

**DOCUMENTS RELATED TO THE BOLT
OPERATION
FOR
THE THA ADMINISTRATIVE COMPLEX
OF
THE DIVISION
OF
AGRICULTURE, MARINE AFFAIRS,
MARKETING AND THE ENVIRONMENT**

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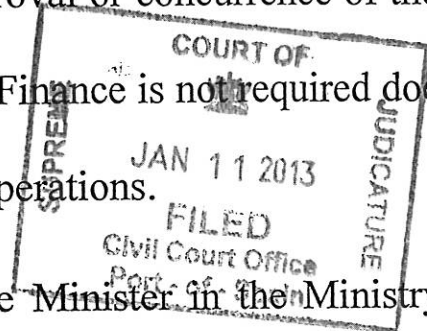
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2c(iv) Letter to the Minister in the Ministry of Finance, April 29th 2003, re, *inter alia*, draft letter of comfort, proposed by Unit Trust Corporation, in connection with THA borrowing for

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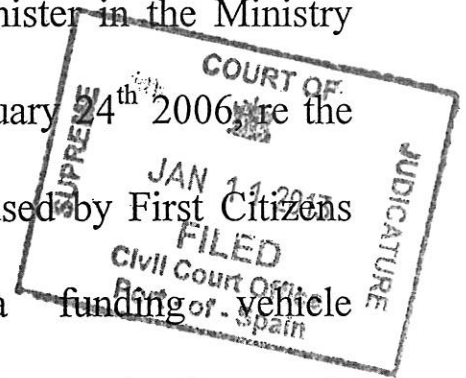
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2c(vi) Letter to the Minister in the Ministry of Finance, November 14th 2005, re, *inter alia*, the invitation of a capital market borrowing programme for Tobago.

2c(vii) Letter to the Minister in the Ministry of Finance, December 12th 2005, re the

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- (7c) The Authority of the THA to Engage in a BOLT Operation - - A Legal Opinion with

specific reference to The Division of Agriculture, Marine Affairs, Marketing and the Environment.

- (7d) Legal Disputes Between the Tobago House of Assembly and the Government of the Republic of Trinidad and Tobago.

1. Introduction

This document is a compilation of the most relevant material that has had a bearing on the decision of the Executive Council of the Tobago House of Assembly to engage in a Build Operate Lease Transfer (BOLT) operation, with respect to the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and The Environment.

Section 2 of the document presents a historical review of the annual budgetary allocations to the Tobago House of Assembly, highlighting the continuous shortfalls in these allocations, particularly with respect to the Development Programme, and against the background of the ruling of Mr. Justice Edoe and the Dispute Resolution Commission. It then outlines key elements of the efforts of the Assembly, over the years, to seek the support of the Central Government for possible borrowing or off-budget project financing by the Assembly.

Section 3 outlines the origins of the specific proposal made to the Assembly to engage in a BOLT operation to construct an Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and The Environment.

Section 4 provides information on various technical reviews of the initial proposal made to the Assembly.

Section 5 contains documents relevant to the approvals by the Executive Council for the project; and the legal documents pertaining thereto.

Section 6 provides specific information with respect to both the land lease and the office lease in the present transaction. Special Emphasis is also placed on the early repayment clauses in the leases, on the deed of surrender; and on the Escrow Account, pertaining thereto.

Section 7 provides an Appendix that first provides information on the rationale for the Assembly's internal rejection of the opinion that it requires the authority of the Central Government to engage in a BOLT operation. It then contains a legal opinion on the authority of the Tobago House of Assembly to engage in a BOLT operation for the

Division of Education, Youth Affairs and Sport; and another with specific reference to the Division of Agriculture, Marine Affairs, Marketing and The Environment. The Appendix concludes with information on previous legal disputes between the Tobago House of Assembly and the Government of Trinidad and Tobago.

It should be noted that any material that is deemed to be privileged is excluded from this document.

2. A HISTORICAL PERSPECTIVE

- 2(a) The Dispute Resolution Commission: An Aide Memoire .
- 2(b) THA Budgetary Allocations, 2001-2013
- 2(c) THA Historical Efforts to Obtain Supplementary Development Programme and Other Funding

Letter to the Minister of Finance,
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- 2c (ii) Letter to the Permanent Secretary,
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re, *inter alia*, the financing of THA
projects through BOLT arrangements;
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2c (viii) Letter to the Minister in the Ministry of Finance, dated February 24th 2006, re the approach to be used by First Citizens Bank to establish a funding vehicle consistent with the net funding needs of the Assembly's priority projects.

2(a) The Dispute Resolution Commission:

An Aide Memoire

The Dispute Resolution Commission
 An Aide Memoire
 (Submitted by the Tobago House of Assembly)

1. A Dispute Resolution Commission is provided for under Section 56 of Act 40, 1996, the Tobago House of Assembly Act.
2. The provisions of the Act were invoked in the year 2000 by the former Administration. After several meetings held over the period March to September 2000, the Commission ruled as follows:
 - (i) that a percentage in the range 4.03% to 5.9% of the national budget, 4.03% being the minimum, be allocated to the Assembly to cover both the recurrent and development allocations for each financial year, such percentage to be reviewed from year to year in the light of prevailing circumstances;
 - (ii) that releases for recurrent and development expenditure in each fiscal year to the Assembly bear the same proportion of total releases made to Government departments and authorities in Trinidad;
 - (iii) that the human resource needs of the Assembly be rationalized as early as possible since personnel expenditure forms a significant component of the recurrent expenditure;
 - (iv) that the Financial Rules prescribed under Section 52 of the Act be enacted as a matter of priority since such Rules are necessary for the proper management of the finances of the Assembly;
 - (v) that the present arrangements for the collection and deposit into the Fund of taxes and duties as indicated in paragraph 7.11 be continued;
 - (vi) with respect to revenues to be collected in Tobago, that a revenue sharing arrangement should be worked out with the Board of Inland

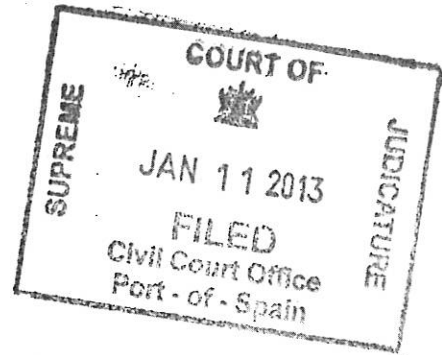
Revenue and appropriate administrative arrangements be made to give effect thereto as a matter of urgency.

- (vii) That no restriction other than those imposed by the Act should be placed in the Assembly's way to facilitate its borrowings or to raise grants for its development programme since the Assembly is a corporate body. In light of the fact that State enterprises and public bodies such as Trinidad and Tobago Electricity Commission and the Water and Sewerage Authority are allowed to borrow and raise grants, the Assembly should be treated no less favourably.

3. In his clarification letter to the Permanent Secretary, Ministry of Finance dated 20th August 2001, Mr. Justice Edoe "confirmed our conclusion that the range recommended 4.03% to 6.9% relates to the whole of the national budget without any deductions" (our emphasis);

4. The attached table provides information on the amount due to the Tobago House of Assembly in fiscal 2003 because of the error committed in the 2003 budget.

ITEM	Fiscal 2001/2002	Fiscal 2002/2003
National Budget as Approved by Parliament:		
Recurrent	16,100,446,441	16,862,228,153
Development Programme	1,314,995,000	882,279,000
Total	17,415,441,441	19,764,507,153
Allocation made to THA as Approved by Parliament:		
Recurrent	-598,472,833	638,850,300
Development Programme	110,320,000	104,072,000
Total	708,792,833	742,922,300
Percentage of National Budget Allocated to THA:	4.070%	3.759%
DRC RANGE = 4.03% - 6.90%		
Variance from DRC Minimum:	0.040%	-0.271%
Variance from DRC Minimum (\$)	6,950,543	-53,687,338
Variance from Previous Year's Share (\$)		-61,476,399



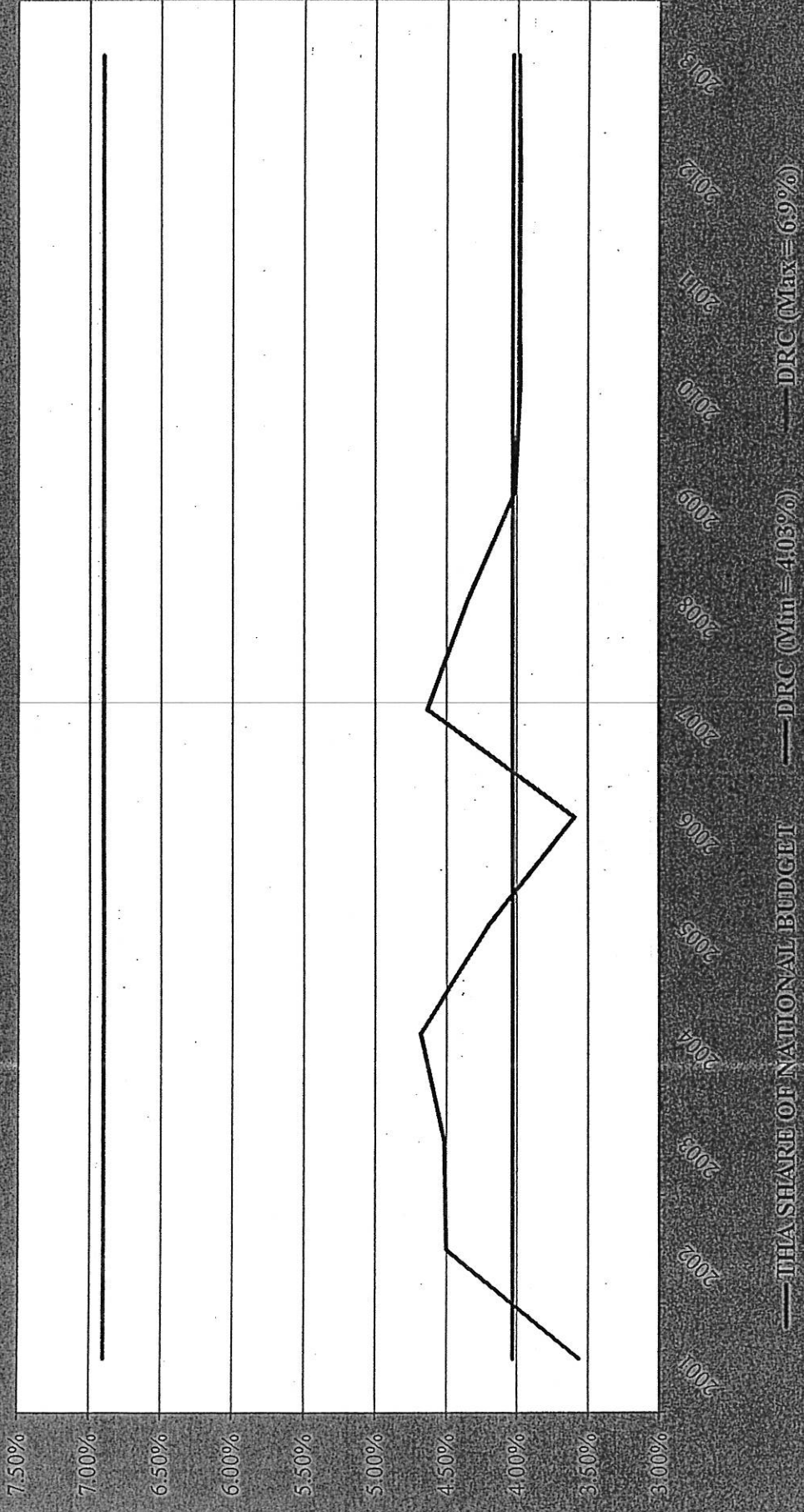
2(b) THA Budgetary Allocations, 2001-2013

An illustration of the shortfalls between funding requested by the THA and the actual Parliamentary Allocations, over the years, to the THA.

PARLIAMENTARY ALLOCATIONS TO THE TOBAGO HOUSE OF ASSEMBLY, FISCAL 2001-2013

FISCAL YEAR	RECURRENT ALLOCATION TO THA	DEVELOPMENT PROGRAMME ALLOCATION TO THA	TOTAL ALLOCATION TO THA	DP ALLOCATION AS % TOTAL THA ALLOCATION	NATIONAL BUDGET -- CAPITAL REPAYMENT and SINKING FUND	NATIONAL RECURRENT BUDGET excl Capital Repayment and Sinking Fund	NATIONAL DEVELOPMENT PROGRAMME BUDGET excl funding from Infrastructure Development Fund	TOTAL NATIONAL RECURRENT DEVELOPMENT PROGRAMME BUDGET	THA SHARE OF NATIONAL BUDGET
	\$ mill (a)	\$ mill (b)	\$ mill (c) = (a) + (b)	\$ mill (d) = (b)/(c)	\$ mill (e)	\$ mill (f)	\$ mill (g)	\$ mill (h) = (f) + (g)	per cent % (i)
2001	\$374.86	\$98.60	\$473.46	20.83%	\$2,983.50	\$12,329.88	\$961.87	\$13,291.75	3.56%
2002	\$598.47	\$110.32	\$708.79	15.56%	\$1,667.44	\$14,433.01	\$1,315.00	\$15,748.01	4.50%
2003	\$638.85	\$104.07	\$742.92	14.01%	\$3,313.66	\$15,568.57	\$882.28	\$16,450.85	4.52%
2004	\$734.11	\$166.45	\$900.56	18.48%	\$2,661.14	\$17,550.95	\$1,677.50	\$19,228.45	4.68%
2005	\$822.90	\$200.00	\$1,022.90	19.55%	\$3,232.08	\$22,260.77	\$2,075.00	\$24,335.77	4.20%
2006	\$1,075.38	\$160.13	\$1,235.51	12.96%	\$1,521.14	\$32,895.72	\$1,500.00	\$34,395.72	3.59%
2007	\$1,324.39	\$315.71	\$1,640.09	19.25%	\$2,263.64	\$31,971.00	\$3,400.00	\$35,371.00	4.64%
2008	\$1,398.88	\$362.37	\$1,761.25	20.57%	\$1,317.05	\$36,588.90	\$3,900.00	\$40,488.90	4.35%
2009	\$1,592.64	\$400.00	\$1,992.64	20.07%	\$1,304.38	\$45,572.73	\$4,080.00	\$49,652.73	4.01%
2010	\$1,470.50	\$301.00	\$1,771.50	16.99%	\$1,408.25	\$41,546.56	\$3,009.50	\$44,556.06	3.98%
2011	\$1,651.12	\$308.39	\$1,959.51	15.74%	\$2,955.10	\$46,141.79	\$3,050.00	\$49,191.79	3.98%
2012	\$1,861.14	\$318.90	\$2,180.04	14.63%	\$2,189.58	\$51,524.88	\$3,290.10	\$54,814.98	3.98%
2013	\$1,987.00	\$349.95	\$2,336.95	14.97%	\$2,282.60	\$55,207.17	\$3,371.00	\$58,578.17	3.99%
Total	\$15,530.23	\$3,195.88	\$18,726.12	17.07%	\$29,099.55	\$423,591.93	\$32,512.25	\$456,104.18	4.11%

**THE BUDGET AND THE DISPUTE RESOLUTION COMMISSION
RULING, FISCAL 2001 - 2013**



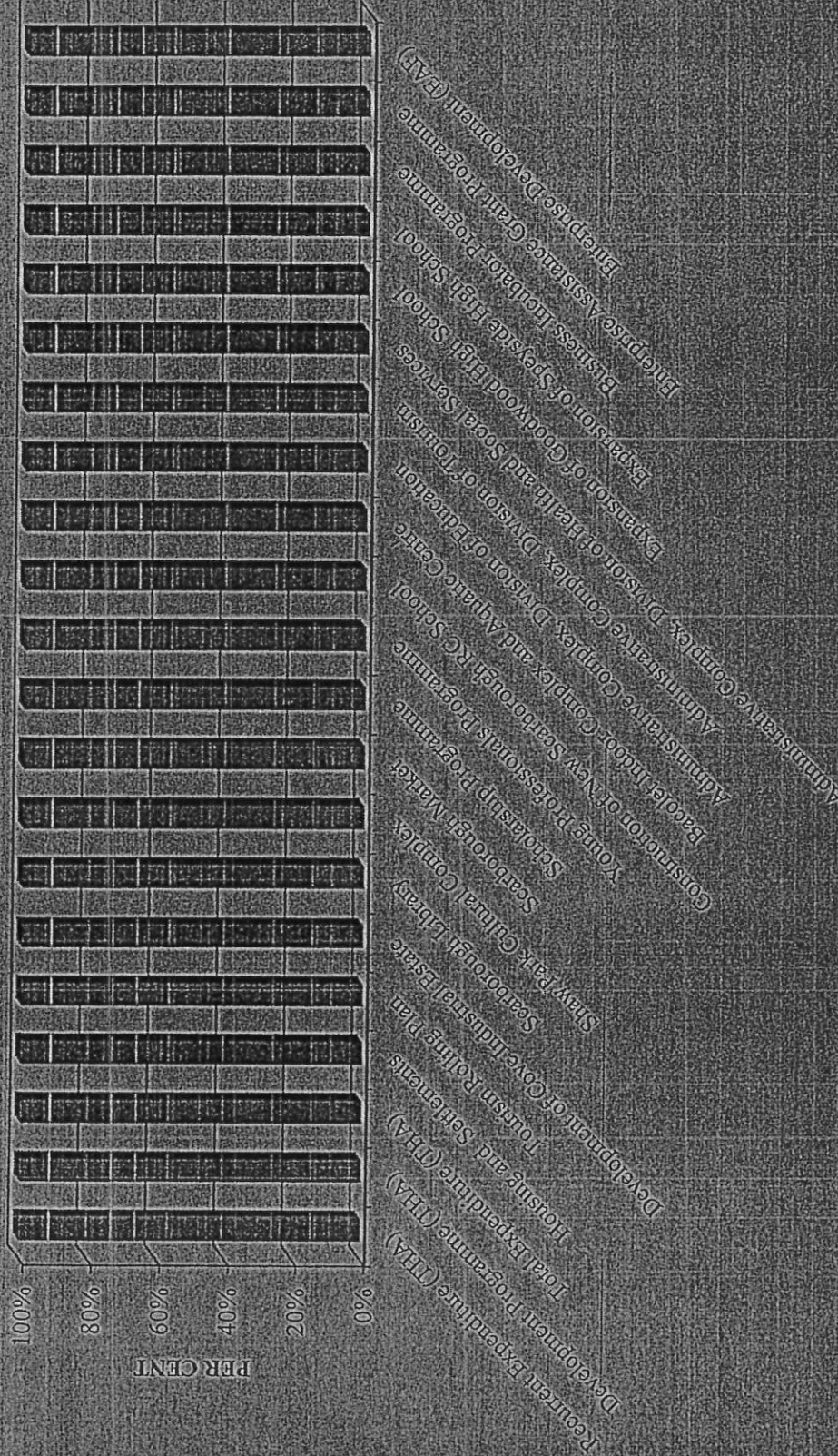
THE 2013 THA BUDGET

ITEM	THA Budget Request \$ millions	Parliamentary Allocation \$ millions	Allocation Shortfall \$ millions	% Allocation Shortfall
1 Recurrent Expenditure (THA)	\$2,495.50	\$1,987.00	\$508.51	20.38%
2 Development Programme (THA)	\$1,721.10	\$349.95	\$1,371.15	79.67%
3 Total (THA)	\$4,216.60	\$2,336.95	\$1,879.66	44.58%
4 Recurrent Expenditure (NATIONAL) (<i>excl. Capital Repayments and Sinking Fund</i>)	\$55,207.17			
5 Development Programme (NATIONAL) (<i>excl. Infrastructure Development Fund</i>)	\$3,371.00			
6 Total (NATIONAL)	\$58,578.17			
7 THA Share of National Budget Total	3.9894%			

