203, 1/210	15,000	45,000	and The
	1.9.1977	1/204, 1/211	10,000	20,000	Cross-Harbour
	1.9.1977	1/205, 1/206, 1/207	5,000	15,000	Tunnel Company Limited
				£800,000	Hongkong 19th July 1969
10	1.3.1978	1/212, 1/213, 1/214	100,000	300,000	-----
	1.3.1978	1/215, 1/216, 1/231	70,000	210,000	Referred to in
	1.3.1978	1/217, 1/218	50,000	100,000	Doc. No. 1.
	1.3.1978	1/219, 1/220	35,000	70,000	<i>continued</i>
	1.3.1978	1/221, 1/222	20,000	40,000	
	1.3.1978	1/223, 1/224, 1/225	15,000	45,000	
	1.3.1978	1/226, 1/227	10,000	20,000	
	1.3.1978	1/228, 1/229, 1/230	5,000	15,000	
				£800,000	
20	1.9.1978	1/239, 1/240, 1/241	100,000	300,000	
	1.9.1978	1/242, 1/243	70,000	140,000	
	1.9.1978	1/232, 1/244, 1/245	50,000	150,000	
	1.9.1978	1/233, 1/246, 1/247	35,000	105,000	
	1.9.1978	1/234, 1/235, 1/248	20,000	60,000	
	1.9.1978	1/236	15,000	15,000	
	1.9.1978	1/237, 1/238	10,000	20,000	
	1.9.1978	1/249, 1/250	5,000	10,000	
				£800,000	

APPENDIX C

PART 2 : NOTES OF SERIES 2

	Presentment Date	Note Numbers	Individual Principal Amounts	Total
30	1.3.1973	2/1, 2/2, 2/24	25,000	75,000
	1.3.1973	2/3, 2/4, 2/5, 2/25	17,500	70,000
	1.3.1973	2/6, 2/7, 2/8, 2/26, 2/27	12,500	62,500
	1.3.1973	2/9, 2/10, 2/11, 2/28	8,750	35,000
	1.3.1973	2/12, 2/13, 2/14	5,000	15,000
	1.3.1973	2/15, 2/16, 2/29	3,750	11,250
	1.3.1973	2/17, 2/18	2,500	5,000
40	1.3.1973	2/19, 2/20, 2/21, 2/22, 2/23	1,250	6,250
				£280,000
	1.9.1973	2/30, 2/31, 2/44, 2/45	25,000	100,000
	1.9.1973	2/32, 2/33, 2/46, 2/47	17,500	70,000
	1.9.1973	2/48, 2/49, 2/50	12,500	37,500
	1.9.1973	2/34, 2/51, 2/52	8,750	26,250
	1.9.1973	2/35, 2/36, 2/53, 2/54	5,000	20,000
	1.9.1973	2/37, 2/38, 2/55, 2/56	3,750	15,000
	1.9.1973		2,500	7,500

<i>Exhibits</i> -----	Presentment Date	Note Numbers	Individual Principal Amounts	Total
Exhibit A1 Agreement between Lloyds Bank Limited London and The Cross-Harbour Tunnel Company Limited	1.9.1973	2/39, 2/40, 2/57	1,250	3,750
	1.9.1973	2/41, 2/42, 2/43		£280,000
Hongkong 19th July 1969	1.3.1974	2/65, 2/66, 2/67	25,000	75,000
	1.3.1974	2/61, 2/68, 2/69, 2/84	17,500	70,000
Referred to in Doc. No. 1. <i>continued</i>	1.3.1974	2/62, 2/70, 2/71, 2/85	12,500	50,000
	1.3.1974	2/72, 2/73, 2/86	8,750	26,250
	1.3.1974	2/74, 2/75, 2/87, 2/88	5,000	20,000
	1.3.1974	2/63, 2/76, 2/77, 2/78, 2/89	3,750	18,750
	1.3.1974	2/64, 2/79, 2/80, 2/90, 2/91	2,500	12,500
	1.3.1974	2/58, 2/59, 2/60, 2/81, 2/82, 2/83	1,250	7,500
				£280,000
	1.9.1974	2/92, 2/93, 2/94, 2/104	25,000	100,000
	1.9.1974	2/95, 2/96, 2/105, 2/106	17,500	70,000
	1.9.1974	2/97, 2/98, 2/107	12,500	37,500
	1.9.1974	2/99, 2/100, 2/108	8,750	26,250
	1.9.1974	2/101, 2/109, 2/110, 2/111	5,000	20,000
	1.9.1974	2/112, 2/113, 2/114, 2/115	3,750	15,000
	1.9.1974	2/116, 2/117, 2/118	2,500	7,500
	1.9.1974	2/102, 2/103, 2/119	1,250	3,750
				£280,000
	1.3.1975	2/120, 2/121, 2/124, 2/125	25,000	100,000
	1.3.1975	2/122, 2/126, 2/127, 2/128	17,500	70,000
	1.3.1975	2/123, 2/129, 2/130	12,500	37,500
	1.3.1975	2/131, 2/132, 1/133	8,750	26,250
	1.3.1975	2/134, 2/135, 2/136, 2/137	5,000	20,000
	1.3.1975	2/138, 2/139, 2/140, 2/141	3,750	15,000
	1.3.1975	2/142, 2/143, 2/144	2,500	7,500
	1.3.1975	2/145, 2/146, 2/147	1,250	3,750
				£280,000
	1.9.1975	2/148, 2/149, 2/171	25,000	75,000
	1.9.1975	2/150, 2/151, 2/152, 2/172	17,500	70,000
	1.9.1975	2/153, 2/154, 2/155, 2/173, 2/174	12,500	62,500
	1.9.1975	2/156, 2/157, 2/158, 2/175	12,500	62,500
	1.9.1975	2/159, 2/160, 2/161	8,750	35,000
	1.9.1975	2/162, 2/163, 2/176	5,000	15,000
	1.9.1975	2/164, 2/165	3,750	11,250
			2,500	5,000

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	Presentment Date	Note Numbers	Individual Principal Amounts	Total	Exhibits ----- Exhibit A1 Agreement between Lloyds Bank Limited London and The Cross-Harbour Tunnel Company Limited Hongkong 19th July 1969 ----- Referred to in Doc. No. 1. <i>continued</i>
	1.9.1975	2/166, 2/167, 2/168, 2/169, 2/170	1,250	6,250	
	1.3.1976	2/177, 2/178, 2/191, 2/192	25,000	100,000	
10	1.3.1976	2/179, 2/180, 2/293, 2/194	17,500	70,000	
	1.3.1976	2/195, 2/196, 2/197	12,500	37,500	
	1.3.1976	2/181, 2/198, 2/199	8,750	26,250	
	1.3.1976	2/182, 2/183, 2/200, 2/201	5,000	20,000	
	1.3.1976	2/184, 2/185, 2/202, 2/203	3,750	15,000	
	1.3.1976	2/186, 2/187, 2/204	2,500	7,500	
	1.3.1976	2/188, 2/189, 2/190	1,250	£ 280,000	
20	1.9.1976	2/212, 2/213, 2/214	25,000	75,000	
	1.9.1976	2/208, 2/215, 2/216, 2/231	17,500	70,000	
	1.9.1976	2/209, 2/217, 2/218, 2/232	12,500	50,000	
	1.9.1976	2/219, 2/220, 2/233	8,750	26,250	
	1.9.1976	2/221, 2/222, 2/234, 2/235	5,000	20,000	
	1.9.1976	2/210, 2/223, 2/224, 2/225, 2/236	3,750	18,750	
30	1.9.1976	2/211, 2/226, 2/227, 2/237, 2/238	2,500	12,500	
	1.9.1976	2/205, 2/206, 2/207, 2/228, 2/229, 2/230	1,250	7,500	
				£ 280,000	
40	1.3.1977	2/239, 2/240, 2/241, 2/251	25,000	100,000	
	1.3.1977	2/242, 2/243, 2/252, 2/253	17,500	70,000	
	1.3.1977	2/244, 2/245, 2/254	12,500	37,500	
	1.3.1977	2/246, 2/247, 2/255	8,750	26,250	
	1.3.1977	2/248, 1/256, 2/257, 2/258	5,000	20,000	
	1.3.1977	2/259, 2/260, 2/261, 2/262	3,750	15,000	
	1.3.1977	2/263, 2/264, 2/265	2,500	7,500	
	1.3.1977	2/249, 2/250, 2/266	1,250	3,750	
				£ 280,000	
	1.9.1977	2/267, 2/268	25,000	50,000	
	1.9.1977	2/269, 2/271, 2/272, 2/273, 2/274, 2/275	17,500	105,000	

<i>Exhibits</i>	1.9.1977	2/270, 2/276, 2/277, 2/278	12,500	50,000	

Exhibit A1	1.9.1977	2/279, 2/280, 2/281	8,750	26,250	
Agreement	1.9.1977	2/282, 2/283, 2/284, 2/285	5,000	20,000	
between					
Lloyds Bank	1.9.1977	2/286, 2/287, 2/288, 2/289	3,750	15,000	
Limited London	1.9.1977	2/290, 2/291, 2/292, 2/293	2,500	10,000	
and The					
Cross-Harbour	1.9.1977	2/294, 2/295, 2/296	1,250	3,750	10
Tunnel Company					
Limited					
Hongkong				£280,000.	
19th July 1969					

APPENDIX C

PART 3 : NOTES OF SERIES 3

Referred to in Doc. No. 1. <i>continued</i>	Presentment Date	Note Numbers	Individual Principal Amounts	Total	
	1.3.1973	3/1	10,000	10,000	
	1.3.1973	3/2, 3/3, 3/4, 3/5, 3/6, 3/7, 3/8, 3/9, 3/10, 3/11, 3/12	5,000	55,000	20
	1.3.1973	3/13, 3/14, 3/15, 3/16	2,000	8,000	
	1.3.1973	3/17, 3/18	1,000	2,000	
				£ 75,000	
	1.9.1973	3/19	10,000	10,000	
	1.9.1973	3/20, 3/21, 3/22, 3/23, 3/24, 3/25, 3/26, 3/27, 3/28, 3/29, 3/30	5,000	55,000	
	1.9.1973	3/31, 3/32, 3/33, 3/34	2,000	8,000	
	1.9.1973	3/35, 3/36	1,000	2,000	
				£75,000	30
	1.3.1974	3/37	10,000	10,000	
	1.3.1974	3/38, 3/39, 3/40, 3/41, 3/42, 3/43, 3/44, 3/45, 3/46, 3/47, 3/48	5,000	55,000	
	1.3.1974	3/49, 3/50, 3/51, 3/52	2,000	8,000	
	1.3.1974	3/53, 3/54	1,000	2,000	
				£75,000	
	1.9.1974	3/55	10,000	10,000	
	1.9.1974	3/56, 3/57, 3/58, 3/59, 3/60, 3/61, 3/62, 3/63, 3/64, 3/65, 3/66	5,000	55,000	40
	1.9.1974	3/67, 3/68, 3/69, 3/70	2,000	8,000	
	1.9.1974	3/71, 3/72	1,000	2,000	
				£75,000	
	1.3.1975	3/73	10,000	10,000	
	1.3.1975	3/74, 3/75, 3/76, 3/77, 3/78, 3/79, 3/80, 3/81, 3/82, 3/83, 3/84	5,000	55,000	

	Presentment Date	Note Numbers	Individual Principal Amounts	Total	Exhibits
					----- Exhibit A1 Agreement between Lloyds Bank Limited London and The Cross-Harbour Tunnel Company Limited Hongkong 19th July 1969 ----- Referred to in Doc. No. 1. <i>continued</i>
	1.3.1975	3/85, 3/86, 3/87, 3/88	2,000	8,000	
	1.3.1975	3/89, 3/90	1,000	2,000	
				£75,000	
10	1.9.1975	3/91	10,000	10,000	
	1.9.1975	3/92, 3/93, 3/94, 3/95, 3/96, 3/97, 3/98, 3/99, 3/100, 3/101, 3/102	5,000	55,000	
	1.9.1975	3/103, 3/104, 3/105, 3/106	2,000	8,000	
	1.9.1975	3/107, 3/108	1,000	2,000	
			75,000		£75,000
20	1.3.1976	3/109	10,000	10,000	
	1.3.1976	3/110, 3/111, 3/112, 3/113, 3/114, 3/115, 3/116, 3/117, 3/118, 3/119, 3/120	5,000	55,000	
	1.3.1976	3/121, 3/122, 3/123, 3/124	2,000	8,000	
	1.3.1976	3/125, 3/125	1,000	2,000	
					£75,000
30	1.9.1976	3/127	10,000	10,000	
	1.9.1976	3/128, 3/129, 3/130, 3/131, 3/132, 3/133, 3/134, 3/135, 3/136, 3/137, 3/138	5,000	55,000	
	1.9.1976	3/139, 3/140, 3/141, 3/142	2,000	8,000	
	1.9.1976	3/143, 3/144	1,000	2,000	
					£75,000
40	1.3.1977	3/145	10,000	10,000	
	1.3.1977	3/146, 3/147, 3/148, 3/149, 3/150, 3/151, 3/152, 3/153, 3/154, 3/155, 3/156	5,000	55,000	
	1.3.1977	3/157, 3/158, 3/159, 3/160	2,000	8,000	
	1.3.1977	3/161, 3/162	1,000	2,000	
					£75,000
	1.9.1977	3/163	10,000	10,000	
	1.9.1977	3/164, 3/165, 3/166, 3/167, 3/168, 3/169, 3/170, 3/171, 3/172, 3/173, 3/174	5,000	55,000	
	1.9.1977	3/175, 3/176, 3/177, 3/178	2,000	8,000	
	1.9.1977	3/179, 3/180	1,000	2,000	
					£75,000

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

**APPENDIX D
FORM OF TRUSTEE LETTER**

1969

To: Lloyds Bank Limited

Dear Sirs,

1. In Consideration of the sum of £1 paid by you to us (the receipt of which we hereby acknowledge), we hereby irrevocably appoint you on the following terms and conditions as our Trustee to hold and deal on our behalf with the Notes which we shall make in accordance with the provisions of the Agreement dated the _____ day of _____ 1969 made between you and us (hereinafter referred to as "the Financial Agreement").

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2. All the words and phrases defined in paragraph 1 of the Financial Agreement shall have the respective meanings assigned to them therein when used in this letter.

3. Upon presentation of Valid Claims by Costains in respect of the Construction Contract you are hereby irrevocably authorised to release Notes of Series 1 and Series 2 in the manner hereinafter specified for purchase up to the amount of such Valid Claims and so that the total cumulative value of Notes of Series 1 and Series 2 released for purchase as closely as possible approximates to but does not exceed the total cumulative value of Valid Claims so presented. The excess in cumulative value of Valid Claims so presented over the cumulative value of Notes of Series 1 and Series 2 released will be added by you to the amount of the Valid Claim or Claims next presented by Costains. The proceeds of the purchase of Notes of Series 1 and Series 2 shall be paid to Costains in accordance with paragraph 7 of the Financial Agreement. Notes of Series 1 and 2 are to be released simultaneously in the order of their respective Presentment Dates the earliest in each series first as set forth in Appendix C to the Financial Agreement so that Notes of Series 2 are released in the same numerical order as Notes of Series 1 and so that the total value of the Series 1 Notes released at any time equals 4/5ths of the total value of all the Notes of both Series 1 and 2 so released, the balance of 1/5th of the total value of all the Notes of Series 1 and Series 2 released being made up of Series 2 Notes.

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4. Upon presentation of Valid Claims by Scott Wilson in respect of the Engineer's Contract you are hereby irrevocably authorised to release Notes of Series 3 in the manner hereinafter specified for purchase up to the amount of such Valid Claims and so that the total cumulative value of Notes of Series 3 released for purchase as closely as possible approximates to but does not exceed the total cumulative value of Valid Claims so presented. The excess in cumulative value of Valid Claims so presented over the cumulative value of Notes of Series 3 released will be added by you to the amount of the Valid Claim or Claims next presented by Scott Wilson. The proceeds of the purchase

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of Notes of Series 3 shall be paid to Scott Wilson in accordance with paragraph 7 of the Financial Agreement. Notes of Series 3 are to be released in the order of the Presentment Dates (the earliest first) as set forth in Appendix C to the Financial Agreement.

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

5. If circumstances arise where it becomes necessary for you to release a Note for the exact amount of a Valid Claim we hereby authorise you to release such Note and to endorse it in the following manner -

10 "Notwithstanding that this Note has a face value of £ by reason of the authority vested in us by the maker of this Note and contained in a letter dated 1969, the principal amount hereof is hereby reduced to £ Payment of this amount will be accepted in full and final payment of the principal amount hereof."

6. When a Note is released by you we hereby authorise you to insert therein the date of purchase by you under the terms of the Financial Agreement as the date from which interest is payable by us.

7. You are requested to advise us in writing of the serial number of the Note and the date of purchase each time a Note is released by you for purchase.

20 8. When all principal and interest payable to Lloyds under the terms of the Financial Agreement or of the Notes have been fully paid and no further Notes fall to be purchased by Lloyds thereunder Lloyds will cancel all the Notes (if any) then held by them and return them to the Tunnel Company.

9. We shall be obliged if you will accept your appointment as our Trustee in this matter and the manner by which your duties as Trustee will be fulfilled by acknowledging receipt of this letter and signifying your agreement with its contents.

10. This letter shall be governed by and construed in accordance with English Law.

30 For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

APPENDIX E

**LETTER OF INSTRUCTION
PART 1: CONSTRUCTION CONTRACT**

To: Costain International Limited (date).....1969
Raymond International Incorporated
Paul Y Construction Company Limited
Richard Costain Limited

Dear Sirs,

Until you shall have been informed in writing by Lloyds Bank Limited that all principal amounts of and interest in connection with any Note purchased by them in accordance with the terms of our Agreement with them dated the day of 1969 as amended at any time have been paid and no Notes remain to be purchased and in order to furnish to Lloyds further and collateral security for the due payment of all principal amounts and interest payable on such Notes we hereby irrevocably authorise you to pay to Lloyds Bank Limited all sums (except for any amounts due under sub-clause (5) and (6) of clause 64 of the Conditions of Contract of our Construction Contract with you) which you may become due to pay to us under the Construction Contract as defined in the said Agreement including sums arising from an arbitration award.

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For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

PART 2: ENGINEER'S CONTRACT

To: Scott Wilson Kirkpatrick and Partners (date).....1969

Dear Sirs,

Until you shall have been informed in writing by Lloyds Bank Limited that all principal amounts of and interest in connection with any Note purchased by them in accordance with the terms of our Agreement with them dated the day of 1969 as amended at any time have been paid and no Notes remain to be purchased and in order to furnish to Lloyds further and collateral security for the due payment of all principal amounts and interest payable on such Notes we hereby irrevocably authorise you to pay to Lloyds Bank Limited all sums which you may become due to pay to us under the Engineer's Contract as defined in the said Agreement including sums arising from an arbitration award.

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For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

**APPENDIX F
LETTER OF INSTRUCTION (PERFORMANCE BOND)**

To: Lloyds Bank Limited. (date)

1969

Dear Sirs,

Whereas in accordance with the terms of the Construction Contract dated the 26th day of June 1969 between ourselves of the one part and the consortium comprising Costain International Limited, Raymond International Inc. and Paul Y. Construction Company Limited (which three firms are collectively there in and hereinafter called "the Contractors") and Richard Costain Limited of the other part you have entered into a Performance Bond for the due fulfilment of and observance of the obligations of the Contractors under the Construction Contract aforesaid.

We hereby agree that until all moneys and interest which may be or become payable to you under the Financial Agreement made between us and dated July 1969 or the Notes issued pursuant thereto have been fully paid and satisfied such monies as would otherwise be payable to us under the said Performance Bond shall be retained by you and shall be applied in accordance with Paragraph 9 of the said Financial Agreement.

For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

Exhibits

Exhibit A1
Agreement
between
Lloyds Bank
Limited London
and The
Cross-Harbour
Tunnel Company
Limited
Hongkong
19th July 1969

Referred to in
Doc. No. 1.
continued

**APPENDIX G
FORM OF THE SEVERAL GUARANTEES BY THE SUBSCRIBERS**

THIS GUARANTEE is made the day of 1969 BETWEEN LLOYDS BANK LIMITED of 71 Lombard Street, London, E.C.3. (hereinafter called "Lloyds") of the one part and (hereinafter called "the Guarantor") of the other part.

WHEREAS:-

- (1) Lloyds have entered into a Financial Agreement (hereinafter called "the Agreement") dated the day of 1969 with The Cross-Harbour Tunnel Company Ltd. (hereinafter called "the Company") a copy of which is hereunto annexed and initialled for the purposes of identification. 10
- (2) The Guarantor is a shareholder in the Company.
- (3) It is a condition precedent to the effectiveness of the Agreement that this guarantee (inter alia) should be entered into.

NOW IT IS HEREBY AGREED as follows:-

1. In consideration of Lloyds making sums available in pursuance of the Agreement and in accordance with the terms thereof the Guarantor HEREBY GUARANTEES that should the Company fail to pay any amounts in sterling due to Lloyds under the Agreement or due upon the Promissory Notes to be purchased by Lloyds in accordance with the terms of the Agreement then and in any such case the Guarantor will pay to Lloyds in London on first demand* of such amounts. 20
2. (a) The liability of the Guarantor hereunder shall not be impaired or discharged by reason of:-
 - (i) Any time or other indulgence which Lloyds may grant to the Company.
 - (ii) Any forbearance on the part of Lloyds whether as to payment, time, performance or otherwise.
 - (iii) Any amendment from time to time of the Agreement or the Contracts as defined in the Agreement. 30
 - (iv) The renewal or extension of any of the Notes or any part thereof.
 - (v) Lloyds compounding with the Company or with any other person or guarantor.
 - (vi) Lloyds abstaining from perfecting or enforcing any security or

other Guarantee or right which Lloyds may now or hereafter have from or against the Company or any other person.

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(b) The Guarantor's liability hereunder shall not be affected by any failure by Lloyds to take any security or by any invalidity of any security taken.

(c) Until all money and liabilities due or incurred by the Company to Lloyds shall have been paid or discharged, the Guarantor will not claim or prove in competition with Lloyds in respect of any payment by the Guarantor hereunder or claim the benefit of any other security which Lloyds may now or hereafter hold for any money or liabilities due or incurred by the Company to Lloyds or to have any share therein.

10

(d) Any security now or hereafter held by the Guarantor from the Company in respect of the liability of the Guarantor hereunder shall be held in trust for Lloyds and as security for the liability of the Guarantor hereunder.

3. Until such time as all principal moneys and interest due or to become due from the Company to Lloyds shall have been paid in full, the Guarantor shall not have or exercise any or all right of subrogation which it might acquire by operation of law or contractually or otherwise in the event of any payment being made by the Guarantor in pursuance of this Guarantee.

20

4. The Guarantor hereby further undertakes with Lloyds that it will not enforce any right of repayment of Convertible Unsecured Loan Stock or Interest Stock under the terms and conditions of the Subscription Agreement between the Company and certain of its shareholders (including the Guarantor) dated 1969 or the Instrument by which such Stock was issued or otherwise howsoever before all principal moneys and interest payable by the Company to Lloyds shall have been fully paid and discharged.

5. (a) Subject to sub-paragraph (b) hereof the Guarantor shall be discharged from this Guarantee and this Guarantee shall be cancelled in the event of the occupation of the Crown Colony of Hong Kong or in the event of the Government of the said Colony ceasing to exercise effective de facto control whether as a result of such occupation or otherwise save to the extent of any compensation awarded in respect of assets of the Company destroyed seized or confiscated in circumstances arising out of or in connection with such occupation or cessation of control.

30

(b) If any such occupation or cessation of control as is referred to in sub-paragraph (a) hereof continues only for a very temporary period and if thereafter the Company is able to operate the Hong Kong Cross-Harbour Tunnel without loss for a period of six months this Guarantee shall not be cancelled or discharged by any such

40

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occupation or cessation of control as aforesaid but shall merely be suspended for the duration thereof and the said period of six months.

6. (a) For the purpose of this Guarantee the expression "without loss" shall mean "without loss after meeting all operating costs and expenses including all principal and interest payments then due under the Agreement".
- (b) The expression "a period of six months" shall mean "the period comprising the first consecutive six months after the end of a very temporary period of occupation or cessation of control as aforesaid during which the Hong Kong Cross-Harbour Tunnel has been operated without loss". 10

7. This Guarantee shall be governed by and contrued in accordance with the laws of England.

AS WITNESS the hands of

duly authorised on behalf of
LLOYDS BANK LIMITED

and

duly authorised on behalf of
THE GUARANTORS 20

- | | | |
|--|---|-----------------------------|
| * Wheelock Marden & Co. Ltd. | — | Percentage guaranteed 29.5% |
| Hutchison International Ltd. | — | Percentage guaranteed 29.5% |
| The Government of Hong Kong | — | Percentage guaranteed 25% |
| The Hongkong and Shanghai
Banking Corporation | — | Percentage guaranteed 10% |
| Kwong Wan Ltd. | — | Percentage guaranteed 5% |
| Sir Elly Kadoorie Successors Ltd. | — | Percentage guaranteed 1% |

APPENDIX H – FORM OF DEBENTURE

Proforma of Debenture, see identical to Exhibit A2.

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**APPENDIX J
UNDERTAKING TO CALL LOAN STOCK**

To: Lloyds Bank Limited. (date) 1969

Dear Sirs,

With reference to the Financial Agreement dated 1969 entered into by us with you, we hereby undertake that we will call upon the Subscribers named in that Agreement to take up Ordinary Shares and Convertible Unsecured Loan Stock in this Company under the terms of the Subscription Agreement between this Company and the Subscribers at such times as will put funds at our disposal to meet at their respective due dates:—

10

- a) our obligations in respect of payments due to Costains and Scott Wilson of approximately one fifth of the drawings set out in Appendix A of the Financial Agreement, and
- b) our other financial obligations during the construction of the Tunnel.

We further undertake:—

- (1) that we will use our best endeavours to ensure that all such calls upon the Subscribers are duly met;
- (2) that if such calls are not met we will offer the Ordinary Shares or Loan Stock in respect of which they have been made to other persons for subscription in accordance with Clause 5 (b) of the said Subscription Agreement.

20

For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

APPENDIX K

Dated the 25th day of June, 1969

THE CROSS-HARBOUR TUNNEL COMPANY, LIMITED

and

WHEELOCK MARDEN AND COMPANY, LIMITED

HUTCHISON INTERNATIONAL LIMITED

30

THE HONG KONG GOVERNMENT

THE HONGKONG AND SHANGHAI BANKING CORPORATION

KWONG WAN LIMITED

SIR ELLY KADOORIE SUCCESSORS LIMITED

SUBSCRIPTION AGREEMENT

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THIS AGREEMENT is made the 25th day of June, One Thousand Nine Hundred and Sixty Nine BETWEEN THE CROSS-HARBOUR TUNNEL COMPANY, LIMITED whose registered office is at Union House, 12th Floor, Hong Kong, (hereinafter called "the Company") of the one part, and WHELOCK MARDEN & COMPANY LIMITED whose registered office is at Union House, 12th Floor, Hong Kong of the second part, HUTCHISON INTERNATIONAL LIMITED whose registered office is at Union House, 11th Floor, Hong Kong, of the third part, THE HONG KONG GOVERNMENT of the fourth part, THE HONGKONG AND SHANGHAI BANKING CORPORATION whose address is at 1 Queen's Road, Central, Hong Kong, of the fifth part, KWONG WAN LIMITED whose registered office is at Prince's Building, 25th Floor, Hong Kong, of the sixth part, SIR ELLY KADOORIE SUCCESSORS LIMITED whose registered office is at St. Goerge's Building, 24th Floor, Hong Kong, of the seventh part(each of which parties is hereinafter referred to as "the Subscriber").

20 WHEREAS:

(A) Agreement has been reached as hereinafter mentioned for the subscription of Ordinary Shares and Convertible Unsecured Loan Stock of the Company upon and subject to the terms hereinafter appearing.