**THE 2013 THA BUDGET
(MAJOR PROJECTS AND INITIATIVES, REQUESTS VS. ALLOCATIONS)**

THA PROJECT	THA Budget Request \$ millions	Parliamentary Allocation \$ millions	Allocation Shortfall \$ millions	% Allocation Shortfall
1 Housing and Settlements	\$285.40	\$28.58	\$256.82	89.99%
2 Tourism Rolling Plan	\$90.00	\$65.00	\$25.00	27.78%
3 Development of Cove Industrial Estate	\$65.94	\$9.50	\$56.44	85.59%
4 Scarborough Library	\$49.00	\$8.00	\$41.00	83.67%
5 Shaw Park Cultural Complex	\$20.00	\$5.00	\$15.00	75.00%
6 Scarborough Market	\$15.00	\$5.00	\$10.00	66.67%
7 Scholarship Programme	\$10.00	\$0.20	\$9.80	98.00%
8 Young Professionals Programme	\$20.00	\$0.30	\$19.70	98.50%
9 Construction of New Scarborough RC School	\$6.00	\$2.00	\$4.00	66.67%
10 Bacolet Indoor Complex and Aquatic Centre	\$3.00	\$0.20	\$2.80	93.33%
11 Administrative Complex, Division of Education	\$5.00	\$1.00	\$4.00	80.00%
12 Administrative Complex, Division of Tourism	\$3.00	\$1.00	\$2.00	66.67%
13 Administrative Complex, Division of Health and Social Services	\$30.00	\$4.00	\$26.00	86.67%
14 Expansion of Goodwood High School	\$2.00	\$0.20	\$1.80	90.00%
15 Expansion of Speyside High School	\$1.35	\$0.15	\$1.20	88.89%
16 Business Incubator Programme	\$1.20	\$0.50	\$0.70	58.33%
17 Enterprise Assistance Grant Programme	\$6.00	\$1.00	\$5.00	83.33%
18 Enterprise Development (EAF)	\$6.00	\$2.00	\$4.00	66.67%

THE 2013 THA BUDGET



□ ALLOCATION SHORTFALL AS % OF THA BUDGET REQUEST
 □ PARLIAMENTARY ALLOCATION AS % OF THA BUDGET REQUEST

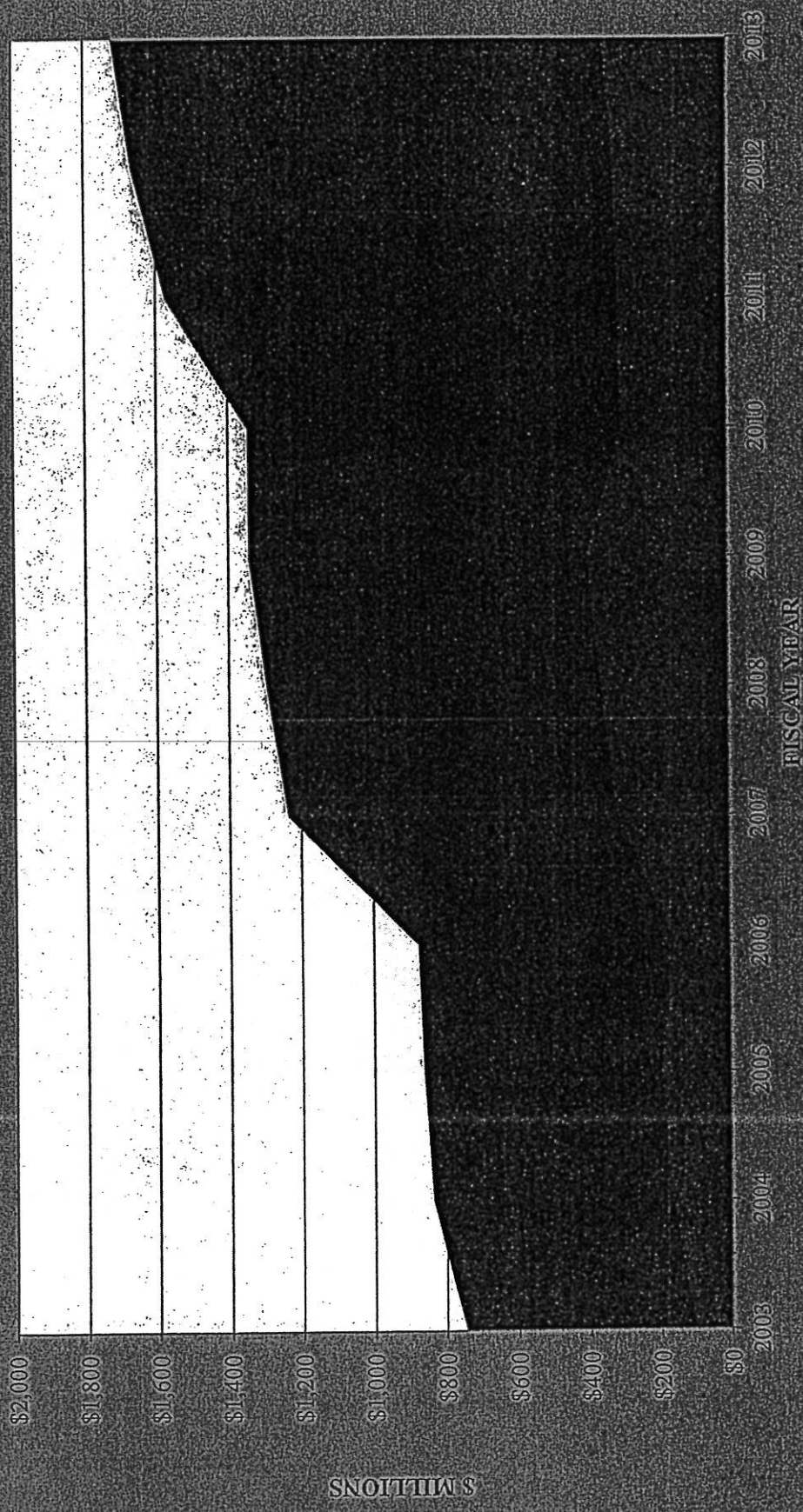
THE 2013 THA BUDGET



THA DEVELOPMENT PROGRAMME, 2003 - 2013

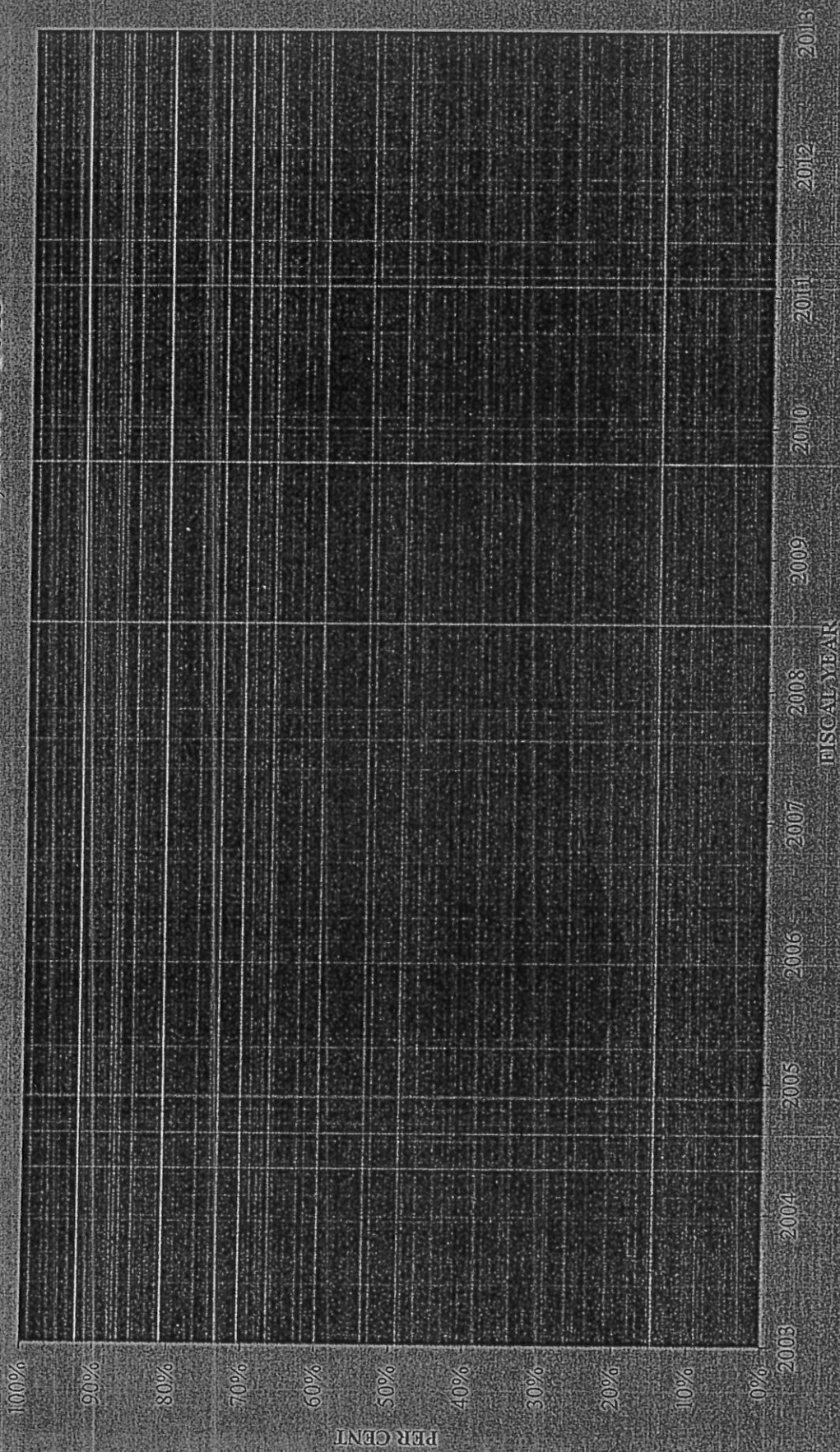
FISCAL YEAR	THA DP BUDGET REQUEST	PARLIAMENTARY ALLOCATION	ALLOCATION SHORTFALL	ALLOCATION AS % REQUEST
	\$ mill	\$ mill	\$ mill	per cent %
2003	\$746.33	\$104.07	\$642.26	13.94%
2004	\$836.60	\$166.45	\$670.15	19.90%
2005	\$861.44	\$200.00	\$661.44	23.22%
2006	\$875.00	\$160.13	\$714.87	18.30%
2007	\$1,236.23	\$315.71	\$920.53	25.54%
2008	\$1,294.27	\$362.37	\$931.90	28.00%
2009	\$1,344.38	\$400.00	\$944.38	29.75%
2010	\$1,345.80	\$301.00	\$1,044.80	22.37%
2011	\$1,574.20	\$308.39	\$1,265.81	19.59%
2012	\$1,666.90	\$318.90	\$1,348.00	19.13%
2013	\$1,721.10	\$349.95	\$1,371.15	20.33%
Total	\$13,502.25	\$2,986.96	\$10,515.29	22.12%

THA DEVELOPMENT PROGRAMME, 2003 - 2013



THA DP BUDGET REQUEST
 PARLIAMENTARY ALLOCATION

THA DEVELOPMENT PROGRAMME, 2003 - 2013



■ ALLOCATION SHORTFALL AS % OF THE BUDGET REQUEST
 ■ PARLIAMENTARY ALLOCATION AS % OF THE BUDGET REQUEST

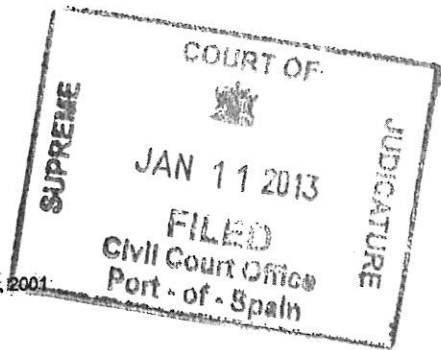
2(c) THA Historical Efforts to Obtain Supplementary Development Programme and Other Funding

Here follows correspondence between the Tobago House of Assembly and the Central Government with respect to the Assembly's attempts over the years to obtain the Central Government's support for borrowing, as provided for under Section 51(b) of the THA Act.

2c(i) Letter to the Minister of Finance, October 2nd 2001 – re
– *inter alia*, A Medium Term Borrowing Programme
for the Tobago House of Assembly.



Office of the Secretary of Finance and Planning
 Tobago House of Assembly
 Sandy Hall, Bacolet Street
 Scarborough, Tobago
 Tel # 635-1203 Email: thasec@tsft.net.tt



October 02nd 2001

Senator The Honourable Gerald Yemling
 Minister of Finance
 Ministry of Finance, Planning and Development
 Eric Williams Finance Building
 Independence Square
 Trinidad

Dear Minister;

Please permit me, in my capacity as the new Secretary of Finance and Planning in the Tobago House of Assembly, to congratulate you on the recent passage of the 2001/2002 Appropriations Bill by both Houses of Parliament.

We in Tobago, have noted with great interest your remarks during the budget debate and look forward to continuing constructive dialogue between the Tobago House of Assembly and the Central Government and, in particular, the Ministry of Finance.

As you are, no doubt, aware, notwithstanding the significant steps forward in the relations between the Tobago House of Assembly and the Central Government over the past several months, there are several outstanding issues with which we would need to treat in order to consolidate and expand on the gains made so far. In this regard, I would wish to propose that our discussions could centre, *inter alia*, around the following issues:

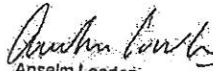
- Adherence to Article 47, Act 40, 1996 regarding the timing and volume of releases to the Tobago House of Assembly.
- Refinement of the Dispute Resolution Commission (DRC) formula.
- A Medium Term Borrowing Programme for the Tobago House of Assembly.
- Corporate Tax Collections in Tobago.

• Valued Added Tax collections in Tobago.

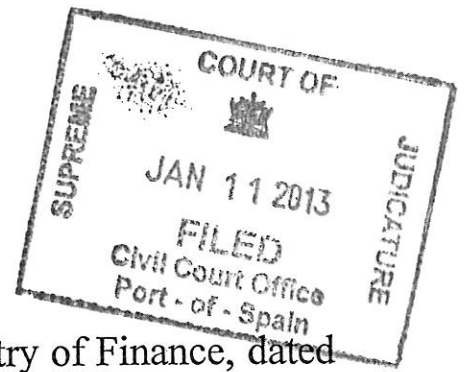
I would, therefore, wish to propose an early meeting with you, either in Trinidad or in Tobago -- as you may wish and at your convenience -- to review these issues. Following this, both our technical teams can be mandated to reach a quick resolution on these issues in a manner satisfactory to both the Ministry of Finance and the Tobago House of Assembly.

Thank you and I look forward to an early meeting with you.

Yours respectfully,


Anselm London
Secretary of Finance and Planning

c.c Chief Secretary



2c(ii) Letter to the Permanent Secretary, Ministry of Finance, dated August 02, 2002, re, *inter alia*, the financing of THA projects through BOLT arrangements; and indicating the Assembly's position that the approval or concurrence of the Ministry of Finance is not required to enter THA Bolt operations.



Office of the Secretary of Finance and Planning
Tobago House of Assembly
Sandy Hall, Bacolet Street
Scarborough, Tobago

Tel# 635-1203

Fax# 639-4927

Email: fhasec@tstt.net.tt

TO : Mr. Leroy Meyers,
Permanent Secretary,
Ministry of Finance
Government of Trinidad and Tobago.

FROM : Anselm London
Secretary of Finance and Planning
Tobago House of Assembly

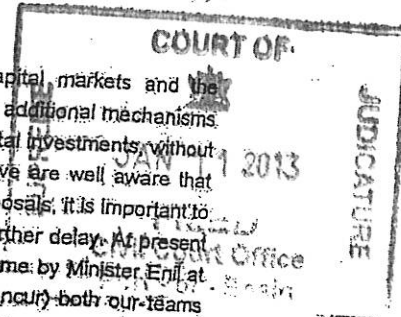
DATE : 2nd August 2002

SUBJECT : THE FINANCING OF URGENT THA CAPITAL PROJECTS

1. The purpose of this memorandum is to follow-up on our discussions held at the Tobago Hilton on Saturday July 27th 2002; and, as promised at the conclusion of those discussions, to submit for further discussion, our proposals with respect to the subject matter indicated above.
2. We would wish to indicate at the outset that the proposals contained herein are considered by the Tobago House of Assembly as reinforcing the ideas raised in the THA document "A Medium Term Public Sector Investment Programme for Tobago" which was submitted to the Prime Minister and Minister of Finance, to Minister Conrad Enli and to you earlier this year. The THA's principal concern at this time is to secure the financing for the projects listed in Annex 1 - - all of which projects have, as I have been advised, already been prepared and appraised and are ready for immediate implementation.
3. You will recall that at our meeting at the Tobago Hilton, you stressed the negative consequences of any additional Central Government borrowing (direct or indirect) for its debt ratios and for your forthcoming rating agency review exercises. Accordingly, you indicated that it would be difficult to finance all of the proposed capital projects through debt. I can assure you that the Chief Secretary and the other members of his

Administration fully share the concern of the Ministry of Finance that, on both fiscal and monetary fronts, all must be done to protect and enhance the debt rating of Trinidad and Tobago.

4. In the circumstances, given both the imperatives of the capital markets and the imperatives of Tobago's development agenda, we suggest that additional mechanisms must be explored to enable the THA to proceed with certain capital investments, without impairing the credit rating of the Central Government. While we are well aware that these projects have been included in our 2002/2003 budget proposals, it is important to the THA that work on these projects commence without much further delay. At present the only constraint is one of financing; but, as recommended to me by Minister Enil at our meeting in Tobago (a recommendation with which I fully concur) both our teams must do what is possible within the constraints faced by both sides.



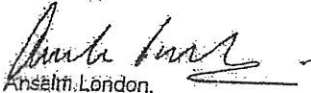
5. With this in view, we are pleased to inform you that our discussions with various local financial institutions indicate that non-debt-creating financing mechanisms are available to the THA. This notwithstanding, we also view it as strategically important both to the Central Government and to the THA to have the current Minister of Finance give practical operational effect to, and go beyond, the verbal undertakings made by the former Minister of Finance in the 2001/2002 budget, by breaking new ground and actually approving some level of borrowing by the THA.

6. We, therefore, propose:

- (i) that the THA finance a significant number of the projects identified in Annex 1 through least-cost BOLT arrangements with certain national financial institutions, such as NIPDEC, FINCOR, RBTT etc., who have all expressed a keen interest in engaging in BOLT arrangements with the THA;
- (ii) that the THA finance some projects through UDECOTT, with Cabinet's prior approval;
- (iii) that the THA be authorised by the Minister of Finance, to undertake some borrowing to finance at least one project, on terms and conditions mutually agreed upon between the THA and the Minister of Finance.

7. We propose further that the distribution of the financing among the various sources be a matter for our joint consideration and recommendation to the Minister. We wish to note, in this context, that if all the projects proposed were to be financed through BOLT arrangements, there will be no direct impact on Trinidad and Tobago's debt ratios and hence on its debt rating. Moreover, with an appropriate distribution of the financing among different funding sources, the impact of the direct and indirect debt (ii) and (iii) above) on the debt ratios could be insignificant and negligible.
8. In all this, we must indicate that a BOLT arrangement undertaken by the TFA does not require the approval or concurrence of the Ministry of Finance, except that agreement should normally be reached, *ex ante*, that budgetary resources would be allocated *ex post* to service these arrangements. Our discussions with various financial institutions suggest that, in the limiting case, even if all the projects were to be financed through BOLT arrangements, the resources required annually for a period of, say, 10 years could more than adequately be met from the \$112 million already set aside for overdraft repayments in the 2001/2002 budget, and which, as recommended in the TFA 2002/2003 budget proposals, should be carried forward into subsequent fiscal years. Furthermore, a BOLT arrangement can be so structured that there would be no additional call on the Consolidated Fund for fiscal 2001/2002, with some of the resources probably required only in late fiscal 2002/2003, when the overall Central Government revenue situation is expected to be considerably better.
9. Therefore, as we had agreed at our meeting at the Tobago Hilton, we would expect to consider these proposals with you at the meeting that we agreed should take place during the week of 5th August, with a view to reaching a consensus on resolving this issue and making appropriate joint recommendations to the Minister. We would, of course, be open to exploring any option that you may wish to propose to move the process quickly forward.
10. Please accept, Sir, the assurances of my highest consideration.

Sincerely,


Anselm London,

Secretary of Finance.

cc. The Honourable Orville London
Chief Secretary

ANNEX 1

URGENT THA CAPITAL PROJECTS

1st August 2002

Item	Project	Total Cost (\$million)	Remarks
1	Crown Point Airport Terminal	\$60.0	BOLT financing offered by various local financial institutions.
2	Mason Hall Primary School	\$6.5	BOLT financing offered by various local financial institutions.
3	Scarborough Library	\$22.0	BOLT financing offered by various local financial institutions.
4	Performing Arts Centre	\$20.0	BOLT financing offered by various local financial institutions.
5	Old Works Building (Works)	\$25.0	BOLT financing offered by various local financial institutions.
6	Financial Complex	\$22.0	BOLT financing offered by various local financial institutions.
7	Industrial Court	\$6.0	BOLT financing offered by various local financial institutions.
8	Administrative Complex	\$34.0	BOLT financing offered by various local financial institutions.
9	Scarborough Market	\$12.0	BOLT financing offered by various local financial institutions.
10	Roxborough Plaza	\$10.0	BOLT financing offered by various local financial institutions.
11	Roxborough Market	\$2.0	BOLT financing offered by various local financial institutions.
12	Vendors Mall	\$8.0	BOLT financing offered by various local financial institutions.
13	Transport Hub	\$35.5	BOLT financing offered by various local financial institutions.
4	Scarborough Secondary School Landslip	\$33.0	BOLT financing offered by various local financial institutions.
	TOTAL	\$295.5	

2c (iii)

Letter to the Minister in the Ministry of Finance, August 21, 2002, expressing disappointment with the lack of response from the Permanent Secretary, regarding the financing of urgent THA capital projects.



Office of the Secretary of Finance and Planning
 Tobago House of Assembly
 Sandy Hall, Bacolet Street
 Scarborough, Tobago

Tel # 635-1203

Fax # 639-4927

Email: thasac@tstt.net.tt



August 21, 2002

Senator The Honourable Conrad Enill
 Minister in the Ministry of Finance
 Level 8 Eric Williams Finance Complex
 Independence Square
 Port of Spain
 Trinidad

Dear Minister Enill,

As you would recall, on your recent visit to Tobago, you requested the Tobago House of Assembly's representatives to meet with representatives of the Ministry of Finance to address various matters, including the financing of some urgent THA capital projects.

Having met with your representatives and agreed on a timetable of action, I regret to inform you that, despite the attached response, despite several reminders, and despite numerous telephone calls (all unanswered), we have had no response from your Permanent Secretary.

We are gravely disappointed at this turn of events, as it runs very much counter to the excellent working relationship that has been established between the THA and your Ministry and with you personally. We are, therefore, hoping that you would intervene with your Permanent Secretary to ensure the prompt resumption of the discussions that you had requested, in order to bring a speedy resolution to this matter.

Please, Sir, accept the assurance of my highest consideration.

Sincerely,

Anselm London
 Secretary of Finance and Planning

cc: Chief Secretary

2 c (iv)

Letter to the Minister in the Ministry of Finance, dated April 29th 2003, re, *inter alia*, draft letter of comfort, proposed by the Unit Trust Corporation of Trinidad and Tobago, in connection with THA borrowing for capital investments that cannot be financed from Parliamentary Appropriations.



Office of the Chief Secretary
Tobago House of Assembly
Calder Hall Administrative Complex
Cor. Government House and Calder Hall Road
Scarborough, Tobago

Tel # 639-2696

Fax # 639-5374

Email: chsec@tsff.net.tt

April 29, 2003

Senator The Honourable Conrad Enill
Minister in the Ministry of Finance
Level 8 Eric Williams Finance Complex
Independence Square
Port of Spain
Trinidad

Dear Minister Enill,

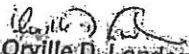
I wish to take this opportunity to thank you and your team for the frank discussions with the THA team on Friday 25th April, 2003.

I would also like to confirm our understanding of the consensus reached on the various issues, as follows:

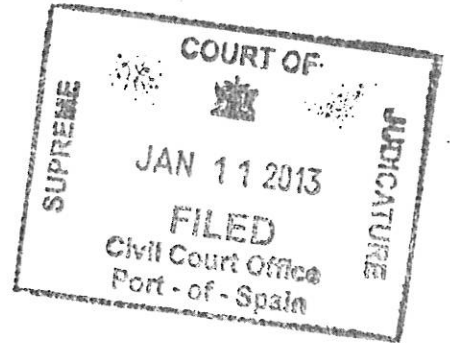
1. The Ministry will submit to the Tobago House of Assembly, by 30th April 2003, its comments on the Financial Rules 2001; and the two teams will meet on or around 6th - 7th May to review the comments and chart a course for the way forward on revisions (if any) to the document and on its submission to Cabinet and Parliament, for which you will be responsible.
2. The Mid-year budget review will take into consideration and include the following agreed adjustments:
 - \$50 million to deal with on-going projects;
 - \$5.7 million for the Health Sector Employee Incentive Programme for Tobago that was omitted in the last budget;
 - \$7.3 million to treat with the arrears of doctors and nurses;
 - \$10.9 million for the Health and Social Sector Reform;
 - \$18 million now due to the Tobago House of Assembly for the Tourism Rolling Plan.

3. The Tobago House of Assembly will provide the Ministry of Finance with a copy of the draft Letter of Comfort, proposed by Unit Trust Corporation, in connection with THA borrowing for capital investments that cannot be financed from Parliamentary Appropriations (see attached);
4. The Tobago House of Assembly will submit an aide-memoire on the Dispute Resolution Commission (see attached);
5. The next consultative meeting is scheduled for June 6th in Tobago.

Sincerely,


Orville D. London
Chief Secretary

c.c. Secretary of Finance and Planning



DRAFT LETTER

LETTER OF COMFORT

The Chairman
 Trinidad and Tobago Unit Trust Corporation
 UTC Financial Centre
 #82 Independence Square
 PORT OF SPAIN

Dear Sir

Tobago House of Assembly (THA) TT\$350 million Term Loan

I wish to confirm that in my capacity as Minister of Finance of the Government of the Republic of Trinidad and Tobago ("the Government"), I am aware that the Tobago House of Assembly (hereinafter called "the Assembly") has resolved to borrow the sum of TT\$350 million by the creation and issue of Term Loans to finance development projects.

I am also aware that the Term Loan will be constituted by a Trust Deed made between the Assembly and The Trinidad and Tobago Unit Trust Corporation (hereinafter called "the TTUTC").

I also wish to confirm that the Government has agreed that TTUTC be awarded the mandate to arrange and finance the said TT\$350 million Term Loan on the terms and conditions set out in the letter from the Chief Secretary of the Tobago House of Assembly to the Executive Director of TTUTC dated March 2003¹.

Government has also agreed that the Term Loan facility be awarded to TTUTC on the basis of the Letter of Comfort, indicating that the financial obligations of the Assembly will be honored.

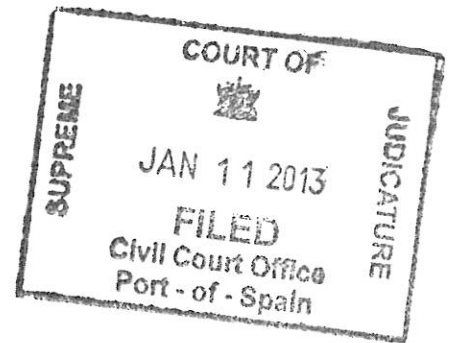
¹ Mandate Letter to be issued by the THA to the TTUTC

Please be assured that it is the Government's intention that the Assembly should meet its financial obligations as aforesaid.

In this regard, I irrevocably undertake on behalf of the Government that I would do everything in my power to ensure that the Assembly discharges its financial obligations to the Lender under the said Trust Deed in accordance with the terms and conditions thereof.

Yours sincerely

Hon. Patrick Manning
Minister of Finance



2c (v)

Letter to the Minister in the Ministry of Finance, dated June 10, 2003, re: *inter alia*, the Central Government's refusal to trigger the clause in the THA Act that would authorize the Assembly to borrow, in order to finance critical projects in Tobago.



Office of the Chief Secretary,
Tobago House of Assembly,
Calder Hall administrative Complex
Calder Hall
Tobago.

Tel No.: 639-2696
Fax No.: 639-5374

June 10, 2003

Senator The Honourable Conrad Enill
Minister in the Ministry of Finance
Level 8 Eric Williams Finance Complex
Independence Square
Port of Spain
Trinidad

Dear Minister Enill,

Further to our most recent telephone conversation and, in preparation for our meeting on Friday of this week, Tobago's position with respect to the key budget issues, is summarized in the following seven (7) points:

- (i) Tobago must receive a share of the national budget (4.03% - 6.90%) consistent both with the decision of the Dispute Resolution Commission and with the "common sense" clarifications offered by Justice Edoo - - all of which were fully respected by the former UNC Finance Minister Yetming;
- (ii) In preparing our own estimates for 2004, we have assumed nominal growth in the national budget that would see expenditures rise to about \$22 billion;
- (iii) For reasons that are obvious, we will be presenting to the Assembly, on June 23rd 2003, a budget of about \$1.6 billion that is slightly above last year's and at the upper end of the 4.03% - 6.9% range of our estimate of the 2004 national budget;
- (iv) It is evident that we will have great difficulty accepting a share of the national budget that is less than the 4.07% benchmark set by the UNC Minister Yetming, or worse, as in the current fiscal year, a share less than even the legal minimum. Accordingly, if asked, we would be unable to defend a decision of the Ministry of Finance that is at variance with what we and the rest of Tobago recognize as the law;

- (v) Closely tied to the decisions made on the THA share of the national budget is the parallel decision on Tobago's authority to borrow, irrespective of whether the entire THA budget can be financed by the Consolidated Fund; and a decision is required now on this matter on which there has been no decision, even after twelve months. It is instructive to note that, at this time, our political opponents are claiming that despite our boast of prudent financial management, our colleagues in the Central Government have refused to trigger the clause in the Tobago House of Assembly Act that would authorise the Assembly to borrow in order to finance critical projects on the island.
- (vi) If the THA budget cannot be fully financed by the Consolidated Fund, then there must be a clear statement in the budget speech of the Minister that the THA may proceed to fund an agreed quantum of capital investments, within the limits set by the borrowing authority previously granted;
- (vii) We expect genuine consultations between the Assembly and the Ministry of Finance in the pre-budget period, bearing in mind the serious negative political consequences for our respective Administrations, in the Tobago House of Assembly and Central Government, of a failure to reach agreement on the points raised above.

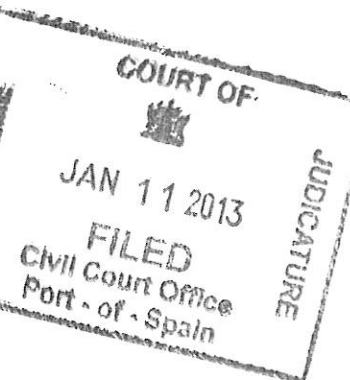
2. We should also mention that, in addition to strictly financial and budgetary issues, we expect to raise, within the context of the budget, some policy issues having to do with fiscal decentralization and the cost of living differential between Tobago and Trinidad; and which we fully expect to be treated by the Central Government.

3. We look forward to a frank and constructive discussion and resolution of the issues raised above. The costs of failure are much too enormous to contemplate.

Best regards

Orville D. London
Orville D. London
Chief Secretary

C. Dr. Anselm London
Secretary of Finance and Planning



2 c (vi)

Letter to the Minister in the Ministry of Finance, dated November 14th 2005, re: *inter alia*, the invitation of a capital market borrowing programme for Tobago.



Office of the Chief Secretary
Tobago House of Assembly
Calder Hall Administrative Complex
Cor. Government House and Calder Hall Road
Scarborough, Tobago

Tel: # 639-2696

Fax: # 639-5374

Email: chesec@tstt.net.tt

14th November 2005

The Honourable Conrad Enli
Minister in the Ministry of Finance
Level 8
Eric Williams Finance Building
Independence Square
Port of Spain
Trinidad

Dear Minister

Now that the Executive Council of the Tobago House of Assembly has had some time to reflect on the principal policy and programme innovations outlined in your 2006 Budget Statement, I wish to draw to your attention three (3) issues that are of concern to the Assembly.

They are as follows:

- (1) We are of the view that the channelling of some of the Assembly's development programme budgetary resources through the Infrastructural Development Fund encroaches on the right of the Assembly to manage its own resources in the manner it chooses and on the projects it deems appropriate for special treatment. This aspect of the Central Government's proposal raises many legal and constitutional issues bearing on certain responsibilities assigned to the Assembly, as enshrined in the Tobago House of Assembly Act, and needs to be revisited.
- (2) The creation of the special purpose companies, while a good idea, in principle, cannot be applied to the Tobago House of Assembly in the same manner as to Ministries. Indeed, even though we have received no formal information from the Ministry of Finance on the formation of these companies, our understanding is that the proposed state enterprises, themselves creatures of the Ministry of Finance, will include one such state enterprise with responsibility for activities in Tobago, with all the companies being answerable to the Ministry of Finance. We view this arrangement as practically and politically untenable.
- (3) In view of all the administrative difficulties encountered by the Ministry of Planning and Development in incorporating in the budget some important agreed upon additional development programme resources for Tobago; and, bearing in mind the fact that the projects concerned cannot be put in abeyance, awaiting mid-year budgetary allocations, we propose that the Ministry of Finance, in collaboration with

budgetary allocations, we propose that the Ministry of Finance, in collaboration with the Assembly, initiate the capital market borrowing programme for Tobago, as promised in your Budget Statement.

We are of the view that these matters are of great significance and, if not treated urgently and prudently, can seriously undermine the integrity of both the Central Government and the Tobago House of Assembly, among Tobagonians. I am, therefore, requesting an Urgent meeting with the Ministry of Finance to discuss these matters, and trust that you will assist in the way forward.

I look forward to hearing from you at the earliest convenience.

Sincerely


Orville D. London
Chief Secretary

Copy to:

Honourable Patrick Manning - Prime Minister
The Honourable Camille Robinson-Reids - Minister of Planning and Development
Dr. Anselm London, Secretary of Finance and Planning

2c(vii)

Letter to the Minister in the Ministry of Finance, dated
December 12th 2005, re the financing of the 2006
Development Programme of the THA.



Office of the Chief Secretary
Tobago House of Assembly
Calder Hall Administrative Complex
Cor. Government House and Calder Hall Road
Scarborough, Tobago

Tel # 639-2696

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Email: chesecc@tsft.net.tt

December 12, 2005

Senator The Honourable Conrad Enill
Minister in the Ministry of Finance
Level 8 Eric Williams Finance Complex
Independence Square
Port of Spain
TRINIDAD

Dear Senator,

Re: The financing of the 2006 Development Programme of the Tobago House of Assembly

I write to outline more formally the principal elements of our recent conversations on the above matter and to indicate both the actions we have already taken on some issues and our preferred course of action for moving forward on other issues.

As I earlier pointed out, a major budgetary challenge facing the Assembly for the remainder of the current fiscal year has to do with the financing of its development programme. In this regard, it bears repeating that:

- (i) The Assembly requested \$875 million in its fiscal 2006 development programme budget submission and received only \$240.9 million;
- (ii) Of this latter amount, some \$80.75 million was allocated (without consultation) to the Infrastructure Development Fund that is controlled by the Ministry of Finance -- a procedure that we regard as constitutionally questionable; and
- (iii) In the present circumstances, the Assembly finds itself unable to proceed with several projects that are now stalled because of a lack of funding.

The current situation is disheartening especially when understood in the context of the inability of the Ministry of Planning and Development to respond in a timely manner to the Prime Minister's exhortations during the budget preparation process (and even as late as the evening prior to the budget presentation) regarding upward adjustments to the Assembly's 2006 Development Programme budget. Regrettably, this administrative breakdown has derailed many of the Assembly's development programme initiatives for fiscal 2006.

Given the administrative delays already encountered and the financing difficulties imposed by the 2006 budget allocation, we wish to advise even at this early stage that we will be approaching the Central Government for the necessary funding to service these arrangements in the next fiscal year and henceforth.

We also wish to advise that the Executive Council of the Tobago House of Assembly has approved the formation of the Assembly's own holding company, The Tobago Development Company that will, as a minimum, have responsibilities and authority (including borrowing authority) as that envisaged for the Special Purpose State Enterprises of the Central Government. The Tobago Development Company, with the appropriate government guarantees, will source funding and undertake various selected development projects on behalf of the Assembly.

With respect to other development programme activities, we propose that the Central Government provide cash resources to support those urgent and critical projects that have either been stalled because of insufficient funding or have not yet begun because of a lack of funding. The relevant projects and the funding required for fiscal 2006 are:

1.	Cove Industrial Estate	-	\$ 15.0 million;
2.	Emergency Operations Centre	-	\$ 2.3 million;
3.	Special Development Programme for Windward Tobago	-	\$ 15.0 million;
4.	Major Improvement Works on Secondary Roads	-	\$ 20.0 million;
5.	Scarborough Library	-	\$ 16.0 million;
6.	Financial Complex	-	\$ 25.0 million; and
7.	Shaw Park Cultural Complex	-	\$ 25.0 million.
	TOTAL		\$118.3 million

Finally, we should remind you that we view with great concern and disquiet the fact that the Ministry has not honoured its undertaking to refund expenses undertaken by the Assembly in fiscal 2005 to pre-finance certain important other projects, such as in Windward Tobago. The Assembly now finds itself in a continuous overdraft situation that, as you are aware, has already impaired our credibility and poses serious financial and political risks. We are recommending that this matter be taken up and addressed in the context of any supplementary estimates submitted to Parliament during the current fiscal year.

We propose, therefore, an urgent meeting with you to agree on a way forward on all these pressing issues.

Sincerely,


Orville London
Chief Secretary

c: *Honourable Patrick Manning, Prime Minister and Minister of Finance*
Honourable Camille Robinson-Regis, Minister of Planning and Development
Councillor the Honourable Anselm London, Secretary of Finance and Planning

2c(viii)

Letter to the Minister in the Ministry of Finance, dated February 24th 2006, re the approach to be used by First Citizens Bank to establish a funding vehicle consistent with the net funding needs of the Assembly's priority projects.



Office of the Chief Secretary
Tobago House of Assembly
Calder Hall Administrative Complex
Cor. Government House and Calder Hall Road
Scarborough, Tobago

Tel # 639-2696

Fax # 639-5374

Email: chesec@tstt.net.tt

24 February 2006

Senator The Honourable Conrad Enill
Minister in the Ministry of Finance
Level B Eric Williams Finance Complex
Independence Square
Port of Spain
TRINIDAD

Honourable Minister Enill,

Re: Priority Projects of the Tobago House of Assembly

I wish, once again, to thank you for your visit to Tobago today, and for your part in the constructive dialogue that ensued on the current priority projects of the Tobago House of Assembly. We are heartened by your sensitivity to the need to expand Tobago's development programme at this time; and to the significant economic and political benefits that will arise both here in Tobago and in Trinidad, as a result of such expansion.

As we agreed, these projects and their estimated costs are:

1. Road Paving.....\$85 million;
2. (i) Shaw Park Cultural Complex.....\$90 million;
(ii) Financial Complex.....\$55 million;
(iii) Scarborough Library.....\$32 million;
3. Cove Industrial Estate.....\$20 million;
4. L'Anse Fourmi/Charlotteville Link Road.....\$15 million;
5. Roxborough Administrative Complex.....\$25 million; and
6. Housing Construction at:
(Roxborough, Blenheim and Castara).....\$150 million.

As we also agreed, Items 2 (i) to 2 (iii) will be discussed at a meeting between the Assembly and UDeCOTT on March 02, 2006 in Tobago, at which meeting, the financing and operational options related to these three projects will be discussed and finalized. The results of these discussions, as well as information on the role of the Housing Development Corporation (HDC) in the financing of (6), will be communicated to you by March 03, 2006.

From our side, we are pleased that, as agreed, the Ministry will approach First Citizens to establish the funding vehicle consistent with our net financing needs, taking into consideration any projects that will be financed by UDeCOTT and/or HDC. The final figure for the financing that is to be arranged through First Citizens will be determined by March 03, 2006, following our discussions with UDeCOTT and with HDC.

We look forward to the work of the week ahead, involving our joint agreement on the net financing needs for the priority projects; to your subsequent submission to First Citizens regarding the funding vehicle; and to the Assembly's later discussion with First Citizens on matters related to the disbursement of the funds and other operational modalities.

Sincerely,


Orville D. London
Chief Secretary

cc: Hon. Patrick Manning, Prime Minister, Minister of Finance, and Minister for Tobago Affairs
Dr. Anselm London, Secretary of Finance and Planning
Mr. Whitney Alfred, Secretary of Infrastructure and Public Utilities.

3. THE ORIGINS OF THE BOLT

PROPOSAL

Dialogue between the Assembly and the project proponents began with an oral presentation to the Assembly by the project proponents, indicating the future availability of a building that contained both office and commercial space that could be leased by the Assembly.