(B) The Authorised Capital of the Company has been increased to HK\$120,000,000 divided into twelve million Ordinary Shares of \$10 each.

30 (C) The franchise for the operation of the Tunnel contained in the terms of a Resolution of the Legislative Council of the Hongkong Government passed on August 11th 1965 has been purchased by the Company from the Victoria City Development Company Limited.

(D) The said franchise has now been confirmed and granted to the Company by Section 4 of the Cross-Harbour Tunnel Ordinance 1969.

(E) The purpose of this Agreement is to bind the parties hereto to contribute to the Company to a total of HK\$110,000,000 by way of subscription for Ordinary Shares and Loan Stock as hereinafter defined

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(exclusive of interest satisfied by the issue of Loan Stock as provided hereafter) in the event of a contract being signed for the construction of the said tunnel and a financial agreement being concluded with Lloyds Bank Ltd.

NOW IT IS HEREBY AGREED as follows:-

1. In this Agreement the following expressions shall have the meanings set opposite to them:-
 - Authorised Share Capital – HK\$120,000,000 divided into 12,000,000 shares of HK\$10 each.
 - Loan Stock – Convertible Unsecured Loan Stock of the 10 Company compulsorily convertible into Ordinary Shares of the Company 30 days before the estimated opening day of the Tunnel, bearing interest at the rate of 10% per annum from date of issue.
 - The Instrument – the instrument constituting the Loan Stock.
 - The Conversion Date – the date on which the Loan Stock falls to be converted into Ordinary Shares of the Company pursuant to the Instrument. 20
 - Interest Stock – Additional Loan Stock issue to holders for the time being of the Loan Stock in satisfaction or part satisfaction of payments of interest due on their holdings of the Loan Stock.
2. The Subscribers agree irrevocably to subscribe in cash at par for the total nominal amounts of Ordinary Shares and Loan Stock as and when the same shall be allotted by the Board of Directors of the Company to a total of HK\$110,000,000 in the following percentages:-

	Percentages	30
Wheelock Marden & Co. Ltd.	29.5	
Hutchison International Limited	29.5	
The Hong Kong Government	25.0	
The Hongkong and Shanghai Banking Corp.	10.0	
Kwong Wan Limited	5.0	
Sir Elly Kadoorie Successors Ltd.	1.0	

3. The Loan Stock shall:

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- (a) Be created by a Resolution of the Board of Directors of the Company and constituted by the Instrument, which shall be in the form annexed hereto with such alterations and additions (if any) as may be agreed.
- (b) be in thyratio of \$40 Loan Stock for every \$10 Ordinary Share issued unless otherwise unanimously agreed in writing by all subscribers.
- (c) be issued at such dates as may be resolved from time to time by the Board of the Company.
- (d) be subscribed for in cash and shall carry interest from the date of such subscription (save as to Interest Stock allotted in satisfaction of interest upon Loan Stock which shall carry interest from the date of such allotment).

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4. The Ordinary Shares and Loan Stock shall be subscribed as aforesaid in accordance with the following provisions:-

- (a) The Company shall give to the Subscriber not less than 30 days notice in writing specifying:
- (i) the date (hereinafter called "the Subscription Date") upon which it has been resolved by the Board that Ordinary Shares and Loan Stock should be subscribed.
- (ii) the amount payable in respect thereof by each Subscriber.
- (b) On each Subscription Date the Company shall deliver to each Subscriber:
- (i) a certified copy of the Resolution of the Board of Directors of the Company authorising the issue of the said Ordinary Shares and/or Loan Stock.
- (ii) a certificate signed by two Directors of the Company that no event has occurred upon the happening of which the Loan Stock is expressed by the Instrument to become repayable and (where relevant) that the issue of the Loan Stock is within the borrowing powers of the company exercisable by the Directors without further authority from its shareholders and
- (iii) certificates for Ordinary Shares and/or Loan Stock in favour of each Subscriber or its nominees

20

30

and each Subscriber shall deliver to the Company in exchange

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therefor a cheque of banker's draft in favour of the Company for the nominal amount of such Ordinary shares and/or Loan Stock to be subscribed by such Subscriber.

5. If a Subscriber shall fail to pay to the Company on the next business day following any Subscription Date the amount due in respect of the Ordinary Shares and/or Loan Stock to be subscribed by him on that date:—

(a) The amount so unpaid shall carry interest at the rate of 15 per cent per annum from that Subscription Date until the actual date of payment. 10

(b) The Company shall be at liberty at any time after such Subscription Date to offer such Ordinary Shares and/or Loan Stock for subscription to other persons upon such conditions as the Board of Directors may decide. The Subscriber shall cease to be liable to subscribe for the same on the date when they shall be taken up by any other person or persons but shall nevertheless be liable to pay interest as aforesaid from the date of the Subscription Date to the date on which such Ordinary Shares and/or Loan Stock are subscribed as aforesaid.

PROVIDED HOWEVER THAT Nothing herein contained shall prevent 20
the Company recovering from the Subscriber damages in respect of any breach by the Subscriber of any of its obligations hereunder or shall release the Subscriber from its obligations hereunder to subscribe for subsequent Ordinary Shares and/or Loan Stock which may be issued pursuant to this Agreement.

6. The Subscriber shall cease to be under any obligations to take up and pay for further Ordinary Shares and/or further Loan Stock if any event shall happen upon the happening of which the Loan Stock is expressed by the Instrument to become repayable without prejudice to the rights of the Company in respect of any antecedent breaches of this 30
Agreement.

7. (a) If the Directors of the Company consider that it is necessary to raise additional funds to finance the construction of the Tunnel such funds shall (unless otherwise authorised by an Extraordinary Resolution of the Stockholders in accordance with the terms of the Instrument) be raised by a further issue of Ordinary Shares and/or Loan Stock ranking *pari passu* with the Ordinary Shares/Loan Stock then in issue in all respects except that the rate and method of payment of interest shall be subject to review by the Board of the Company in the light of prevailing financial conditions at the time 40
or times when such further issue or issues are under consideration. In such event the Company shall (unless the Subscriber shall have failed to perform his obligations to the Company hereunder) notify

the Subscriber in writing of the total principal amount of the additional Ordinary Shares and/or Loan Stock, of the interest rate thereof, of dates on which it is to be subscribed and of any special terms. The Subscriber shall have the right to subscribe for such proportion of such additional issue or issues in the percentages set out in paragraph 2 hereof.

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(b) The Subscriber shall notify the Company in writing within 60 days of receiving a notice pursuant to paragraph (a) of this Clause whether the Subscriber elects to exercise his right to subscribe for such additional Ordinary Shares and/or Loan Stock. If the Subscriber so elects the provisions of this Agreement shall mutatis mutandis apply to such additional Ordinary Shares and/or Loan Stock. Failure by the Subscriber to give notice to the Company under this paragraph (b) shall be deemed to be an election by the Subscriber not to take up such additional Ordinary Shares and/or Loan Stock as aforesaid.

(c) The provisions of this Clause shall apply on each and every occasion on which the Directors of the Company decide to issue additional Ordinary Shares and/or Loan Stock.

20

(d) Any additional Ordinary Shares and/or Loan Stock which the Subscriber elects not to take up or which is not offered to the Subscriber in consequence of the Subscriber having failed to perform his obligations hereunder shall be offered by the Company to the other holders of the Ordinary Shares and/or Loan Stock pro rata to their holdings at the time when such offer is made.

8. If and when called upon by the Company, the Subscribers agree irrevocably that they will each provide shares pro rata to their holdings of shares in the Company when so called upon to enable the Company to comply with the requirements Section 8 of the Cross-Harbour Tunnel Ordinance 1969.

30

9. Any notice required to be served under the provisions of the Agreement may be served by sending it through the post in a prepaid letter addressed to the Company at its registered office or to the Subscriber at the address of the Subscriber appearing on the register of Stockholders and service shall be deemed to be effected at the time when the letter containing the same was posted and in proving such service it shall be sufficient to prove that the letter was properly addressed, stamped and posted.

40

10. This contract shall be governed by and construed according to the laws of the British Colony of Hong Kong.

IN WITNESS WHEREOF this Agreement has been entered into on the day and year first before written.

SIGNED by JOHN LOUIS MARDEN)
for and on behalf of THE)
CROSS-HARBOUR TUNNEL)
COMPANY LIMITED with the)
authority of a Resolution of its)
Board of Directors dated 18th June)
1969 in the presence of:

THE CROSS-HARBOUR TUNNEL CO., LTD.

10 (Sgd.) D.R. Metcalf

SIGNED by JOHN LOUIS MARDEN)
and PETER OSWALD SCALES for)
and on behalf of WHEELOCK)
MARDEN & COMPANY LIMITED)
with the authority of a Resolution of)
its Board of Directors dated 20th)
June 1969 in he presence of:

(Sgd.) D.R. Metcalf

(Sgd.) John Louis Marden
Peter Oswald Scales

SIGNED by DENNIS CASSERLY)
LYTH and PETER ALAN LEE WINE)
for and on behalf of HUTCHISON)
INTERNATIONAL LIMITED with)
the authority of a Resolution of its)
Board of Directors dated 17th June)
1969 in the presence of:)

(Sgd.) D.R. Metcalf

(Sgd.) Dennis Casserly Lyth
Peter Alan Lee Wine

SIGNED by HADDON-CAVE being)
duly authorised to sign for and on)
behalf of THE HONG KONG)
GOVERNMENT in the presence of:)

10

(Sgd.) G. Lau

(Sgd.) Haddon-Cave

SIGNED by MARTIN CURRAN)
being duly authorised to sign for and)
on behalf of THE HONG KONG)
AND SHANGHAI BANKING)
CORPORATIN inthe presence of:)

(Sgd.) D.R. Metcalf

(Sgd.) Martin Curran

20

SIGNED by RICHARD CHARLES)
LEE and BUNNAN TONG for and)
on behalf of KWONG WAN)
LIMITED with the authority of a)
Resolution of its Board of Directors)
dated 20th June 1969 in the presence)
of:

(Sgd.) D.R. Metcalf

(Sgd.) Richard Charles Lee
Bunnan Tong

10 SIGNED by LAWRENCE)
KADOORIE for and on behalf of SIR)
ELLY KADOORIE SUCCESSORS)
LIMITED with the authority of a)
Resolution of its Board of Directors)
dated 13th June 1969 in the presence)
of:

(Sgd.) D.R. Metcalf

(Sgd.) Lawrence Kadoorie

DATED NINTH JUNE 1969

THE CROSS-HARBOUR TUNNEL COMPANY
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INSTRUMENT

constituting

HK\$100,000,000 10 per cent. CONVERTIBLE UNSECURED LOAN STOCK

(with power to increase)

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THIS INSTRUMENT is made the Ninth day of June, One Thousand nine hundred and sixty nine by THE CROSS-HARBOUR TUNNEL COMPANY, LIMITED (hereinafter called "the Company") whose registered office is at Room 1234 Union House, Hong Kong.

WHEREAS (a) The Company has an authorised share capital of H.K.\$120,000,000 divided into 12,000,000 shares of HK\$10.
(b) The Company is to construct and operate a vehicular tunnel between Hong Kong Island and Kowloon.
(c) The Company by a resolution of its Board of Directors passed on the ninth day of June, 1969 has determined to issue up to HK\$100,000,000 10 per cent Convertible Unsecured Loan Stock to be constituted as hereinafter provided. 10

NOW THIS INSTRUMENT WITNESSETH AND THE COMPANY HEREBY DECLARES as follows:—

1. In this Instrument and the Schedules annexed hereto unless there is something in the subject or context inconsistent therewith the expressions following shall have the meanings hereinafter mentioned that is to say:—

"The Tunnel" means the said vehicular tunnel between Hong Kong Island and Kowloon to be constructed by the Company;

"The Original Stock" means the principal moneys represented by the H.K.\$100,000,000 10 per cent Convertible Unsecured Loan Stock hereby constituted and for the time being outstanding or as the case may require a specific portion thereof; 20

"The Additional Stock" means the principal moneys represented by any unsecured loan capital of the Company constituted by the joint operation of this instrument and any instrument or instruments expressed to be supplemental hereto in accordance with the provisions of Clause 2 hereof and for the time being outstanding or as the case may require a specific portion thereof;

"The Stock" (except in the First Schedule hereto) means and includes the Original Stock and the Additional Stock; 30

"The Conversion Rights" means the rights of conversion into Ordinary Share Capital of the Company attached to the Stock or any part thereof;

"The Stockholders" (except in the First Schedule hereto) means the several persons for the time being entered in the register hereinafter mentioned as the holders of the Stock;

“Estimated Opening Date” means the date estimated for the opening for traffic of the Tunnel which estimated date shall be decided by resolution of the Board of Directors of the Company not later than 60 days in advance of such date;

“Conversion Date” means the date which precedes the Estimated Opening Date by 30 days;

“Secretary” means the Secretary or Secretaries of the Company for the time being.

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10 Expressions defined in the Hong Kong Companies Ordinance shall bear the same meanings in this Instrument.

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20 2. The Original Stock is limited to H.K.\$100,000,000 but the Company reserves to itself the right to constitute further unsecured loan capital (being Additional Stock as before defined) by means of an instrument or instruments expressed to be supplemental to this instrument and such Additional Stock may be constituted on terms identical in all respects so as to form a single issue with the Original Stock or upon such other terms as the Company may determine Provided that no Additional Stock will be so constituted unless the Company has procured its Auditors for the time being to give a certificate to the effect that the issue thereof will not result in any contravention of Clause 8 of this instrument and any such certificate when given shall be conclusive and binding upon the Company and the Stockholders and all persons claiming through or under them. The whole of the Stock as and when issued shall rank *pari passu* as an unsecured obligation of the Company and equally and rateably without discrimination or preference.

3. The Stock may be issued to such persons on such terms and at such time or times at par.

4. The Original Stock shall be held subject to the Conditions set forth in the First Schedule hereto and such Conditions shall be binding on the Company and the Stockholders and all persons claiming through them respectively.

30 5. Every Stockholder will be entitled to a certificate stating the amount of the Stock held by him and every such certificate shall refer to this Instrument and be in the form or to the effect set out in the First Schedule hereto and shall be under the Common Seal of the Company and shall be signed by a Director and by the Secretary or some other person approved by the Directors for the purpose. Every certificate shall bear a denoting number. Joint holders of Stock will be entitled to one certificate only in respect of the Stock held by them jointly and the same will be delivered to the Stockholder whose name stands first in the register in respect of such Stock.

40 6. The Stock shall become repayable in each and every one of the following events (but in the case of any such event as is mentioned in paragraphs (i) or (ii) below only if the holders of a majority in nominal value

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of the Stock for the time being outstanding by notice in writing to the Company given before such failure breach or non-compliance is made good shall require repayment of the Stock);

- (i) failure by the Company to convert any of the Stock on the Conversion Date or to pay or satisfy within fourteen days after the due date for payment any interest payable on any of the Stock;
- (ii) breach of or non-compliance by the Company with any of the provisions of this instrument or of any instrument supplemental hereto;
- (iii) an order being made or an effective resolution being passed for the winding up of the Company; 10
- (iv) the appointment of a Receiver of any part of the undertaking or property of the Company or the levying or enforcement of any distress or execution upon any of its assets or property which is not paid out or discharged or set aside as provided by the Code of Civil Procedure within fourteen days;
- (vii) the cessation or threatened cessation by the Company to carry on its business or the sale or disposal by the Company of the whole or substantially the whole of its undertaking;
- (viii) if the Company shall for the purpose of Section 178 of the Hong Kong Companies Ordinance be deemed to be unable to pay its debts; 20
- (viii) if the Tunnel shall not be open for traffic within the time limit (or any extension thereof) specified by the franchise granted by section 4 of the Cross-Harbour Tunnel Ordinance 1969 enacted or to be enacted;
- (viii) if the Company shall commit any breach of the said franchise or other agreement with the Government of Hong Kong and the Government of Hong Kong rescinds such franchise or enters into possession of the works and constructions being carried out by the Company pursuant thereto. 30

7. The Company shall at all times keep or cause to be kept at some place in Hong Kong an accurate register showing:—

- (A) The names and addresses of the holders for the time being of the Stock;
- (B) The amount of each class of the Stock held by every registered holder; and
- (C) The date at which the name of every such registered holder is entered in respect of the stock standing in his name; and

IN WITNESS whereof this Instrument has been entered into the day and year first above written.

Signed by JOHN LOUIS MARDEN
By the Authority of a Resolution of
the Board of Directors of THE
CROSS-HARBOUR TUNNEL
COMPANY LTD., dated 9th June,
1969, in the presence of:

(Signed)

J. L. MARDEN

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(Signed) R.J.F. Brothers

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(D) The serial number of each Stock Certificate issued and the date of the issue thereof any charge of name or address on the part of any Stockholder shall forthwith be notified to the Company and thereupon the said register shall be altered accordingly, Each Stockholder and any person authorised by him shall be at liberty at all reasonable times during office hours to inspect the said register and to take copies of or extracts from the same or any part thereof.

8. The Company undertakes that so long as any part of the Stock remains outstanding:—

(A) It will at all times maintain in being an amount of unissued ordinary share capital sufficient to enable it to give effect to the conversion rights; 10

(B) It will not alter any of the rights now attached to its ordinary share capital or attach any special rights or restrictions thereto and it will not create any ordinary share capital which does not form one class with the ordinary capital in issue at the date hereof;

(C) It will not consolidate or subdivide its ordinary shares;

(D) It will not grant any person any right to subscribe for any debentures, loan stock, shares or other securities of the Company for a consideration which does not in the opinion of the Directors represent the full value thereof otherwise than by way of rights to the holders of the ordinary share capital and the Stockholders and the holders of any other loan capital or securities of the Company carrying a right to convert into ordinary share capital. 20

9. The form of Conversion Notice and the Conditions to be endorsed on the Stock Certificate as set out in the First Schedule hereto and the provisions contained in the Second Schedule hereto shall have effect in the same manner as if herein set forth.

10. The Company shall pay all stamp duty (if any) on this Instrument and on the Stock Certificates. 30

11. Each of the Stockholders shall be entitled to sue for the performance and observance of the provisions hereof so far as his Stock is concerned.

12. This Instrument shall be construed in accordance with and the rights of the Stockholders governed by the Law of The British Colony of Hong Kong.

THE FIRST SCHEDULE
THE CROSS-HARBOUR TUNNEL COMPANY,
LIMITED

(Incorporated in Hong Kong under the Hong Kong Companies Ordinance)

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continued

NO.

Issue of HK\$100,000,000 10 per cent Convertible Unsecured Loan
Stock (with power to increase).

Issued pursuant to Clause 3 (18) of the Memorandum and to Article 96
of the Company's Articles of Association and to a Resolution of the Board of
10 Directors passed on 9th June, 1969.

This Is To Certify That

of
is/are the registered holder(s) of Hong Kong Dollars of the
above Stock which Stock is constituted by an Instrument entered into by the
Company dated 9th June, 1969 and is issued subject to the conditions therein
contained and to the conditions annexed hereto

Interest is payable on the Stock half-yearly on 1st January and 1st July.

Copies of the above mentioned Instrument are obtainable from the
Company. GIVEN under the Common Seal of the Company this
day of 19

Director.

Secretary.

20

NOTE: The Company need not register the transfer of any Stock unless the certificate is
produced. The Stock is transferable in amounts and multiples of HK\$10.

Exhibits

CONDITIONS

Exhibit A1
Agreement
between
Lloyds Bank
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Limited
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continued

1. In these Conditions "the Stock" means only the Original Stock and "Stockholders" shall be construed accordingly.

2. (A) The Company shall not later than 50 days before the Estimated Opening Date give to the Stockholders notice that on the Conversion Date the whole of the Stock held by them shall be converted into fully paid ordinary capital of the Company at the rate of one Ordinary Share of H.K.\$10 for every H.K.\$10 in nominal amount of Stock and such notice shall be in the form set out in the Third Schedule hereto.

(B) Each Stockholder shall before the Conversion Date deliver to the 10
Company the certificate for his Stock together with a conversion notice in the form set out in the Third Schedule and a form of nomination (if appropriate) duly completed by him (and in the case of joint holders by all joint holders) and if he fails to do so the Company may nominate some person to complete as agent for the Stockholder a conversion notice in relation to the Stockholder's holding of Stock on the footing that all the ordinary capital resulting from the conversion thereof is to be registered in his name and such person and the Directors and the Company shall be fully indemnified by the Stockholder for all matters relating thereto.

(C) On the Conversion Date unless the Stock has previously become 20
repayable under Clause 6 of the Instrument the Stock held by each Stockholder shall be converted into ordinary share capital at the aforesaid rate by the allotment to each Stockholder by the Company credited as fully paid of the number of ordinary shares of the Company to which he is entitled pursuant to this paragraph.

(D) All ordinary shares issued and allotted under paragraph (C) hereof shall be credited as fully paid and shall rank as from the Conversion Date *pari passu* in all respects with the ordinary shares of the Company in issue at the Conversion Date.

(E) Interest on Stock converted under paragraph (C) hereof shall be 30
payable to the first day of January or the first day of July immediately preceding the Conversion Date but shall cease to accrue thereafter.

(F) If any fractions of the minimum amount in which the ordinary capital is for the time being transferable shall arise on conversion the aggregate amount of ordinary capital representing such fractions will be sold and the net proceeds will be distributed pro rata among the persons entitled thereto but no fraction of the minimum amount in which the ordinary capital is for the time being transferable shall be allotted or issued for this purpose.

(G) As soon as practicable after the Conversion Date the Company will issue free of charge to each Stockholder or to his nominee as aforesaid a 40
certificate in respect of the ordinary shares allotted to him under paragraph (C)

hereof. Joint holders of Stock will be entitled to one certificate only in respect of the Stock held by them jointly and the same will be delivered to the Stockholder whose name stands first in the register in respect of such Stock.

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(H) Any Stockholder whose stock has been converted shall if and when so required by the Company and at the expense of the Company execute such contract (if any) as the Company shall reasonably require for the purpose of filing with the Registrar of Companies and the Directors shall have power to authorise some person to execute such contract on his behalf.

10 (I) Forms of nomination may not be amended or withdrawn without the consent of the Company.

(J) All ordinary shares allotted by the Company under paragraph (C) hereof shall be in full satisfaction of the principal amount of the Stock converted.

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continued

3. (A) The Company will pay interest on the Stock at the rate of 10 per cent per annum by equal half yearly instalments on the 1st day January and the 1st day of July in every year the first payment to be made in accordance with the terms of issue of the Stock.

20 (B) Notwithstanding the provisions of paragraph (A) hereof the Company shall be entitled to give notice in writing to the Stockholders not later than one month before any due date for the payment of interest that the Company intends to satisfy the interest due on such date or any part thereof by allotting on such due date to the Stockholders credited as fully paid Stock or Additional Stock ranking *pari passu* in all respects with the Original Stock of a nominal amount equal to the interest or such part thereof as the Company shall specify in such notice. The said notice to each Stockholder shall specify the amount of Stock or Additional Stock to be allotted to the Stockholder to whom it is addressed.

30 (C) Nothing contained in paragraph (B) hereof shall entitle the Company to allot Stock or Additional Stock to any Stockholder in satisfaction of any part of any interest payment to him which the Company is required by any legislation for the time being in force in Hong Kong to pay to the Government of Hong Kong by way of taxation on such interest.

40 (D) If notice is given to the Stockholders under paragraph (B) of this Clause the Company shall on the due date for the payment of interest referred to in such notice allot to each Stockholder credited as fully paid the amount of Stock or Additional Stock specified in the said notice sent to him and in the case of joint holders such Stock or Additional Stock shall be allotted to them jointly and each Stockholder shall accept the Stock or Additional Stock so allotted to him in full satisfaction of the interest in respect of which such Stock was allotted.

(E) As soon as practicable after Stock or Additional Stock has been

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allotted pursuant to paragraph (D) hereof the Company will issue free of charge to each Stockholder a certificate in respect of the Stock or Additional Stock allotted to him. Joint holders of Stock will be entitled only to one certificate in respect of the Stock held by them jointly and the same will be delivered to the Stockholder whose name stands first in the register in respect of such Stock.

4. If the Stock becomes repayable under the terms of the Instrument it will be repaid at par (together with accrued interest).

5. All principal moneys and interest payable in respect of the Stock shall be payable at the registered office for the time being of the Company or at such other place as the Company may appoint. 10

6. The Company will recognise the registered holder of any Stock as the absolute owner thereof and will not be bound to take notice of or to see to the execution of any trust whether implied or constructive to which any Stock may be subject and the receipt of such person (or in the case of joint holdings of any one of such holders) for the interest on or for the moneys payable upon the redemption of the same shall be a good discharge to the Company notwithstanding any notice it may have whether express or otherwise of the right title interest or claim of any other person to or in such Stock or interest or moneys. No notice of any trust express implied or constructive shall (except as by statute provided or as required by an Order of a Court of competent jurisdiction) be entered in the register in respect of any Stock. 20

7. Every Stockholder will be recognised by the Company as entitled to his Stock free from any equity set-off of cross-claim on the part of the Company against the original or any intermediate holder of the Stock.

8. The executors or administrators of a deceased holder of Stock (not being one of several joint holders) shall be the only person recognised by the Company as having any title to such Stock.

9. In the case of the death of any of the joint holders of Stock the survivors or survivor will be the only persons or person recognised by the Company as having any title to or interest in such Stock. 30

10. Every holder of the Stock will be entitled to transfer the same or any part thereof (being an amount or multiple of HK\$10) by an instrument in writing in the usual common form or in such other form as the Directors may approve.

11. Every such instrument of transfer shall be signed by the transferor and the transferor shall be deemed to remain the owner of such Stock until the name of the transferee is entered in the Register in respect thereof. The instrument need not be a Deed.

12. Every instrument of transfer must be left at the Registered Office of the 40

Company for registration accompanied by the Certificate of the Stock to be transferred or such other evidence as the Directors may require to prove the title of the transferor of the transfer or his right to transfer the Stock. No transfer shall be registered during the fourteen days preceding any interest payment date.

13. All instruments of transfer which shall be registered shall be retained by the Company.

14. A fee not exceeding HK\$10 will be charged for the registration of each transfer and must if required by the Directors be paid before the registration of the transfer. There shall also be paid to the Company in respect of the registration of any power of attorney letters of administration or probate marriage or death certificate distringas deed poll or other document affecting the transfer or transmission of Stock such fee not exceeding HK\$10 as the Directors shall determine.

15. Any person becoming entitled to any Stock in consequence of the death or bankruptcy of any holder of such Stock may upon producing such evidence that he sustains the character in respect of which he proposes to act under this condition or of his title as the Directors shall think sufficient be registered himself as the holder of such Stock or subject to the preceding conditions as to transfer may transfer such Stock.

16. Subject to the provisions of Condition 3 above the interest upon the Stock may be paid by cheque sent through the post to the registered address of the holder or in the case of joint holders to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque sent through the post shall be at the risk of the registered holder or joint holders and shall be made payable to the order of the person to whom it is sent and payment of the cheque by the banker upon whom it is drawn shall be a satisfaction of the interest.

17. Subject to the provisions of Condition 4 above payment of the principal for the time being owing on the Stock or any part thereof may be made by cheque or warrant made payable to the registered holder thereof or in the case of joint registered holders to all such holders or to such person or persons as the registered holder or joint registered holders may in writing direct and sent to such address as the registered holder or joint registered holders may in writing direct. Every such cheque or warrant may be sent through the post at the risk of the registered holder or joint registered holders and payment of any such cheque or warrant by the banker upon whom it is drawn shall be a satisfaction of the moneys represented thereby.

18. If several persons are entered in the register as joint holders of any Stock then without prejudice to the less preceding clause the receipt of any of such person for any principal interest or other moneys payable on or in respect of the Stock shall be as effective a discharge to the Company or other person

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making the payment as if the person signing such receipt were the sole registered holder of such Stock.