In view of the need to accommodate staff of the Assembly, bearing in mind the million-dollar annual rental costs borne by the Divisions, the Assembly expressed interest in the basic proposal but with two caveats - -

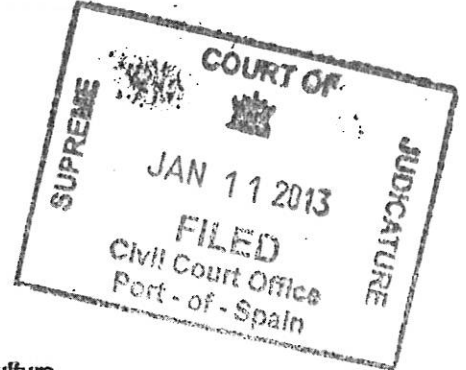
- (i) That it (ie the Assembly) would not be interested in a pure rental; and
- (ii) That the proposal should involve an office building, that could meet not only the needs of a single Division but also certain Assembly-wide activities.

The project proponents agreed to recast the initial proposal; and the Assembly engaged in internal discussions, resulting in the decision that, if accepted, from among the competing Divisions, the building would be used by the Division of Agriculture, Marine Affairs, Marketing and the Environment. It is on this basis that an entirely new proposal was developed and submitted to the Assembly.



December 9, 2009

The Honourable Dr. Ansem London
Secretary of Finance & Enterprise Development
Tobago House of Assembly
Tam's Building
Glen Road
Scarborough
Tobago



RE: Office and other Accommodations for THA – Department of Agriculture

Dear Dr. London,

We are pleased to submit to you our proposal to build, operate, lease and transfer (BOLT) to the Tobago House of Assembly (THA), a purpose built facility at the corner of the Claude Noel Highway and Shirvan Road, Tobago to house the Department of Agriculture, Marine Affairs and the Environment.

The purpose of this letter is to document the terms and conditions of the proposal so that we could proceed to a formal Development Agreement to be prepared by our attorneys.

1. Description of Property:

A minimum of 51,000 square feet of air conditioned office space in two buildings as illustrated in the plan attached to this proposal. The total land size is approximately three acres of freehold land complete with all requisite approvals for the development.

2. BOLT Provisions:

Under the terms of this BOLT proposal the Developer will build and operate the facility. During the term the THA will make monthly payments and at the end of the term the Developer will transfer title and ownership rights to the THA.

3. Term:

20 years, commencing on the date of completion of the building by the Developer and handover to THA.

Tradezone I El Socorro Road Ext., San Juan, Trinidad
Tel: (868) 675-5052, Fax: (868) 675-8483
www.ameracorporation.com

12

Copy

A

4. Monthly Payment:

A monthly sum of \$21.50 per square foot of building space, to cover the cost of the development inclusive of the land, and at the end of the term to transfer ownership of land and building to the THA for the total sum of \$1.00 with no further sums due. The developer as part of its operating obligations will pay the costs of insurance, property taxes and repairs and maintenance which is to be reimbursed to the Developer by the THA. Utilities (water, sewer, electricity etc) will be paid directly by the THA to the relevant agencies.

These concepts are to be further detailed in a Development Agreement to be signed by both parties prior to construction. However, once you are in agreement with the terms stated above, the Developer will commence design work and preliminary pre-construction work to ensure a timely commencement of construction early in the New Year.

We look forward to your positive feedback and please feel free to contact us with any questions or requests for additional information.

Best Regards,



Joseph Rahael

cc: Honourable Hilton Sandy, Deputy Chief Secretary and Secretary of Agriculture, Marine Affairs and the Environment

Peter Fordé, Fincor, Republic Bank Ltd

Copy



December 21, 2010

The Honourable Dr. Anslem London
Secretary of Finance & Enterprise Development
Tobago House of Assembly
Tam's Building
Glen Road
Scarborough
Tobago

Dear Dr. London

**RE: BOLT Proposal for Office and other Accommodations for THA -
Department of Agriculture**

We refer to our letter sent to you on Dec 9, 2009 (attached for ease of reference) on the above captioned.

We understand that there have been numerous meetings between the Division of Agriculture and our architects to advance the plans for the proposed development.

At this time we respectfully seek your confirmation of your willingness to accept the commercial terms and conditions contained in our Dec 9 2009 letter in order to proceed to a formal Development Agreement and subsequent construction. We look forward to your urgent response on this.

While our proposal of December 2009 is our preferred approach, and we are prepared to negotiate the terms, as an alternative we will be prepared to sell the freehold rights of the land to THA for a price of TT\$18m and to construct the facility if you so require. We are in receipt of a Ministry of Valuations Division dated November 2010 proposing a valuation of TT\$12m however this is far lower than the price than the land was acquired for in 2006 and does not take the municipal approvals that we have acquired over the past few years nor does it take into account the value of the architectural, structural and mechanical plans that have been prepared and will redound to the benefit of the THA.

We remain committed to assisting the THA achieve its plans and goals and we ask that you respond as soon as possible as we would want to take advantage of the upcoming dry season to commence construction.

.../2

Tradezone I El Socorro Road Ext., San Juan, Trinidad
Tel: (868) 675-5052, Fax: (868) 675-8483
www.ameracorporation.com

A

We stand ready to fly over to Tobago to commence negotiations on our proposal during the first week of January 2011.

Best Regards



Joseph Rahael

cc: Honourable Hilton Sandy, Deputy Chief Secretary and Secretary of
Agriculture, Marine Affairs and the Environment



January 26, 2011

The Honourable Dr. Anselm London
Secretary of Finance & Enterprise Development
Tobago House of Assembly
Tam's Building
Glen Road
Scarborough
Tobago

RE: Office and other Accommodations for THA -- Department of Agriculture,
Marine Affairs and the Environment

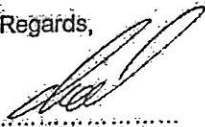
Dear Dr. London,

As a follow up to our letter of December 21, 2010 and our meeting of January 17, 2011, we are pleased to submit the attached proposal for the consideration of The Tobago House of Assembly.

We look forward to continuing to work with the THA to and look forward to finalizing our discussions on this soon and the commencement of construction.

Please do not hesitate to contact us with any questions on the proposal or if any further information is required.

Best Regards,



.....
Joseph Rahael

Cc: Honourable Hilton Sandy, Deputy Chief Secretary and Secretary of Agriculture,
Marine Affairs and the Environment

Tradezone I, El Socorro Road Ext., San Juan, Trinidad
Tel: (868) 675-5052, Fax: (868) 675-8483
www.ameracorporation.com

**4. TECHNICAL REVIEWS OF THE
PROPOSAL**

- 4(a) The Report of the Commissioner of Valuation on the Valuation of the Land in Question
- 4(b) The Report of Project Specialists Limited on the Technical and Financial Aspects of the Project Proposal
- 4(c) Subsequent Press Release Statement by Project Specialists Ltd.
- 4(d) The Cost Benefit Analysis of the Proposal

4(a) The Report of the Commissioner of Valuation

On the Valuation of the Land in Question

F(VD): 7/14/302

/ct



MINISTRY OF FINANCE
VALUATION DIVISION
109 HENRY STREET, FORT OF SPAIN
TELEPHONE NO. 623-4221-5 FAX 623-5874 Email valdir@fsti.net.tt

September 1, 2010

The Administrator
Division of Agriculture, Marine Affairs
And the Environment
General Administration
Glen Road
Scarborough
Tobago

Dear Sir

Proposed Acquisition of land situate at the corner of the Claude
Noel Highway and Shirvan Road, Tobago.

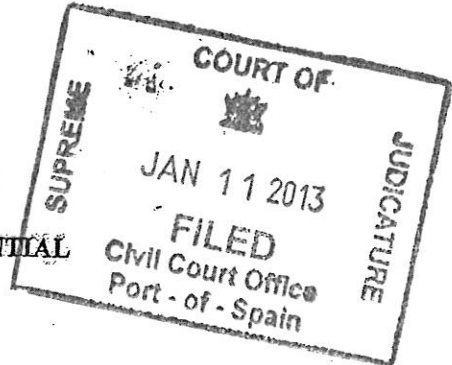
I refer to all previous correspondence and discussions regarding the above
subject.

Please be advised that the sum of **TWELVE MILLION DOLLARS
(\$12,000,000.00)** represents a fair estimate of the current market value of
the subject parcel of land comprising three (3) acres in area.

Yours faithfully


Commissioner of Valuations

COMMISSIONER OF VALUATIONS



EXECUTIVE COUNCIL MINUTE

CONFIDENTIAL

No. 189 March 11, 2011

Note No. CS (2011) 80; EC 202

File No. TRA (CA) 100/13/7

FOR ACTION	FOR INFORMATION
File No. TRA (CA) 100/13/7	
Chief Secretary and Secretary of Public Administration, Planning and Development, Energy, State Lands and Information and Note.	Secretary of Agriculture, Marine Affairs and the Environment and Note.
Chief Administrator and Note.	Secretary of Tourism and Transportation and Note.
Secretary of Finance, Enterprise Development, Consumer Affairs and Cooperatives and Note.	Secretary of Education, Youth Affairs and Sport and Note.
Administrator, Division of Finance and Enterprise Development, Consumer Affairs and Cooperatives and Note.	Secretary of Infrastructure and Public Utilities and Note.
	Secretary of Health and Social Services and Note.
	Secretary of Settlements and Labour and Note.
	Secretary of Community Development and Culture and Note.

Matter considered by Executive Council on - March 11, 2011

Matter confirmed by Executive Council on - March 16, 2011

CONFIRMED

EXECUTIVE COUNCIL MINUTE NO. 189 OF MARCH 11, 2011

The acquisition of land located at the corner of the Claude Noel Highway and Shirvan Road, Tobago for the construction of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment of the Tobago House of Assembly.

Note No. CS (2011) 80; EC-202 was considered.

The Executive Council:

- (i) accepted the recommendation of the Valuation Division of the Ministry of Finance, that the sum of twelve million dollars (\$12,000,000.00) represents a fair estimate of the current market value of the parcel of land comprising three (3) acres, located at the Claude Noel Highway and Shirvan Road, Tobago;
- (ii) agreed that funds be identified from the Contingencies Account for the acquisition of the land located at the corner of the Claude Noel Highway and Shirvan Road, by private treaty, for the construction of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment.

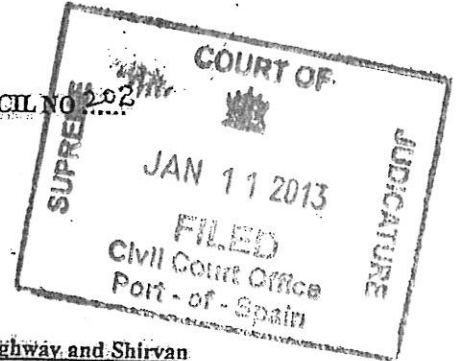

Manager, Executive Council Affairs

CS (11) 80

EXECUTIVE COUNCIL NO 202

THA: (CA) 100/13/7

February 22, 2011



NOTE FOR EXECUTIVE COUNCIL

The Acquisition of Lands Located at the Corner of the Claude Noel Highway and Shirvan Road, Tobago for the Construction of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment of the Tobago House of Assembly.

1. The matter for the consideration of the Executive Council is the acquisition of Lands located at the corner of the Claude Noel Highway and Shirvan Road, Tobago for the construction of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment of the Tobago House of Assembly.
2. The Division of Agriculture, Marine Affairs, Marketing and the Environment currently occupies Office space at different locations. This dispersion of the various Departments of the Division has contributed to challenges with co-ordination of the various roles, functions and communication. The housing of all the various Departments of the Division in one Administrative Complex would contribute to the seamless management of the operation of the Division. Thus, ensuring that the Division fulfil its mandate.
3. The Division's Main Office housing the Office of the Secretary, the Administrator, the Human Resources Unit, the Systems Information Unit and the Accounting Unit occupies approximately nine thousand, five hundred square feet (9,500 sq. ft.) of Office Space at Glen Road, Scarborough. The monthly rental is ninety-two thousand, eight hundred and sixty-three dollars (\$92,863.00) Value Added Tax inclusive. However, with the increase in staff on the establishment and the filling of many vacant positions, the accommodation is inadequate to house all employees in a comfortable environment.
4. The Department of Natural Resources and the Environment occupies approximately three thousand square feet (3,000 sq. ft.) of Office Space at the Highmoor Centre, on Plymouth Road, a building owned by Sandeep Kumar. The monthly rental of which is ten thousand, nine hundred and twenty five dollars (\$10,925.00). This lease expires on March 31, 2011. The Executive Council Minute No. 96 of February 02, 2011 has agreed to the rental of approximately five thousand square feet (5,000 sq. ft.) of Office Space at Glen Road, Scarborough owned by Independence Properties Limited at a cost of forty thousand dollars (\$40,000.00) plus Value Added Tax.

5. The Department of Marine Resources and Fisheries currently occupies approximately five thousand square feet (5,000 sq. ft.) of Office Space at Glen Road, Scarborough owned by Independence Properties Limited at a cost of forty thousand dollars (\$40,000.00) plus Value Added Tax. This also became necessary due to the filling of vacant post.
6. Additionally, the Department of Food Crop Production and the Planning and Implementation Unit currently leases Office Space in the same building at Glen Road, Scarborough, owned by Mr. Lennox Paul at a cost of forty-eight thousand dollars (\$48,000.00).
7. With regard to the foregoing, the construction of the Administrative Complex to house the various Departments in the Division of Agriculture, Marine Affairs, Marketing and the Environment in one complex would result in the economical utilization of financial resources. The Division would have adequate accommodation to provide for the filling of vacant positions on the establishment. The construction of the Administrative Complex would ensure that the accommodation provided for staff of the Division is in compliance with the Occupational Safety and Health Act.
8. The Valuation Division of the Ministry of Finance had been approached to provide a valuation of the land located at the corner of the Claude Noel Highway and Shirvan Road, Tobago. The Division by correspondence dated September 1st 2010 has advised the sum of twelve million dollars (\$12,000,000.00) represents a fair estimate of the current market value of the parcel of land comprising three (3) acres in the area. See Appendix 1.
9. Accordingly, the Chief Secretary and Secretary with responsibility for planning and development recommends and the Executive Council is asked to agree that:
 - i. the acceptance of the Valuation Division of the Ministry of Finance recommendation that the sum of twelve million dollars (\$12,000,000.00) represents a fair estimate of the current market value of the parcel of land comprising three (3) acres located at the corner of the Claude Noel and Shirvan Road, Tobago; and
 - ii. the identification of funds under the Contingencies Account for the acquisition of the land by private treaty located at the corner of the Claude Noel Highway and Shirvan Road for the construction of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment.

F(VID): 7/14/302
Jcl



APPENDIX I



MINISTRY OF FINANCE
VALUATION DIVISION
109 HENRY STREET, PORT OF SPAIN
TELEPHONE NO. 623-4221-5 FAX: 623-5874

September 1, 2010

The Administrator *(H.S. Perkins)*
Division of Agriculture, Marine Affairs
And the Environment
General Administration
Glen Road
Scarborough
Tobago

Dear Sir

Proposed Acquisition of land situate at the corner of the Claude
Noel Highway and Shirvan Road, Tobago

I refer to all previous correspondence and discussions regarding the above subject.

Please be advised that the sum of TWELVE MILLION DOLLARS (\$12,000,000.00) represents a fair estimate of the current market value of the subject parcel of land comprising three (3) acres in area.

Yours faithfully

Commissioner of Valuations
COMMISSIONER OF VALUATIONS

**4(b) The Report of Project Specialists Ltd on the Technical
and Financial Aspects of the Project Proposal**



218 Calcutt Road, Large Park, Chaguanas, Trinidad and Tobago. Email: psl.project@psl.com Phone: (868) 690-5162, 672-4794

**Report on Proposal submitted by
Amera Caribbean Development Ltd
for the Provision of Accommodation for
Tobago House of Assembly
Division of Agriculture, Marine Affairs and the
Environment**

Synopsis

On 02 February 2011, the Secretary of Finance and Enterprise Development of the Tobago House of Assembly (the Client) engaged Project Specialist Ltd. (the Consultant) to conduct an assessment of the proposal by Amera Caribbean Development Ltd. (the Developer) dated 26 January 2011 for the provision of office accommodation for the Division of Agriculture, Marine Affairs and the Environment (the User) of the Tobago House of Assembly (THA).

On 10 February 2011, the Consultant submitted comments based on the said proposal provided by the Client.

The Consultant concluded, inter alia, that the calculated lease rental rate of \$19.78 per square foot per month initially proposed by the Developer for the required accommodation was excessive and would be difficult to justify. The proposed development cost was \$194.4M, inclusive of profit and financing costs, which translated to a monthly lease rental payment of \$1,625,708.86.

The Consultant identified some critical areas of concern to be addressed in order to realize the successful implementation of the project in a more cost effective manner. These included the attributed cost of the land, the unit cost of construction and professional fees.

Subsequently, the Client, the Developer and the Consultant held discussions on the identified issues and this resulted in the reduction of the development budget to \$143,236,993.62, which translated to a monthly lease rental payment of \$1,198,091.61, which was accepted in principle with some reservations from the User.

The Developer has presented a Memorandum of Understanding (MOU) with respect to the implementation of the project for the consideration of the THA. On 14 April 2011, the Client engaged the Consultant to prepare a report on the project to assist in the consideration of the MOU and matter related thereto.

This report outlines the Consultant's findings and recommends the way forward.

Project Financing Mechanism

The project financing mechanism that was initially proposed involved a lease transfer approach, which would operate as follows:

- Amera is the owner of approximately 3 acres of land located at the corner of Shirvan Road and the Claude Noel Highway ("the Lands") through its special purpose subsidiary, Dankett.
- Amera would undertake preparation of designs and specifications for construction of the required accommodation and related facilities (the Premises) on the said Lands for the User.
- The THA would agree to lease the Premises from Amera for the provision of office accommodation for the User.
- Amera shall procure its own financing for the project.
- Amera would construct the required facilities based on the User's requirements subject to a lease rental agreement with the THA for a period of twenty years at a monthly rent over the period.
- The ownership of the Premises would be transferred to the THA at the end of the lease period at a nominal cost of \$1.00.

Following due consideration of various options it has been agreed that the most appropriate model would require immediate acquisition of the land by the THA. The land would then be leased to the Developer who would construct the Premises based on the agreed specifications and sub-lease the completed facilities to the THA for a period of twenty (20) years.

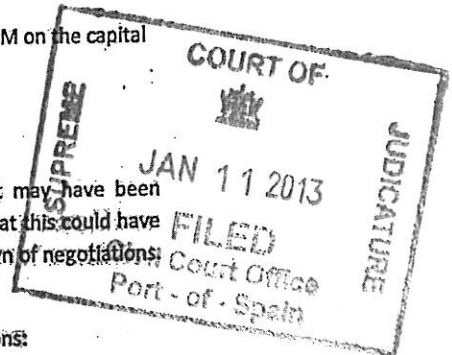
Based on the proposal submitted, it is anticipated that the Developer would raise the required financing for the project via a bank licensed under the Financial Institution Act (2008). The bank would require assignment of the lease rental income stream and may also require the THA to provide some level of collateral security for the transaction.

It is also more than likely that the bank may insist on the utilization of a special purpose company to insulate the project's assets from the other assets of the Developer. In this regard, Dankett could fulfil the role as the special purpose company.

The overall impact of the negotiations was a total saving of approximately \$51M on the capital cost of the project.

Investment Analysis

Notwithstanding the significant progress made during the negotiations, it may have been possible to realise further savings. However, there was also the possibility that this could have made the project unattractive to the Developer with consequential breakdown of negotiations. The critical issue was therefore was is best from the point of view of the THA.



In the absence of accurate data, the Consultant made the following assumptions:

1. The current Gross Floor Area Rented by the Division of Agriculture, Marine Affairs and the Environment and/or other possible users of the proposed building would be at least 75,000 square feet.
2. Current Rental Rate was \$9.00 per square foot per month.
3. Savings from the aforementioned rentals would be used toward lease rental payments for the proposed project.
4. The annual rent would increase by an average of 4% per annum.
5. Land value would appreciate, in real terms, by an average of 2% per annum over the long term.
6. The Present value of the Residual Value of the building at end of Year 20 would not be less than the current cost of construction estimated @ \$1200 per square foot.
7. The construction period would be approximately 18 months.

The cash flow analysis reveals that from the THA's point of view, the implementation of the project based on the revised proposal submitted by the Developer would yield a Net Present Value (NPV) of \$66.60M. The NPV based on the initial proposal would have been \$10.6M.

Recommendation

The Consultant is of the view that the project would be beneficial to the THA from administrative, financial and economic perspectives and therefore recommends the approval of the MOU, in principle. The major points of concern in the MOU are:

1. Recital G, which sets a minimum lease rental.
2. There is an absence of specifications for the proposed facilities. It would be prudent to make provision for the minimum acceptable specifications.
3. The times for commencement of construction and for completion of the project should be included in the MOU.

Capital Cost of Project

The Consultant examined the Developer's capital cost budget and identified various areas that may have contributed to the projected lease rentals being significantly above the current market rates, viz:

- Land Value

The land is currently owned by the Developer and therefore provision has been made for the sale of the land at the beginning of the project.

It may be argued that such approach is necessary to provide for the Opportunity Cost to the Developer. In addition, it is intended that the ownership of the land would be transferred to the Client at the end of the lease period.

However, there may be equally strong arguments against such an approach, particularly with the proposal to front load the project with this land cost. The proposed approach increases the expenditure to the Client by the amount of land financing costs during the period of construction. This cost should be the responsibility of the Developer.

The consideration for the land could be effected in various alternative ways:

1. Lump sum payment based on market value on completion of construction.
2. Amortised payments based on the market value of the land at the end of the construction period. This could be added to the lease rental payments for the accommodation.
3. Acquisition of the land by the Client prior to commencement of construction based on current market value established by the relevant authority. The Client would be unable to justify going beyond such limits.

It is understood that the official valuation for the land, by the Valuation Division is approximately \$12.0M. However, the Developer had used a value of \$16.4M. The subsequent decision of the THA for upfront acquisition of the lands at the officially approved value would therefore result in a savings of \$4.4M.

- Building Construction and External Works

The initial Developer's Estimated Construction Cost for construction of the premises (building and external works) was of \$126.6M which equates to a unit construction cost of \$1,539 per square foot of the building.

It was also noted that the net building construction cost was estimated at \$1,200 per square foot plus 10% for Contingencies and a further 10% for Preliminaries. The gross rate for the building construction was therefore \$1,440 per square foot. This is very high based on experience on similar projects. Although it is appreciated that the Developer

may include a risk premium for the project due to the nature of the contract and the challenges of the location; the proposed rate was considered unacceptable.

The Consultant suggested two possible options to achieve amicable resolution of this matter:

- I. Engage the services of an independent quantity surveyor to advise on the most realistic estimate.
- II. Request the Developer to obtain competitive tenders from at least four (4) suitably qualified contractors, two of which should be nominated by the THA.

The Developer's Budget is silent on Value Added Tax, which suggests that VAT refunds obtained in relation to the capital cost of the project would be utilised to reduce the effective cost to the Developer. This savings is being passed on to the Client.

It should be noted however that the lease rental payments would be subject to VAT.

Professional Fees

The proposed professional fees were considered acceptable except for the Architecture, Legal Fees and Other Consultancy Fees.

It was suggested that the architects' fees be capped at 4.0%. If the proposed legal fees include provision for stamp duty, then it may be acceptable; otherwise it should be capped at \$250,000.

Some explanation is required for the provision of \$500,000 for Other Consultancy.

Revised Proposal

Based on negotiations between the Client (advised by the Consultant) and the Developer, the Developer agreed to submit a revised proposal. The major areas adjusted were as follows:

1. The Developer agreed to sell the Land to the THA and therefore it was not necessary to include the value of the land in the computation of lease rental payments.
2. As a result of the above, the associated finance charges were eliminated.
3. The Developer also agreed to eliminate the following costs:
 - a. Contingency provision of 10% of the construction costs, a saving of \$9.95M.
 - b. Preliminaries equivalent to 10% of the construction costs, a saving of \$10.6M.
4. The combined project management fee and Developer's overheads was reduced from 5.0% to 3.5% resulting in a direct saving of \$2.6M
5. Reduction in Developer's profit from \$23.7M to \$17.6M.



EXECUTIVE COUNCIL MINUTE

CONFIDENTIAL

No. 385 April 18, 2012

Note No. FED (2012) 48; EC 401

File No. THA(F) 1111

FOR ACTION	FOR INFORMATION
File No. THA(F) 1111 Secretary of Finance, Enterprise Development, Consumer Affairs and Cooperatives and Note.	Chief Secretary and Secretary of Public Administration, Planning and Development, Energy, State Lands and Information and Note.
Administrator, Division Finance, Enterprise Development Consumer Affairs and Cooperatives and Note.	Secretary of Agriculture, Marine Affairs, Marketing and the Environment and Note.
	Secretary of Settlements and Labour and Note.
	Secretary of Tourism and Transportation and Note.
	Secretary of Infrastructure and Public Utilities and Note.
	Secretary of Health and Social Services and Note.
	Secretary of Education, Youth Affairs and Sport and Note.
	Secretary of Community Development and Culture and Note.
	Chief Administrator and Note.

Matter considered by Executive Council on

April 18, 2012

Matter confirmed by Executive Council on

April 25, 2012



4(c) Subsequent Press Release Statement by Project Specialist Ltd.



**OFFICE OF THE CHIEF SECRETARY
TOBAGO HOUSE OF ASSEMBLY
DEPARTMENT OF INFORMATION**
Administrative Complex, Calder Hall, Scarborough, Tobago
Phone: - 639-3720/639-3421 Ext: 5047 Fax: - 660-7214
Email: tha.infodept@gmail.com

PRESS RELEASE

There are significant benefits to be gained from the BOLT (Build Own Lease Transfer) arrangement entered into by the Tobago House of Assembly (THA) with the special purpose company, MILSHIV Limited to build an administrative office complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment, according to Peter Forde, managing director of Project Specialist Limited of Chaguana, Trinidad.

The project at the junction of the Claude Noel highway and Shirvan Road in west Tobago has drawn criticism from a number of Tobagonians who felt that the Assembly could have borrowed the money instead of entering into the BOLT arrangement which was new to Tobago. The \$143 million complex will comprise a three storey building of 83,000 square feet of floor space.

Forde explained in an interview on Thursday (6th September 2012) that the THA would not have to put out any money for the project; it would pay a fixed rate at the present market price of \$15.61 per square foot per month over the 20-year period of the lease; the rate would not change as a result of inflation; Assembly would not be responsible for the external maintenance of the building constructed under the arrangement; the developer would take all the risk in the investment; at the end of every three-year period the Assembly could capitalise the rent to the end of the lease period and pay off for the building; and at the end of the 20-year period the property would automatically be owned by the Assembly.

He said to borrow money for the project required the use of Assembly funds, its own resources and collateral while the lease rental would be a charge on recurrent expenditure thus freeing up development funds for other projects.

Forde held a senior position at the Ministry of Works for 17 years and later at Republic Bank Limited and London Street Limited before launching his own consulting company in 2011. He said the BOLT arrangement was not uncommon to Trinidad and Tobago since this arrangement was entered into to build the Ministry of Works head office, the National Library, Police Stations and the Unit Trust Corporation (UTC) head office in Port of Spain, adding that a similar arrangement was used for projects in Barbados and Grenada.

2010!

He said the monthly payment of \$15.61 per square foot per month was not an unreasonable rate because there were properties in Scarborough where tenants were paying as much as \$10.00 per square foot. He stressed that even if there was inflation the rate will remain the same.

Forde said the 131,000 square feet of land which was previously owned by Amera Caribbean Development Limited was valued at \$12 million in 2006 by the Commissioner of Valuations of the Central Government and purchased by the Assembly at that price in 2011. He said all BOLT arrangements required a special purpose company for the project and as a result MILSHIV was formed as the developer. The land was then leased to MILSHIR at a pepper corn rental of \$10.00 per year for 199 years in order for it to secure long term financing for the project.

Senior legal adviser Alvin Pascall who sat in on the interview also sought to clear the air on reports that the Assembly owned the property opposite and therefore could have utilised it for the complex. He said this was far from the truth since the Assembly had no legal right to the land because although it was acquired through compulsory acquisition the Central Government had not released funds to pay off for it.

Thursday 6th September 2012

Caption: Managing director of Project Specialist Limited Peter Forde (right) addressing a media conference in Scarborough on Thursday (6th September 2012) to deal with the BOLT arrangement for the THA Administrative Office Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment. At left is THA Senior legal adviser Alvin Pascall.

4 (d) A Cost Benefit Analysis

STATEMENT

A. BACKGROUND and CONTEXT

The project originated with the need for accommodation for the various Divisions of the Tobago House of Assembly, which are currently dispersed in several locations throughout Tobago and in several properties that are rented. In its currently designed form, the facilities would provide service to the Division of Agriculture and several other Divisions.

Budget requests from 2004 onwards produced no funding for the project. Several projects suffered from this lack of funding among them being the Divisions of Education, the R.C. Primary School for Scarborough, Tourism and Transportation, Health and Community Development. Given the lack of funding and driven by the need to provide these facilities, the Assembly compiled a programme of construction, held discussions with the First Citizens Bank and obtained a very positive response to fund the programme at a cost of seven hundred and fifty million dollars (\$M 750). There was a lot of liquidity in the system that would have made the programme beneficial to the bank and the THA. FCB is the Assembly's Bank and would have led a consortium of banks to fund the programme.

The Tobago House of Assembly, based on that information and its preliminary negotiations, approached Central Government in accordance with Section 51 of the THA Act of 1996, which requires the Assembly to obtain the approval of the Minister of Finance to obtain long term loans. In successive budget presentations, all Ministers of Finance have indicated that the THA would be allowed to borrow, but when the crunch time came they all refused – citing the level of the public debt.

Consequently, the Executive Council was constrained to seek other mechanisms for satisfying the needs of the people of Tobago. The Assembly engaged in discussions with several entities in attempting to implement its construction programme, these entities included: NIPDEC, UDECOTT, FCB, ANSA MCCAL, among other many private organizations.

The business community was aware of the various projects within the portfolio under consideration. As a result, we had proposals for development of housing, construction of buildings, development of industrial sites, agricultural projects and sporting endeavours. These

are in varying stages of discussion and negotiations. Some have been aborted, some are in preliminary stages, and others are under active consideration for implementation.

In 2009, the Amera Caribbean Development Ltd., being aware of the needs of the Assembly indicated its willingness to become involved with the Assembly in a mutually beneficial project. It should be noted that it took three years of negotiation to get to this point of execution.

The Assembly was interested in the initial proposal because it satisfied two requirements, location and provision of facilities, without the extraordinary capital outlay in advance. It was also a suitable location for the Agricultural Administrative Offices. Suitability of the site is based on a number of factors:

- Most active agriculturalists live and operate in this part of the island;
- Access is facilitated by the Claude Noel Highway, avoiding the congestion in Scarborough;
- Close to the airport and seaport for facilitating the trade and regulatory issues associated with both exports and imports of agriculture.
- The marine environment activity is predominantly in this area for regulatory control, promotion of environmental conservation;
- Fishermen activity.

Moreover, given the need for facilities required by other entities within the Assembly, who operate in this part of the island, provision was included in the designs to accommodate them.

Having decided on the feasibility of the project from a viability and sustainability perspective a more robust analysis of process, and the financial and economic benefits were undertaken. In this regard, legal advice was sought from both the internal and external sources. The BOLT process was determined to satisfy the administrative, legal and conventional method of treating with the project.

B. TENDER PROCEDURE:

There are three elements of acquisition that can possibly require public participation, namely:

- Purchase of land by the Assembly.
- Lease of land by the Assembly.
- Lease of property by the Assembly.

The Purchase of Land by the Assembly and the Central Government has been based on the need for a particular parcel of land to satisfy a particular need, and the purchase is pursued either by private treaty or statutory acquisition. We can find no situation where it was necessary to enter into public tendering.

Lease of Land-: The Assembly and the Government have found it necessary to lease land to varying entities for disparate, personal, agriculture, commercial, industrial and social interests. The use of a public tendering process award leases has never been used. Moreover, once there is congruence between the usage planned for the area and the purpose of the lease approval is granted by the executive be it Cabinet or the Executive Council depending on the particulars of the specific venture, the term of the lease, the premium and recurrent rental fee is determined.

Lease of Accommodation: - Neither the Assembly nor the Government is in the habit of putting out tenders for the acquisition of property for use by them. A property is found to satisfy its usage and an executive decision is taken.

C. EARNED VALUE

In order to ensure value for money is obtained a process that involves independent professional agencies is undertaken. Valuation of the property for purchase or rental is normally done by private or Government's Valuation Department. In this case the Government's Valuator recommended a purchase price of \$M12 while the Developer requested \$M16.5. The land was bought for \$M12, consequently an immediate saving of \$4.5 M is thus realized.

With respect to the value to be gained by the Assembly the Executive Council engaged the services of Project Specialists Limited (PSL), to evaluate the proposals put forward by the Developer. Project Specialists Limiteds' recommendations were accepted and utilized unchanged in negotiations with the Developer. The following modifications were proposed by PSL.

- i. THA to acquire the land prior to construction.
- ii. Lease the land to Developer.
- iii. Lease back the property from the Developer, after construction, for twenty (20) years.
- iv. The entire property to be returned to the Assembly after twenty (20) years.
- v. Developer to finance construction.
- vi. PSL noted that Financiers would require a Special Purpose Company to insulate the assets from the main Developer organization.

Based on the advice of PSL the following modifications were negotiated that resulted in savings:

i. Developer agreed to sell the land, thereby saving the cost of amortization over the twenty year period	
	\$21.75
ii. Elimination of a contingency figure savings	\$9.95M
iii. Elimination of Preliminaries	\$10.6M
iv. Reduction of Project Management Fee	\$ 2.6M
v. Reduction in Profit	\$ 6.1M
Total saving on capital cost of	\$51M

PSL indicates the project would yield a Net Present Value (NPV) of \$66.5M to the Assembly over the twenty years. This is based on the following information:

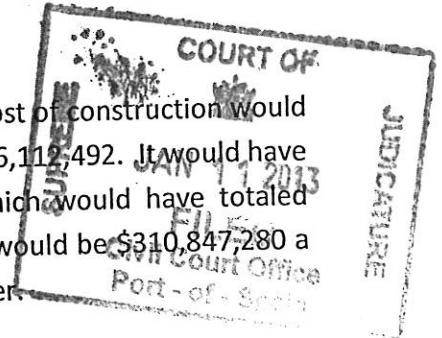
- i. A Gross Floor Area of 82,544 square feet.
- ii. Current rental price of \$9.00 per square foot per month
- iii. An annual rental increase of 4% per annum.
- iv. Appreciation of land value by 2% per annum.
- v. The residual value of the building when transferred to the Assembly in twenty (20) years would not be less than the Present value of the \$12.00 per square foot.

In simpler terms if the Assembly continued to rent 82,954 of space over the twenty years it would pay \$278,543,801 in rent for a building or buildings it would never own. By the lease purchase arrangement it would have paid out \$310,847,280; but would have a building

worth \$M377 at that time. You would have a residual value of \$377M that would not be possible with the rental option.

BOLT vs BORROWING

If the Assembly borrowed the money to build the same building, the cost of construction would have been \$117,127,332 bridging finance \$8,985,160 for a total of \$126,112,492. It would have to repay the loan over twenty years at an interest rate of 8% which would have totaled \$253,164,960. The amount to be paid out in the BOLT arrangement would be \$310,847,280 a difference of \$57,582,788 which would include a profit to the Developer.



Heavy weather has been made of the provision in the land lease that allows the Lessee a 199 year term at peppercorn rates. This is a standard arrangement in the BOLT arrangement for two major reasons:

- i. It is necessary for the Developer to have firm ownership in order to secure financing for the project;
- ii. Lower lease payments will reduce the amount the Assembly will have to pay when leasing back the property from the Developer.

This provision is counterbalanced by the essential feature of the BOLT, i.e. the Transfer of the property in good order at the end of twenty years and this is clearly stated in article 2 (i) of the Standard Lease: "To yield up such lands at the expiration or sooner determination of the said term or upon the satisfaction by the Lessor of the terms and conditions of the Office Lease which ever is earlier. In the latter case the Lessee will execute a Deed of Surrender of this lease."

The Lessee in this case is the Developer, who will surrender leasehold back to the Assembly at the end of 20 years when the lease on the building by the THA expires or before if the THA exercises the options to buy out the remainder of the lease.

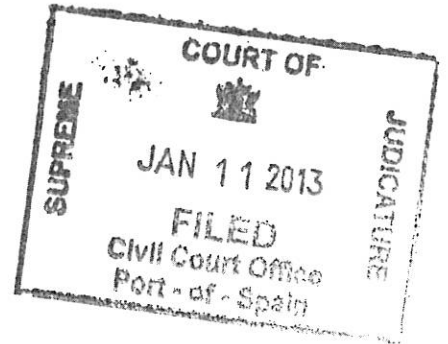
CONCLUSION

In summary the major points that emanate from this exercise are:

- i. There are several projects in its Development Programme that have remained unfunded for over a decade because the Assembly has been unable to obtain funding either through Parliamentary Appropriation or Approval to borrow. Consequently, it sought to find legitimate approaches for obtaining the desired results.
- ii. The need for a suitable site for a facility that is critical to the discharge of its mandate to the Tobago Community, is attained by this measure.
- iii. The arrangement allows for alternative financing that was not satisfied by either budgetary appropriations or by approval to borrow from government.

- iv. The legal and administrative processes appropriate for entering into purchase of property, lease of property to and from the Assembly would be duly observed.
- v. In the entire process it was guided by:
- Legal advice from internal and external sources.
 - Valuation of the Land by the Government's Valuation Department, to which it adhered.
 - Reputable independent advice from a professional firm, with a superlative track record, in the nation and region, that indicated the net benefits to be derived by the Assembly.
 - At the end of twenty years the entire property (3 acres of land and the building)will be transferred to the Assembly.
 - This Assembly can buy out the entire transaction in any three- year cycle of the twenty years.

The Executive Council based on professional and legal advice should make a decision in the best interest of the people of Tobago.



5.Executive Council Project Approval

5(a) Relevant Executive Council Minute

5(b) Departments To Be Housed in the New
Administrative Complex

5(a) Relevant Executive Council Minute



EXECUTIVE COUNCIL MINUTE

CONFIDENTIAL

No. 290 April 13, 2011

Note No. FED (2011) 32; EC 283

File No. THA(F) 11/11

FOR ACTION	FOR INFORMATION
File No. THA(F) 11/11 Secretary of Finance, Enterprise Development, Consumer Affairs and Cooperatives and Note.	Chief Secretary and Secretary of Public Administration, Planning and Development, Energy, Statelands and Information and Note.
Administrator, Division Finance, Enterprise Development, Consumer Affairs and Cooperatives and Note.	Secretary of Settlements and Labour and Note.
Secretary of Agriculture, Marine Affairs and the Environment and Note.	Secretary of Tourism and Transportation and Note.
Administrator, Division of Agriculture, Marine Affairs, Marketing and the Environment.	Secretary of Education, Youth Affairs and Sport and Note.
	Secretary of Infrastructure and Public Utilities and Note.
	Secretary of Health and Social Services and Note.
	Secretary of Community Development and Culture and Note.
	Chief Administrator and Note.

Matter considered by Executive Council on - April 13, 2011

Matter confirmed by Executive Council on - April 20, 2011

CONFIRMED

EXECUTIVE COUNCIL MINUTE NO. 290 OF APRIL 13, 2011

Financing of the Administrative Complex for the Division of
Agriculture, Marine Affairs, Marketing and the Environment.

Note No. FED (2011) 32; EC 283 was considered.

The Executive Council accepted:

the construction and financing arrangements of the Administrative
Complex for the Division of Agriculture, Marine Affairs, Marketing and
the Environment.

^{of the}
Manager, Executive Council Affairs

FED (2011) 82
THA (F) 1/1/11
April 04, 2011

Executive Council No: 223

Note to the Executive Council

Financing of Administrative Complex for the Division of
Agriculture, Marine Affairs, Marketing and the Environment

- S¹
1. The matter for consideration of the Executive Council is a draft memorandum and term sheet pertaining to the construction and financing of an Administrative Building for the Division of Agriculture, Marine Affairs, Marketing and the Environment.
 2. The attached documents have been reviewed by the Senior State Counsel and by Mr. Peter Forde who was requested to provide an independent assessment of the legal and financial proposals.
 3. The Secretary of Finance and Enterprise Development proposes that the construction and financing arrangements be accepted by the Tobago House of Assembly.
 - S²
4. The Executive Council is asked to agree.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made on this _____ day of _____ 2011 among:

- S'
- (1) The Tobago House of Assembly ("the THA"), a body corporate constituted under the provisions of s.5 of the Tobago House of Assembly Act Chap. 25:03 ("the THA Act") of the Revised laws of the Republic of Trinidad and Tobago with its principal place of business situate at [insert relevant address here] in the Republic aforesaid, and
 - (2) Dankett Limited ("Dankett"), a company incorporated under the provisions of the Companies Act Chap 81:01 of the laws of Trinidad and Tobago and having its registered office at Nos. 11-13 Victoria Avenue in the City of Port of Spain in the Island of Trinidad in the said Republic, and
 - (3) Amera Caribbean Development Ltd ("Amera"), a company also incorporated under the provisions of the said Companies Act and having its registered office at 1 El Socorro Road Ext, San Juan in the island of Trinidad. (THA, Dankett and Amera are hereinafter called individually "a Party" and collectively "the Parties")
- S'

WHEREAS:

- (A) The THA is responsible for the formulation and implementation of policy in respect of the matters set out in the Fifth Schedule to the THA Act and, for the better performance of its functions, is empowered to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duties and in particular may enter into such contracts as it deems fit for the efficient discharge of its functions;
- (B) The THA has identified the need for the acquisition of real estate on which it can cause to be constructed offices and facilities for the discharge of its administrative functions within the island of Tobago.