19. (A) Any notice may be given to any Stockholder by sending the same by post in a prepaid letter addressed to such Stockholder at his registered address. In the case of joint registered holders of any Stock a notice given to the Stockholder whose name stands first in the register in respect of such Stock shall be sufficient notice to all the joint holders.

(B) Any notice may be given to the Company by sending the same by post in a prepaid letter addressed to the Company at its registered office for the time being.

10

20. Any notice given by post shall be deemed to have been served at the time when it is posted and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed stamped and posted.

21. A copy of the published annual report and accounts of the Company together with all documents required by law to be attached thereto shall be sent by the Company to every Stockholder concurrently with the issue thereof to the members.

THE SECOND SCHEDULE

Exhibits

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between
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1. Either the Company or any one or more of the Stockholders holding not less than one-tenth of the Stock for the time being outstanding may at any time convene a meeting of the Stockholders to be held at such place in Hong Kong as the Company or such Stockholder or Stockholders as the case may be may determine by giving twenty-one days' notice thereof to the Stockholders and such meeting shall have power by an Extraordinary Resolution being a resolution passed by a majority consisting of not less than three-fourths of the Stockholders voting thereat upon a show of hands or if a poll is demanded by the Chairman of the meeting by Stockholders holding not less than one-tenth of the Stock for the time being outstanding by a majority consisting of not less than three-fourths in value of the votes given on such poll to sanction any modification or compromise or any arrangement in respect of the rights of the Stockholders against the Company or the exchange of the Stock for or the conversion of the Stock into Shares Stock Debentures or other obligations or securities of the Company or any other company formed or to be formed and to assent to any modification of the provisions of this Instrument. A resolution passed in manner aforesaid shall be binding on all the Stockholders whether present or not present as such meeting and each of the Stockholders shall be bound to give effect accordingly. A resolution signed by all the holders of the Stock for the time being outstanding shall be as valid and effectual as if it had been passed as an Extraordinary Resolution at a meeting of the Stockholders duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more Stockholders.

2. The Notice convening any meeting shall specify the place day and hour of the meeting and the general nature of the business to be transacted and it shall in the case of Extraordinary Resolutions specify in the Notice the terms of the Extraordinary Resolutions to be proposed.

3. At any meeting Stockholders present in person or by proxy representing least one-tenth in value of the Stock for the time being outstanding shall form a quorum for the transaction of business except for the purpose of passing an Extraordinary Resolution. The quorum for passing any Extraordinary Resolution shall be the holders present in person or by proxy of a clear majority in value of the Stock for the time being outstanding. No business shall be transacted at any meetin unless the requisite quorums is present at the commencement of business.

4. A person nominated by the Company shall be entitled to take the chair at any meeting of the Stockholders. If at any meeting any such person shall not be present within five minutes after the time appointed for holding the meeting the Stockholders present shall choose one of their number to be Chairman at that meeting. The Chairman shall not be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Stockholder.

5. If within fifteen minutes from the time appointed for the meeting a

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quorum is not present the meeting if convened on the requisition of Stockholders shall be dissolved and in any other case it shall stand adjourned to such day (not being less than fourteen or more than twenty-eight days after the date of the meeting of which such adjournment takes place) and time and place as the Chairman of the meeting shall direct and at such adjourned meeting to Stockholders present in person or by proxy and entitled to vote (irrespective of their number and the value of the Stock held by them) shall form a quorum. Provided that at least seven days' notice shall be given of any such adjourned meeting at which the quorum was not present and such notice shall state that the Stockholders present whatever their number or the Stock held or represented by them will constitute a quorum for all purposes. Subject as aforesaid it shall not be necessary to give notice of an adjourned meeting. 10

6. On a show of hands every Stockholder who (being an individual) is present in person or (being a corporation) is present by its authorised representative shall have one vote and on a poll every Stockholder who is present in person or by proxy shall have one vote for every Ten Dollars of Stock of which he is the holder. In the case of joint registered holders of Stock the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the Register of Stockholders in respect of the joint holding. A person appointed to act as a proxy need not be a Stockholder. 20

7. If and whenever there are issued and outstanding different classes of the Stock the foregoing provisions of this Schedule shall have effect subject to the following modifications:—

- (a) A resolution which in the opinion of the Directors of the Company affects one class only of the Stock shall be deemed to have been duly passed if passed at a separate meeting of the holders of that class;
- (b) A resolution which in the opinion of the Directors of the Company affects all or any two or more classes of the Stock in relation to which the Directors of the Company are of opinion that there is no conflict of interest between the holders of Stock of the several classes so affected shall be deemed to have been duly passed if passed at a single meeting of the holders of Stock of all the classes so affected; 30
- (c) A resolution which in the opinion of the Directors of the Company affects more than one class of the Stock and in relation to which the Directors are of opinion that there is or might be a conflict of interest between the holders of Stock of all such classes it shall be duly passed at separate meetings of the holders of Stock of each class or group of classes so affected. 40

To all such meetings as aforesaid all the preceding provisions of this

Schedule shall *mulalis mulandis* apply as though references therein to the Stock and the Stockholders were references to the Stock constituting the class or classes in question and to the holders of such Stock respectively.

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continued

THE THIRD SCHEDULE

CONVERSION NOTICE

**THE CROSS-HARBOUR TUNNEL COMPANY,
LIMITED**

To: (Name and address of Stockholder)

The Company hereby gives you notice that the Estimated Opening Date has been fixed for 19 and that accordingly your holding of Stock will be converted into Ordinary Shares of H.K.\$10 each fully paid of the Company on 19 ("the Conversion Date") in accordance with the provisions of the First Schedule to the Instrument dated 9th day of June, 1969 constituting the Stock. 10

You are requested to complete Parts A, B and C of this Form as appropriate and return it to the Company together with the certificates for your holding of Stock so as to reach the Company not later than the Conversion Date.

Dated this day of 19

For and on behalf of
THE CROSS-HARBOUR TUNNEL COMPANY, LIMITED

.....
Director

To: The Directors of The Cross-Harbour Tunnel Company, Limited. 20

PART A.

I/We accept the Ordinary Shares of the Company to be allotted on the Conversion Date to me/us credited as fully paid in conversion of my/our holding of Stock subject to the Memorandum and Articles of Association of the Company and desire all of the said Ordinary Shares to be registered in my/our name(s) and hereby authorise the entry of my/our name(s) in the Register of Members in respect of such shares and the despatch of a certificate therefor by ordinary post at my/our risk to
at

NOTE: If the space is left blank the Certificate will be sent to the registered address of the first-named Stockholder on the Register of Stockholders. 30

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Exhibit A1
Agreement
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**APPENDIX L
FORM OF CLAIM (CONSTRUCTION CONTRACT)**

COSTAIN INTERNATIONAL LIMITED

To: Lloyds Bank Limited. (date)

**Financial Agreement with
The Cross-Harbour Tunnel Company Limited**

We refer to the enclosed Payment Certificate and Annexure (Valuation Summary) duly signed by the Engineer, and hereby claim payment to us of £

We certify that the above sum does not exceed 75% of the total amount due to us under that Certificate (representing 78.7% of the estimated value of 10 U.K. and Hong Kong goods, materials and services due for financing under the terms of the Financial Agreement) and is payable to us in accordance with Clause 93 (7) of the Conditions of Contract.

We certify that the amount claimed has not been the subject of any previous claim to you.

for Costain International Limited

APPENDIX M

**FORM OF QUALIFYING CERTIFICATE (AND ANNEXURE)
(CONSTRUCTION CONTRACT)**

HONG KONG CROSS HARBOUR TUNNEL

CONSULTING ENGINEERS

Scott, Wilson Kirkpatrick and Partners in association
with Freeman, Fox and Partners

PAYMENT CERTIFICATE NO

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10 To: Lloyds Bank Limited, 71 Lombard Street, London, E.C.3 and
The Cross-Harbour Tunnel Company Limited, 12th Floor,
Union House, Hong Kong.

(1) WE HEREBY CERTIFY that the total amount due under the
Construction Contract to Costain International Limited on account
of work done, goods and materials delivered, Constructional Plant
on Site and other matters under the Contract between
and the Cross-Harbour Tunnel Company Limited dated the
day of June, 1969 is HK\$ (.
Hong Kong dollars) as shown in the Valuation attached hereto as
an Annexure.

20 (2) WE FURTHER CERTIFY that of the above certified total amount
a proportion equal to HK\$ (.
Hong Kong dollars) is now payable in accordance with sub-clause
93(6) of the conditions of contract to Costain International Limited
by the Cross-Harbour Tunnel Company Limited in Hong Kong in
Hong Kong dollars under the above Contract.

30 (3) WE FURTHER CERTIFY that an amount of £ (. pounds
Sterling) is now payable in accordance with sub-clause 93(7) of the
conditions of contract and subject to the terms of the Financial
Agreement to Costain International Limited by Lloyds Bank
Limited in the United Kingdom, this amount being the Sterling
equivalent at an exchange rate of 14.60 H.K. dollars to one pound
Sterling of the balance remaining of the total amount now payable
under the Contract after deduction of the proportion certified under
(2) above.

(4) WE FURTHER CERTIFY that the goods and services, the subject
of this certificate, are not currently the subject of arbitration.

SIGNED Engineer 19

EXHIBIT A2

Exhibits

Exhibit A2
Collateral
Debenture
granted by
The
Cross Harbour
Tunnel Company
Limited.
11th August 1969

Adjudication for
\$5 paid
Stamp Duty
\$429,225.00
paid

Referred to in
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Exhibits

Exhibit A2
Collateral
Debenture
granted by
The
Cross-Harbour
Tunnel Company
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11th August 1969

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ISSUE OF A COLLATERAL DEBENTURE TO SECURE LIABILITY UNDER CERTAIN PROMISSORY NOTES TO THE EXTENT OF POUNDS FOURTEEN MILLION SEVEN HUNDRED AND FIFTY THOUSAND STERLING (£14,750,000) WHEREAS THE CROSS-HARBOUR TUNNEL COMPANY LIMITED whose registered office is situated at Union House, 12th Floor, Victoria, Hong Kong (hereinafter called "the Company") has applied to LLOYDS BANK LIMITED whose registered office is situated at 71, Lombard Street, London, E.C.3., England (hereinafter called "the Bank") and the Bank has agreed to make sums available to the Company from time to time by the purchase of the Company's Promissory Notes (hereinafter called "the Notes") not exceeding in the aggregate £14,750,000 in accordance with the provisions of a Financial Agreement dated 1969 (hereinafter called "the Financial Agreement") made between the Company and the Bank, such Notes to bear interest at the rate of 5½% per annum payable as therein mentioned. 10

AND WHEREAS it was a term of the treaty for the Financial Agreement that the Company should furnish to the Bank further and collateral security for due payment of all principal moneys and interest payable under the said Notes in accordance with the terms and conditions contained in the Financial Agreement.

NOW THIS DEBENTURE WITNESSETH as follows:- 20

1. (a) In pursuance of the Financial Agreement and in consideration of the Bank purchasing the Notes in accordance with and subject to the terms and conditions thereof, the Company hereby covenants with the Bank that it will pay to the Bank all principal moneys not exceeding in the aggregate £14,750,000 which may be or become payable to the Bank under or by virtue of the said Notes together with interest thereon as therein mentioned which moneys and interest shall be payable in Sterling in London by the Company to the Bank in accordance with the terms and provisions of the said Notes and of the Financial Agreement. 30

- (b) In the event of any delay in payment of interest referred to in the preceding sub-paragraph, interest shall be paid by the Company on the interest in arrear from the due date of payment to the date on

which the said interest is received by the Bank at the said rate of 5½% per annum.

Exhibits

- (c) This Debenture being by way of collateral security for the said Notes, any payment of principal and/or interest hereunder shall discharge pro tanto the corresponding liability of the Company under the Notes.

Exhibit A2
Collateral
Debenture
granted by
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2. In further pursuance of the said Financial Agreement and in order to provide the Bank with further security for due payment of all amounts which may be or become payable to the Bank under or by virtue of the said Notes,
10 THE COMPANY DOETH HEREBY CHARGE with payment to the Bank of all principal moneys and interest which may be or become payable in accordance with the provisions of Clause I hereof and/or all other claims costs and expenses which may be incurred by the Bank in connection with this security (including any expenses and charges arising out of or in connection with the acts and matters referred to in Condition No.3 of the Conditions to this Debenture) and so that the charge hereby created shall be a Floating Charge and a continuing security ALL THAT its undertaking property and assets whatsoever and wheresoever both present and future including its uncalled capital for the time being.

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20 3. The Company will at any time and from time to time if and when required by the Bank so to do execute in favour of the Bank such legal, specific or other mortgages or charges as the Bank shall require over the property and assets hereby charged or any of them to secure all money and liabilities hereby agreed to be paid or intended to be hereby secured, such mortgages or charges to be prepared by or on behalf of the Bank at the cost of the Company and to contain such powers and remedies and such terms and conditions as the Bank shall reasonably require.

30 4. The Company hereby irrevocably appoints the Chief Controller and Secretary for the time being of the Bank jointly and each one of them severally to be its Attorney for the Company and in its name, on its behalf and as its act and deed or otherwise to sign seal and deliver or otherwise perfect any such legal or formal mortgage or charge as aforesaid or any other deed assurance or act which may be required or deemed proper by the Attorney for perfecting the title of the Bank to any of the property or assets hereby charged or for or in connection with the exercise of any power or remedy of the Bank hereunder.

40 5. The Company may at any time give to the Bank one month's notice of its intention to discharge this security and immediately upon the expiration of such notice all money and liabilities hereby secured or intended so to be shall become immediately payable by the Company.

6. The security hereby created is in addition to any other security or securities which the Bank may now or at any time hereafter hold or take from the Company or from any other person in respect of the obligations of the Company.

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Exhibit A2
Collateral
Debenture
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continued

7. This Debenture is issued subject to and with the benefit of the conditions endorsed hereon which are deemed to be part of it.

8. The expression "the Company" and "the Bank" wherever used in these presents shall (if the context permit) include the company or corporation specifically named and its successors and assigns.

GIVEN under the Common Seal of the Company this Eleventh day of August, one thousand nine hundred and sixty-nine.

THE CONDITIONS WITHIN REFERRED TO

1. The Company shall not be at liberty without the consent in writing of the Bank to create any charge upon the property and assets comprised in this security to rank in priority to or *pari passu* with the charge hereby created. 10

2. The principal monies hereby secured shall immediately become payable on demand by the Bank:-

(a) If the Company make default in payment of any monies which by the terms of this Debenture are expressed to be payable by the Company.

(b) If the Company makes default in performance or observance of any of the covenants and conditions binding upon it by virtue of the Financial Agreement or any other event of default occurs as defined in Paragraph 16 of the Financial Agreement. 20

(c) If the Company suspends its business or makes any composition with creditors if an order is made for the compulsory winding-up of the Company.

(d) If the Company commits any breach of any of the covenants terms and conditions contained in this Debenture including these Conditions.

3. At any time after the principal moneys hereby secured become payable the Bank may by writing under the hand of an officer of the Bank from time to time appoint any person or persons to be a receiver and/or manager or receivers and/or managers of the property and assets charged by this Debenture 30 and may by like writing remove any such receiver and/or manager or receivers and/or managers and may appoint a new receiver and/or manager or receivers and/or managers and a receiver and/or manager or receivers and/or managers so appointed shall have power:-

(a) To take possession of collect and get in all or any of the property and assets charged by this Debenture and for that purpose to take all proceedings in the name of the Company or otherwise as may seem expedient;

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Exhibit A2
Collateral
Debenture
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continued

- 10 (b) To carry on and manage or concur in carrying on and/or managing the business of the Company or any part thereof and for any of these purposes to raise or borrow any money that may be required upon the security of the property and assets hereby charged or any of them.
- (c) To sell or concur in selling all or any of the property and assets charged by this Debenture after giving to the Company at least seven days' notice of his or their intention to sell and to carry any such sale into effect by assigning in the name and on behalf of the Company or otherwise. Any such sale may be for cash, debentures, or other obligations, shares, stock or other valuable consideration and may be payable in a lump sum or by instalments and subject to such terms and conditions as the Bank may think fit. Plant machinery and other fixtures may be severed, and sold separately from the premises containing them, without the consent of the Company being obtained thereto.
- 20 (d) To make and effect all repairs, renewals and any improvements of the Company's plant machinery and effects and to take out, maintain and renew insurances on all or any of the Company's property and assets.
- (e) To appoint managers, agents, servants, workmen and others for any of the aforesaid purposes at such remuneration and for such periods as he or they shall think fit.
- (f) To do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid or which may be necessary or requisite for compliance with any of the provisions of the Cross-Harbour Tunnel Ordinance 1969 or any amendment or re-enactment thereof or any other act or thing which, he or they lawfully may or can do as agent for the Company.

30 4. A receiver and/or manager or receivers and/or managers so appointed shall be deemed to be the agent or agents of the Company and the Company shall be solely responsible for his or their acts or defaults and for his or their remuneration. The provisions of Section 101, Sub-sections (1) and (2) Sections 104, 106, 107 and Section 109, sub-sections (3) (4) (5) (6) (7) and (8) (i) (ii) (iii) of the Imperial Statute entitled the Law of Property Act 1925 and the powers thereby conferred on a mortgagee or receiver or receivers shall so far as applicable and not inconsistent herewith apply to the receiver and/or manager or receivers and/or managers so appointed as if such provisions were
40 incorporated herein save that all monies received by such receiver and/or manager or receivers and/or managers after providing for the matters specified in Clauses (i) to (iii) of Section 109, Sub-section (8) aforesaid and for all costs, charges and expenses of and incidental to the exercise of any of the powers of such receiver and/or manager or receivers and/or managers shall be applied in or towards satisfaction of this Debenture.

Exhibits

Exhibit A2
Collateral
Debenture
granted by
The
Cross-Harbour
Tunnel Company
Limited.
11th August 1969

Referred to in
Doc. No. 1
continued

5. No powers of leasing letting entering into agreements for leases or lettings and accepting surrenders of leases (whether statutory or otherwise) shall during the continuance of this security be exercisable by the Company without the consent of the Bank signified in writing under the hand of an authorised officer of the Bank.

6. The expression "the Bank" hereinbefore used shall include the Bank's assigns whether immediate or derivative. Any appointment or removal under Clause 3 hereof may be made by writing signed or sealed by any such assigns and the Company hereby irrevocably appoints any one or more duly authorised officer or officers of each of such assigns to be its Attorney or Attorneys in the 10 terms and for the purposes in Clause 4 hereinbefore set forth.

SEALED with the Common Seal of the Company and SIGNED by JOHN LOUIS MARDEN, Chairman and DAVID RICHARD METCALF, Secretary of WHEELOCK MARDEN & CO', LTD., Secretaries of the Company.

(Sgd.) John Louis Marden

(Sgd.) David Richard Metcalf

in he presence of:—

(Sgd.) R. J. BROTHERS.

EXHIBIT A3

INSTRUCTIONS TO TENDERS

TENDER FORM

FORM OF BOND

FORM OF ARTICLES OF AGREEMENT

CONDITIONS OF CONTRACT

C O N T E N T S

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INSTRUCTIONS TO TENDERERS

(These instructions will not form part of the Contract)
(and are herein reproduced only in so far as they are)
(relevant for purposes of record)

Exhibits

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to Tenders
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of Contract.
continued

1. Tenders will only be considered from contractors or consortia who have previously been notified by the Engineer on behalf of the Company that they are accepted as prospective tenderers.
2. Tenderers must visit, examine and consider the Site and obtain for themselves all information which may be necessary for making a Tender and entering into a Contract and must examine the Tender Documents in order to ascertain the matters as to which they will be deemed to have satisfied themselves and the risks and obligations which they are to undertake.
3. Model studies of the effects of currents in the Harbour on the submerged tube tunnel units during the sinking and handling operations are being carried out at the Hydraulics Research Station, Wallingford, England. The principal results of these studies will be made available to tenderers when they become available. Tenderers are welcome to visit the Research Station providing an application is made in writing to “The Consulting Engineers, Hong Kong Cross-Harbour Tunnel, 47 Victoria Street, London, S.W.1., England.”
- 20 4. Soil samples and rock cores taken from bore holes made in and about the Site will be available for inspection by the duly authorised representatives of tenderers on application to the offices of the Engineer in Hong Kong. Tenderers must satisfy themselves as to the extent to which these samples and cores are representative of sub-surface conditions.

The description given in appendix 1 of the site investigations will not form part of the Contract and the attention of tenderers is drawn to clause 1.6 of the Specification.

Should tenderers wish to make additional borings or other site investigations they may do so at their own cost subject to the approval of the

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continued

Engineer and any other relevant authority or body and provided they apply beforehand to the Engineer in writing. Should the tenderer be awarded the Contract he shall make available to the Engineer all results and details of the borings and any other site investigations.

5. Memoranda, letters, Drawings, and all other information given to prospective tenderers prior to the issue of the Tender Documents will not form part of the Contract between the successful tenderer and the Company. The Contract between the successful tenderer and the Company will consist solely of the Articles of Agreement (a draft of which is attached), and the documents referred to therein. No other documents issued by the Engineer or the 10 Company may be used in interpreting or construing the Contract.

6. Should there be any doubt as to the meaning of any of the Tender Documents or as to anything to be done or not to be done under the Contract or as to these instructions or as to any other matter or thing, tenderers must set forth writing such doubt to "The Consulting Engineers, Hong Kong Cross-Barbour Tunnel, 5th Floor, Manson House, Nathan Road, Hong Kong," with a copy of all correspondence to them at 47 Victoria Street, London, S.W.1., England, not later than fourteen days before the date fixed for the delivery of the Tenders.

Neither the Engineer, nor any of his employees, nor any agents or 20 servants of the Company have any authority to make representation or explanation to tenderers as to the meaning of the Tender Documents, or as to any other matter or thing, so as to bind the Company or to bind or fetter the judgment or discretion of the Engineer in the exercise of his powers and duties under the Contract, excepting insofar as such representation or explanation is contained in formal Circular Letters to Tenderers issued by the Engineer and subsequently incorporated in the Contract.

7. The quantities given in the Bill of Quantities are approximate and tenderers must satisfy themselves as to the general accuracy and representativeness of these quantities, calling attention in their Tender to the 30 items concerned and must provide accordingly in the tendered rates.

8. Additional copies of the Tender Drawings may be obtained from the offices of the Engineer in Hong Kong or London on payment of the cost of printing and postage. All copies of the Tender Drawings (whether free or paid for) together with all copies of documents issued to tenderers for the purposes of tendering shall be returned by all unsuccessful tenderers, to the Engineer, when instructed to do so.

9. The scheme of construction described in the documents, which will be termed the Engineer's Scheme, provides for a rectangular reinforced concrete tunnel to be constructed in a basin and sunk by the submerged-tube method. 40 The Specification provides for the Contractor to adopt alternative methods of construction in various respects and the attention of tenderers is particularly drawn to the following clauses:

Clause 3.9	Waterproofing	<i>Exhibits</i>
Clause 4.43	The procedure for handling, sinking and joining	-----
Clause 3.1	The number of the submerged tunnel units	Exhibit A3
Clause 4.51	Construction of the permanent foundation to the submerged tunnel	Instructions to Tenders
Clause 5.6	Construction of rock anchors in the South Ramp	Tender Form
Clause 5.11	Temporary cofferdams.	Form of Bond
		Form of Agreement
		Conditions of Contract.

The exercise of the options permitted by these and other similar clauses in the Specification will not be considered to be departures from the Engineer's Scheme. However tenderers may propose departures from the Engineer's Scheme for the whole or for any part of the Works, provided that they submit with their Tender further specifications, drawings and priced bills of quantities, hereinafter defined as Addendum Documents, describing their Alternative Schemes in similar detail to the manner in which the documents for the Engineer's Scheme are prepared together with the documents itemised in clause 11 of these Instructions to Tenderers.

The Tender Documents as amended by the Addendum Document must only deviate from those for the Engineer's Scheme insofar as is necessary on account of the design and method of construction proposed and must fully describe the Alternative Scheme or cover all the liabilities and obligations imposed in respect of the Engineer's Scheme. The Company reserves the right to reject any Tender where these requirements are not complied with.

Tenderers who consider offering Alternative Schemes to the Engineer's Scheme are advised to discuss their proposals with the Engineer during the Tender Period and preferably at an early stage to ensure that they will fulfil the essential requirements of the Company. Such discussions will be without prejudice to the result of the Tender and the Engineer and the Company will use their best endeavours to prevent any information supplied during such discussions being passed to any third party.

10. Tenders and supporting documents must be written entirely in English and priced in Hong Kong Dollars, and must be enclosed in a plain sealed package endorsed "Hong Kong Cross-Harbour Tunnel Tender" and addressed to "The Cross-Harbour Tunnel Co. Ltd., 12th Floor, Union House, Hong Kong". Tenders must be delivered to the above address not later than 12 noon on Tuesday, January 31st 1967. The package, if sent by post, must be registered. Tenders by telegraph or cable will not be considered.

11. Tenderers must submit with their Tender triplicate copies of the following documents, one of which is to be marked 'ORIGINAL' and which shall be the binding documents, and two of which are to be marked 'COPY' and are to be exact replicas of those marked 'ORIGINAL':—

- (a) A memorandum of procedure giving in outline their general scheme, programme and time-table for execution of the Works. The programme must show dates for sinking each tunnel unit, and must

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also be consistent with the dates specified for commencing nominated subcontracts.

- (b) A description of the method that the tenderer proposes to adopt for handling, sinking, bedding and joining the tunnel units including drawings of the plant that he proposes to use.
- (c) Descriptions of the temporary cofferdams for the construction of the North and South Ventilation Buildings, in-situ tunnels and Ramps, of any temporary reclamations, wharves, jetties, and moorings, temporary diversions and other measures to protect services. 10
- (d) A description of the method that the tenderer proposes to adopt for waterproofing, forming a permanent foundation under the tunnel units, constructing rock anchors in the South Ramp and in-situ tunnel, the number of the submerged tunnel units and any other major alternatives permitted in the Engineer's Scheme.
- (e) Particulars of the persons who will hold posts of major responsibility on the Contractor's staff engaged on the Contract giving details of their previous experience.
- (f) A schedule of Constructional Plant which the Contractor proposes to use for the Contract including any plant to be used by any proposed sub-contractors. The schedule shall include a brief description of each item including the name of the manufacturer, type, size, capacity year of manufacture and the approximate number of months after the Engineer's order to commence the Works when the plant will be on Site. 20
- (g) Tenders from a consortium of contractors must be accompanied by a statement giving details of the separate companies who constitute the consortium, with their nationalities, and also by a statement of the manner by which they propose to enter into a Contract with the Company. They must also state the company or body who will represent them and receive instructions on their behalf. Should they propose to form an ad hoc corporate body for this purpose they must give detailed information about its proposed constitution. 30
- (h) A list of sub-contractors and specialist consultants which the tenderer proposes to employ indicating the work they will be engaged upon.

12. Tenderers must, when sending in their Tender, give the names and addresses of the Banks or Insurance Companies whom they propose as satisfactory sureties and if their Tender is accepted must execute a Bond in the form annexed. 40

13. Every Tender for the Engineer's Scheme shall be made out in duplicate

on the forms included in the bound document containing these Instructions, the Tender Form, Form of Bond, Form of Articles of Agreement, Conditions of Contract, Specification, Bill of Quantities and key plans, which document shall be forwarded intact with the approximate quantities in the Bill of Quantities fully priced, cast, totalled, the Daywork Schedule completed, and all the blanks in the Tender Form duly completed together with signed copies of each Circular Letter to Tenderers (if any).

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10 Every Tender for an Alternative Scheme shall also be made out in duplicate on the forms included in the bound document containing these instructions, the Tender Form, Form of Bond, Form of Articles of Agreement, Conditions of Contract, Specification, Bill of Quantities and key plans and forwarded intact together with the Addendum Documents listed in clause 9 of these Instructions. The approximate quantities in the Bill of Quantities shall be fully priced, cast and totalled, or show that where such items are unpriced, the cost of the work has been included in the Addendum Documents. The Daywork Schedule shall be completed and all the blanks in the Tender Form duly completed and signed copies of each Circular Letter to Tenderers (if any) shall be returned with the Tender.

20 No Tender will be considered unless it complies with these conditions and unless a rate is affixed to every item in the Bill of Quantities or show that the values of the Works described under items left unpriced are allowed for elsewhere.

No erasure or alteration in the text of the documents sent herewith will be allowed and any such erasure or alteration will be disregarded.

14. Tenderers should note that any proposals submitted as variations permitted by the Engineer's Scheme or as an Alternative to the Engineer's Scheme will, if a Tender is accepted on the basis of such proposal, be incorporated into a consolidated contract document which will form the basis of the Contract to be entered into.

30 15. The Conditions of Contract have been prepared on the basis of the Company making payments to the Contractor for the value of work executed, less retention, during the course of the Contract. The Company, however, require offers from tenderers for deferring payment, wholly or partly, until after the works are complete, when the balance would be paid by instalments over some years.

40 Tenders must be submitted assuming the basis of payment described in the Conditions of Contract. Tenders must be accompanied by a letter stating the terms and arrangements for deferred payment that the tenderer can make available. This would be the basis for the negotiation with the Company of a supplementary agreement on finance.

16. The offer of a bribe or other inducement to any person with a view to influencing the placing of the Contract will result in the instant rejection of the Tender.

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17. The Company will not defray any costs incurred in tendering or in preparing Alternative Schemes to the Engineer's Scheme, is not bound to accept the lowest or any Tender and will not assign any reason for the rejection of any Tender.
18. All prospective tenderers must treat all documents or information supplied to them by the Company or the Engineer for the purpose of submitting a Tender as private and confidential.

THE CROSS-HARBOUR TUNNEL COMPANY LTD.

**HONG KONG
CROSS-HABOUR TUNNEL**

TENDER FORM

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continued

To: The Chairman,
The Cross-Harbour Tunnel Co. Ltd.,
12th Floor, Union House,
Hong Kong.

1. Having inspected the Site, or having caused the same to be inspected on
10 our behalf by a person competent and experienced in such type of inspection
and having examined the Drawings, Conditions of Contract, Specification, Bill
of Quantities, Instructions to Tenderers, Form of Bond, Form of Agreement
and Appendix to the Tender for the construction of the above-named Works, we
offer to execute, construct, complete and maintain the whole of the said Works
in conformity with the said Agreement, Drawings, Conditions of Contract,
Specification and Bill of Quantities for the sum of Hong Kong Dollars Two
Hundred and Seventy two Million Five Hundred and Thirty three thousand,
three Hundred and Thirty three (HK\$272,533,333.00) or such sums as may be
20 ascertained in accordance with the Conditions of Contract (hereinafter referred
to as "the said Conditions").
2. Lloyds Bank Limited have indicated their willingness to act as surety for
the due performance of the said Contract in the sum of HK\$10,000,000 in
respect of the Performance Bond and in the sum of H.K.\$1,500,000 in respect
of the Maintenance Bond and if our Tender is accepted we will execute and
procure the execution by such sureties as may be approved of Bonds for these
sums in the form hereto annexed when required to do so.
3. We agree to abide by this Tender for the period of 120 days from the
date fixed for receiving the same and it shall remain binding upon us and may
be accepted at any time before the expiration of that period.
- 30 4. We have entered into a sub-contract with N.V. Philips' Gloeilampen
Fabrieken of Einphoven Netherlands in the sum of H.K.\$19,342,140
(Nineteen Million Three Hundred and Forty Two thousand One Hundred and
Forty H.K. Dollars) for certain of the electrical and mechanical plant and
equipment for the Works and enclose a true and complete copy of the
documents comprising this sub-contract. We accept this sub-contract to be
nominated and accept the terms and conditions provided therefor.

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5. Unless and until a formal Agreement is prepared and executed this Tender together with the written acceptance thereof by the Company shall constitute a binding Contract between us.

6. We understand that the Company is not bound to accept the lowest or any Tender it may receive.

APPENDIX

(This Appendix forms part of the Tender)

Conditions of Contract:

Clause No.

19.	Period of Maintenance.....	12 months	10
24.	(2) Minimum amount of third party insurance		
	(a) in respect of marine accidents.....	H.K.\$ 80,000,000	
	(b) in respect of non-marine accidents.....	H.K.\$ 25,000,000	
58.	Time for completion.....	36 months	
62.	(1) Rate of liquidated damages.....	H.K.\$60,000 per day	
62.	(4) Rate of bonus.....	H.K.\$27,000 per day	
86.	Percentage for adjustment of P.C. sums (where provision for adjustment is not given in the Bill of Quantities).....	15 per cent	
93.	(1) Minimum amount of interim certificates.....	H.K.\$ 3,000,000	20

Signature
in the capacity of DIRECTOR, COSTAIN INTERNATIONAL, LIMITED duly authorised to sign tenders for and on behalf of THE JOINT VENTURE OF COSTAIN INTERNATIONAL LTD., RAYMOND INTERNATIONAL INC. AND PAUL Y. CONSTRUCTION CO. LTD.

Registered address of tenderer LA MOTTE CHAMBERS, ST HELIER, JERSEY, CHANNEL ISLANDS.

Date 23RD JUNE, 1969.

Witness Address: Shelford House, Preston St. Mary, nr. Sudbury, Suffolk. Occupation Civil Engineer.

In the tenderer intends to constitute a consortium he shall enter below the names and registered office or residential addresses of the intending members of the consortium.

Names of partners	Registered offices or residential addresses of partners or intending members of consortium	<i>Exhibits</i> -----
COSTAIN INTERNATIONAL LIMITED	LA MOTTE CHAMBERS, ST. HELIER, JERSEY, CHANNEL ISLANDS	Exhibit A3 Instructions to Tenders
RAYMOND INTERNATIONAL INCORPORATED	TWO PENNSYLVANIA PLAZA NEW YORK, N.Y. 10001, U.S.A.	Tender Form Form of Bond Form of Article of Agreement
PAUL Y. CONSTRUCTION COMPANY LIMITED	BANK OF CANTON BUILDING, 18TH FLOOR, DES VOEUX ROAD CENTRAL, HONG KONG	Conditions of Contract. <i>continued</i>

10

Exhibits

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continued

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we COSTAIN INTERNATIONAL RAYMOND(hereinafter called "Costain International") a Company incorporated in accordance with the Laws of the Channel Islands and having its registered or principal office at

RAYMOND INTERNATIONAL INCORPORATED (hereinafter called "Raymond International") a Company incorporated in accordance with the Laws of the United States of America and having its registered or principal office at

PAUL Y CONSTRUCTION COMPANY LIMITED (hereinafter called "Pual Y") 10
a Company incorporated in accordance with the Laws of Hong Kong and having its registered or principal office at

and a Company incorporated in accordance with the Laws of office at and having its registered or principal office at

are firmly bound to THE CROSS-HABOUR TUNNEL COMPANY LIMITED (hereinafter called "the Company") a Company incorporated in accordance with the Laws of Hong Kong and having its registered office at 12th Floor Union House Hong Kong in the penal sum of Ten Million Dollars of Lawful money of Hong Kong such sum to be paid (unless otherwise directed by the 20 Company) to the Company at the above address for which payment to be well and truly made we bind ourselves and each of us and the successors of each of us jointly and severally by these presents

SEALED with our seals

DATED the day of one thousand nine hundred and sixty-nine.

WHEREAS by Agreement (hereinafter called "the Contract") dated the day of and made between the Company of the first part Costain International of the second part Raymond International of the third part Paul Y of the fourth part and Richard Costain 30 Limited (hereinafter called "Richard Costain") of the fifth part Costain International Raymond International and Paul Y in consortium jointly and severally (hereinafter collectively called "the Contractor") have agreed to execute construct complete and maintain the Hong Kong Cross-Harbour Tunnel and other works more particularly described in the Contract upon the terms and conditions therein contained.

AND WHEREAS before and as one of the terms upon which the Contract was made it was expressly agreed between the parties thereto and that the Contractor and as Surety for the Contractor shall enter into the above-written Bond 40 conditioned as hereunder mentioned

Exhibits

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10 NOW THE CONDITION of the above-written Bond is such that if the Contractor shall well and truly perform and observe all the agreements conditions and stipulations which under or by virtue of the Contract or any award made under the provisions therein contained ought on his part to be performed or observed and shall from time to time and at all times hereafter at his own cost and charges save harmless and keep indemnified the Company from all actions suits losses charges damages and expenses which the Company shall or may bear sustain or incur for or by reason of the non-observance or non-performance or breach of any of the said agreements and stipulations in the Contract contained or referred to and on the part of the Contractor to be performed or observed by the Contractor or if the Contractor shall for any reason whatsoever and in any way be in default in accordance with the Contract in the performance or observance as aforesaid and Richard Costain Raymond International and Paul Y jointly and severally shall themselves make good that default in accordance with the terms of the Contract as if they were respectively the Contractor then the above-written Bond shall be void but otherwise shall remain in full force and effect.

20 PROVIDED ALWAYS AND IT IS HEREBY DECLARED that all the rights and remedies of the Company under the above-written Bond are to be deemed cumulative and in addition to and not in substitution for its rights and remedies under the Contract and that the rights of the Company against and their successors shall not be prejudiced or affected by any alteration which may be made by agreement between the parties to the Contract in the terms thereof or the nature of the work to be executed or obligations to be performed thereunder or by any indulgence or forbearance towards the Contractor in connection with the Contract which but for this provision might release from liability under the said Bond

30 This Bond shall be interpreted in accordance with the Laws of England.

It is intended that Costain International Raymond International and Paul Y shall in due course register in Hong Kong a Company to perform the Contract and to whom the Contract will be assigned in accordance with the provisions of Clause 6 of the Articles of Agreement in the Contract and this Bond shall continue in full force and effect whether or not such Company shall be registered in Hong Kong but subject to any such revisions in this Bond as may be mutually agreed between the parties hereto and the Company.

SIGNED SEALED AND DELIVERED

by:

40 in the presence of

*Authorised Signatory for and
on behalf of*
COSTAIN INTERNATIONAL LIMITED

SIGNED SEALED AND DELIVERED)

by:)

in the presence of:)

**Authorised Signatory for
and on behalf of
RAYMOND INTERNATIONAL
INCORPORATED**

SIGNED SEALED AND DELIVERED)

by:)

10 in the presence of:)

**Authorised Signatory for
and on behalf of
PAUL Y CONSTRUCTION
COMPANY LIMITED**

THE COMMON SEAL of)

was hereunto affixed)

in the presence of:)

MAINTENANCE BOND

Exhibits

KNOW ALL MEN BY THESE PRESENTS that we COSTAIN INTERNATIONAL LIMITED (hereinafter called "Costain International") a Company incorporated in accordance with the Laws of the Channel Islands and having its registered or principal office at

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RAYMOND INTERNATIONAL INCORPORATED (hereinafter called "Raymond International") a Company incorporated in accordance with the Laws of the United States of America and having its registered or principal office at

10 PAUL Y CONSTRUCTION COMPANY LIMITED (hereinafter called "Paul Y") a Company incorporated in accordance with the Laws of Hong Kong and having its registered or principal office at

and a Company incorporated in accordance with the Laws of and having its registered or principal office at

are firmly bound to THE CROSS-HARBOUR TUNNEL COMPANY LIMITED (hereinafter called "the Company") a Company incorporated in accordance with the Laws of Hong Kong and having its registered office at 12th Floor Union House Hong Kong in the penal sum of One Million five Hundred thousand Dollars of lawful money of Hong Kong such sum to be paid (unless otherwise directed by the Company) to the Company at the above address for which payment to be well and truly made we bind ourselves and each of us and the successors of each of us jointly and severally by these presents

20

SEALED with our seals

DATED the day of one thousand nine hundred and sixty-nine

WHEREAS by an Agreement (hereinafter called "the Contract") dated the day of and made between the Company of the first part Costain International of the second part Raymond International of the third part Paul Y of the fourth part and Richard Costain Limited (hereinafter called "Richard Costain") of the fifth part Costain International Raymond International and Paul Y in consortium jointly and severally (hereinafter collectively called "the Contractor") have agreed to execute construct complete and maintain the Hong Kong Cross-Harbour Tunnel and other works more particularly described in the Contract upon the terms and conditions therein contained

30

AND WHEREAS before and as one of the terms upon which the Contract was made it was expressly agreed between the parties thereto and that the Contractor and

as Surety for the Contractor shall enter into the above-written Bond 40 conditioned as hereunder mentioned

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NOW THE CONDITION of the above-written Bond is such that if the Contractor shall duly perform and observe all the terms provisions conditions and stipulations of the Contract for the maintenance of the Hong Kong Cross-Harbour Tunnel and other Works mentioned in the Contract (including in particular but without in any way limiting the generality of the same the reimbursement to the Company by the Contractor of all costs expenses or charges (if any) incurred by the Company under the provisions of Clauses 64 and 65 of the Conditions relating to the responsibilities and obligations thereby imposed upon the Contractor to maintain the Works and to repair defects therein) on the Contractor's part to be performed and observed according to 10 the true purport intent and meaning thereof or if on default by the Contractor the Surety shall satisfy and discharge the damages sustained by the Company thereby up to the amount of the above-written Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect.

PROVIDED ALWAYS and it is hereby declared (a) that all the rights and remedies of the Company under the above written Bond are to be deemed cumulative and in addition to and not in substitution for the rights and remedies of the Company either under the Contract or under the Performance Bond (b) that the rights of the Company against 20 and their successors shall not be prejudiced or affected by any alteration in terms of the Contract made by agreement between the Company and the Contractor or in the extent or nature of the Works to be executed constructed completed and maintained thereunder and (c) that no allowance of time by the Company under the Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Contract on the part of the Company shall in any way release the Surety from any liability under the above-written Bond.

The Surety undertakes to accept as proof of default by the Contractor a certificate by the Engineer under the Contract which details the loss sustained by the Company. On receipt of such certificate the Surety will immediately 30 pay the amount shown therein to the Company SUBJECT ALWAYS to the maximum amount of the above-written Bond.

This Maintenance Bond shall and shall be deemed to come into operation on the date of the Certificate of Completion of the Works to be issued by the Engineer under the provisions of Clause 63 of the Conditions of Contract or in the event of the issue of more than one of them from the date of the earliest of such Certificates of Completion.

It is intended that Costain International Raymond International and Paul Y shall in due course register in Hong Kong a company to perform the contract and to whom the Contract will be assigned in accordance with the 40 provisions of Clause 6 of the Articles of Agreement in the Contract and this Bond shall continue in full force and effect whether or not such company shall be registered in Hong Kong but subject to any such revisions in this Bond as may be mutually agreed between the parties hereto and the Company.

This Bond shall be interpreted in accordance with the Laws of England

Exhibits

SIGNED SEALED AND DELIVERED)

by:)

in the presence of:)

Authorised Signatory for and
on behalf of
COSTAIN INTERNATIONAL LIMITED

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SIGNED SEALED AND DELIVERED)

by:)

10 in the presence of:)

Authorised Signatory for and
on behalf of
RAYMOND INTERNATIONAL
INCORPORATED

SIGNED SEALED AND DELIVERED)

by:)

in the presence of:)

20

Authorised Signatory for and
on behalf of
PAUL Y CONSTRUCTION
COMPANY LIMITED

THE COMMON SEAL OF
was hereunto affixed
in the presence of:

Exhibits

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Instructions
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continued

THE CROSS-HARBOUR TUNNEL COMPANY LTD.

HONG KONG

CROSS-HARBOUR TUNNEL

FORM OF ARTICLES OF AGREEMENT

ARTICLES OF AGREEMENT made and entered into this 26th day of June One thousand nine hundred and sixty-nine B E T W E E N The Cross-Harbour Tunnel Co. Ltd. (hereinafter called "the Company") a company incorporated in accordance with the Laws of Hong Kong and having its registered office at 12th Floor Union House Hong Kong of the first part Costain International Limited (hereinafter called "Costain International") a Company incorporated in accordance with the Laws of the Channel Islands and having its registered or principal office at La Motte Chambers St. Helier Jersey, Channel Islands of the second part Raymond International Incorporated (hereinafter called "Raymond International") a Company incorporated in accordance with the Laws of the United States of America and having its registered or principal office at Two Pennsylvania Plaza New York N.Y. 10001 U.S.A. of the third part Paul Y Construction Co. Limited (hereinafter called "Paul Y") a Company incorporated in accordance with the Laws of Hong Kong and having its registered or principal office at Bank of Canton Building 18th Floor Des Voeux Road Central Hong Kong of the fourth part and Richard Costain Limited (hereinafter called "Richard Costain") a Company incorporated in accordance with the Laws of England and having its registered or principal office at 111 Westminster Bridge Road London S.E.1 England of the fifth part

WHEREAS:-

- A. The Company is desirous that such Works as are herein mentioned for the construction of The Hong Kong Cross-Harbour Tunnel (in these recitals referred to as "the Tunnel") and other Works in connection therewith shall be executed constructed completed and maintained in the manner and during the period hereinafter provided 30
- B. On the instructions of the Company the Engineer prepared a first design for the Tunnel using the submergence of concrete tube tunnel units with a suitable foundation
- C. The Company called for tenders based on this said first design and invited tenderers to put forward alternative designs for consideration
- D. Costain International Raymond International and Paul Y acting in consortium have submitted a Tender dated the Twenty Third day of June 1969 to execute construct complete and maintain the Works using the submergence of steel tube tunnel units on a suitably screeded bed foundation for the sum of Hong Kong Dollars Two Hundred & Seventy two Million Five Hundred & 40

Thirty Three Thousand Three Hundred & Thirty Three (H.K.\$ 272,533,333.00) or such other sum as may become payable under the terms hereof upon the terms during the period and in the manner hereinafter mentioned which Tender has been accepted by the Company

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D. The parties hereto have agreed to enter into these Articles of Agreement and Costain International Raymond International and Paul Y have agreed to secure the performance thereof by the joint and several bonds of themselves and Lloyds Bank Limited in the sum of H.K.\$10,000,000.

10 F. Costain International Raymond International and Paul Y have agreed to secure the due performance of their obligation to maintain the Works by a further joint and several bond of themselves and Lloyds Bank Limited in the sum of H.K.\$1,500,000.

G. Richard Costain has agreed to enter into these Articles of Agreement for the purpose of guaranteeing in manner hereinafter appearing the performance of the Contract by Costain International

20 H. If The New Contractor Company referred to in Clause 6 of these Articles of Agreement shall be registered and shall carry out the Contract on behalf of Costain International Raymond International and Paul Y Richard Costain Raymond International and Paul Y have agreed to indemnify and keep indemnified the Company in manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. (a) IN these Articles of Agreement the term "the Contractor" shall mean and include Costain International Raymond International and Paul Y acting jointly and severally as a consortium and further where the context so requires The New Contractor Company referred to in Clause 5 of these Articles of Agreement

30 (b) IN these Articles of Agreement the term "the Parent Companies" shall mean and include Richard Costain Raymond International and Paul Y acting jointly and severally together

(c) Subject thereto in these Articles of Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract

2. THE following documents copies of which are either bound up herewith in this volume or bound up in two accompanying volumes together with the Drawings shall be deemed to form and be read and construed as part of these ARTicles of Agreement, viz:-

(a) The Tender above recited together with the Letter of Acceptance thereof

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- (b) The Conditions of Contract
- (c) The Specification
- (d) The Priced Bill of Quantities and Schedule thereto
- (e) the letters copies of which are annexed hereto, viz:-

DATE	FROM	TO
------	------	----

- (f) The Drawings

3. IN consideration of the payments to be made by the Company to the Contractor as hereinafter mentioned the Contractor hereby agrees with the Company to execute construct complete and maintain the Works in conformity in all respects with the provisions of the Contract. 10

4. IN consideration of the execution construction completion and maintenance of the Works the Company hereby agrees to pay to the Contractor the said sum of H.K.\$272,533,333 or such other sum as shall become payable under the terms hereof by such instalments at such times and in such manner as is prescribed in the Contract

5. Without in any way limiting the generality of his responsibilities hereunder the Contractor shall take full responsibility for the designs of the submerged tube tunnel structure with its foundation the bond pile walls and all other works associated therewith as the same are shown in or may be inferred from Clause 1.1 of the Specification to be constructed and completed in 20 accordance with designs offered by the Contractor

6. Costain International Raymond International and Paul Y with the agreement of the Company shall in due course register in Hong Kong a Company herein referred to as "The New Contractor Company" for the purpose of carrying on the Contract on their behalf.

7. IN further consideration of the payments herein referred to and to be made hereunder to the Contractor by the Company (a) Richard Costain as Guarantor for and on behalf of Costain International and (b) the Parent Companies as Guarantors jointly and severally for and on behalf of The New Contractor Company after it shall have been incorporated respectively guarantee 30 to the Company that the Contractor shall in accordance with his obligations under the Contract well and truly execute construct complete and maintain the Works and perform and observe all the agreements conditions and stipulations which under or by virtue of the Contract or any award made under the provisions therein contained ought on his part respectively to be executed constructed completed maintained performed and observed and hereby agree with the Company.

Exhibits

(a) that to the extent to which the Contractor shall in any way under the Contract be in default in such execution construction completion maintenance performance and observance or any of them as aforesaid Richard Costain as Guarantor for and on behalf of Costain International and the Parent Companies as Guarantors jointly and severally for and on behalf of The New Contractor Company as the Contractor shall respectively itself or themselves (as the case may be) make good any default on the part of the Contractor as if it or they were the Contractor and

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(b) that until the date of issue of the Maintenance Certificate in accordance with Clause 97 of the Conditions of Contract in respect of the whole of the Works or if the Works be completed in stages in respect of the stage of the Works to be last completed (i) Richard Costain will neither in any way release its control over nor dispose of its interest in the share capital of Costain International and (ii) the Parent Companies will neither in any way release their control over nor dispose of their respective interests (whether direct or indirect) in the share capitals either of the three constituents in the Contractor or in The New Contractor Company

20

PROVIDED ALWAYS that all the rights and remedies of the Company under this guarantee are to be deemed cumulative and in addition to and not in substitution for its rights and remedies under the Contract against either Costain International Raymond International and Paul Y or any of them and that the rights of the Company under the guarantee against Richard Costain against the Parent Companies and against their respective successors shall not be prejudiced or affected by any alteration which may be made by agreement between the Company and the Contractor in the terms of the Contract or the nature of the work to be executed or obligations to be performed thereunder or by any indulgence or forbearance towards the Contractor in connection with

30

the Contract which but for this provision might release Richard Costain or the Parent Companies or their successors from liability under the guarantee,

IN WITNESS whereof John Louis Marden on behalf of The Cross-Harbour Tunnel Company Limited John P. Sowden on behalf of Costain International Limited Robert R. Helen on behalf of Raymond International Incorporated George C.C. Tso on behalf of Paul Y Construction Company

Limited and John P. Sowden on behalf of Richard Costain Limited have hereunto set their respective hands the day and year first above written

SIGNED)

by John Louis Marden)

in the presence of:-)

Authorised Signatory on behalf
of THE CROSS-HARBOUR
TUNNEL COMPANY LIMITED

SIGNED)

by John P. Sowden)

in the presence of:-)

Authorised Signatory on behalf of
COSTAIN INTERNATIONAL
LIMITED

10

SIGNED)

by Robert R. Helen)

in the presence of:-)

Authorised Signatory on behalf of
RAYMOND INTERNATIONAL
INCORPORATED

SIGNED)

by George C.C. Tso)

in presence of:-)

Authorised Signatory on behalf of
PAUL Y CONSTRUCTON
COMPANY LIMITED

20

SIGNED)

by John P. Sowden)

in the presence of:-)

Authorised Signatory on behalf of
RICHARD COSTAIN LIMITED

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CONDITIONS OF CONTRACT

DEFINITIONS & INTERPRETATION

(1) In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:—

- (a) "Company" means The Cross-Harbour Tunnel Company Limited and its successors and assigns.
- (b) "Engineer" means Scott Wilson Kirkpatrick & Partners of 5, Winsley Street, London, W.1. in association with Freeman, Fox & Partners of 25 Victoria Street (South Block), London, S.W. 1. or other the Engineer appointed from time to time by the Company in accordance with the provisions of the Financial Agreement made between the Company and the Lending Bank and notified in writing to the Contractor to act as Engineer for the purposes of the Contract in place of the firms hereinbefore named. 10
- (c) "Engineer's Representative" means any engineer or assistant engineer or inspector of works or other person authorised from time to time by the Engineer to perform the duties set forth in clause 2 hereof whose authority shall be notified in writing to the Contractor by the Engineer. 20
- (d) "Contractor" means Costain International Limited, Raymond International Incorporated and Paul Y Construction Co. Limited whose Joint Venture tender has been accepted by the Company together with their successors in title and permitted assigns.
- (e) "Government" means The Government of Hong Kong.
- (f) "Works" means all the works and things to be executed, constructed, supplied or done by the Contractor under the Contract.
- (g) "Temporary Works" means all temporary works of every kind required in or about the execution, completion or maintenance of the Works. 30
- (h) "Contract" means the Articles of Agreement, Tender (including the Appendix thereto) and the acceptance thereof by the Company, the Drawings, Conditions of Contract, Specification, priced Bill of Quantities.
- (i) "Tendered Sum" means the sum named in the Tender for the construction, completion and maintenance of the Works.

- (j) "Final Contract Price" means the Tendered Sum subject to additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.
- (k) "Constructional Plant" means all appliances or things of whatsoever nature (including Floating Plant) required in or about the execution, completion or maintenance of the Works or Temporary Works but does not include materials or other things intended to form or forming part of the permanent work.
- 10 (l) "Floating Plant" means all dredgers, craft, pipelines and other items of Constructional Plant as aforesaid which are designed and intended to float on water.
- (m) "Hired Plant" means any Constructional Plant, Temporary Works and materials for Temporary Works held by the Contractor under any Agreement for Hire thereof.
- (n) "Essential Hired Plant" means all Hired Plant the withdrawal of which in the event of a forfeiture under clause 101 hereof might in the opinion of the Engineer endanger the safety or stability of or result in serious disturbance to the execution of any part of the Works.
- 20 (o) "Agreement for Hire" means an agreement for hire other than an agreement for hire purchase.
- (p) "Hire Purchase Plant" means any Constructional Plant, Temporary Works and materials for Temporary Works held by the Contractor under an agreement for hire purchase thereof.
- (q) "Period of Maintenance" means the period of maintenance named in the Tender calculated from the date of completion of the Works certified by the Engineer in accordance with the provisions of clause 63 hereof or in the event of more than one certificate having been issued by the Engineer under that clause from the respective date so certified.
- 30 (r) "Drawings" means the drawings hereto annexed (hereinafter referred to as the "Tender Drawings") and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
- (s) "Specification" means the specification hereto annexed and any further general or detailed specifications furnished to the Contractor as the Works proceed pursuant to any provisions of the Contract.
- 40 (t) "Site" means the lands and other places including the sea bed on, under, in or through which the Works are to be executed or carried

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out and any other lands or places provided by the Company for the purposes of the Contract.

- (u) "Night" means the period from 7 p.m. until 7 a.m.
- (v) "General Holiday" means any Sunday or other day which is a general holiday by virtue of the Holidays Ordinance.
- (w) "Lending Bank" means Lloyds Bank Limited of 71 Lombard Street, London, E.C.3. or such other bank as may be agreed by the Company and the Contractor.
- (x) "Financial Agreement" means the agreement between the Company and the Lending Bank in respect of the Loan equal to seventy-five 10 per cent of the Tendered Sum.
- (y) "Valid Claim" means a claim for payment on behalf of the Contractor and valid under the terms of the Financial Agreement.

(2) Works importing the singular only also include the plural and vice versa where the context requires.