- (C) The THA has identified the lands located on a 3 acre site at the Corner of Shirvan Road and the Claude Noel Highway ("the Lands") and which are more particularly described in the First Schedule to this Memorandum of Understanding as suitable for its needs under Recital B.
- (D) Dankett is the owner of the Lands and is desirous of selling the Lands to the THA at the price of TT\$ 12 Million (being the market value of the Lands as at September 1, 2010 as per the findings of the Commissioner of Valuations as per his letter of September 1, 2010 attached as the Second Schedule to this MOU), for its aforesaid purposes on the basis that its affiliate, Amera be awarded a contract to procure the design and construction of the said office facilities;
- (E) Amera is a real estate developer capable of assembling a team with a view to designing and constructing the office accommodation which the THA requires
- (F) The THA is desirous of entering into an agreement for sale with Dankett in relation to its proposed purchase of the Lands and thereafter to negotiate in good faith with Amera with a view to entering into a construction contract for the design and construction of the said office facilities which construction contract may have to be assigned as part of a package of security to Amera's lenders on this project
- (G) Amera shall procure its own financing for the project which will require that it lease the Lands at a nominal rent from the THA, construct the said office facilities thereon at a cost not to exceed TT\$143,236,993.62 (save as per variations costed and agreed thereon in manner set out in the said construction contract and any additional interest and financing charges associated therewith) with a view to leasing the said office facilities to the THA for a period of twenty years at a monthly rent over the twenty year period which shall not be less than TT\$1,198,091.61 subject only to revision upward to reflect any additional or unexpected financing costs not already contemplated in the projections upon which the said annual rent estimate is now based;
- (H) The Parties have agreed to implement a Memorandum of Understanding ("MOU") to govern this arrangement.

NOW THIS MOU WITNESSETH as follows:

1. OBLIGATIONS OF THE PARTIES

A. THA

- (i) The THA shall procure all internal approvals and pass all requisite resolutions for entry into this MOU and in due course all the transactions contemplated thereby including but not limited to: (a) entry into the agreement for sale herein (b) the proposed construction contract for the erection of the office buildings and facilities herein described, and (c) entry into the lease to Amera and the entry into the leaseback from Amera at the minimum lease payments set out above and (d) any necessary financing and documentation/security related thereto (whether required for itself or by Amera's lenders) for the said construction as shall be required.
- (ii) The THA shall on the execution of the MOU cause its attorneys to prepare an agreement for sale relative to its acquisition of the Lands on customary terms, inter alia, as to the provision of unencumbered title by Dankest to the Lands and to completion within 30 days of execution of the said agreement for sale and shall enter into same no later than 15th April, 2011.
- (iii) The THA shall negotiate in good faith the finalization and execution of the terms of its proposed contract with Amera and any financing and security documentation for Amera's lenders to which it is required to be a party for the design and construction of the office building and facilities (being 82,954 sq. ft over three floors in extent) on the Lands in accordance with the preliminary designs completed by Messrs. Fojo Design & Development Limited as per the Third Schedule to this MOU and which shall include but not be limited to buildings which shall include the following systems and services:
- (a) Air-conditioning
 - (b) Generators
 - (c) Elevators
 - (d) Provision for UPS facilities
 - (e) Provision for the disabled

- (d) 166 vehicle parking spaces
- (e) Audio visual facilities and rooms
- (h) Catering facilities
- (i) Library facilities
- (j) Entertainment spaces
- (k) Landscaping
- (l) Conference facilities to specifications
- (m) Security and Life Support Systems which shall include intrusion security alarm system, door access control system, closed circuit television system, fire alarm system, intercom system and security facilities for guards.

(iv) ~~the THA agrees that in the event of its inability to conclude negotiation of the construction contract it shall in any event refund to Amera all its proven expenses involved in preliminary design works which have been commenced as at the date of this MOU.~~

B. Dankett

Dankett shall negotiate and enter into the agreement for sale of the Lands no later than April 15, 2011

C. Amera

- (i) Amera shall prepare a first draft of the construction contract between itself or its nominee and the THA no later than *[insert date here]* and shall enter into good faith negotiations with the THA to finalise and execute same no later than *[insert date here]*
- (ii) Amera shall with all due diligence tender or otherwise procure financing arrangements with a view to finalizing costs related to this project necessary to achieving final agreement on a cap of lease payments in relation to the leaseback of the Lands by THA from Amera as set forth above
- (iii) Amera shall pending the finalization of the agreement set out at (i) above, immediately upon the execution of the agreement for sale by Dankett in favour of the THA, commission, at rates to be agreed with the THA, design works to be supplied

by Fojo Design & Development Ltd. for the said office facilities to be supplied no later than [insert date here] for approval by Amera and the THA

- (iv) Amera shall be entitled to be refunded all costs of procuring the said design work together with all its disbursements related thereto in the event that, as set out at A(iv) above, it is unable to conclude with the THA a construction contract for the construction of the said office facilities on or before [insert date here].

8

2. **CONFIDENTIALITY**

- 2.1 The terms of this MOU shall be treated as confidential by the Parties and shall not be disclosed by any Party to a third party without the prior written consent and joint approval of the other Parties.
- 2.2 No public or other announcements or press releases concerning the endeavours or transactions contemplated by this MOU shall be made by any Party hereto without the prior written consent and joint approval of the other Parties.

3 **DURATION OF THIS MOU/MODIFICATION**

- 8
- 3.1 This MOU shall become effective immediately upon signature by the Parties and shall remain in force and effect unless the Agreement for Sale is not entered into on or before [insert date here] or the construction contract is not entered into on or before [insert date here] whichever date is the later. Provided always that all costs including attorney's fees and other disbursements consequent upon reliance being placed on this MOU by Amera shall be payable to Amera. This MOU can be varied at any time by agreement in writing by all Parties.

4 **TERMINATION AND SETTLEMENT OF DISPUTES/BINDING EFFECT**

- 4.1 In the event of a dispute, arising out of or relating to this MOU or the breach thereof, either of the Parties shall serve notice on the other giving particulars of the dispute and requesting a meeting to attempt to reach an amicable resolution of the dispute during a period agreed to by the Parties.

4.2 It is intended that this MOU be binding on the Parties.

5 LIABILITY RESTRICTION

None of the Parties to this MOU shall be liable or obliged to each other under any clause of these terms and conditions or under contract, negligence, strict liability or other legal or equitable theory for any indirect, special, incidental, lost profits, consequential or punitive damages.

6 NOTICES

All notices under the MOU shall be in writing and shall be sent by email or registered or recorded delivery post to the party being served at the address and marked for the attention of the signatories set out below. The date of service shall be deemed to be the day following the day on which notice was transmitted or posted as the case may be:

For the THA:

Address: *[please insert the address to be used here]*

For the attention of: the Chief Secretary

Email: *[insert email address here]*

For Dankett:

Address: *[please insert the address to be used here]*

For the attention of: The Chairman

Email: *[insert email address here]*

For Amvera:

Address: *[please insert the address to be used here]*

For the attention of: The Chairman

Email: [insert email address here]

AS WITNESS WHEREOF the Parties have set their hands hereto the day and year first above written.

For: The Tobago House of Assembly

The Chief Secretary

Witness

For: Dankett Limited

Chairman

Witness

For: Amera Caribbean Development Limited

.....
Chairman

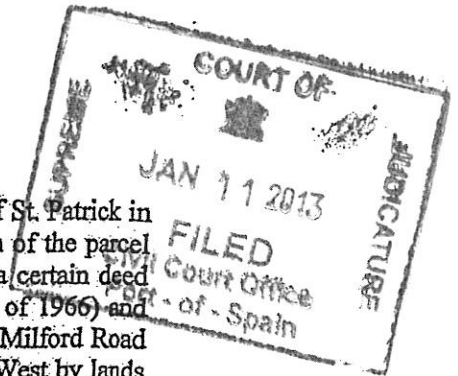
.....
Witness

The FIRST SCHEDULE above referred to

All and Singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising One Acre (being portion of the parcel of land described in the Second Part of the Schedule to a certain deed dated 24th September, 1966 and registered as No. 11281 of 1966) and bounded on the North by Shirvan Estate on the South by Milford Road on the East by a road reserve fifty links wide and on the West by lands of Marjorie Tsoi-a-Patt which said parcel of land is shown coloured pink in the plan annexed and marked "B" to the said deed No. 11281 of 1966

All and Singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising One Acre (being portion of the parcel of land described in the Second Part of the Schedule to a certain deed dated 24th September, 1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Milford Road on the East by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said deed No. 11281 of 1966

All and Singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising One Acre (being portion of the parcel of land described in the Second Part of the Schedule to a certain deed dated 24th September, 1966 and registered as No. 11281 of 1966) and bounded on the North and East by Shirvan Estate on the South by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "D" to the said deed No. 11281 of 1966



The SECOND SCHEDULE (above referred to)

10/09/2010
M



MINISTRY OF FINANCE
VALIDATION DIVISION
1100 Highway 70, P.O. Box 21, TRINIDAD
TELEPHONE No. 621-4221 & FAX: 621-4274

September 1, 2010

The Administrator
Division of Agriculture, Marine Affairs
And the Environment
General Administration
Glen Road
Scarborough
Trinidad

Dear Sir:

Proposed Acquisition of land situate at the corner of the Grande
Noel Highway and Shiran Road, Tobago

Refer to all previous correspondence and discussions regarding the above
subject.

Please be advised that the sum of TWELVE MILLION DOLLARS
(\$12,000,000.00) represents a fair estimate of the current market value of
the subject parcel of land comprising 1100.00 acres in Tobago.

Yours faithfully

Commissioner of Valuations
COMMISSIONER OF VALUATIONS

32

The THIRD SCHEDULE above referred to

Designs attached

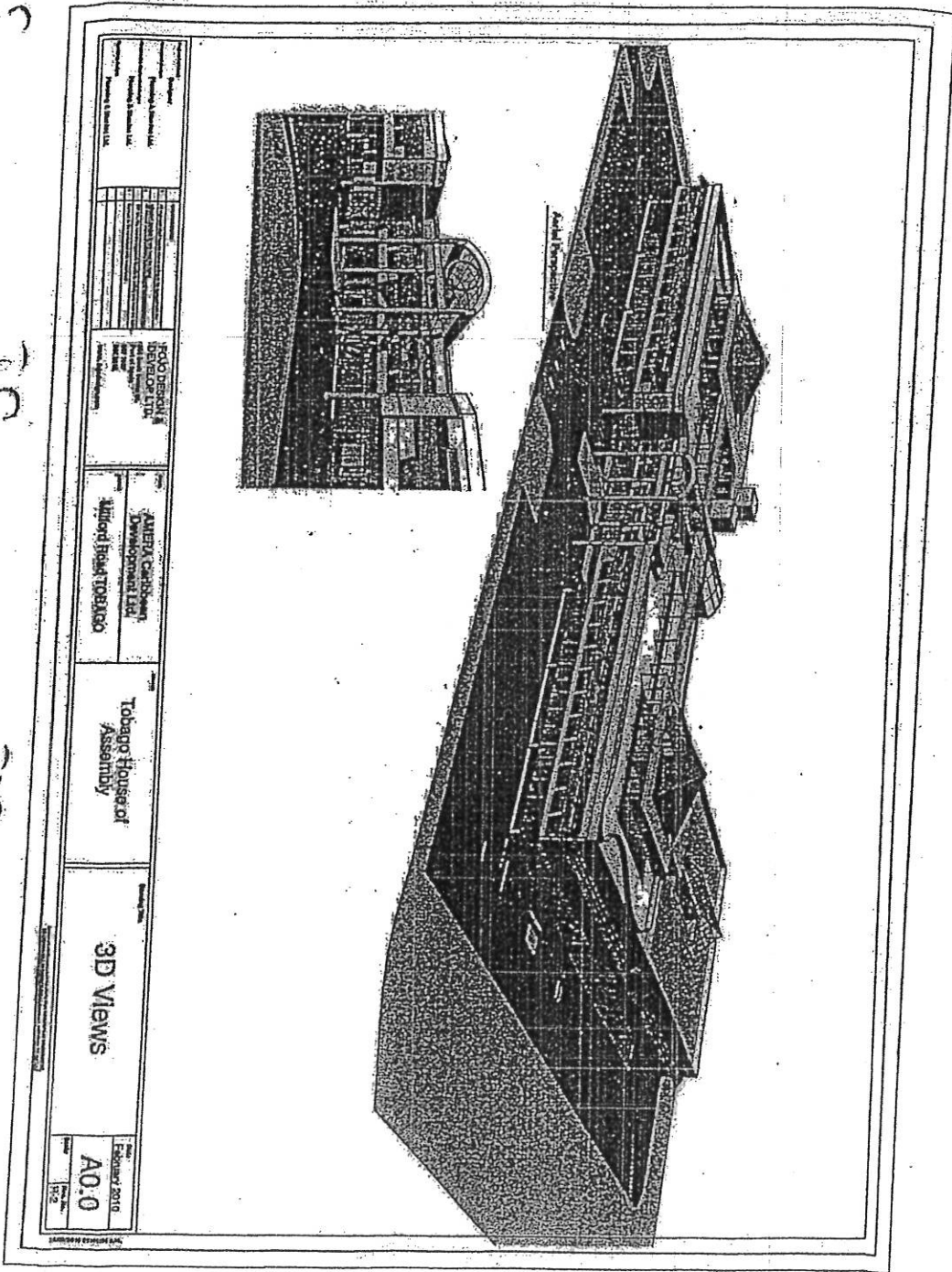
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Project Name Project Location Project Number Project Date	Project Description Project Status Project Manager Project Team	Project Budget Project Cost Project Revenue Project Profit	Project Risk Project Quality Project Safety Project Compliance	Project Schedule Project Milestones Project Deliverables Project Key Dates	Project Stakeholders Project Roles Project Responsibilities Project Authority	Project Documents Project Reports Project Drawings Project Specifications	Project Tools Project Software Project Hardware Project Equipment	Project Metrics Project KPIs Project Indicators Project Benchmarks	Project Notes Project Comments Project Observations Project Recommendations
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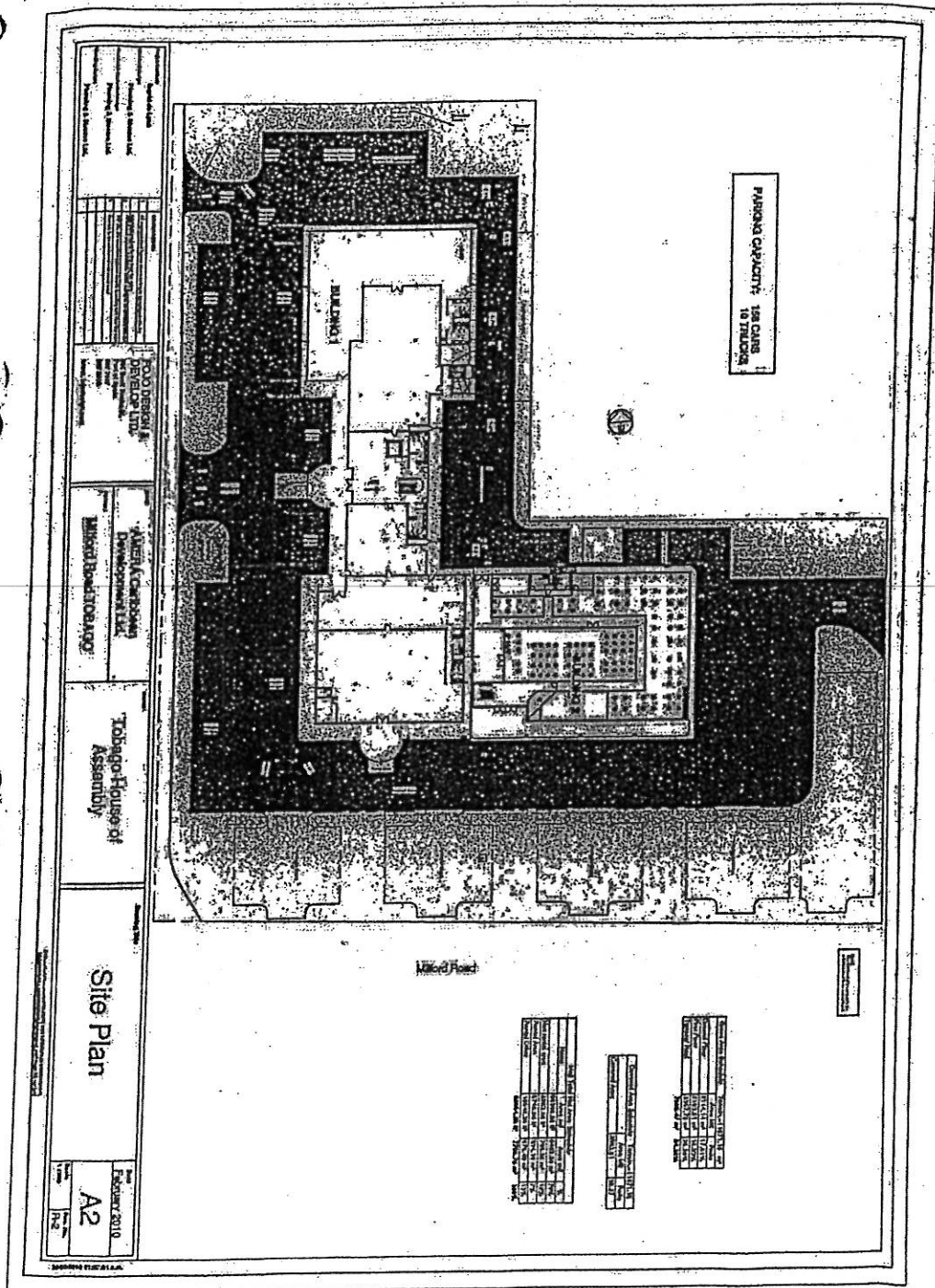
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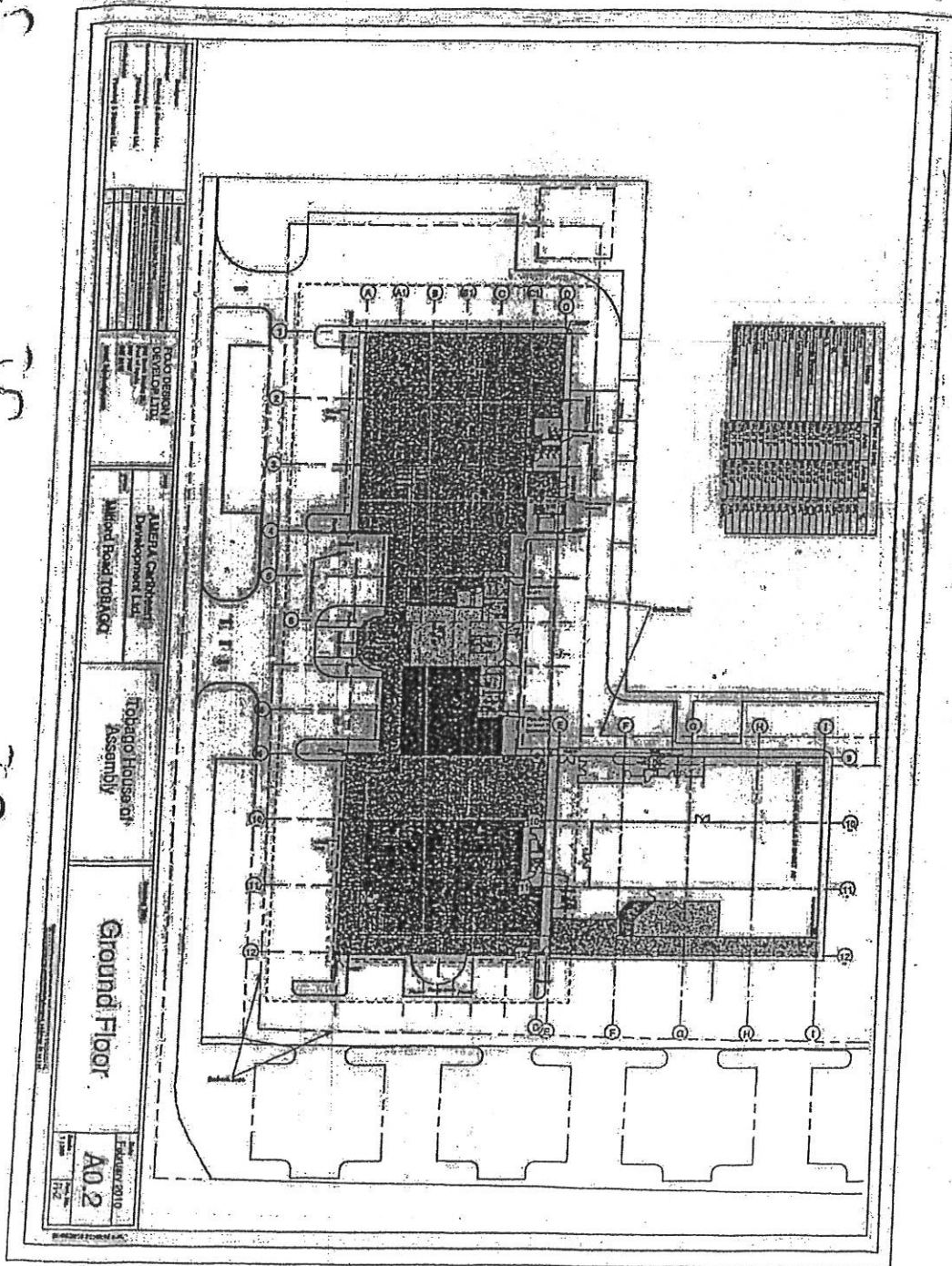
AMERICA CAPITAL DEVELOPMENT LLC