(3) The marginal headings or notes in the Conditions of Contract, the Specification and the preamble to the Bill of Quantities shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

(4) All correspondence between the Contractor and the Company, the 20 Engineer or the Engineer's Representative concerning the Contract shall be conducted in English and all inscriptions on drawings shall be in English.

(5) All units of weight and measurement shall be based on the British Standard of Weight and Measurement kept at the Standards Office, London.

(6) All dates and intervals of time shall be reckoned according to the Gregorian calendar.

(7) The contract shall be and shall be deemed to be a Hong Kong Contract and shall accordingly be governed by and construed according to the laws for the time being in force in the Colony of Hong Kong.

(8) The Interpretation Ordinance (Chapter 1) shall apply to the 30 Contract.

ENGINEER'S REPRESENTATIVE

2. (1) The duties of the Engineer's Representative are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works.

(2) The Engineer's Representative shall have authority neither to relieve the Contractor of any of his duties of obligations under the Contract nor except as expressly provided hereunder to order any work involving delay or any extra payment by the Company nor to make any variation of or in the Works.

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10 (3) The Engineer may from time to time in writing delegate to the Engineer's Representative such of the powers and authorities vested in the Engineer as may be necessary for the efficient execution of the Works and shall furnish to the Contractor a copy of all such written delegations of powers and authorities.

(4) Any written instruction or written approval given by the Engineer's Representative to the Contractor within the terms of such delegation (but not otherwise) shall bind the Contractor and the Company as though it had been given by the Engineer.

Provided always as follows—

(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.

20 (b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.

ASSIGNMENT & SUB-LETTING

3. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder (otherwise than by a charge in favour of the Contractor's bankers of any monies due or to become due under the Contract) without the written consent of the Company.

4. (1) The Contractor shall not sub-let the whole of the Works.

30 (2) Except whereotherwise provided by the Contract the Contractor shall not sub-let any part of the Works without the written consent of the Engineer (which shall not be unreasonably withheld or withdrawn). Such consent (if given) shall not relieve the Contractor from any liability or obligation under the Contract but he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen:

Provided always that the provision of labour on a piece-work basis shall not be deemed to be a sub-letting under this clause.

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(3) The Engineer may in his discretion withhold consent to sub-letting on the ground that the proposed sub-contractor is not on the Public Works Department List of Approved Contractors.

(4) The Engineer may withdraw consent to sub-letting to a sub-contractor if any of the pre-conditions of clauses 38 or 101 hereof shall be satisfied in respect of the sub-contractor or of the work sub-let to him.

SCOPE OF CONTRACT

5. (1) The scope of the Contract comprises the execution, construction, completion and maintenance of the Works and the provision of all labour, materials, Constructional Plant, Temporary Works and everything whether of a temporary or permanent nature required in and for such execution, construction, completion and maintenance so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract. 10

(2) Notwithstanding anything else herein contained the scope of the Works as defined and described in the Specification may be extended by agreement between the parties hereto and the Lending Bank to include other work associated with the Works as so defined and described.

CONTRACT DOCUMENTS

6. (1) Except if and to the extent otherwise provided by the Contract the provisions of the Conditions of Contract shall prevail over those of any other document forming part of the Contract. 20

(2) Subject to the foregoing the several documents forming the Contract are to be taken as mutually explanatory of one another but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions directing in what manner the work is to be carried out:

Provided always that if in the opinion of the Engineer compliance with any such instructions shall involve the Contractor in any expense which by reason of any such ambiguity or discrepancy the Contractor did not and had reason not to anticipate the Engineer shall certify and the Company shall pay such additional sum as may be reasonable to cover such expense. 30

7. (1) The Drawings shall remain in the sole custody of the Engineer but two copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all drawings provided under the Contract.

(2) The Contractor shall give adequate notice in writing to the Engineer of any further drawing or specification that may be required for the execution of the Works or otherwise under the Contract. Such notice shall state the

reason for which the drawings or specifications are required and the date at which the further information will become necessary to avoid delay to the Works.

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(3) One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorised by the Engineer in writing.

10 (4) The Contractor shall treat the Contract and everything contained therein as private and confidential and shall take all practicable steps to ensure that no photographs of the Site or of the Works or any part thereof are taken except with the permission in writing of the Engineer. In particular the Contractor shall not publish any information, drawing or photograph concerning the Works and shall not give interviews to the press or take part in radio or television programmes except with the written consent of the Engineer and subject to such conditions as he may prescribe. The Contractor shall not use the Site for the purpose of advertisement.

20 (5) The Engineer shall have full power and authority to supply to the Contractor from time to time during the progress of the Works such further drawings, specifications and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works and the Contractor shall carry out and be bound by the same.

8. (1) Not less than twenty-eight days before the work concerned is to be commenced the Contractor (if so required by the Engineer) shall submit in duplicate for the approval of the Engineer any drawings which it may be necessary for the Contractor to prepare or provide in connection with the Works or any Temporary Works. The Contractor shall make or cause to be made any alterations or additions which the Engineer may require to drawings so submitted and shall submit the revised drawings to the Engineer before the work concerned is commenced. The Contractor shall furnish the Engineer with
30 four further copies of each approved drawing.

(2) Should it be found at any time after approval has been given by the Engineer to any drawings submitted by the Contractor that such drawings do not comply with the Contract the Contractor shall make or cause to be made such amendment as the Engineer may require notwithstanding any approval previously given.

(3) Neither any examination by the Engineer of any document or drawing submitted by the Contractor nor any approval expressed by the Engineer in regard thereto either with or without modifications shall absolve the Contractor from any liability imposed upon the Contractor by any
40 provision of the Contract.

(4) All drawings supplied by the Contractor shall be as far as possible of a uniform size not more than forty inches by twenty seven inches over all; all drawings shall be numbered and dated in the bottom right hand corner.

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9. The Contractor when called upon to do so shall enter into and execute an agreement which will be prepared at the cost of the Company in the form annexed with such modifications as may be necessary.

10. (1) The Contractor shall at his own expense obtain the guarantee of an insurance company or bank (in either case to be approved by the Company) to be jointly and severally bound together with him to the Company in the sum stated in the Tender for the due performance of the Contract.

(2) Such guarantee shall continue until the issue by the Engineer of the Maintenance Certificate in accordance with clause 97 hereof or, if more than one such Certificate is issued, until the issue of the latest Certificate. 10

(3) Without in any way limiting the generality of the guarantee referred to in this Clause and in so far as reimbursement for any expenditure incurred by the Company in carrying out work for maintenance of the Works being work which the Contractor is under duty to perform under the provisions of Clause 64 hereof shall for any reason and to any extent not be made either by the Contractor or by way of a claim or claims under the Maintenance Bond as is provided under the terms of Clause 64 hereof the Company shall claim on the the Guarantee referred to in this Clause for reimbursement of the unpaid balance of any such expenditure. 20

11. (1) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his Tender as to the nature of the ground, of the sea bed and of the subsoil the form and nature of the Site, the quantities and nature of the work and materials necessary for the completion of the Works and the means of access to the Site, the accommodation which he may require and in general to have himself obtained all necessary information as to risk, contingencies and other circumstances which may influence or affect his Tender.

(2) Neither the contents of the Contract nor any other information supplied to the Contractor by or on behalf of the Company or otherwise shall be deemed to imply the accuracy of any statement of fact made therein or shown thereon or of the quantities entered in the Bill of Quantities. 30

(3) Neither neglect nor failure on the part of the Contractor himself to obtain information upon the foregoing or any other matters affecting the execution, construction, completion and maintenance of the Works shall relieve the Contractor from any of the risks or liabilities undertaken by him herein nor shall any claim for increased rates or otherwise be entertained on the ground of any representation, promise or guarantee made or given by the Company, the Engineer or any other persons.

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12. The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bill of Quantities which rates and prices shall except in so far as it is otherwise provided in the Contract cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works.

10 13. (1) Save in so far as it is legally or physically impossible the Contractor shall execute, construct, complete and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the Contract or not) touching or concerning the Works.

(2) The Contractor shall take instructions and directions only from the Engineer or (subject to the limitations referred to in clause 2 hereof) from the Engineer's Representative.

20 14. (1) As soon as practicable after the acceptance of his Tender the Contractor shall submit for the approval of the Engineer a programme showing the order of procedure and method by which he proposes to carry out the Works and whenever required by the Engineer particulars in writing of his detailed arrangements for the carrying out of the Works and of the Constructional Plant and Temporary Works which he intends to supply, use or construct as the case may be. Any proposed amendment of the approved programme or arrangements shall be similarly submitted for approval.

(2) The submission to and approval by the Engineer of any such programme or amended programme and of any proposed arrangements for the carrying out of the Works and of the Constructional Plant and Temporary Works shall not relieve the Contractor of any of his obligations or responsibilities under the Contract.

30 15. (1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for proper fulfilment of the Contractor's obligations under the Contract.

(2) The Contractor or a competent and authorised English-speaking agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) shall be constantly on the Works and shall give his whole time to the superintendence of the same.

40 (3) If such approval shall be withdrawn by the Engineer the Contractor shall as soon as is practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal remove the agent from the Site and shall not thereafter employ him again on the Site in any capacity and shall replace him by another English-speaking agent approved by the Engineer.

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(4) Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of clause 2 hereof) the Engineer's Representative.

16. (1) The Contractor and any sub-contractor shall provide and employ on the Site in connection with the execution and maintenance of the Works:---

(a) only such technical assistants (at least three of the most senior of whom shall be English-speaking) as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands and in such numbers as are competent to give proper supervision to the work which they are required to supervise and

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(b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.

(2) The Engineer shall be at liberty to object to and require, without giving his reasons, the Contractor and any sub-contractor to remove forthwith from the Works any person employed by the Contractor or by a sub-contractor in or about the execution or maintenance of the Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Engineer.

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(3) Any person so removed from the Works shall be replaced as soon as possible by a competent substitute approved by the Engineer.

17. (1) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing or shown on the Drawings and for the correctness (subject as above mentioned) of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

(2) If at any time during the progress of the Works any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works the Contractor on being required so to do by the Engineer or the Engineer's Representative shall at his own expense rectify such error to the satisfaction of the Engineer or the Engineer's Representative unless such error is based on incorrect and unqualified data supplied in writing by the Engineer or the Engineer's Representative in which case the expense of rectifying the same shall be borne by the Company.

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(3) The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

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18. If at any time during the execution of the Works the Engineer shall require the Contractor to make bore-holes or to carry out exploratory excavation (other than as provided for in the Specification) such requirement shall be ordered in writing and shall be deemed to be additional work ordered under the provisions of clause 68 hereof.

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10 19. (1) The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or by any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others and in particular where work is being carried on at night shall ensure that all parts of the Works where work is being carried on are so lighted as to ensure the safety of all persons on the Site and enable the Works to be properly executed.

(2) During the execution of the Works the Contractor shall provide, maintain and keep lighted to the satisfaction of the Company, the Engineer and any competent statutory or other authority good and sufficient lights upon the Works and upon the Temporary Works.

20 (3) The Contractor shall provide and maintain to the satisfaction of the Engineer efficient shipkeepers for all Floating Plant and shall display on the Floating Plant good and sufficient lights, flags, signals and markings as may be required by any competent authority for the safety of vessels, craft and the public.

(4) The Contractor shall provide, remove and replace such buoys, moorings and fastenings as may be required for effectually securing the Floating Plant during the execution of the Works and also such mark buoys as may be deemed necessary by any competent authority to warn vessels or craft of the existence of submerged portions of the Works and Temporary Works.

30 20. (1) From the commencement to the completion of the Works the Contractor shall take full responsibility for the care thereof and of all Temporary Works and in case any damage loss or injury shall happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever (save and except the excepted risks as defined in sub-clause (2) of this clause) shall at his own cost repair and make good the same so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage loss or injury happening from any of the excepted risks the Contractor shall if and to the extent required by the Engineer and subject always to the provisions of Clauses 104 and 105 hereof repair and make good the same as aforesaid at the cost of the Company.

40 The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 64 hereof.

(2) The "excepted risks" are war hostilities (whether war be declared or

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not) invasion act of foreign enemies rebellion revolution insurrection or military or usurped power civil war or (otherwise than among the Contractor's own employees) riot commotion or disorder a cause solely due to the use or occupation by the Company of any portion of the Works in respect of which a Certificate of Completion has been issued or a cause solely due to the Engineer's design of the Works (all of which are herein collectively referred to as "the excepted risks").

21. (1) Without limiting his obligations and responsibilities under clause 20 hereof the Contractor shall insure in the joint names of the Company and the Contractor against all loss or damage from whatever cause arising (other than the excepted risks) and in such manner that the Company and the Contractor are covered during the period of construction of the Works and are also covered during the Period of Maintenance for loss or damage arising from a cause occurring prior to the Commencement of the Period of Maintenance and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under clause 64 hereof:--

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(a) The Works and the Temporary Works to the full value of such works executed from time to time plus six per cent of such value to cover incidental costs and

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(b) The materials Constructional Plant and other things brought on to the Site by the Contractor to the full value of such materials Constructional Plant and other things plus six per cent of such value to cover incidental costs.

(2) Except as provided for in sub-clause (3) of this clause, such insurances shall be effected with an insurer and in terms approved by the Company (which approval shall not be unreasonably withheld) and the Contractor shall whenever required produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipts for payment of the current premiums. Provided always that without limiting his obligations and responsibilities as aforesaid nothing in this clause contained shall render the Contractor liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract.

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(3) Notwithstanding the provisions in sub-clause (2) of this clause and the other provisions contained in this Contract regarding other insurance policies the policy of marine insurance and the Contractor's "All Risks Policy" will be deposited with the Lending Bank. Such deposit shall be made with the provision that the Engineer and parties properly accredited in writing by the Contractor may from time to time inspect such policies at the premises of the Lending Bank. Provision will be made in these policies for the payment to the Lending Bank of moneys arising from those parts of any claim under such policies as are in respect of the Works and goods for incorporation therein. The said policies of insurance shall be effected in Sterling with an Insurer or Insurers carrying on business in the United Kingdom and approved by the Lending Bank.

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22. The Contractor shall take every practicable precaution not to cause damage or injury to any person or property and shall (except if and so far as the Specification provides otherwise) indemnify and keep indemnified the Company against all losses and claims for injuries or damage to any person or any property whatsoever (other than surface or other damage to land being or crops being on the Site suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto:

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10 Provided always that –

(a) nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Company against any compensation or damages for or with respect to:–

(i) the permanent use or occupation of land by the Works or any part thereof or (save as hereinafter provided) surface or other damage as aforesaid;

(ii) the right of the Company to construct the Works or any part thereof on, over, under, in or through any land;

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(iii) interference whether temporary or permanent with any right of light, air, way or water or other easement or quasi-easement which is the unavoidable result of the construction of the Works in accordance with the Contract;

(iv) injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of the Contract by the Company, its agents, servants or other contractors (not being employed by the Contractor)

or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto and

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(b) for the purposes of this clause the expression “the Site” shall be deemed to be limited to the area defined in the Specification or shown on the Drawings in which land and crops will be disturbed or damaged as an inevitable consequence of the carrying out of the Works.

23. The Company will save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in proviso (a) to clause 22 hereof.

24. (1) Before commencing the execution of the Works the Contractor (but without limiting his obligations and responsibilities under clause 22 hereof) shall

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insure and keep insured in the joint names of the Contractor and the Company until the end of the Period of Maintenance against any damage, loss or injury which any occur to any property (including that of the Company) or to any person (including any employee of the Company) by or arising out of the execution of the Works or Temporary Works or in the carrying out of the Contract otherwise than due to the matters referred to in proviso (a) clause 22 hereof.

(2) Such insurance shall be effected with an insurer and in terms approved by the Company which approval shall not be unreasonably withheld and for at least the amount in the Tender and the Contractor shall lodge with the Company through the Engineer the policy or policies of insurance and the receipts for payment of the current premiums. 10

25; (1) The Contractor shall take every practicable precaution to protect workmen from injury whether or not such precautions are imposed on him by any enactment or regulation relating to safety precautions in industry.

(2) The Company shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor save and except an accident or injury resulting solely from any act or default of the Company, its agent or servants and the Contractor shall indemnify and keep indemnified the Company against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto. 20

26. The Contractor shall insure against such liability as is mentioned in clause 25 hereof with an insurer approved by the Company (which approval shall not be unreasonably withheld) and shall continue such insurance during the whole of the time that any persons are employed by him on the Works and shall lodge with the Company through the Engineer such policy of insurance and the receipt for payment of the current premium: 30

Provided always that in respect of any persons employed by any sub-contractor the Contractor's obligation to insure as aforesaid under this clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such person in such manner that the Company is indemnified under the policy but the Contractor shall require such sub-contractor to lodge with the Company through the Engineer such policy of insurance and the receipt for payment of the current premium.

27. If the Contractor shall fail to effect and keep in force the insurances referred to in clause 21, 24 and 26 hereof or any other insurance which he may be required to effect under the terms of the Contract then and in any such case the Company may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct 40

the amount so paid by the Company as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

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28. In the event of any workman or other person employed on the Works in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there be a claim for compensation or not the Contractor shall without delay give notice in writing of such personal injury to the Engineer and to the Commissioner of Labour.

10 29. The Contractor shall give all notices and pay all fees required to be given or paid by any enactment or any regulation or by-law of any local or other duly constituted authority in relation to the execution of the Works or of any Temporary Works and by the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works or any Temporary Works.

20 30. (1) The Contractor shall conform in all respects with the provisions of any enactment and the regulations or by-laws of any local or other duly constituted authority which may be applicable to the Works or to any Temporary Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Company indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance or Law, regulation or by-law.

(2) Any notices required to comply with the Contract or with the rules and regulations of Government or other competent authority and which the Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees shall be written in English and Chinese characters.

30 (3) The Contractor shall bring to the attention of sub-contractors the requirements of the Employment Ordinance (Cap 57) with particular regard to the prompt payment of wages and shall ensure that sub-contractors observe the provisions of the said Ordinance and the Contractor shall make it a term of any sub-contract that the provisions of the Ordinance shall be strictly observed and shall hold the Company indemnified against the consequences of any failure by the Contractor or any sub-contractor to observe the said Ordinance any other clause in this Contract notwithstanding.

40 31. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archeological interest discovered on the site of the Works shall as between the Company and the Contractor be deemed to be the absolute property of the Company and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer's Representative of such discovery and carry out at the expense of the Company the orders of the Engineer's Representative as to the disposal of the same.

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32. The Contractors shall save harmless and indemnify the Company from and against all claims and proceedings for or on account of infringement of any patent rights, design, trade-mark or name or other protected rights in respect of any Constructional Plant, machines, work, method or material used for or in connection with the Works or Temporary Works or any of them and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise specified the Contractors shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works or any of them. 10

33. All operations necessary for the execution of the Works and for the Construction of any Temporary Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to, use and occupation of public or private roads, footpaths, waterways, canals, anchorages and navigable channels or to or of properties whether in the possession of the Company or of any other person and the Contractor shall save harmless and indemnify the Company in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor. 20

34. (1) The Contractor shall in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to any other contractors employed by the Company and their workmen and to the workmen of the Company and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Company may enter into in connection with or ancillary to the Works.

(2) If however the contractor shall on the written request of the Engineer make available to any such other contractor or the Company or any such authority any roads or ways for the maintenance of which the Contractor is responsible or permit the use by any of the foregoing of any of the Contractor's Constructional Plant on the Site or provide any other service of whatsoever nature for any of the foregoing the Company shall pay to the contractor in respect of such use or service such sum or sums as shall in the opinion of the Engineer be reasonable 30

35. (1) Except where otherwise specified the Contractor shall at his own expense supply, provide and maintain all the Constructional Plant, Temporary Works, materials (both for temporary and for permanent works) labour (including the supervision thereof) transport to or from the Site and in and about the Works and other things of every kind required for the construction, completion and maintenance of the Works. 40

(2) Should there be from any cause whatever any damage or to breakdown of any of the Constructional Plant or Temporary Works the

Contractor shall take immediate steps for the repair of the same and should such damage or breakdown have incapacitated any of the Constructional Plant or Temporary Works or have occasioned damage to any permanent work the Contractor shall so far and as quickly as is practicable provide other suitable Constructional Plant or Temporary Works and shall reinstate the damaged permanent work at his own charge and to the satisfaction of the Engineer's Representative so that the delay occasioned by such damage or breakdown may be minimised to the fullest possible extent.

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- 10 (3) If any of the Constructional Plant shall be sunk or become derelict from any cause whatever within the limits of the Colony of Hong Kong the Contractor shall raise or remove the same efficiently with all possible despatch and until the same shall have been raised or removed the Contractor shall set all such buoys and display at night such lights and do all such things for the safety of navigation as may be necessary or proper or required by Government or by the Engineer. In the event of the Contractor not carrying out the obligations hereinbefore imposed upon him it shall be in the power of the Company to take steps to remove such sunken or derelict Constructional Plant and to buoy and light the same and the Contractor shall refund to the Company all costs and charges incurred in connection therewith. The fact that the sunken
- 20 Constructional Plant being insured has been declared a total or constructive total loss shall not absolve the Contractor from the obligation of raising or removing the same if instructed by the Engineer. The contractor shall indemnify and keep indemnified the Company against all expenses incurred by the Company in carrying out in place of the Contractor any work required by Government pursuant to this sub-clause and this indemnity shall extend to any expenses of Government in carrying out such work itself for which the Company may be liable.

36. On the completion of the Works the Contractor shall clear away and remove from the Site all Constructional Plant, surplus materials, rubbish and
- 30 Temporary Works of every kind and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

37. (1) No explosives of any kind shall be used by the Contractor or by any sub-contractor without the written consent of the Engineer.

(2) The Contractor and any sub-contractor shall purchase his own explosives and conform in all respects with all enactments regulations and Government instructions relating to the movement, storage and use of explosives.

- (3) Should the Contractor or any sub-contractor require to store explosives for use at the Works he shall erect at his own cost a magazine on a
- 40 site approved by the Engineer.

(4) The magazine shall conform in all respects with all enactments regulations and Government instructions regarding the erection and maintenance of explosives' magazines.

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(5) The Contractor shall pay all licence fees and charges for obtaining a permit to store explosives in the magazine and shall supply sufficient watchmen and guards and do all things necessary to ensure compliance with the laws in force in the Colony relating to dangerous goods.

38. If the Contractor or any sub-contractor shall be found to have offered or given any gratuity, bonus, discount, bribe or loan of any sort to any employee of the Company or to any member of the Engineer's staff the Company (notwithstanding the provisions of sub-clause (4) of clause 4 hereof) shall be at liberty forthwith to cancel the Contract and shall hold the Contractor liable for any loss or damages which the Company may thereby sustain. 10

LABOUR

39. Any temporary accommodation provided for labourers shall comply with the provisions of any enactment in force relating thereto and in particular (in respect of any such accommodation in the New Territories) with the provisions of the Labourers' Lines (N.T.) Rules, 1953 or of any enactment substituted therefor.

40. The Contractor shall provide and maintain at his own cost efficient and sanitary latrine accommodation for the use of the employees on the Works and shall keep the whole of the Site and the latrines in a clean and sanitary condition to the satisfaction of the Engineer and of the Director of Urban Services or the District Commissioner, New Territories, as the case may be. 20

41. (1) The Contractor shall keep wages books and time sheets to the approval of the Engineer and showing the wages paid to and time worked by the workmen in and about the execution of the Works and whenever required shall produce such wages books and time sheets for inspection by the Engineer's Representative or by any person authorized by him.

(2) The Contractor shall deliver to the office of the Engineer's Representative on the Site on each working day at not later than 1 p.m. a return in such form as the Engineer may prescribe showing in detail the numbers of the several classes of day labour employed by the Contractor on the Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day and such information about Constructional Plant as the Engineer may require. 30

(3) The several classes of labour shall be divided into the following categories:—

- (a) Individuals provided with meals at the Contractor's expense.
- (b) Individuals not so provided with meals.

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(2) The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required or as are specified in the Specification for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.

(3) All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Specification or Bill of Quantities but if not then at the cost of the Company.

(4) Unless the Contract otherwise provides the cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Specification or Bill of Quantities and (in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) which is particularised in the Specification or Bill of Quantities in sufficient detail to enable the Contractor to price or allow for the same in his Tender. 10

(5) If any test is ordered by the Engineer which is either:-

(a) Not so intended by or provided for;

(b) (in the cases above-mentioned) is not so particularised or 20

(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested.

then the cost of such test shall be borne by the Contractor if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the instructions of the Engineer but otherwise by the Company.

49. The Engineer and any person authorized by him shall at all times have access to the Works and to the Site and to all workshops and places where 30 work is being prepared or whence materials, manufactured articles and machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

50. (1) No work shall be covered up or put out of view without the approval of the Engineer's Representative and the Contractor shall afford full opportunity for the Engineer's Representative to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon.

42. (1) The Contractor shall make his own arrangements in regard to the provision of such labour skilled and unskilled as may be required for the construction, completion and maintenance of the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with the general local usage and subject to such regulations as Government may from time to time require to be observed.

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(2) As far as practicable all labour both skilled and unskilled shall be engaged in the Colony.

10 43. The Contractor shall at all times during the progress of the Contract take all requisite precautions and use his best endeavours to prevent any riotous or unlawful behaviour by or amongst the workmen and others employed on or in connection with the Works and for the preservation of the peace and protection of the inhabitants and the security of all property in the neighbourhood of the Works.

20 44. The Contractor shall not at any time give, sell or barter any alcoholic liquors or drugs or permit or suffer any such sale, gift or barter to be made by any sub-contractor, employee or agent of the Contractor nor import or permit or suffer the importation of any alcoholic liquors or drugs into the Colony or any part thereof otherwise than in conformity with such laws, rules and orders as may from time to time be made by Government.

45. The Contractor, every sub-contractor and all their agents and employees shall in all their dealings with their workmen and labourers for the time being employed on or in connection with the Works have due regard to all recognised festivals and religious and other customs.

30 46. In the event of illness of an epidemic nature breaking out the Contractor shall carry out and comply with all such orders, arrangements or regulations as may be issued by Government with a view to stamping out the same. The Contractor shall comply with any instructions issued by Government regarding measures to be adopted to prevent or control diseases of any kind.

47. The Contractor shall arrange for the issue of passes to workpeople engaged for work on the Site or any part thereof and to any other persons authorized by the Engineer or by the Company to have access to the Site and any person who fails to show his pass on demand by any duly authorized person may be refused admission to the Site.

MATERIALS & WORKMANSHIP

40 48. (1) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the instructions of the Engineer and shall be subjected from time to time to such tests at the place of manufacture or fabrication or on the Site or at all or any such places as the Engineer may direct.

(2) The Contractor shall give due notice to the Engineer's Representative whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer's Representative shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly attend for the purposes of examining and measuring such work or of examining such foundations.

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10 51. (1) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer.

(2) If any such part or parts have been covered up or put out of view after compliance with the requirements of clause 50 hereof and are found to be executed in accordance with the Contract the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Company but in any other case all such expenses shall be borne by the Contractor.

52. The Engineer shall during the progress of the Works have power to order in writing from time to time: -

- 20
- (a) the removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;
 - (b) the substitution of proper and suitable materials and
 - (c) the removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

30 53. (1) The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer.

(2) The extra cost including all running wages to be paid on the Site, salaries, depreciation and maintenance of Constructional Plant, site on-costs and general overhead costs of the Contract incurred by the Contractor in giving effect to the instructions of the Engineer under this clause shall be borne and paid by the Company unless such suspension is:—

- (a) otherwise provided for in the Contract or
- (b) necessary for the proper execution of the work or by reason of

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weather conditions affecting the safety or quality of the Works or by some default on the part of the Contractor or

(c) necessary for the safety of the Works or any part thereof:

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within twenty-eight days of the Engineer's order.

(3) The Engineer shall settle and determine such extra payment to be made to the Contractor in respect of such claim as shall in the opinion of the Engineer be fair and reasonable.