Tobacco House of Assembly

3D Views

February 2010
A0.0





CAPITAL COST and MONTHLY COST ANALYSIS

Division of Agriculture, Marine Affairs and Environment, Tobago

DEVELOPMENT BUDGET

	Notes	Unit	Rate	Total Cost (TTD)	
A. Land Acquisition					
Land Value	Current Market value	130,000	0 \$/sqft	\$	To be paid separately as per Government valuation, not to be included in monthly rental payments
B. Construction (HARD COSTS)					
New construction buildings	Estimated at \$1200 per			\$ 99,422,600.00	
Contingency	percent of construction cost		0%	\$	Included in rate per
External Works	provisional sum			\$ 8,519,895.30	
Professional Fees			0%	\$	Included in rate per
Hardcost Subtotal				\$ 108,942,095.30	
C. Professional Fees					
Architects	percent of construction cost		4.0%	\$ 4,237,883.81	reduced from 4.2%
Civil/Structural Engineer	percent of construction cost		2.0%	\$ 2,198,000.00	
MEP Engineer	percent of construction cost		2.0%	\$ 2,198,000.00	
Geotech Survey	Estimate			\$ 750,000.00	
Legal Fees	Estimate			\$ 20,000.00	
Project Mgmt & Disposal Overhead			1.5%	\$ 1,634,773.34	reduced from 5%
County Survey				\$ 704,000.00	
Other Consultancy Fees, Reimbursable Estimate				\$ 200,000.00	
Soft Cost subtotal				\$ 11,803,867.15	
Development Cost to be financed:				\$ 120,745,962.45	
D. PROJECT FINANCING Fees and Costs					
Bank Charges and Legal Fees	provision			\$ 800,000.00	
Finance Interest 1	(on Construction cost)		8.00%	\$ 7,874,378.31	
Finance Interest 2	(on Land cost)		0.00%	\$	reduced to zero
Financing Fees Subtotal				\$ 8,674,378.31	
sub total				\$ 129,420,340.76	
Sponsor Profit		15.00%		\$ 19,413,051.11	
Total Development Cost Estimate				\$ 148,833,391.87	
Monthly Payment fixed for 20 years				\$ (1,180,097.81)	
after which an's facility transferred to TTA at no additional or further costs					

AMERA

3/22/2011

DEPARTMENTS/UNITS TO BE HOUSED IN NEW
AGRICULTURAL HEADQUARTERS

1. General Administration:

- Office of the Secretary
- Office of the Administrator
- Accounts
- Human Resources
- Communications
- IT
- Internal Audit
- Event Planning
- OSH

2. Department of Food Crop Production:

- Office of Director
- Office of Agricultural Officer II
- Extension Supervisors
- Crop Protection
- Food Security

3. Office of the Technical Officer

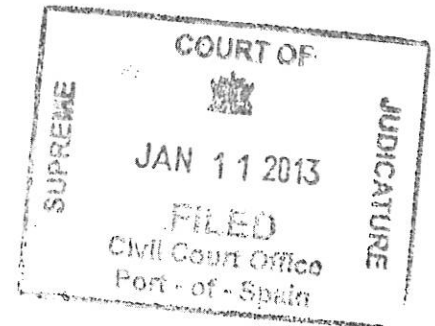
4. Office of the Director of Agriculture(New)

5. Livestock Production Unit

6. Office of Deputy Director of Agriculture(New)

7. Department of Environment and Natural Resources:

- Office of Director
- Office of Deputy Director
- Forestry Unit



- Coastal Management Unit(New)
- Climate Change Unit(New)
- Wetlands Management Unit
- Wildlife Management Unit

8. Department of Fisheries and Marine Resources:

- Office of Director
- Marine Parks Unit
- Fisheries Unit
- Aquaculture Unit
- Statistics and data Collection

9. Planning and Statistics Unit

10. Project Implementation Unit

11. Conference Rooms



6. The Legal Structure

- 6(a) The Office Lease
- 6(b) The Land Lease
- 6(c) Letters to / from Fitzwilliam & Stone
- 6(d) Rectification Deed
- 6(e) Highlights of Special Lease Provisions
- 6(f) The Escrow Account

6(a) The Office Lease

TRINIDAD AND TOBAGO

"Land Lease"

"A"

that the above-mentioned
has been prepared by me
David Michael Yung
12th
January 2012.

David Michael Yung
COMMISSIONER OF AFFIDAVIT.

INGRID SAMUEL KERR
Commissioner of Affidavits
12/1/12
Date



Prepared by me

DAVID MICHAEL YUNG
Attorney at Law,
Elizabeth Stone,
Furness, Smith & Morgan,
48-50 Sackville Street,
Port of Spain.

12:01:12
17:01:12
17:01:12
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THIS LEASE is made on the 21st day of November In the Year
of Our Lord Two Thousand and Eleven between THE TOBAGO HOUSE OF
ASSEMBLY a body corporate constituted under the provisions of s.5 of the
Tobago House of Assembly Act 25:03 (hereinafter called "the Lessor" which
expression where the context so admits shall include the reversioner for the time
being immediately expectant on the term hereby created) of the One Part and
the MILSHIRV PROPERTIES LIMITED a Company duly incorporated under
the Companies Act, Ch. 81:01 of the Laws of Trinidad and Tobago and having its
registered office at 1 El Socorro Extension San Juan In the Ward of St. Ann's in
the Island of Trinidad (hereinafter called "the Lessee" which expression where
the context so admits include its successors in title and assigns of the Other Part.

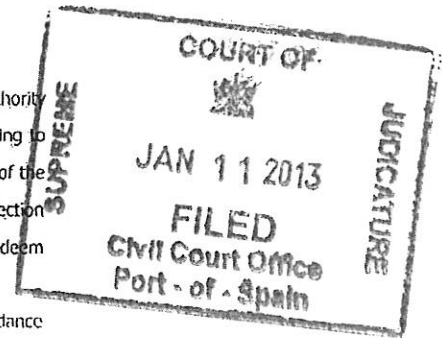
WHEREAS:

- A. The Lessor is seized and possessed in fee simple of the lands described in the Schedule hereto (hereinafter called "the said Lands").
- B. The Lessee has agreed with the Lessor to construct an office building and facilities (being 82,954 s.f. over 3 floors in extent) on the said Lands ("the said Office Facility") in accordance with plans and specifications hereto annexed and marked "A".
- C. On completion of the said Office Facility, the Lessee will lease to the Lessor the Office Facility for a term of 20 years in accordance with the terms and conditions of the draft Deed of Lease ("the Office Lease") hereto annexed and marked "B".

WITNESSETH as follows :-

1. In consideration of the rent hereby reserved the Lessor hereby demises unto the Lessee the said Lands TO HOLD the said Lands unto the Lessee for the term of one hundred and ninety nine (199) years commencing 1st day of December, 2011 at the annual rent of Ten Dollars (\$10.00) to be paid on the first day of January of each and every year during the said term.
2. The Lessee hereby covenants with the Lessor to the intent that the obligations may continue throughout the said term as follows -
 - (a) To pay the rent hereinbefore reserved in advance on the first day of January of each and every year of the term hereby granted.
 - (b) At all times during the said term to comply in all respects with the provisions and requirements of the competent authorities and all regulations or orders made by them in respect of the said Lands whether as to the permitted user hereunder or otherwise and to indemnify (as well after the expiration of the said term by effluxion of time or otherwise as during its continuance) and keep the Lessor indemnified against all liability whatsoever including costs and expenses in respect of such matters. And forthwith to produce to the Lessor on receipt of notice thereof any notice order or proposal

therefor made given or issued to the Lessee by a planning authority under or by virtue of any Act or regulation affecting or relating to the said Lands and at the request of the Lessor and the cost of the Lessee make or join with the Lessor in making every such objection or representation against the same that the Lessor shall deem expedient



- (c) To construct the Office Facility on the said Lands in accordance with the attached plans and specifications.
- (d) To permit the Lessor its duly authorised agents surveyors and others at all reasonable times upon previous written notice to enter into and upon and view the state and condition of the said Lands or the actual user thereof and with due diligence after the Lessor's agents or surveyors shall have given to the Lessee or left on the said Lands a notice in writing of any defects or wants of reparation found thereupon in accordance with the covenants hereinbefore contained well and substantially to repair and make good the same.
- (e) Not to assign underlet or part with or share the possession or occupation of the said Lands or any part thereof without the previous written consent of the Lessor such consent not to be unreasonably withheld.
- (f) Not to use or permit or suffer the use of the said Lands or any part thereof for any illegal or immoral purposes.
- (g) Not to do suffer or cause to be done anything which is or may be or may become a nuisance or annoyance to occupiers of adjoining premises or of any premises in the neighbourhood.
- (h) To indemnify and save the Lessor harmless from any liability for injury or damage in or upon the said Lands to any person or property caused or contributed to by the Lessee his servants agents or persons doing business with him whether by negligence or otherwise and for injury or damage to the person and property of the Lessee his servants agents or persons doing business with

him by whomsoever caused and whether by negligence or otherwise.

- (i) To yield up the said lands at the expiration or sooner determination of the said term or upon the satisfaction by the Lessor of the terms and conditions of the Office Lease whichever is earlier. In the latter case the Lessee will execute a Deed of Surrender of this lease.
- (j) To pay forthwith unto the Lessor its costs and expenses of and incidental to the preparation execution and registration of this Lease and any counterpart thereof.

3. The Lessor hereby covenants with the Lessee as follows:-

- (a) To pay all rates taxes and assessments levied on the said Premises.
- (b) To comply in all respects with the provisions of all statutes and instruments pursuant to them for the time being in force and the requirements of any competent authority relating to the said Premises or anything done in or upon it by the Lessor and to indemnify the Lessee against all actions proceedings claims or demands which may be brought or made by reason of default in compliance with such statutes or instruments or requirements.
- (c) That the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on the part of the Lessee contained shall peaceably hold and enjoy the said lands throughout the said term without any interruption by the Lessor or any persons rightfully claiming under or in trust for the Lessor.
- (d) To execute the Office Lease on the completion of the Office Facility, which completion shall be certified by the issuance of a Practical Completion Certificate by the Lessee's architect.

4. **PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED** that

- (a) If the rent hereby reserved or any part thereof shall at any time be unpaid for the period of thirty (30) days after becoming payable

(after formerly demanded) or if the covenants on the Lessee's part herein contained shall not be performed or observed or if the Lessee should be adjudged bankrupt or being a company shall be wound up (except for the purpose of reconstruction or amalgamation) or shall be put into receivership and in any such case it shall be lawful for the Lessor at any time thereafter to re-enter upon the said Lands or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the Lessor's right of action in respect of any antecedent breach of the Lessee's covenants herein contained.

- (b) In these presents, the singular includes the plural, the masculine includes the feminine and the neuter as the case may be and the obligations of the Lessee if more than one individual or corporation shall be deemed to be joint and several obligations.
- (c) Any notice required to be served hereunder by the Lessor on the Lessee shall be sufficiently served on the Lessee if left addressed to the Lessee at the address given in these presents or forwarded by registered post addressed to it there and any notice required to be served hereunder on the Lessor shall be sufficiently served on the Lessor if left at its registered office or forwarded by registered post addressed to the Lessor there and a notice sent by post shall be deemed to be received one week after it shall have been posted.
- (d) This lease embodies the entire understanding of the parties relating to the said Lands and to all the matters dealt with by any of the provisions of this lease.
- (e) The Lessee acknowledges that this lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Lessor except any such statement or representation that is expressly set out in this lease.
- (f) If any question difference or dispute shall arise between the parties hereto or any person persons or corporation claiming under them respectively concerning or touching the construction of any clause

herein contained or of the rights, duties or liabilities of the parties hereto or in any way touching or arising out of these presents the same shall be referred to the determination of a single arbitrator if the parties can agree on one, or otherwise to two arbitrators one to be appointed by each party to the dispute or an umpire to be appointed by such arbitrators before proceeding in the reference in accordance with the Arbitration Act Chapter 5:01 or any statutory re-enactment or modification for the time being in force.

IN WITNESS WHEREOF the Common Seal of the Lessor was hereunto affixed the 28th day of December in the year of Our Lord Two Thousand and Eleven and the Common Seal of the Lessee was hereunto affixed the 21st day of November in the year of Our Lord Two Thousand and Eleven.

THE SCHEDULE REFERRED TO ABOVE:

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September, 1966 and registered as NO. 11281 of 1966) and bounded on the North by Shirvan Estate on the South by Milford Road on the East by a Road Reserved fifty links wide and on the West by lands of Marjorie Tsoi-a-Pait which said parcel of land is shown coloured pink in the plan annexed and marked "D" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Milford Road on the

East by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 21st September 1966 and registered as No. 11281 of 1966) and bounded on the North and East by Shirvan Estate on the South by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "D" to the said Deed No. 11281 of 1966.



SIGNED AND DELIVERED by the
 the within-named
 Dr. Ellis Buffis
 Chief Administrator in the office of the
 Chief Secretary for and on behalf of and
 as and for the act and deed of the
 Tobago House of Assembly in the
 presence of:

EB *Buffis*

CLAUDETTE AN TINE
 ADMINISTRATIVE COMPLEX
 CALDER HALL
 TOBAGO
 SECRETARY

Clair *Alvin*
Alvin Pascall

The Common Seal of
 MUSHRY PROPERTIES LIMITED
 was hereunto affixed by
 Joseph Ramkel
 its Secretary in the presence of
 JOHN RAMSAY
 one of its Directors by order of
 the Board of Directors and
 signed by them in conformity
 with the Articles of Incorporation
 thereof in the presence of:



Annie Ramsdooon
 Executive Assistant
 Tradexone
 # 1 El Socorro Road Ext
 San Juan


Annie Ramsdooon

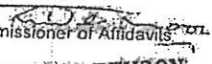
I, ALVIN PASCALL of Administrative Complex Calder Hall in the/.....

TRINIDAD AND TOBAGO

Island of Tobago Attorney-at-Law make oath and say that I was personally present on the 28th day of December, 2011 together with Claudette Arthur Secretary at Administrative Complex Caker Hall aforesaid and did then and there see ELLIS BURRIS the Chief Administrator in the office of the Chief Secretary of The Tobago House of Assembly one of the parties to the Deed hereto prefixed and marked "A" purporting to be a Deed of Lease made between THE TOBAGO HOUSE OF ASSEMBLY of the One Part and MILSHIRY PROPERTIES LIMITED of the Other Part affix the Common Seal of The Tobago House of Assembly to the said Deed and he then subscribed his name to the same in my presence and in the presence of the said Claudette Arthur and that the Seal thereto affixed is the Common Seal of The Tobago House of Assembly which was so affixed in accordance with the terms of his appointment and that the signature "E. Burris" thereto subscribed is of the true and proper handwriting of the said ELLIS BURRIS and that the signatures "Alvin Pascall" and "C. Arthur" thereto subscribed as of the witnesses to the execution of the same by The Tobago House of Assembly in manner as aforesaid are of the true proper and respective handwritings of me this deponent and of the said Claudette Arthur.

Sworn to at 11, ROBERT STREET
San Fernando, Tobago
this 28th day of December, 2011.


Before me,


Commissioner of Affidavits
CEWILL E. DENOON
Commissioner of Affidavits
Tobago.

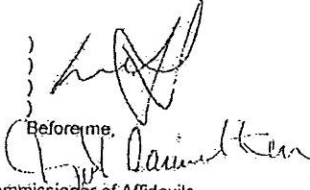
TRINIDAD AND TOBAGO

I, DAVID MICHAEL YUNG of 48-50 Sackville Street in the City of Port of Spain in the Island of Trinidad Attorney-at-Law, make oath and say that I was personally present together with ANNIE RAMSOOGOON Executive Assistant on the 21st day of November 2011 at Nos. 48-50 Sackville Street aforesaid did and then and there see JOSEPH RAHAEL the Secretary of MILSHIRV PROPERTIES LIMITED (hereinafter called "the Company") one of the parties to the Deed hereto prefixed and marked "A" purporting to be a Deed of Lease and made between The Tobago House of Assembly of the One Part and the Company of the Other Part affix the Common Seal of the Company to the said Deed in the presence of JOHN ABOUD a Director of the Company; that I also did then and there see the said JOSEPH RAHAEL and JOHN ABOUD sign the said Deed; that the seal affixed thereto is the common seal of the Company and which was so affixed by order and authority of the Board of Directors and in conformity with the Articles of Incorporation of the Company; that the signatures "Joseph Rahael" and "John Aboud" to the said Deed subscribed are respectively of the true and proper handwritings of the said JOSEPH RAHAEL and JOHN ABOUD and that the signatures "David M. Yung" and "A. Ramsagoon" to the said Deed subscribed as of the witnesses to the execution of the same by the Company in manner aforesaid are of the proper handwritings of the said ANNIE RAMSOOGOON and of me this deponent.

IN FIDELITY
HONORABLE
COMMISSIONER OF AFFIDAVITS

CA

Sworn to at No. 48-50 Sackville Street in the City of Port of Spain this 12th day of January 2012.

Before me,

Commissioner of Affidavits

HONORABLE SAMUEL-KERR
Commissioner of Affidavits
12/1/12
Date

"A"

DESIGN NARRATIVE
FOR
THE ADMINISTRATIVE OFFICES
Corner of Milford Road and Shirvan Road

1. OUTLINE OF DEVELOPMENT

The proposal is to Design and Construct an administration building, all external service buildings and car parking as shown on the guide presentation drawings as attached to this document. The administrative building will be generally a two storey structure with a rooftop terrace and provision for two office spaces on the roof level. The administration building will be an office facility structure for use without major modification over the next 20 years.

The land area is approximately 11871.16 square meters and located at the corner of Milford Road and Shirvan Road, Tobago.

The total BUILDING GROSS AREA of approximately 8152.65 square meters is divided as follows:

Ground floor: 3039.85 sq M
First floor: 2976.33 sq M
Terrace: 2222.69 sq M

The administration building will also include:

- One (1) Elevator - 13 passenger
- Standby Generator system
- Fire & Security alarm system
- Adequate office lighting illumination
- IT Cable Network
- MEET all Fire codes and requirements

Externally the building will cater for:

HV room
Garbage collection area
Sewage disposal facilities as required.
Adequate water storage facilities/pump station
Security Booth
Adequate Parking for cars and service vehicles.
Allowance for handicapped spaces.
Adequate Car Park and security lighting
Landscaping

2. OUTLINE BUILDING SPECIFICATIONS

a). General Proposal:

The design and construction will be carried out in accordance with all applicable building codes and standards and adhering to the client brief, guide presentation drawings and performance narrative as outlined in the Architectural, Structural, Civil and MEP briefs.

b). Materials

Materials so far as procurable should be of the best quality consistent of the character of the work and obtained from a reputable manufacturer or supplier. The choice of materials must all combine to provide an environmentally friendly structure and surroundings.