54. If the progress of the Works or any part thereof is suspended on the written order of the Engineer for more than 90 days the Contractor may serve a written notice on the Engineer requiring permission within 28 days from the receipt thereof to proceed with the Works or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 68 hereof or where it affects the whole Works as an abandonment of the Contract by the Company. Such abandonment shall be deemed to be default by the Company under clause 112 hereof, except in cases of suspension arising where the Engineer shall give a certificate under the provisions of sub-clause (1) of clause 101 hereof, or when suspension is necessary for the reasons prescribed in paragraph (b) or (except where the safety of the Works is endangered within the terms of Clause 104 hereof) paragraph (c) of sub-clause (2) of Clause 53 hereof. 10 20

COMMENCEMENT, TIME & DELAYS

55. The Contractor shall be deemed to commence the Works on Site on the first day of September 1969 or on the date that the Contract shall become operative, whichever is the later, and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the Engineer or be wholly beyond the control of the Contractor. 30

56. (1) Save in so far as the Contract may prescribe the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed the Company will give to the Contractor

with the Engineer's written order to commence the Works possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the programme referred to in clause 14 hereof and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Engineer and the Company will from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works with due despatch in accordance with the said programme or proposals (as the case may be).

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(2) If the Contractor suffers delay or incurs expense from failure on the part of the Company to give possession in accordance with the terms of this clause or from failure of the Engineer to provide Drawings, Specifications and instructions in sufficient time to enable the Contractor to proceed or continue with the said programme the Engineer shall grant such extension of time for the completion of the Works as the Engineer may consider reasonable and certify such sum as he considers fair to cover the expense incurred which sum shall be paid by the Company to the Contractor:

Provided always that:—

- 20 (a) in the case of failure by the Engineer as aforesaid, the Engineer shall, in determining the extension of time (if any) take into account the progress of the Works or parts thereof to which the Drawings, Specifications and instructions relate and
- (b) no such extension shall be granted unless the Contractor shall have given adequate notice in accordance with sub-clause (2) of clause 7 hereof.

57. (1) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the Site.

- 30 (2) The Contractor shall provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Works.

58. Subject to any requirement in the Specification as to completion of any portion of the Works before completion of the whole, the whole of the Works shall be completed within the time stated in the Tender calculated from the first day of September 1969 or from such later date as the Contract shall have become operative, or within such extended time as may be determined in accordance with the provisions of Clause 59 hereof.

- 40 59. (1) Should the amount of additional work of any kind or other special circumstances of any kind whatsoever which may occur (except circumstances arising from weather conditions or from conditions due to weather conditions save only damage which occurs to the Works, Temporary Works or Constructional Plant and which is caused directly or indirectly by and during

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the existence of a typhoon) be such as fairly to entitle the Contractor to an extension of time for the completion of the Works the Engineer shall determine the amount (if any) of such extension;

Provided always that:—

- (a) for the purpose of this clause, a typhoon shall be deemed to exist only for the period whilst a Storm Signal of Number 3 or greater number or its equivalent is duly displayed by the Government as prescribed in and in accordance with the Port Regulations; and
- (b) in deciding whether an extension of time is fairly due the Engineer shall in respect of damage which occurs during the period of display 10 as aforesaid of Storm Signals Numbers 3, 5, 6, 7 or 8 consider only damage due to collision between shipping or floating objects and the Works, Temporary Works or Constructional Plant and not damage due to other causes.

(2) The Engineer shall not be bound to take into account any extra or additional work or other special circumstances or damage occasioned by typhoon as mentioned in sub-clause (1) of this clause unless the Contractor within twenty-eight days after such work has been commenced or such circumstances have arisen or typhoon occurred or as soon thereafter as is practicable shall have delivered to the Engineer full and detailed particulars of 20 any claim to extension of time to which he may consider he is entitled in order that such claim may be investigated at the time.

(3) Every variation in time for completion of the Contract shall be by order in writing signed by the Engineer.

(4) Any extension of time granted by the Engineer to the Contractor (other than an extension of time given under sub-clause (2) of clause 56 hereof) shall be deemed to be in full compensation and satisfaction for and in respect of any actual or probable loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every such extension shall exonerate the 30 Contractor from any claims or demands on the part of the Company for or in respect of any delay during the period of such extension but not further or otherwise nor for any delay continued beyond such period.

60. Subject to any provision to the contrary contained in the Contract none of the permanent work shall (save as hereinafter provided) be carried on during the Night or any General Holiday without the permission in writing of the Engineer save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer's Representative:

Provided always that the provisions of this clause shall not be applicable 40 in the case of any work which it is customary to carry out by rotary or double

shifts or any work described in the schedule of night work contained in the Specification.

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61. (1) The whole of the materials, plant and labour to be provided by the Contractor in accordance with the provisions of clause 5 hereof and the mode, manner and speed of execution and maintenance of the Works shall be to the satisfaction of the Engineer.

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10 (2) Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve and/or as the Engineer may reasonably require to expedite progress so as to complete the Works by the prescribed time or extended time for completion.

(3) If the Works are not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payment for so doing.

20 (4) Notwithstanding the stipulation embodied in clause 60 hereof the Works or portions of the Works shall without entitling the Contractor to any extra payment be carried on by day and night without intermission should the Engineer consider such a course necessary owing to the default, negligence, or slow progress of the Contractor and so direct in writing.

62. (1) In this clause the following terms shall have the meanings respectively assigned to them:

- 30 (a) "Scheduled Completion Date" shall mean the last day of the period set out in clause 58 hereof for completion of the Works (or of such extended period as the Engineer may grant under the provisions of clause 59 hereof);
- (b) "Actual Completion Date" shall mean the date upon which the Completion Certificate for the whole of the Works, or, where more than one Completion Certificate is issued, the Completion Certificate in respect of that part of the Works which is last completed, becomes operative;
- (c) "Traffic Lane" means a clear road through the whole length of the Works fit and available for the passage of a single file of motor vehicles of types prescribed under the bye-laws enacted or to be enacted under the Cross-Harbour Tunnel Ordinance, 1969.
- 40 (d) "Certificate of Limited Use" shall mean a certificate to be issued by the Engineer upon application by the Contractor when at least two Traffic Lanes shall be fit and continuously available to and in actual

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use by the Company for the passage of toll-paying traffic of any class permitted or to be permitted under the Cross-Harbour Tunnel Ordinance 1969 provided that the Engineer shall first have issued a Certificate of Completion under the provisions of clause 63 hereof in respect of the parts of the Works required for the passage of such traffic.

(e) "days" shall mean complete days of twenty-four hours.

Provided always that in the event of any dispute as to such fitness and availability of Traffic Lanes as defined in item (c) the decision of the Engineer shall be final and binding on the parties hereto.

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(2) If the Scheduled Completion Date precedes the Actual Completion Date the Contractor shall pay to the Company liquidated damages: if the Actual Completion Date precedes the Scheduled Completion Date the Company shall pay to the Contractor a bonus. The amount of liquidated damages or bonus shall be calculated as the product of the respective rate stated therefor in the Tender and the number of days in the period between the Actual and Scheduled Completion Dates.

(3) If the Engineer shall issue a Certificate of Limited Use before the Scheduled Completion Date the Company shall pay to the Contractor a reduced bonus. The amount of such reduced bonus shall be calculated as the product of one half of the rate stated for bonus in the Tender and the number of days in the period between the date of issue of the Certificate of Limited Use and the Scheduled Completion Date or Actual Completion Date, whichever is the earlier.

(4) If, during a period in which the Contractor is liable under sub-clause (2) hereof to pay liquidated damages to the Company, the Engineer shall issue a Certificate of Limited Use the rate of such liquidated damages shall be reduced to one half for the period of days that shall elapse between the date of issue of the Certificate of Limited Use and the Actual Completion Date.

(5) The payment of any sum by the Contractor to the Company under this clause shall be by way of liquidated damages for default and not as a penalty. The payment of liquidated damages for delay shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract. Any sum or sums payable under sub-clauses (2) or (4) hereof shall be so payable and enforceable by the sole fact of the delay without legal or other formality and without proof of damage.

(6) At any date after the expiration of two years from the date of the Contract the parties hereto shall at the request in writing of one party to the other party reconsider the terms of either or both sub-clauses (3) and (4) of this clause in the light of the circumstances then prevailing and to such extent as may be mutually agreed between them revise such terms.

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63. As soon as (in the opinion of the Engineer) the Works shall have been substantially completed and shall have satisfactorily passed any final test which may be prescribed by the Contract the Engineer on receiving a written undertaking by the Contractor to finish any outstanding work during the Period of Maintenance shall issue a Certificate of Completion in respect of the Works and the Period of Maintenance of the Works shall commence from the day after the date of completion stipulated in such certificate:

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Provided that -

- 10 (a) the Engineer may give such a certificate with respect to any substantial part of the Works before completion of the whole of the Works and shall upon the written application of the Contractor give such certificate with respect to any substantial part of the Works which has been both completed to the satisfaction of the Engineer and occupied or used by the Company and when any such certificate is given in respect of a part of the Works such part shall be considered as completed and the Period of Maintenance of such part shall commence from the date of completion stipulated in such certificate and
- 20 (b) a Certificate of Completion given in accordance with the foregoing provisions in respect of any part of the Works occupied and used as aforesaid shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state.
- (c) the Engineer shall not be required to issue any Certificate of Completion until the Contractor has executed the Maintenance Bond in accordance with the requirements of clause 64 hereof.

MAINTENANCE & DEFECTS

30 64. (1) To the intent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered up to the Company in a good and perfect condition (fair wear and tear after the commencement of the Period of Maintenance excepted) to the satisfaction of the Engineer the Contractor shall execute all such work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages, settlements or other faults as may be required of the Contractor in writing by the Engineer during the Period of Maintenance or within fourteen days after its expiration as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

40 (2) Where such work could interfere with the normal use of the works or parts thereof the Contractor shall execute the work having regard to such use and in a manner and at times approved by the Engineer so as to reduce or avoid interference.

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(3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall in the opinion of the Engineer be due to the use of materials or workmanship not in accordance with the Contract or to neglect or failure on the part of Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract.

(4) If in the opinion of the Engineer such necessity shall be due to any other cause the value of such work shall be ascertained and paid for as if it were additional work.

(5) The Contractor shall at his own expense obtain the guarantee of an insurance company or bank (in either case to be approved by the Company) to be jointly and severally bound together with him to the Company in the sum stated in the Tender for the due performance of his obligations under this clause and under clause 67 hereof. Such guarantee (herein referred to as the Maintenance Bond) shall be separate from and additional to that provided under clause 10 hereof and shall be in the form hereto annexed. Such guarantee shall be valid from the date of issue of the Certificate of Completion under clause 63 hereof or, if more than one such Certificate is issued, from the date of issue of the first such Certificate. Such guarantee shall continue in full force and effect until the issue by the Engineer of the Maintenance Certificate in accordance with clause 97 hereof or, if more than one such Certificate is issued, until the issue of the latest such Certificate. 10 20

(6) In any case where the Company either by itself or by other contractors carried out work for the maintenance of the Works being work which the Contractor under the provisions of this Clause is under duty to perform the Engineer shall as soon as may be reasonably possible in the circumstances of the particular case send to the Contractor a memorandum setting out sufficient particulars to enable the Contractor to identify the particular work carried out either by the Company or by other contractors and the amount of expenditure therein incurred. Unless the Contractor shall reimburse to the Company within a period of 30 days from the date of such memorandum the amount of the expenditure shown thereon the Company may (but shall not be under any obligation to) claim upon the Maintenance Bond for reimbursement of the amount of the expenditure so incurred. 30

65. If the Contractor shall fail to carry out any such work as is required by the Engineer in accordance with the provisions of clause 51, 52, 53, 64, 67 or 68 hereof the Company shall be entitled to carry out such work by its own workmen or by other contractors and if such work is work which the Contractor should have carried out at the sole cost of the Contractor the Company shall be entitled to recover the cost thereof from the Contractor or may deduct the same from any monies due or becoming due to the Contractor.

66. If in the course or for the purpose of the execution of the Works or any part thereof any highway or other road or way shall have been broken into then notwithstanding anything herein contained:- 40

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10 (a) if the permanent reinstatement of such highway or other road or way is to be carried out by the appropriate authority or by some person other than the Contractor (or any sub-contractor to him) the Contractor shall at his own cost and independently of any requirement of or notice from the Engineer be responsible for the making good of any subsidence or shrinkage or other defect, imperfection, settlement or fault in the temporary reinstatement of such highway or other road or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the Period of Maintenance in respect of the Works beneath such highway or other road or way or until the authority or other person as aforesaid shall have taken possession of the Site for the purpose of carrying out permanent reinstatement (whichever is the earlier) and shall indemnify and save harmless the Company against and from any damage or injury to the Company or to third parties arising out or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;

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(b) as from the end of such Period of Maintenance or the taking of possessions as aforesaid (whichever shall first happen) the Company shall indemnify and save harmless the Contractor against and from any damage or injury as aforesaid arising out or in consequence of or in connection with the said permanent reinstatement or any defect, imperfection or failure of or in such work of permanent reinstatement and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;

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(c) where the authority or other person as aforesaid shall take possession of the Site as aforesaid in sections or lengths the responsibility of the Contractor under paragraph (a) of this sub-clause shall cease in regard to any such section or length at the time possession thereof is so taken but shall during the continuance of the said Period of Maintenance continue in regard to any length of which possession has not been so taken and the indemnities given by the Contractor and the Company respectively under the said paragraph shall be construed and have effect accordingly.

40 67. (1) The Contractor shall if required by the Engineer in writing search for the cause of any defect, imperfection or fault under the directions of the Engineer.

(2) Unless such defect, imperfection or fault shall be one for which the Contractor is liable in accordance with the provisions of the Contract the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Company.

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(3) If such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of clause 64 hereof.

ALTERATIONS ADDITIONS & OMISSIONS

68. (1) The Engineer may make any variation of the form, quality or quantity of the Works or any part thereof that shall in his opinion be necessary and for that purpose or if for any other reason it shall in his opinion be desirable shall have power to order the Contractor to do and the Contractor shall do any 10
of the following:-

- (a) increase or decrease the quantity of any work included in the Contract;
- (b) omit any such work;
- (c) change the character, quality or kind of any such work;
- (d) change the levels, lines, position and dimensions of any part of the Works and
- (e) execute additional work of any kind necessary for the completion of the Works

and no such variation shall in any way vitiate or invalidate the Contract but the value (if any) of all such variations shall be taken into account in ascertaining 20
the amount of the Final Contract Price.

(2) No such variation shall be made by the Contractor without an order in writing of the Engineer:

Provided that –

- (a) no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities;
- (b) if for any reason the Engineer shall consider it desirable to give any such order verbally the Contractor shall comply with such order and 30
any confirmation in writing of such verbal order given by the Engineer whether before or after the carrying out of the order shall be deemed to be an order in writing within the meaning of this clause and

- (c) if the Contractor shall confirm promptly in writing to the Engineer any verbal order of the Engineer and such confirmation shall not be contradicted in writing by the Engineer within 14 days it shall be deemed to be an order in writing by the Engineer.

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69. (1) The Engineer shall determine the amount (if any) to be added to or deducted from the sum named in the Tender in respect of any extra or additional work done or work omitted by his order. All such work shall be valued at the rates set out in the Contract if in the opinion of the Engineer the same shall be applicable. If the Contract shall not contain any rates applicable to the extra or additional work then reasonable prices shall be fixed by the Engineer.

(2) Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that in the opinion of the Engineer the rate or price contained in the Contract for any item of the Works is by reason of such omission or addition rendered unreasonable or inapplicable the Engineer shall fix such other rate or price as in the circumstances he shall think reasonable and proper.

20 Provided also that no increase of the Contract Price under sub-clause (1) of this Clause or variation of rate or price under sub-clause (2) of this Clause shall be made unless as soon after the date of the order is practicable and in the case of extra or additional work before the commencement of the work or as soon thereafter as is practicable notice shall have been given in writing:—

- (a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or
- (b) by the Engineer to the Contractor of his intention to vary a rate or price as the case may be.

30 70. (1) The Engineer may if in his opinion it is necessary or desirable order in writing that any additional or substituted work shall be executed on a daywork basis. The Contractor shall then be paid for such work under the conditions set out in the Daywork Schedule included in the Bill of Quantities and at the rates and prices affixed thereto by him in his Tender and failing the provision of a Daywork Schedule he shall be paid at the rates and prices and under the conditions contained in the "Schedules of Dayworks carried out incidental to Contract Work" issued by The Federation of Civil Engineering Contractors current at the date of submission of the Contractor's Tender for the execution of the Works.

40 (2) The Contractor shall furnish to the Engineer such receipts or other vouches as may be necessary to prove the amounts paid and before ordering materials shall submit to the Engineer quotations for the same for his approval.

(3) In respect of all work executed on a daywork basis the Contractor

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shall during the continuance of such work deliver each day to the Engineer's Representative an exact list in duplicate of the names occupation and time of all workmen employed on such work and a statement also in duplicate showing the description quantity of all materials and plant used thereon or therefor (other than plant which is included in the percentage addition in accordance with the Schedule under which payment for daywork is made). One copy of each list and statement will if correct or when agreed be signed by the Engineer's Representative and returned to the Contractor. At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour material and plant (except as aforesaid) used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorize payment for such work either as daywork (on being satisfied as to the time employed and plant and materials used on such work) or at such value therefor as he shall consider fair and reasonable. 10

71. The Contractor shall send to the Engineer once in every month an account giving particulars (as full and detailed as possible) of all claims for any additional expense to which the Contractor may consider himself entitled and of all additional work ordered by the Engineer which he has executed during the preceding month and no claim for payment for any such work or expense will be considered which has not been included in such particulars: 20

Provided that the Engineer shall be entitled to authorize payment to be made for any such work or expense notwithstanding the Contractor's failure to comply with this condition if the Contractor has at the earliest practicable opportunity notified the Engineer that he intends to make a claim for such work or expense and has submitted detailed particulars of his claim within 90 days of the completion of the work concerned. 30

PLANT, TEMPORARY WORKS & MATERIALS

72. All Constructional Plant, Temporary Works and materials owned by the Contractor or by any company in which the Contractor has a controlling interest shall when brought on to the Site (or in the case of Hire Purchase Plant on the Site on its becoming the property of the Contractor) immediately be deemed to become the property of the Company.

73. In order to secure in the event of a forfeiture under clause 101 hereof the continued availability for the purpose of executing the Works of any Essential Hired Plant the Contractor shall not bring on to the Site any Hired Plant unless the Agreement for Hire thereof contains a provision that the owner thereof on request in writing made by the Company within seven days after the date on which any such forfeiture has become effective and on the Company undertaking to pay all hire charges in respect thereof from such date will hire such Essential Hired Plant to the Company on the same terms in all respects as 40

the same was hired to the Contractor save that the Company shall be entitled to permit the use thereof by any other contractor employed by the Company for the purpose of completing the Works under the terms of the said clause.

74. In the event of the Company entering into any Agreement for Hire of Essential Hired Plant pursuant to the provisions of clause 73 hereof all sums properly paid by the Company under the provisions of any such agreement and all expenses incurred by the Company (including stamp duties) in entering into such agreement shall be deemed for the purpose of clause 101 hereof to be part of the cost of completing the Works.

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10 75. (1) The Contractor shall upon request made by the Engineer at any time in relation to any item of Essential Hired Plant forthwith notify to the Engineer in writing the name and address of the owner thereof and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements of clause 73 hereof.

(2) The Contractor shall also upon request as aforesaid give a like notification (but without certificate) in regard to any Hire Purchase Plant.

20 76. In order to avoid seizure by the owner of any Hire Purchase Plant the Company shall be entitled to pay to such owner the amount of any overdue instalment or other sum payable under any agreement for hire purchase and in the event of the Company doing so any amount so paid by the Company shall be a debt due from the Contractor to the Company and may be deducted by the Company from any monies due or which may become due to the Contractor under the Contract or may be recovered by the Company from the contractor at law.

30 77. No Constructional Plant, Temporary Works or any part thereof (except Hired Plant not declared essential by the Engineer) shall be removed from the Site without the written consent of the Engineer which consent shall not be unreasonably withheld where the same is no longer immediately required for the purposes of completion of the Works but the Company will permit the Contractor the exclusive use of all such Constructional Plant, Temporary Works and materials in and for the completion of the Works until the occurrence of any event which gives the Company the right to exclude the Contractor from the Site and proceed with the completion of the Works.

40 78. (1) Upon removal of any such Constructional Plant, Temporary Works or materials as have been deemed to have become the property of the Company under clause 72 hereof with consent as aforesaid the property therein shall be deemed to revert in the Contractor and upon completion of the Works the property in the remainder of such Constructional Plant, Temporary Works and materials as aforesaid shall subject to the provisions of clause 101 hereof be deemed to revert in the Contractor who shall remove the same together with any Hired Plant and Hire Purchase Plant.

(2) If the Contractor shall fail to remove any Constructional Plant, Temporary Works or materials as aforesaid or any Hired Plant or Hire Purchase

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Plant within such reasonable time after completion of the Works as may be allowed by the Engineer then the Company may:-

- (a) sell any such Constructional Plant, Temporary Works and materials as aforesaid and
- (b) return at the Contractor's expense to the person, firms or company from whom any Hired Plant or any Hire Purchase Plant was held by the Contractor such Hired Plant or Hire Purchase Plant

and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale and of and in connection with return as aforesaid shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Company and shall be deductible or recoverable by the Company accordingly as aforesaid. 10

79. The Company shall not at any time be liable for the loss of or injury to any of the Constructional Plant, Temporary Works or materials which have been deemed to become the property of the Company under clause 72 hereof save as mentioned in clauses 20 and 104 hereof.

80. The Contractor shall when entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract (by reference or otherwise) the provisions of clauses 72 to 79 inclusive hereof in relation to Constructional Plant, Temporary Works and materials, Essential Hired Plant, Hired Plant and Hire Purchase Plant brought on to the Site by the sub-contractor. 20

81. The operation of clauses 72 to 80 inclusive hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

82. The quantities set out in the Bill of Quantities are the estimated quantities of the Works but they shall not be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract. 30

83. (1) The Engineer shall except as otherwise stated ascertain and determine by admeasurement the value in accordance with the Contract of work done in accordance with the Contract.

(2) The Engineer shall when he requires any part or parts of the Works to be measured give notice to the authorised agent or representative of the Contractor who shall forthwith attend or send a qualified agent to assist the Engineer or the Engineer's Representative in making such measurement and shall furnish all particulars required by either of them.

(3) Should the Contractor not attend or neglect or omit to send such agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work.

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10 (4) For the purpose of measuring such permanent work as it to be measured by records and drawings the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor as and when called upon to do so in writing shall within fourteen days attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed and if the Contractor does not so attend to examine and agree any such records and drawings they shall be taken to be correct.

(5) If after examination of such records and drawings the Contractor does not agree the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the Contractor shall within fourteen days of such examination lodge with the Engineer's Representative for decision by the Engineer notice in writing of the respects in which such records and drawings are claimed by him to be incorrect.

20 84. Except where any general or detailed description of the work in the Bill of Quantities expressly shows to the contrary the Bill of Quantities shall be deemed to have been prepared and measurements shall be made according to the procedure set forth in the Standard Method of Measurement of Civil Engineering Quantities issued by the Institute of Civil Engineers (1965) and any subsequent amendment or modification thereof.

PROVISIONAL & PRIME COST SUMS

30 85. Every provisional sum (other than P.C. prices under clause 86 hereof) set out in the Bill of Quantities (whether for work to be executed by the Contractor which has not been specified in detail when the Contract is entered into or for work to be executed by a nominated sub-contractor as hereinafter defined) together with the charges and profits (if any) which the Contractor shall have added to such sums shall be deducted from the Tendered Sum and in lieu thereof there shall be added to the Tendered Sum:-

(a) where work to which the provisional sum relates has been ordered by the Engineer and executed by the Contractor the value of the work so executed valued in accordance with clauses 69 to 71 inclusive hereof and

40 (b) where the work to which the provisional sum relates has been ordered by the Engineer and executed by a nominated sub-contractor (as hereinafter defined) the sum or sums actually paid (subject however to the provisions of clause 89 hereof) by the Contractor to such sub-contractor on the direction of the Engineer and (if the Contractor shall have added to the provisional sum to which the work relates any sums in respect of charges and profits) a

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sum in the same proportion to the sum so actually paid as the said charges and profits bear to the said provisional sum. If the item in the Bill of Quantities referring to the Provisional Sum is such that the Contractor was not given opportunity at Tender to add sums in respect of charges and profit then the Engineer shall determine the amounts (if any) of such charges and profits in accordance with the provisions of clause 69 hereof.

86. (1) Every sum in the Bill of Quantities which contains (either as the whole or part of the sum) a prime cost (P.C.) price for goods or materials to be supplied for or for incorporation into the Works shall be varied by the substitution for the prime cost price of the actual price (subject however to the provisions of clause 89 hereof) paid by the Contractor for the goods or materials on the direction of the Engineer and (as the case may be) there shall be added to or deducted from the Tendered Sum and the amount by which the sum in the Bill of Quantities is increased or decreased by such substitution. 10

(2) No variation shall be made to or in respect of any sum added for labour to the prime cost price on account of the said actual price being greater or less than the prime cost price but in respect of all other charges and profit there shall be added or deducted (as the case may be) a sum representing such percentage as is provided in the Bill of Quantities in relation to the particular item of prime cost concerned or (if none) such percentage as is inserted by the Contractor in the Tender as the percentage for the adjustment of prime cost sums. 20

87. All sums set out in the Bill of Quantities which shall be stated to be provisional or for contingencies shall be used only at the discretion and on the express direction in writing of the Engineer and if not used either wholly or in part shall as to the amount not used be deducted from the Tendered Sum to the intent that nothing on account of overheads or of profits shall be paid to the Contractor on account of any such provisional or contingency item unless such provisional or contingency item is actually used at such discretion and on such direction of the Engineer. 30

88. The Contractor shall when required by the Engineer produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of provisional or prime cost items.

89. In so far as any sum is paid by the Contractor to a sub-contractor or supplier by direction of the Engineer under paragraph (b) of clause 85 or under clause 86 hereof before the Contractor shall have received payment of that sum from the Company there shall for the purpose of determining additions to or deductions from the Tendered Sum under clause 85 or clause 86 hereof (as the case may be) be added to the actual sum paid by the Contractor as aforesaid any discount obtained by the Contractor by reason of such payment up to two and a half per cent of the amount of such actual payment and the benefit (in excess of such two and a half per cent) of any larger discount allowed in respect thereof shall be passed to the Company. 40

90. In the event of a nominated sub-contractor (as hereinafter defined) having undertaken towards the Contractor in respect of the work executed or the goods or materials supplied by such nominated sub-contractor any continuing obligation extending for a period exceeding that of the Period of Maintenance under the Contract the Contractor shall at any time after the expiration of the Period of Maintenance assign to the Company at the request and cost of the company the benefit of such obligation for the unexpired duration thereof.

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10 91. (1) All specialists, merchants, tradesmen and others executing any work or supplying any goods for which provisional or prime cost sums are included in the Bill of Quantities who may have been or be nominated or selected or approved by the Company or the Engineer and all persons to whom by virtue of the provisions of the Bill of Quantities or Specification the Contractor is required to sub-let any work shall in the execution of such work or the supply of such goods be deemed to be sub-contractors employed by the Contractor and are herein referred to as "nominated sub-contractors":

20 Provided always that subject to the provisions of sub-clauses (2), (3), (4) and (5) of this clause the Contractor shall not be required by the Company or by the Engineer or be deemed to be under any obligation to employ any nominated sub-contractor who shall decline to enter into a sub-contract with the Contractor containing provisions that -

30 (a) in respect of the work or goods the subject of the sub-contract the sub-contractor will undertake towards the Contractor the like obligations and liabilities as are imposed upon the Contractor towards the Company by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities and

(b) the sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the sub-contractor, his agents, workmen and servants and from and against any misuse by him or them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

40 (2) If any nominated sub-contractor (other than the nominated sub-contractor the subject of sub-clause (3) of this clause) shall object to entering into a sub-contract containing all of such provisions as aforesaid and after the Contractor has notified the Engineer thereof in writing specifying the particular provisions which are so objected to the Company or the Engineer instructs the Contractor nevertheless to employ such nominated sub-contractor then the Contractor shall employ such nominated sub-contractor in accordance with such instruction and in that case the Contractor:-

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- (a) shall be relieved in respect of the sub-contract works of any of his obligations and liabilities hereunder which are not undertaken by the nominated sub-contractor;
- (b) shall be indemnified by the Company in respect of any matters as to which the nominated sub-contractor refuses to indemnify the Contractor in accordance with paragraphs (a) and (b) of the proviso to sub-clause (1) of this clause and
- (c) shall be paid any extra cost or expense unavoidably incurred by the Contractor as a result of any instruction given under this sub-clause.

(3) Prior to the acceptance of his Tender by the Company the Contractor shall have entered into a contract with a firm nominated by the Engineer and the Company as nominated sub-contractor for certain electrical and mechanical plant and equipment for the Works which contract shall be conditional upon the Company and the Contractor entering a binding contract in respect of the Works. The Contractor shall be deemed to have accepted the terms and conditions of contract with this nominated sub-contractor notwithstanding any conflict or difference actual or implied between these and the terms or conditions of this Contract and shall be deemed to have entered this nominated sub-contract freely and willingly. 10

(4) Within 2 months of the commencement of work on Site the Contractor shall submit to the Engineer for his approval (which approval shall not be unreasonably withheld) the form of sub-contract **the proposes shall apply** between himself and a nominated sub-contractor (other than the nominated sub-contractor of sub-clause (3) of this clause). Such approval shall not relieve the Contractor of any of his obligations or liabilities under the Contract. When approved such ofrm of sub-contract shall be used for all nominated sub-contracts **except as may be specifically approved or directed by the Engineer.** Should the Engineer approve or direct that any provisions as aforesaid should be waived in respect of a nominated **sub-contract the** Contractor shall, in respect of that sub-contract, be relieved, indemnified and paid extra cost of expense (if any) as prescribed in **paragraphs (a), (b) and (c)** respectively of sub-clauses (2) of this clause in the same way as if a nominated sub-contractor had objected to entering into a sub-contract containing such provisions. 30

(5) Subject to the **provisions** of clause 92 hereof the Contractor shall make monthly payments on account to each nominated sub-contractor in respect of work done or **goods** supplied in accordance with the sub-contract subject to the deduction of a retention the terms of which retention shall be approved by the Engineer.

(6) The Contractor shall invite tenders from nominated sub-contractors when and in the manner directed by the Engineer such tenders being returnable 40 to the Engineer.

92. Before issuing under clause 93 or clause 98 hereof any certificate which includes any payment in respect of work done or goods supplied by any

nominated sub-contractor the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments (less retentions) included in previous certificates in respect of the work or goods of such nominated sub-contractor have been paid or discharged by the Contractor in default whereof unless the Contractor shall:-

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- (a) inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produce to the Engineer reasonable proof that he has so informed such nominated sub-contractor in writing

10 the Company shall be entitled to pay to such nominated sub-contractor direct upon the certificate of the Engineer all payments (less retentions) which the Contractor has failed to make to such nominated sub-contractor and to deduct by way of set-off the amount so paid by the Company from any sums due or which become due from the Company to the Contractor:

Provided always that where the Engineer has certified and the Company has paid direct as aforesaid the Engineer shall in issuing any further certificate in favour of the Contractor deduct from the amount thereof the amount so paid direct as aforesaid but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

20 93. (1) The Company shall pay in London to the Contractor one million eight hundred and sixty-six thousand six hundred and sixty-seven pounds Sterling (£1,866,667) either:-

- (a) on or before the thirty-first day of August 1969; or
- (b) on the date of receipt by the Hongkong and Shanghai Banking Corporation at 9, Gracechurch Street, London E.C.3., of confirmation in writing from the Lending Bank that the conditions set out in paragraph 4(A) of the Financial Agreement have been fulfilled to the satisfaction of the Lending Bank with the exception of the provision contained in paragraph 4(A)(4) thereof;

30 whichever is the later.

(2) The Engineer shall determine the total amount due to the Contractor at the end of each month on account of

- (i) the estimated contract value of permanent and temporary work executed up to the end of that month;
- (ii) the estimated value (less ten per cent thereof) of goods and materials in good condition and properly stored delivered to the Site and present thereon at the end of that month for inclusion in the Works or Temporary Works;

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(iii) the estimated value of Constructional Plant other than Hired Plant present on the Site at the end of the month allowing for depreciation in accordance with proviso (c) of this sub-clause; and

(iv) any other matter under the Contract not covered under items (i) (ii) or (iii) of this sub-clause.

and shall notify the Company and the Contractor of the total amount due, of the amount due under each item (i), (ii), (iii) and (iv) and the proportions of the total amount due that are payable by the Company and subject to the provisions of the Financial Agreement by the Lending Bank such proportions being determined in accordance with sub-clause (6) and (7) of this clause. Such notification shall be by duplicate certificates of the form appended hereto or such other form as may be agreed between the parties hereto which the Engineer shall sign and deliver or cause to be delivered one to the Company and one to the Contractor within fourteen days of receipt by the Engineer of the Contractor's statement corresponding thereto and referred to in sub-clause 3 of this clause. 10

Provided that –

- (a) no certificate other than the Final Certificate under clause 98 hereof shall be issued for an amount less than HK\$3,000,000; 20
- (b) the amount certified in respect of Constructional Plant shall not exceed five per cent of the Tendered Sum and shall not include items of such Plant whose individual value is less than HK\$10,000;
- (c) after a period of twelve months shall have elapsed from the commencement of the Works, all amounts certified in respect of Constructional Plant shall be reduced month by month according to linear progression such that after a period of thirty months shall have so elapsed the amount to be certified in respect of such Plant is nil;
- (d) the value of temporary work will be certified only in respect of Temporary Works for which an item has been specifically included in the Bill of Quantities; 30
- (e) no payment in respect of goods materials or Constructional Plant shall be certified after the total of all amounts certified, excluding any such payment, has attained eighty per cent of the Tendered Sum;
- (f) the deliveries of goods, materials and Constructional Plant to and their removal from the Site shall not, in the opinion of the Engineer, be inconsistent with the approved programme referred to in clause 14 hereof. 40

(3) To assist the Engineer in determining the total amounts due each month the Contractor shall submit to the Engineer no later than seven days after the end of each month a detailed statement showing the values under items (i), (ii), (iii) and (iv) of sub-clause (2) of this clause. The Contractor shall submit all such vouchers and evidence as may be necessary to substantiate the several values to the satisfaction of the Engineer either with the monthly statement or as the Engineer may further require.

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10 (4) The measurements for the statements required under sub-clause (3) of this clause shall be prepared on printed forms supplied by and at the cost of the Contractor and the style of such forms shall be as provided for in the preamble to the Bill of Quantities. The Contractor shall after each monthly measurement has been made in conjunction with the Engineer fill in the quantities so agreed and otherwise complete the statement and forward six signed copies of the same to the Engineer for checking and if necessary correction. When these copies of the statement have been finally approved by the Engineer he shall sign the same and shall return one signed copy to the Contractor.

20 (5) In determining the total amount due to the Contractor under any certificate the Engineer shall deduct the total amounts previously certified but shall not deduct the amount of the ten per cent down payment made under sub-clause (1) of this clause. Always provided that if in the late stages of the execution of the Works the Engineer is of the opinion that the provisions of this clause are such that the Contractor will be paid an amount in excess of that to which he is entitled under the Contract the Engineer may deduct such part of the aforesaid down payment as he considers necessary to ensure that the Contractor is not paid such excess.

30 (6) Of the total amount due under each certificate the proportion payable by the Company shall comprise a sum equal to fifteen per cent of the total of the amounts certified by the Engineer to be due under items (i), (ii) and (iv) of sub-clause (2) of this clause and twenty-five per cent of the amount so certified under item (iii) thereof. This sum shall be paid by the Company to the Contractor in Hong Kong in Hong Kong dollars.

Always provided that —

- 40 (a) should the aggregate of all amounts certified as due under the Contract exceed the Tendered Sum the Company shall pay the whole amount of the excess to the Contractor in Hong Kong in Hong Kong dollars;
- (b) should any **amounts** be certified as due under the Contract other than amounts due under Clauses 62, 93, 102, 104, 105, 106, 107, 108, 110, 112 and 114 hereof the Company shall pay the whole of such amounts to the Contractor in Hong Kong in Hong Kong dollars; and

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(c) payments may be made other than in Hong Kong in Hong Kong dollars if agreed by the parties hereto.

(7) Of the total amount due under each certificate the proportion payable by the Lending Bank (subject to the terms of the Financial Agreement) shall comprise a sum equal to seventy-five per cent of such total amount (representing 78.7 per cent of the estimated value of United Kingdom and Hong Kong goods, materials and services to be financed under the Financial Agreement) which sum shall be paid by the Lending Bank to the Contractor in the United Kingdom in Sterling, the amount of Sterling being calculated at the rate of 14.60 Hong Kong dollars to one pound Sterling.

10

Provided --

(a) that no claims upon the Lending Bank shall be a Valid Claim under the Financial Agreement other than a claim in respect of clauses 62, 93 (but except sub-clause 1 of clause 93), 98, 102, 104, 105, 106, 107, 108, 110, 112 or 114;

(b) that the aggregate amount of all such Valid Claims shall not exceed an amount which is equal to seventy-five per cent of the Tendered Sum; and

(c) that no claim under the terms of this sub-clause shall be made by either party hereto on account of any change occurring during the Contract in the rate of Exchange of HK\$14.60 to one pound Sterling.

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(8) The sum payable by the Company to the Contractor to the Contractor under sub-clause (6) hereof shall be so paid by the Company within seven days of receipt by the Company of the Engineer's certificate to such effect. In the event that the Company does not make such payment within such period the Company shall be liable to the Contractor for interest on the amount not so paid at the rate of five per cent per annum from the last date on which the payment should have been made.

(9) Any payment due under the Contract by the Contractor to the Company shall be made forthwith by the Contractor to the Lending Bank in reduction of the liabilities of the Company under the Financial Agreement except for any amounts due under sub-clause (6) of clause 64 hereof which amounts shall be paid direct to the Company by the Contractor.

30

(10) Notwithstanding anything herein contained as to payment by the Lending Bank to the Contractor should the Lending Bank not make any such payment the Company shall become liable to the Contractor for such payment.

(11) Should any amounts become due to the Contractor under sub-clause (3) of clause 107 or under clauses 108, 110 or 112 hereof which are not paid

from any other source then, subject to the terms of the Financial Agreement, the Contractor may be paid such amounts or parts thereof by the Lending Bank upon presentation of the Engineer's certificate to the effect that such amounts are due or, in the case of payment under clause 11o hereof, upon presentation of a certified copy of an arbitration award.

(12) All payment made under the Contract shall be made to Costain International Limited who shall receive them on behalf of the Contractor.

(13) Both the Company and the Contractor may disregard anything contained herein which is in contravention of the Financial Agreement.

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10 94. The Contractor will be required to pay all such taxes (if any) as may from time to time be chargeable on any profits made by him in Hong Kong in respect of this Contract in accordance with the tax laws currently in force there.

20 95. (1) In that the Contractor requires for the purpose of the Contract to remit money from the United Kingdom to Hong Kong the Contractor and the Company have agreed to reimburse one another in accordance with the procedures of sub-clauses 2 and 3 hereof such gain or loss (if any) that either incurs as a result of a difference between the rate of exchange prevailing for the remittance of money from the United Kingdom to Hong Kong at the time when the remittance is made and the rate of 14.60 Hong Kong dollars to one pound Sterling.

Provided always that --

- (a) neither the Contractor nor the Company shall be required to make reimbursement of a loss or gain (as the case may be) incurred in respect of the transfer of a sum or sums exceeding one-quarter of the Tendered Sum, the Sterling equivalent of this being calculated at the rate of 14.60 Hong Kong dollars to one pound Sterling;
- (b) the Contractor shall bear the cost of all charges for transmission;
- 30 (c) reimbursement shall only be made in respect of losses or gains incurred in the transfer by the Contractor from the United Kingdom to Hong Kong of monies to be spent in Hong Kong for the purposes of the Contract;
- (d) that under this clause the Company shall reimburse to the Contractor any such loss as the Contractor may suffer so far only as such loss arises in such remittances as a result of the net loss arising from a decrease in the rate of exchange below **HK\$14.558** to one pound Sterling;
- (e) that under this clause the Contractor shall reimburse to the Company any gain as the Contractor may make in so far only as

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the part of such gain arises in such remittances as a result of an increase in the rate of exchange above HK\$14.642 to one pound Sterling.

(2) The Contractor shall furnish to the Engineer within twenty-eight days after any remittance has been made a certificate by the transmitting bank, which bank shall be approved by the Engineer, certifying the sum remitted, the rate of exchange at which the conversion of currency was affected and the amount of the banker's charges for transmission.

(3) If when making a remittance the Contractor obtains apart from any transmission charges more or less Hong Kong dollars than the product of the rate of exchange prevailing at the time of Tender multiplied by the number of pounds Sterling which are converted, then the surplus or deficit shall be certified by the Engineer for reimbursement by the Contractor or the Company as appropriate. The Engineer shall issue his certificate to such effect within seven days of receipt by him of the bank's certificate and the Contractor and the Company shall reimburse one another in Hong Kong dollars in accordance with and within twenty-one days of receipt of the Engineer's certificates always provided that the surplus or deficit may be deducted from or added to (as the case may be) the next payment due to be made by the Company to the Contractor under Clause 93 hereof. 10 20

(4) Should the cost in Sterling to the Contractor of any of the items defined in paragraphs (a) to (e) of this sub-clause increase due to a change occurring after the time of Tender in the rate of exchange between the currencies of the United Kingdom and the U.S.A. or between the currencies of the United Kingdom and Western Germany or between both then the Company shall reimburse the Contractor the amount of such increase in cost as the Engineer considers the Contractor necessarily so incurred for the purpose of the Contract, the rates of exchange between the currencies at the time of Tender which rates for the purpose of this clause shall be deemed respectively 2.40 U.S. dollars or 9.60 DM to one pound Sterling. For the purposes of payment under this sub-clause the amount of increased cost in pounds Sterling shall be converted to Hong Kong dollars at the rate of 14.60 Hong Kong dollars to one pound Sterling. Provided that no reimbursement shall be required in respect of changes in the rates of exchanges which are less than 0.833 per cent of the above rates of exchange. 30

(a) Fees for design Consultancy services provided by Messrs. Parsons Brinckerhoff Quade and Douglas Incorporated in respect of an amount paid before the thirty-first day of December 1969 equal to thirty per cent of their total fee and in respect of such part of the balance thereof as is paid before the thirty-first day of December 1971. 40

(b) Peine piles paid for before the thirty-first day of March 1970.

(c) Lima "2400" crane paid for before the thirtieth day of September

1969 and spares therefor paid for prior to the completion of the works.

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(d) Ocean freight for plant and materials in respect of an amount paid before the thirty-first day of March 1971 equal to eighty per cent of the total cost of such freight throughout the period of the Contract and in respect of such part of the balance thereof as is paid before the thirty-first day of December 1972.

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(e) Air fares for the Contractor's staff and their dependents paid during the period of the Contract.

10 96. (1) The Engineer may by any certificate make any correction or modification in any previous certificate (other than the Maintenance Certificate and the Final Certificate referred to in clause 97 and 98 respectively hereof) which shall have been issued by him and shall have power to withhold any certificate if the Works or any part thereof are not being carried out to his satisfaction.

20 (2) No certificate other than the Maintenance Certificate referred to in clause 97 hereof shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof. No certificate other than the Final Certificate referred to in clause 98 hereof shall be taken as an admission of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Engineer nor shall any other certificate conclude or prejudice any of the powers of the Engineer.

30 97. The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Company stating that the Works have been completed and maintained to his satisfaction. Such Maintenance Certificate shall be given by the Engineer within twenty-eight days after the expiration of the Period of Maintenance (or if different Periods of Maintenance shall become applicable to different parts of the Works the expiration of the latest such period) or as soon thereafter as any works ordered during such period pursuant to clauses 64, 65, 66 and 67 hereof shall have been completed to the satisfaction of the Engineer and full effect shall be given to this clause notwithstanding any previous entry on the Works or the taking possession of, working or using the same or any part thereof by the Company.

40 98. After the Engineer has made his final determination of all the amounts (if any) to be added to or deducted from the Tendered Sum in accordance with the provisions of the Contract and after receipt by him of a written declaration from the Contractor that no unresolved claims, questions, disputes or differences exist between the Company and the Contractor the Engineer will issue a Final Certificate in the appropriate amount. The Contractor shall then be entitled to receive the amount by which the value of the Final Certificate

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exceeds the total of all preceding payments made to him under the Contract but if such total exceeds the value of the Final Certificate then the Contractor shall forthwith pay to the Lending Bank the amount of such excess.

99. The Company shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract of the execution of the Works unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Maintenance Certificate under clause 97 hereof.

100. **Notwithstanding** the issue of the Maintenance Certificate the Contractor and (subject to the provisions of clause 99 hereof) the Company shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such certificate is issued and for the purposes of **determining** the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto. 10

REMEDIES & POWERS

101. (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Company first obtained or shall have execution levied on his goods or if the Engineer shall certify in writing to the Company that in his opinion the Contractor:- 20

- (a) has abandoned the Contract or
- (b) without reasonable excuse has failed to commence the Works within the time stated in the Appendix to the Tender or has suspended the progress of the Works for twenty-eight days after receiving from the Engineer written notice to proceed or
- (c) has failed to remove materials from the Site or to pull down and replace work for twenty-eight days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions or 30
- (d) is not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract or
- (e) has to the detriment of good workmanship or in defiance of the Engineer's instruction to the contrary sub-let any part of the Contract or

(f) has failed to proceed with the Works with due diligence

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then the Company by its representative after giving fourteen days' notice in writing to the Contractor may enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Company or the Engineer by the Contract and may itself in such manner by such means and to such extent as it may deem fit complete the Works or may employ any other contractor to complete the Works and the Company or such other contract may use for such completion so much of the Constructional Plant, Temporary Works and materials which have been deemed to have become the property of the Company under the provisions of the Contract as it or they may think proper and the Company may at any time sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to the Company from the Contractor under the Contract.

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(2) The Engineer shall as soon as may be practicable after any such entry and expulsion by the Company fix and determine ex parte or by or after reference to the parties or after such investigation or enquires as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and what was the value of any unused or partially used materials, any Constructional Plant and any Temporary Works which have been deemed to become the property of the Company under the provisions of the Contract.

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102. (1) If the Company by its representative shall enter and expel the Contractor under clause 101 hereof the Company shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion and maintenance, liquidated damages for delay in completion (if any), and without prejudice to the generality of the foregoing all other expenses incurred by the Company (but excluding any loss to the Company by reason of withdrawal of credit facilities afforded to the Company as a result of acceptance of the Contractor's Tender) have been ascertained and the amount thereof certified by the Engineer.

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(2) The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount but if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Company the amount of such excess and it shall be deemed a debt due by the Contractor to the Company and shall be recoverable accordingly.

103. (1) If by reason of any accident or failure or other event occurring to, in or in connection with the Works or any part thereof either during the

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execution of the Works or during the Period of Maintenance any re-medial or other work or repair shall in the opinion of the Engineer be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair the Company may by its own or other workmen do such work or repair as it may consider necessary.

(2) If the work or repair so done by the Company is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Company in so doing shall on demand be paid by the Contractor to the Company or may be deducted by the Company from any monies due or which may become due to the Contractor: 10

Provided always that the Engineer shall as soon as after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

SPECIAL RISKS

104. The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the Works (save to work condemned under the provisions of clause 52 hereof prior to the occurrence of any special risk hereinafter mentioned) or Temporary Works or to property whether of the Company or third parties or for or in respect of injury or loss of life which is the consequence whether direct or indirect of war, hostilities (whether war be declared or not) invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, or (otherwise than amongst the Contractor's own employees) riot, commotion or disorder, (hereinafter comprehensively referred to as "the said special risks") and the Company shall indemnify and save harmless the Contractor against and from the same and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising thereout or in connection therewith and shall compensate the Contractor for any loss of or damage to property of the Contractor used or intended to be used for the purpose of the Works (including property in transit to the Site) and occasioned either directly or indirectly by the said special risks. 20 30

105. (1) If the Works or Temporary Works or any materials (whether for the former or the latter) on or near or in transit to the Site shall sustain destruction or damage by reason of any of the said special risks the Contractor shall nevertheless be entitled to payment for any permanent work and for any materials so destroyed or damaged and the Contractor shall be entitled to be paid by the Company the cost of making good any such destruction or damage whether to the Works or the Temporary Works and of replacing or making good such materials so far as may be required by the Engineer or as may be necessary for the completion of the Works on a prime cost basis plus profit as the Engineer may certify to be reasonable. 40

(2) Destruction, damage, injury or loss of life caused by the explosion

or impact whenever and wherever occurring of any mine, bomb, shell, grenade or other projectile, missile, munition or explosive or war shall be deemed to be a consequence of the said special risks.

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10 106. The Company shall repay to the Contractor any increased cost of or incidental to the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of clause 52 hereof prior to the occurrence of any special risk) which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks (subject however to the provisions in clause 107 hereof hereinafter contained in regard to outbreak of war) but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing.

107. (1) If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in any part of the world which whether financially or otherwise materially affects the execution of the Works the Contractor shall unless and until the Contract is terminated under the provisions in this clause contained use his best endeavours to complete the execution of the Works:

20 Provided always that the Company shall be entitled at any time after such outbreak of war to terminate the Contract by giving notice in writing to the Contractor and upon such notice being given the Contract shall (save as to the rights of the parties under this clause and to the operation of clause 111 hereof) terminate but without prejudice to the rights of either party in respect of any antecedent breach thereof.

(2) If the Contract shall be terminated under the provisions of sub-clause (1) of this clause the Contractor shall with all reasonable despatch remove from the Site all Constructional Plant and shall give similar facilities to his sub-contractors to do so.

30 (3) If the Contract shall be terminated as aforesaid the Contractor shall be paid by the Company (in so far as such amounts or items shall not have already been covered by payments on account made to the Contractor) for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:-

(a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed;

40 (b) the cost of materials or goods reasonably ordered for the Works or Temporary Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Company upon such payment being made by it);

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- (c) a sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned;
- (d) any additional sum payable under the provisions of clause 104, sub-clause (1) of clause 105 and clause 106 hereof;
- (e) the reasonable cost of removal under sub-clause (2) of this clause and (if required by the Contractor) return thereof to the Contractor's main plant yard in his country of registration or to any other destination at no greater cost and 10
- (f) the reasonable cost of repatriation of all the Contractor's staff and workmen recruited outside Hong Kong specifically for the Contract and employed on or in connection with the Works at the time of such termination:

Provided always that against any payments due from the Company under this sub-clause the Company shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of plant and materials and any sum previously paid by the Company to the Contractor in respect of the execution of the Works. 20

FRUSTRATION

108. In the event of the Contract being frustrated whether by war or otherwise howsoever the sum payable by the Company to the Contractor in respect of the work executed shall be the same as that which would have been payable under clause 104 to 107 inclusive hereof if the Contract had been terminated under the provisions of those clauses.

SETTLEMENT OF DISPUTES

109. (1) In measuring, valuing, deciding or certifying the Engineer is not intended to act as arbitrator but as an engineer acts by his skill and from his knowledge of the facts and incidents connected with the Works and in so far as any facts are not within his own knowledge the Engineer shall be at liberty to inform himself by enquiry of such person or persons as he may consider necessary. 30

(2) The Engineer shall at all times be considered to be in possession of all facts necessary for him to form his own opinion make his measurements or valuations give his decisions and orders make his requisitions or give or refuse his certificate and he shall be at liberty to certify at such times and in such manner as in his discretion he may think proper and he shall not be bound to give any reason for or any particulars of his certificate or any reason for his not certifying. 40

110. If any dispute or difference of any kind whatsoever shall arise (save only as to the decision of the Engineer referred to in the proviso to sub-clause (1) of clause 62 hereof) between the Company or the Engineer on the one hand and the Contractor on the other hand in connection with or arising out of the contract or the carrying out of the Works (whether during the progress or the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Company and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Company and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Company as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of 90 days after being requested to do so or if either the Company or the Contractor be dissatisfied with any such decision of the Engineer then and in any case either the Company or the Contractor may within 90 days after receiving notice of such decision or within 90 days after the expiration of the first named period of 90 days (as the case may be) require that the matter shall be referred to an arbitrator to be agreed upon between the parties or failing agreement within a period of 42 days after the date of such requisition to be nominated on the application of either party by the President for the time being the Institution of Civil Engineers in London and any such reference shall be deemed to be a submission to arbitration in accordance with the Arbitration Act 1950 (as the same applied to England). If the Engineer has given a decision and given notice thereof as aforesaid within a period of 90 days as aforesaid and no notice of dissatisfaction has been given either by the Company or the Contractor within a period of 90 days from receipt of such notice thereof the said decision of the Engineer shall remain final and binding upon the Company and the Contractor. Such arbitrator shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or as to the exercise of the Engineer's power to give a certificate under sub-clause (1) of clause 101 hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Company and the Contractor.

40 Provided always that -

- (i) the giving of a Certificate of Completion under clause 63 hereof shall not be a condition precedent to the opening of any such reference;
- (ii) no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever

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relevant to the dispute or difference so referred to the arbitrator as aforesaid;

- (iii) such arbitrator shall have full power to give all directions necessary in connection with such reference as to the disclosure of documents as to the delivery of evidence as to the venue time and general conduct of the hearing in so far as such matters are not otherwise laid down; and
- (iv) such arbitrator shall further have full power in making his award in the reference to give directions as to the payment of costs whether on a party and party basis or on a solicitor and client basis as he in his discretion deem fit. 10

NOTICES

111. (1) Any notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by post to or leaving the same at the Contractor's principal office on the Site or at such other office in Hong Kong or in the event that the Contractor has no office in Hong Kong in London all as the Contractor may from time to time indicate in writing to the Company and the Engineer.

(2) Any notice to be given to the Engineer under the terms of the Contract shall be served by sending the same by post to or leaving the same at the office of the Engineer on the site or at such other office as the Engineer may from time to time indicate in writing to the Contractor and the Company. 20

(3) Any notice to be given to the Company under the terms of the Contract as distinct from the Engineer shall be served by sending the same by post or leaving the same at its registered office.

DEFAULT OF COMPANY

112. (1) In the event of the Company:

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within thirty days after the same shall have become due under the terms of the Contract; 30
- (b) interfering with or obstructing the issue of any such certificate;
- (c) becoming bankrupt or (being a company) going into liquidation other than for the purposes of a scheme of reconstruction or amalgamation;
- (d) abandoning the Contract by the suspension of the Works under the provisions of clause 54 hereof; or

(e) being sent a written notice by the Lending Bank within the terms of sub-paragraph 2 of paragraph 16 of the Financial Agreement;

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10 the Contractor shall be entitled without prejudice to any other rights or remedies to terminate the employment of the Contractor under the Contract if the Company shall fail to remedy its default within ten days after service upon the Company of notice in writing of the Contractor's intention so to terminate his employment. Provided that if in the opinion of the Contractor any default under this sub-clause by the Company may be only temporary, then the Contractor shall have the right to suspend the Works by giving notice in writing to the Company but the Contractor shall nevertheless retain the right to terminate his employment as aforesaid.

(2) Upon such termination the property in all Constructional Plant brought upon the Site by the Contractor and by his sub-contractors shall revert in him and in them respectively and he shall with all reasonable despatch remove or cause to be removed the same from the Site.

(3) In the event of termination under sub-clause (1) of this clause the Company shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of clause 107 hereof.

20 (4) In the event of suspension under sub-clause (1) of this clause any necessary extra cost approved by the Engineer and incurred by the Contractor in giving effect to such suspension shall be borne and paid for by the Company.

(5) Nothing contained in this clause shall prejudice the right of the Contractor to exercise either instead of or in addition to the rights and remedies in this clause any other rights or remedies to which the Contractor may be entitled.

113. The Contract shall only become operative when the payment of ten per cent of the Tendered Sum referred to in sub-clause (1) of clause 93 hereof shall have been made to the Contractor. If this payment shall not have been received by Costain International Ltd. on behalf of the Contractor within three months of the date of signing the Contract then the Contract shall be terminated except that such three months may be extended by agreement between the parties hereto.

114. Without prejudice to the other provisions of the Contract the Contractor shall, in particular, not be entitled to an extension of time or to extra payment on account of delay and/or expense incurred by him as a result of any strike in Hong Kong among his own employees or those of his Sub-Contractors. Should the Contractor satisfy the Engineer, however, that such strike is part of a stoppage of work or withdrawal of labour widespread in Hong Kong and co-incident with such strike then and in that case he shall be entitled to such extension of time and/or extra payment as the Engineer considers fair and proper on account of such delay and/or expense.

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HONG KONG CROSS-HARBOUR TUNNEL

Consulting Engineers

Scott Wilson Kirkpatrick and Partners in association with Freeman, Fox and Partners

VALUATION SUMMARY FOR PAYMENT CERTIFICATE NO.....

Item	Description	Up to the Time of this Certificate HK\$	Up to the Time of the Last Certificate HK\$	Amount due Under this Certificate HK\$	Deduct/Add (delete as appropriate)
(i)	Total estimated contract value of permanent and temporary work executed (Clause 93(2)(i))				Deduct/Add
(ii)	Total estimated value (less ten per cent) of goods and materials (Clause 93(2)(ii))				Deduct/Add
(iii)	Total estimated value of Constructional Plant (Clause 93(2)(iii))				
(iv)	Total amount in respect of other matters (under Clause(s) *62, 93 (but except sub-clause 1 and 6 of Clause 93, 98 104-106, 114) *Delete as necessary				
The above mentioned clauses refer to the Conditions of Contract		TOTAL			

The total amount due namely HK\$..... (.....) Hong Kong Dollars is comprised of the amounts shown above under the respective items and is to be transferred to the accompanying Certificate No.....

SIGNED.....ENGINEER.....19.....

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Stamp Duty
paid \$3.00

MEMORANDUM OF AGREEMENT made the twenty-sixth day of September One Thousand Nine Hundred and Sixty Nine BETWEEN THE CROSS-HARBOUR TUNNEL COMPANY LIMITED of 12th Floor Union House Hong Kong (hereinafter referred to as "the Client") by PETER OSWALD SCALES acting for and on behalf of The Cross-Harbour Tunnel Company Limited of the one part and ERNEST OLIVER MEASOR HENRY GRACE REGINALD WHITE HAWKEY FRANK MAURICE BOWEN
10 CHARLES GEORGE SANG JOHN KEITH MAXWELL HENRY and GEOFFREY MILSON JOHN WILLIAMS practising as Consulting Engineers at 5 Winsley Street London WIN 7AQ under the style of Scott Wilson Kirkpatrick & Partners and registered in London (who and the survivor or survivors of whom are hereinafter referred to as "the Consulting Engineers") by GEOFFREY MILSON JOHN WILLIAMS acting for an on behalf of Scott Wilson Kirkpatrick & Partners of the other part who will associate with themselves as joint consultants Freeman, Fox & Patners of 25 Victoria Street London, S.W.1. and Scott Wilson Kirkpatrick & Partners of Star House Salisbury Road Kowloon
20 Hong Kong (hereinafter referred to collectively as "the Associated Consultants").

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WHEREAS the Client has considered and approved the general proposals recommended in reports dated April One Thousand Nine Hundred and Sixty One and October One Thousand Nine Hundred and Sixty Three submitted to Victoria City Development Company Limited by the Associated Consultants and has entered into a contract dated the twenty sixth day of June One Thousand Nine Hundred and Sixty Nine (hereinafter referred to as the "Construction Contract" which term shall include any contract which may be substituted for it) with the Joint Venture of Costain Internatitonal Limited, Raymond International Inc. and Paul Y Construction Company Limited
30 (hereinafter together referred to as "the Contractor" which term shall include any contractor employed by the Client under any contract substituted as above) and Richard Costain Limited for the construction of a road tunnel with a ventilation system, toll collection facilities, administration building and other ancillary works (hereinafter collectively referred to as "the Works") between the Hung Hom Reclamation on the Kowloon Peninsula and the Wan Chai Reclamation on Hong Kong Island and has entered into a Financial Agreement dated the seventeenth day of July One Thousand Nine Hundred and Sixty Nine (hereinafter referred to as "the Financial Agreement") with Lloyds Bank

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Limited of 71 Lombard Street London, E.C.3 (hereinafter referred to as “the Lending Bank”) for the purpose of financing a part of the fees and other charges hereunder and has now requested the Consulting Engineers to undertake and perform the duties hereinafter mentioned which the Consulting Engineers have agreed to do upon and subject to the terms and conditions hereinafter set forth.

NOW THESE PRESENTS WITNESS and it is hereby agreed and declared by and between the parties hereto as follows:—

1. Appointment of Consulting Engineers

The Client hereby appoints the Consulting Engineers and the Consulting Engineers accept the appointment on the terms and conditions hereinafter set forth. 10

2. Duties of Consulting Engineers

The duties to be performed by the Consulting Engineers are the administration of the Construction Contract and the technical control of the construction of the Works including:

- (a) Preparing such further drawings, estimates and other engineering documents as are necessary to enable the developed general proposals for the construction of the Works to be submitted for consideration by the Client and to enable him to obtain approval from any Hong Kong Government Department or Public Authority Concerned, including as may be applicable in the particular case: 20
 - (i) Making surveys of the site including topographical and marine surveys
 - (ii) Investigating available data or information relating to the Works.
 - (iii) Advising the Client on the necessity for any special surveys, borings, investigations or tests which may be required for the proper design and construction of the Works, arranging for these to be carried out on his behalf and considering and advising on the results of such special surveys, borings, investigations or tests. 30
 - (iv) Arranging for an procuring such architectural services as the Consulting Engineers deem requisite and as shall be approved by the Client for the architectural treatment of the Works.
- (b) Preparing information for submission by the Client to the Hong Kong Government to enable the Client to obtain approval to the construction of the Works under the Ordinances of Hong Kong and/or the relevant conditions of franchise and assisting the Client in making such representations to the Hong Kong Government

(c) Advising on the preparation of any sub-contracts relating to the Construction Contract

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(d) Giving such further advice as may be necessary on prices and estimates to the Client to enable to Contractor to execute the Works. No tender shall be accepted or order placed by the Consulting Engineers except on behalf and with the approval of the Client (as evidenced by a resolution of its Board) nor shall consent be given by the Consulting Engineers to the Contractor to sub-let any part of the Works without such a resolution of the Board.

10 (e) Preparing any further designs and drawings which may be necessary for the information of the Contractor to enable him to carry out the Works and checking the bar bending schedules associated with such further designs and drawings.

(f) Examining Contractor's proposals and details and Contractor's bar bending schedules associated with the Contractor's design.

(g) Advising the Client on the necessity for the inspection and testing of materials and plant supplied under the Construction Contract and arranging for these to be carried out on its behalf

20 (h) Providing resident site staff in accordance with the provisions of Clause 7 hereof

(i) Issuing instructions to the Contractor and making such site visits as the Consulting Engineers consider necessary

(j) Issuing certificates for payment to the Contractor (including payments arising on termination of the Construction Contract or any part thereof and any Arbitration award).

30 (k) Performing any duties which the Consulting Engineers may reasonably be required to carry out under the Construction Contract for the execution of the Works - including the supervision of architectural treatment - provided that they shall first have approved that contract

(l) Delivering to the Client on completion of the Works such records (including at least one complete set of final drawings) as are necessary for operation and maintenance

(m) Assisting in settling disputes or differences which may arise between the Client and the Contractor.

The Consulting Engineers will use their best endeavours to discharge their duties as quickly as possible in accordance with the Contractor's general programme included in the Construction Contract to enable the Contractor to proceed with the execution of the Works.

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3. Remuneration of Consulting Engineers

The remuneration of the Consulting Engineers for the necessary services under Clause 2 shall be Hong Kong Dollars 4,630,000.

4. Remuneration for Additional Services

For additional services required by the Client the Consulting Engineers shall be paid in accordance with the scale of charges shown in Schedule I attached hereto, or as may be otherwise agreed, together with specialists' fees and those of the Associated Consultants and out of pocket expenses in connection therewith. Such additional services shall consist of work and advice in connection with:

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- (i) the taking by the Client of the Works or any part thereof out of the hands of the Contractor due to their failure properly to perform the Construction Contract or the termination of any sub-contract
- (ii) the resumption of the Works after postponement if any as referred to in Clause 11 hereof
- (iii) the termination of the Construction Contract under the terms thereof by the Contractor or other the postponement cancellation or abandonment of the Works
- (iv) the entering into any new contract for the construction of the Works

20

and (v) litigation or arbitration not attributable to default on the part of the Consulting Engineers.

5. Alterations or Modifications to Design

If any design (whether completed or in progress) or any specification, drawing or other document prepared in whole or part by the Consulting Engineers or by the Associated Consultants shall require to be substantially modified or revised by reason of instructions given to the Consulting Engineers by the Client (as evidenced by a resolution of its Board), such modification or revision and any consequential reproduction of documents shall be the subject of additional payment computed on a time basis in accordance with the Scale shown in Schedule I attached hereto, or such other basis as may be agreed.

30

6. Out of Pocket Expenses

In addition to the remuneration to be paid under other Clauses of this Agreement, the Consulting Engineers shall be reimbursed by the Client all duly supported costs and out of pocket expenses actually and properly incurred by them in respect of borings soil tests model tests and other large-scale tests or special investigations undertaken with the prior approval of the Client (as evidenced by a resolution of its Board).

7. Supervision on Site

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10 The Consulting Engineers shall employ such resident site staff as they consider necessary for the supervision of work on site. The Consulting Engineers shall be reimbursed in accordance with the scale of charges in Schedule II attached hereto for the costs estimates at Hong Kong Dollars 9,970,000 of providing such site staff and the transport and other equipment and services necessary for the proper execution of their duties other than such transport equipment or services as may be provided by the Client or the Contractor. The Contractor will provide local office accommodation furniture telephones and equipment and the Client will provide land and water transport for the resident staff on a scale and form to be agreed between the parties hereto, the costs of all these provisions not being reimbursable by the Consulting Engineers. Such staff shall take their instructions solely from the Consulting Engineers.

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8. Payments to the Consulting Engineers

The Client shall pay the Consulting Engineers as follows:—

(i) Under Clause 3

- 20 (a) Hong Kong Dollars 3,630,000 in instalments as the construction of the Works proceeds in proportion to the cost of the work carried out by the Contractor under the Construction Contract and certified by the Consulting Engineers
- (b) Hong Kong Dollars 1,000,000 when the Consulting Engineers issue the Certificate of Completion in respect of the Works in accordance with Clause 63 of the Construction Contract.

(ii) Under Clause 7

By monthly instalments the actual expenditure incurred thereunder and claimed by the Consulting Engineers in supported accounts.

(iii) Under Clauses 4, 5, 6 and 10

30 Payments of fees and/or expenses properly incurred under these Clauses shall become due on the submission of supported accounts by the Consulting Engineers.

9. Method by which payments shall be made to the Consulting Engineers

- (a) The Client shall pay to the Consulting Engineers in Sterling in London the equivalent of Hong Kong Dollars 1,460,000 on the signature hereof as a deposit.
- (b) The Consulting Engineers shall submit monthly accounts showing all sums due under this Agreement in respect of fees and expenses then

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outstanding and due to them and the Consulting Engineers shall appropriate so much of the sum of Hong Kong Dollars 1,460,000 referred to in sub-Clause (a) hereof as is sufficient to satisfy ten per cent of each such account (until the said sum has been wholly exhausted in this manner) and the Client shall be called upon to make further payments in order to discharge the balance of any such account subject to the provisions of sub-Clause (c) hereof. The said accounts shall be contained in the form set forth in Schedule III hereof.

- (c) Notwithstanding that arrangements have been made by the Client according to which the intention is that the Consulting Engineers shall receive from the Lending Bank payment of 75% of the fees and expenses claimed by the Consulting Engineers within an upper limit of £750,000 Sterling (but excluding any fees and expenses claimed under sub-Clause 4 (iv) hereof) and in the form set forth in Schedule IV hereof and as shown by the accounts submitted by them in accordance with sub-Clause (b) hereof the Client shall at all times remain liable to pay to the Consulting Engineers all fees and expenses due to them under Clause 8 hereof and such fees and expenses so claimed by them (if any) which are not paid to them by the Lending Bank shall be paid to them by the Client. 10 20
- (d) All payments made by the Lending Bank shall be in Sterling in London and calculated at the rate of Hong Kong Dollars 14.6 to One Pound Sterling and any payments made by the Client in Sterling in London at the request of the Consulting Engineers shall be calculated at the same rate.
- (e) Claims presented to the Lending Bank by the Consulting Engineers in implementation of this Clause shall constitute Valid Claims as provided for in the Financial Agreement.
- (f) In the event that with the submission of the final account in accordance with sub-Clause (b) hereof the total of all the sums due under this Agreement is less than Hong Kong Dollars 14,600,000 any part of the sum referred to in sub-Clause (a) hereof which has not been appropriated as in sub-Clause (b) hereof shall be credited to the Client. 30

10. Damage or Destruction of the Works

If at any time before the completion of the Works any part of the Works or the equipment therefor shall be damaged or destroyed the Client shall pay to the Consulting Engineers (subject to the provisions of Clause 12 hereof) remuneration for any additional work resulting from such damage or destruction and undertaken with the prior approval of the Client (as evidenced by a resolution of its Board) such remuneration being in accordance with the scale in Schedule I attached hereto together with any out of pocket expenses properly incurred in connection therewith. 40

11. Postponement, Cancellation or Abandonment of the Works

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In the event of the whole or any part of the Works being postponed cancelled or abandoned then the payment to be made in respect of that part of the Works so postponed cancelled or abandoned shall be that part of the fee under Clause 8(i)(a) due at the time of such postponement cancellation or abandonment. If the postponement cancellation or abandonment is such that the Consulting Engineers do not issue the Certificate of Completion in respect of the Works a sum of Hong Kong Dollars Thirty Thousand shall be paid in lieu of the payment under Clause 8(i)(b) for each month of the Construction Contract period worked up to the time of such postponement cancellation or abandonment but not exceeding Hong Kong Dollars 1,000,000 in the aggregate. Full payment shall be made under sub-Clauses 8(ii) and (iii). If within three years or such other time as may be mutually agreed, the postponed Works or any part thereof shall again proceed, then any relevant payments made under this Clause shall rank as payments on account towards the total fee actually payable.

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In the event of the Works or any part thereof being postponed for a continuous period longer than three years or such other time as may be mutually agreed, such Works or part thereof (as the case may be) shall be considered to have been abandoned. If the whole of the Works are so abandoned this Consultancy appointment shall be considered to be terminated and in the event of subsequent resumption of the Works the Client shall be at liberty to employ other Consulting Engineers.

12. Care and Dilligence

The Consulting Engineers shall exercise all reasonable skill, care and diligence in the discharge of the duties agreed to be performed by them including the submission of the drawings estimates and other engineering documents referred to in Clause 2 hereof and, in so far as any of their duties are discretionary, shall act fairly as between the Client and the Contractor. Except in an emergency, the Consulting Engineers shall not, without the prior approval of the Client (as evienced by a resolution of its Board); authorise any modification of the Works involving an extra cost exceeding Hong Kong Dollars 10,000.

13. Information to be Supplied

The Client will from time to time keep the Consulting Engineers informed on all material matters within its knowledge affecting the duties of the Consulting Engineers in relation to the Works to which this Agreement relates and shall give such assistance approvals and decisions in writing as shall reasonably be required for the carrying out by the Consulting Engineers of their duties under this Agreement in sufficient time to enable them to execute such duties in the manner laid down herein.

The Consulting Engineers will from time to time keep the Client informed on all material matters relative to the Works within the knowledge of

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the Consulting Engineers and will answer all reasonable enquiries received from the Client and will render reports at reasonable intervals when asked to do so and shall give all such assistance as shall reasonably be requested in writing to enable the Client to form an opinion as to the manner in which the Works are proceeding and the amount of any variation in the cost of the Works or any part thereof.

14. Ownership of Documents and Copyright

All documents including inter alia specifications drawings and bills of quantities prepared by the Consulting Engineers and the Associated Consultants in connection with the Works shall be the property of the Client and shall only be used for the carrying out of the Works, for the maintenance thereof, the repairs thereto but for no other purposes. 10

15. Non-Assignment

The Consulting Engineers shall not have the right to assign or transfer the benefit and obligations of this Agreement or any part thereof, and the same shall automatically come to an end on the death of the survivor of them but without prejudice to the accrued rights of either party against the other under this Agreement – provided that it shall be lawful for the Consulting Engineers at any time to take into partnership another Partner or Partners and that he or they or the survivor of them shall thenceforth be deemed to be included in the expression “the Consulting Engineers”. 20

16. Suspension or Termination by Consulting Engineers

The Consulting Engineers shall have the right to suspend or to terminate this Agreement upon giving fourteen days notice in writing of their intention so to do and without prejudice to their other rights or remedies in the event that:

- (a) conditions outside the control of either party to this Agreement render the completion of the Works impossible save that the Consulting Engineers before exercising that right shall at their sole discretion use their best endeavours to carry out such of their remaining duties as circumstances shall permit of 30
- (b) this Agreement does not become operative according to Clause 17 hereof or
- (c) the Client fails to pay any amount due to the Consulting Engineers under this Agreement other than that due under Clause 9(a) hereof within forty days of the submission of the account becomes bankrupt or goes into liquidation other than for the purpose of reconstruction or amalgamation or
- (d) the Client is sent a written notice by the Lending Bank within the

terms of sub-paragraph 2 of paragraph 16 of the Financial Agreement.

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17. Agreement Operative

This Agreement shall only become operative when the payment under Clause 9(a) hereof shall have been made.

18. Publicity Relating to the Works

10 In cases where notice or display boards are erected on the site the Consulting Engineers shall have the right if they so elect to have their name designation and address inscribed on such boards and to have their name and designation included on commemorative tablets or stones provided in the structure. The Consulting Engineers shall also have the right subject to the Client's approval to publish descriptive articles with or without illustrations relevant to the Works either on their own account or in conjunction with other parties concerned.

19. Jurisdiction and Arbitration

20 This Agreement shall be construed as having been concluded and as being interpreted according to the laws of England and any dispute or difference arising out of this Agreement shall be referred to arbitration under the provisions of the Arbitration Act 1950 (as the same applies to England) or any statutory modification or re-enactment thereof for the time being in force such reference to be made to a person to be mutually agreed upon between the parties hereto or failing such agreement within 42 days from the date of the dispute or difference at the request of either party to some person appointed by the President for the time being of the Law Society in London.

20. Notices

30 Any notice to be given under this Agreement shall be deemed fully served at the time when in the ordinary course of post (or if sent by air mail when by Air Mail Delivery) the same would be received at the address for the time being of the Client in Hong Kong or at the address for the time being of the Consulting Engineers in London as the case may be.

21. Sums to be paid to the Client

The Client agrees that any sums of money which the Consulting Engineers may agree to pay or arising from an arbitration may be found liable to pay to the Client in accordance with the terms of this Agreement shall be paid to the Lending Bank in accordance with Clause 9 or the Financial Agreement.

IN WITNESS whereof PETER OSWALD SCALES on behalf of The Cross-Harbour Tunnel Company Limited and GEOFFREY MILSON JOHN WILLIAMS on behalf of Scott Wilson Kirkpatrick & Partners have hereunto set their respective hands the day and year first above written.

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SCHEDULE I

SCALE OF CHARGES ON A TIME BASIS

1. The Scale of Charges on a time basis which shall be applicable to the Consulting Engineers and the Associated Consultants shall be as follows:—

(i) Partners: Resident in London: 6 guineas per hour
Resident in Hong Kong: Hong Kong \$92.50 per hour

(ii) Technical Staff: At the rate of 3/- per hour per £100 (or part thereof) of annual salary including any bonus and contributions towards pension fund made by the Consulting Engineers or Hong Kong \$2.4 per Hong Kong Dollars 1600 of annual salary in the case of those resident in Hong Kong. 10

Time spent by clerical staff shall not be chargeable.

Time spent by Partners and Technical staff in travelling shall be chargeable.

2. In addition to the charges under (i) and (ii) above, the appropriate proportion of the net cost of passages accommodation and (if applicable leave pay shall be recoverable in respect of any expatriate Partners and technical staff of the Consulting Engineers resident in Hong Kong which generally shall be in accordance with the scales laid down in Schedule II (Clause 2) for expatriate Resident Site Staff with the exception of the contributions towards the pension fund made by the Consulting Engineers. 20

SCHEDULE II

BASIS OF CHARGES FOR RESIDENT SITE STAFF

ESTABLISHMENT

1. Individual gradings of site staff and numbers in each under the headings of expatriate and locally engaged staff, and the periods in which they are required, shall be set out in an estimate and agreed between the Client and the Consulting Engineers. 30

FULLTIME EXPATRIATE STAFF

2. Charges shall be recovered from the Client in full under the following headings—

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- (a) Salary
- (b) Pension
- (c) 5% (subject to revision) per annum of a hypothetical salary in accordance with the Rules of the Pension Fund operated by the Consulting Engineers. (Hypothetical salary is approximately two thirds of the salary in (a) above.
- (c) United Kingdom National Health Insurance contributions which may have to be paid by the Consulting Engineers during the first year of service in Hong Kong by the Employee.

10

(d) Insurance

Life and accident insurances in accordance with the Consulting Engineers established practice.

- (e) Excursion Air Passages once a year for employee and family, including sons under 18 and daughters under 21.
- (f) Baggage Expenses at the beginning and the end of service.

12 years and over up to £50 per head
3 - 11 years up to £25 per head
Under 3 years up to £12.10/- per head

20

- (g) Living accommodation on an approved scale related to salary, including hard furniture, refrigerator, cooking stove and one air conditioner.
- (h) Free Medical Insurance for employee and family and in such cases as the cost of medical and dental treatment is not covered by the Insurance Company, a refund for the same.

(i) Leave Pay

30 day per annum if salary under \$4000 p.m.
40 days per annum if salary \$4000 - \$5999 p.m.
48 days per annum if salary \$6000 and over p.m.

(j) Education Allowance

30

Child at
Boarding
School

When Employee's monthly salary is

Less than \$6000	\$6000 - \$6499	\$6500 - \$7299	\$7300 or more
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<i>Exhibits</i> ----- Exhibit A4 Engineering Contract 26th September 1969.	First	£ 180 p.a.	£ 180 p.a.	£ 180 p.a.	nil
	Second	£ 220 p.a.	£ 220 p.a.	nil	nil
	Third	£ 250 p.a.	nil	nil	nil

FULLTIME LOCALLY ENGAGED STAFF

3. Salary and any other payroll costs shall be recovered net.

PARTTIME STAFF LOANED BY SCOTT WILSON KIRKPATRICK & PARTNERS (HONG KONG)

4. In the interests of the Client and or the efficient supervision of the Works it may be agreed with the Client that part-time services of staff regularly employed by Scott Wilson Kirkpatrick & Partners (Hong Kong) 10 may be made available to augment the full-time resident site staff.

These services shall be charged to the Client as follows:—

(a) Staff loaned for short periods only will be the subject of charges in accordance with Schedule I.

(b) Staff loaned for substantial periods shall be charged for on the basis of the costs incurred under headings similar to those in 2 above such costs being apportioned in accordance with the ratio between the working days spent on site and those spent on other work during the appropriate period of employment by Scott Wilson Kirkpatrick & Partners (Hong Kong). 20

SCHEDULE III

In account with
SCOTT WILSON KIRKPATRICK & PARTNERS

5 Winsley Street,
London, WIN 7AQ.

To The Cross-Harbour Tunnel Co., Ltd.
12th Floor, Union House,
Hong Kong.

Account No.

Cross Harbour Tunnel, Hong Kong.

	Total Due	Already	Balance
	HK.\$	Invoiced.	Invoiced this 30
	HK.\$	HK.\$	Account
			HK.\$
1. To Professional Service			

- 1.1. Under Clause 3*
- 1.2. Under Clause 4 but excluding 4(iv)*
- 1.3 Under Clause 5*
- 2. To Out of Pocket Expenses Under Clause 6*
- 3. To site Supervision Under Clause 7*
- 4. Any other agreed charges _____

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10

Total due this Account HK.\$

* Refers to Agreement dated (Date). For details of items 1 to 4 see Annexures hereto.

HK\$

Method of Payment

- 5. Due on this Account as above
- 6. Payment requested from Lloyds Bank Ltd. (75% of Item 5) _____ :- (£ _____ to
- 7. Due from Cross-Harbour Tunnel _____ **Barclays Bank Ltd.**
A/c No. 30818623
95 Victoria Street,
London, S.W.1.)
- 8. Credit against Deposit paid under Clause 9(a) of Agreement (10% of Item 5) 0 _____
- 9. Balance due from Cross-Harbour Tunnel Company _____ :- (Payment to be made at Bank(s) named overleaf)
- 0 Balance of Deposit remaining:- HK.\$

Copy for ECGD.

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SCHEDULE IV

SCOTT WILSON KIRKPATRICK & PARTNERS

5 Winsley Street,
London, WIN 7AQ.

To Lloyds Bank Ltd.,
71 Lombard Street,
London, E.C.3.

Date:

Dear Sirs,

FINANCIAL AGREEMENT WITH THE CROSS-HARBOUR TUNNEL CO., LTD.

We refer to the enclosed copy of an Account numbered / and dated , which we have submitted to The Cross-Harbour Tunnel Co., Ltd. and hereby claim payment of £ in part settlement thereof.

10

We hereby certify that the above sum together with the aggregate of all previous valid claims under the Financial Agreement does not exceed 75% of the total sum due to us as at the date hereof, 14.6 Hong Kong Dollars having been calculated as equivalent to £1 Sterling where appropriate.

We certify that the amount claimed has not been the subject of any previous claim to you.

Yours faithfully,
SCOTT WILSON KIRKPATRICK & PARTNERS

20

CERTIFICATE OF VALIDITY

- (1) We certify that the above claim is valid under the terms of the Financial Agreement between Lloyds Bank Ltd. and ourselves and is in accordance with the terms of the Agreement entered into by the Claimants and this Company on , (Date).
- (2) We further certify that the services and expenses the subject of this

Certificate are not currently the subject of Arbitration.

For THE CROSS-HARBOUR TUNNEL COMPANY LIMITED

Date:

Copy for ECGD. _____

SIGNED by PETER OSWALD SCALES

in the presence of:

(*Sgd.*) W. Turnbull Jr.
Solicitor,
Hong Kong

For and on behalf of The
Cross-Harbour Tunnel Company Limited

10 *SIGNED* by JOHN WILLIAMS

in the presence of:

For and on behalf of The
Scott Wilson Kirkpatrick & Partners

(*Sgd.*) Cecil R.C. Turner
66 Queen Street
London E. C. 4
Solicitor

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In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

THE CROSS-HARBOUR TUNNEL COMPANY LIMITED *Appellants*

AND

THE COLLECTOR OF STAMP REVENUE *Respondent*

RECORD OF PROCEEDINGS

Solicitors for the Respondent.

Solicitors for the Appellants.