3. MAIN BUILDING

a) Foundations and floor slab

The foundation and floor slabs will be constructed generally as follows but in strict accordance with the guide structural specifications.

R.C pad footings, ground beams and concrete ground floor slab in O.P reinforced concrete on hardcore bed, and sand blinding, DPC membrane.

b). Frame

The frame will be constructed of structural steel unless otherwise proposed but in strict accordance with the guide structural specifications.

c). Upper floors and roof

The suspended first floor and roof slab shall consist of reinforced concrete or as otherwise proposed but in strict accordance with the guide structural specifications.

d). Staircases

The internal staircases will be constructed of reinforced concrete and meet all applicable fire codes. Staircases to be tiled with non-skid ceramic tiles

e). Fire Escape

The external fire escape shall have a straight flight and constructed of structural steel unless otherwise proposed by the contractor. Staircase will meet all applicable codes and standards as outlined by the local fire agency.

f). External walls

External walls to be constructed of reinforced block work or as otherwise proposed but in strict accordance with the guide structural specifications.

g). Internal Walls

Internal walls to be constructed of concrete block or in metal frame/gypsum where applicable or as otherwise proposed but in strict accordance with the guide structural specifications

h). Roof waterproofing over concrete floors.

The waterproofing to the exposed concrete slab area should be two-ply roofing system with appropriate drainage or as otherwise proposed and approved. Any selected system must meet a 10 year leak free guarantee.

gpc

i). Roofs over the two office areas.

The roof framing is to be constructed of lightweight steel and covered with minimum 24 G pre painted aluminum sheeting with minimum 10 year guarantee. Construction will be in strict accordance with the guide structural specifications.

j.) Roof over Terrace walkways and entrance feature.

Roofs over terrace walkways to be off pre painted aluminum finish and supported by steel structure. The roof over entrance feature to be constructed of rolled aluminum and tempered glass to approved detail. Must meet 10 year guarantee standard.

k). External Cladding.

Aluminum composite panels secured to frame and be of lightweight steel or aluminum structure. Must meet minimum structural specifications and approved.

l). Windows/Shop Fronts.

Anodized aluminum frame with tempered glass by approved manufacturer

m). Entrances - Anodized aluminum narrow style entrance doors in glazed curtain wall. Doors to have standard hardware including automatic closers. Curtain wall to be glazed with tempered glass.

n). Sunshades.

Aluminum louvers on aluminum framing. Must meet acceptable structural support standards and approved.

o). Elevator

There will be one (1) 13 passenger elevator serving the ground, first and roof level. The elevator will be of standard design with aluminum panel doors. Elevator will be encased in structural reinforced concrete shaft as per structural requirements and meet all fire/safety codes.

p). External works

Car Park paving
Concrete curbs
Drains
Rough Grano to exterior walkway
Landscaping
External lighting for car parking and security

4. INTERNAL ARCHITECTURAL CONSIDERATIONS

a). Ceilings

Public areas entrances and internal office lobby or reception areas-
Gypsum ceiling on suspended metal frame with tapered joints and painted.

General offices, private offices, toilets (public and private), storerooms
Suspended ceiling on aluminum grid (fully accessible)

External soffits- Plysem on metal frame with painted finish.

b) Floor finishes:

Public areas- Porcelain tiles with approved non skid finish and specification laid on smooth screed
and fixed with approved adhesive/bonding agent. Porcelain skirting tiles to match

General offices, Toilets - Ceramic tile with approved non skid finish laid on smooth screed and fixed
with approved adhesive/bonding agent. Ceramic skirting tile to match

Private offices and Training rooms- Commercial grade carpet. Timber skirting.

c). Wall finishes

Public areas- Paint finish on smooth wall

General offices - paint on masonry and gypsum walls

Typical paint spec shall be one coat primer and two (2) coats finishing.

Toilets: Ceramic wall tiles to 1800mm throughout and paint.

d). Doors

General office- Semi-solid flush doors with vision panels
Private offices- Semi-Solid flush door
Toilet doors- Solid flush doors- Partition doors to toilets where applicable.

e). Ironmongery-

Locks- High quality Schlage or equal
Hinges- high frequency heavy duty aluminum hinges
Kick plates and closures where applicable.

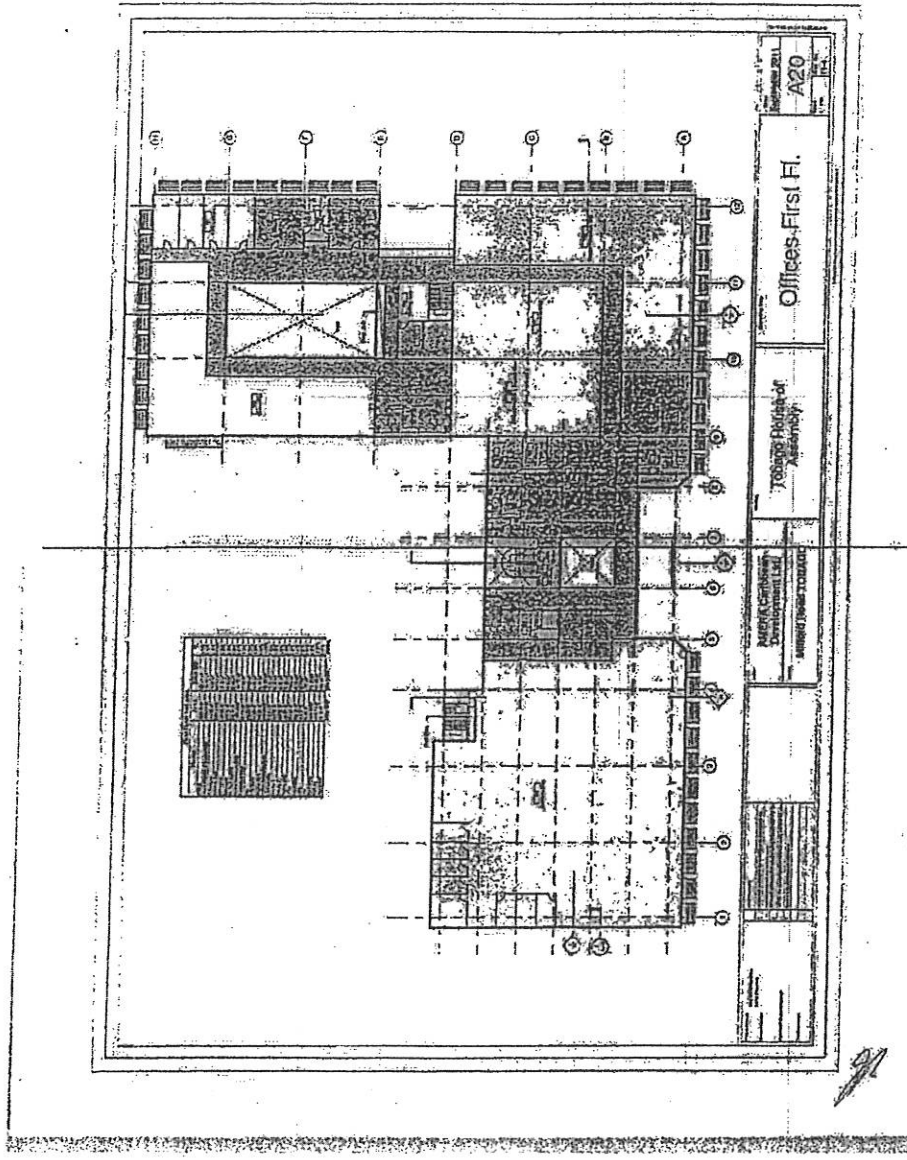
f). Internal partitions

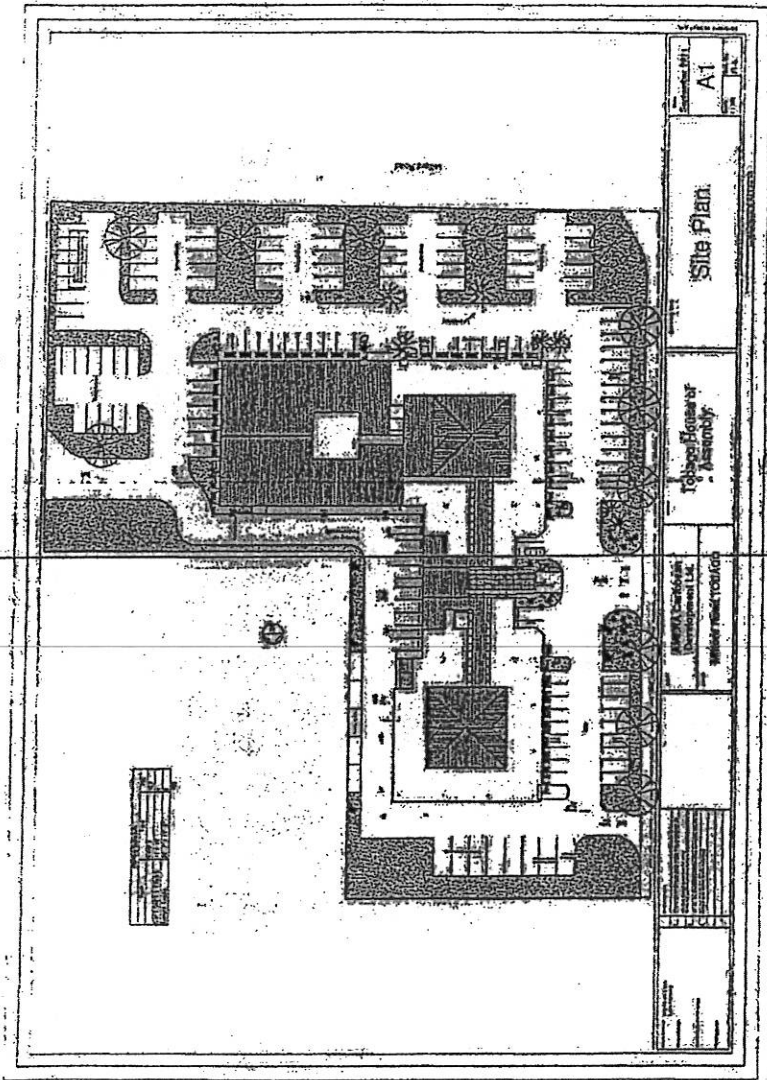
Open office cubicles- Gypsum partitions to 5'0"
Private offices- Full height gypsum or glass partition with aluminum frames

g). MEP Considerations

All designs and installation will be guided by the MEP performance narrative.

Plumbing fixtures and accessories- High quality fixtures by Delta, Txyfords, Armitage Shanks or approved equal. Ease of service and parts supply critical



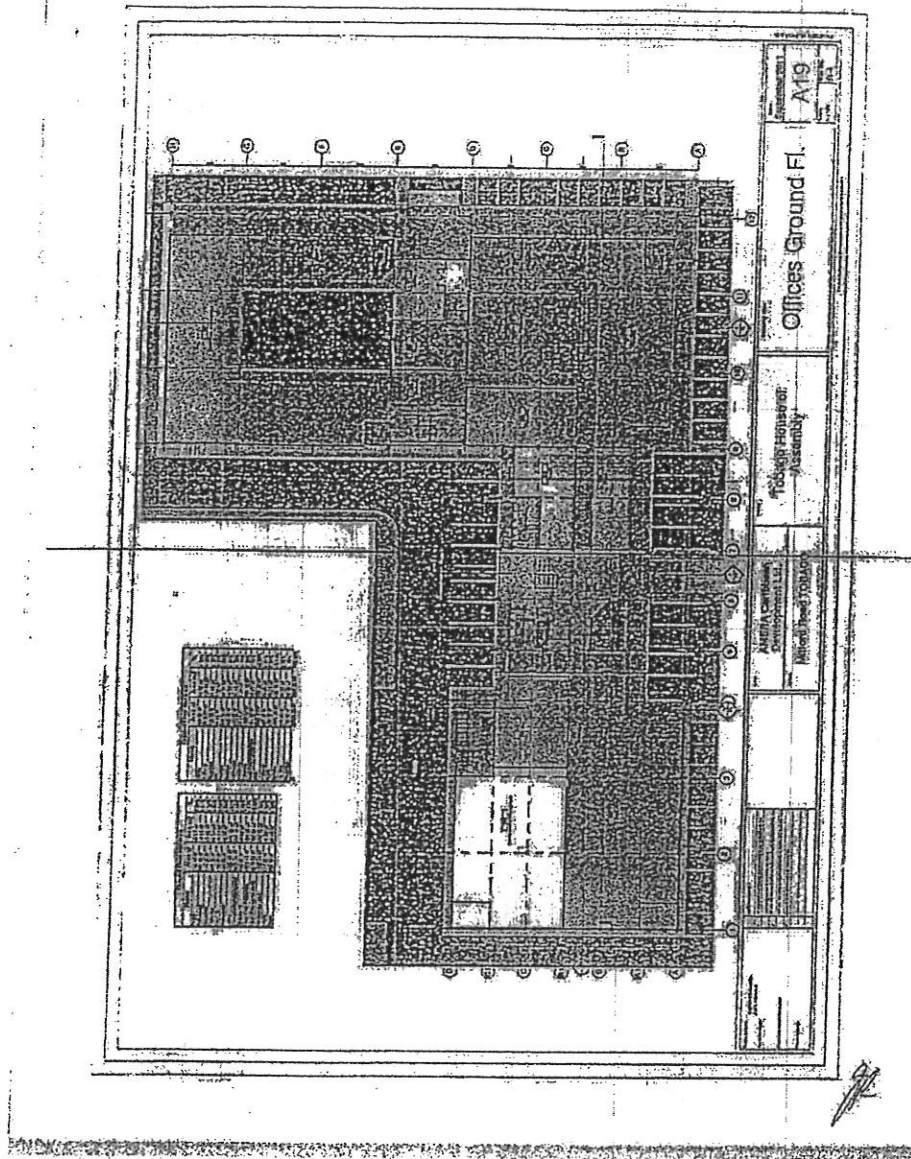


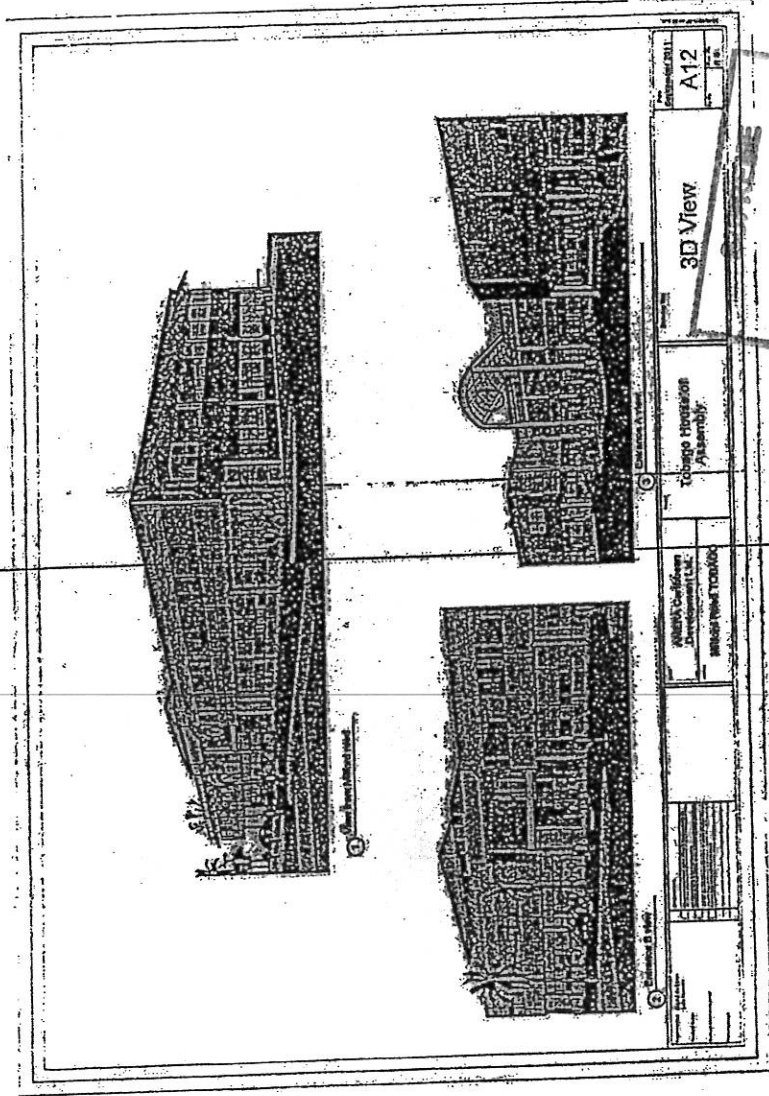
Prepared by:
 MWA Construction Management LLC
 10000 Westpark Drive
 Dallas, Texas 75241
 Phone: 972.382.1000
 Fax: 972.382.1001
 Email: mwa@mwacm.com


Prepared for:
 Federal House of Representatives

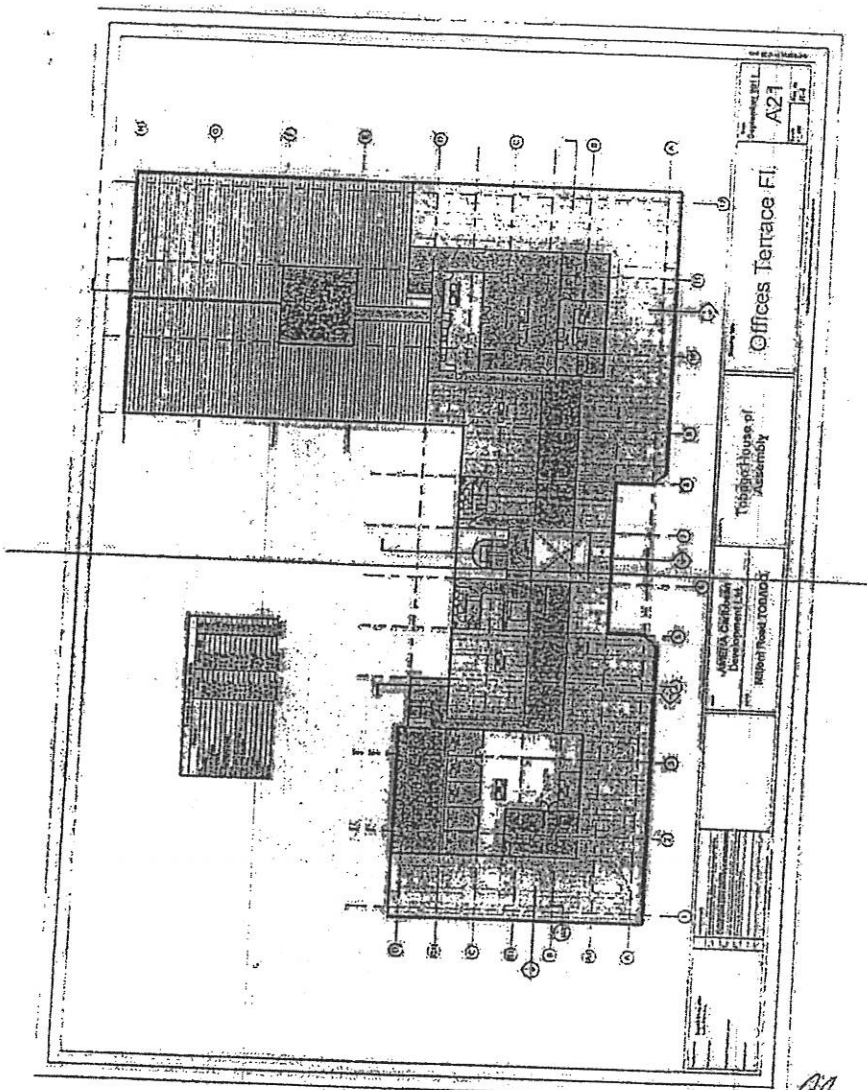
Project Name:
 Site Plan

Drawing No.:
 A1





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 Port - of - Spain
 JUDICATURE



6(b) The Land Lease

TRINIDAD AND TOBAGO
6/10/11

"Office Lease"

"B"

Prepared by me,

DAVID MICHAEL YUNG,
Attorney at Law,
Fitzwilliam, Stone,
Furness Smith & Morgan,
48-50 Sackville Street,
Port of Spain.

THIS LEASE is made on the day of in the Year
of Our Lord Two Thousand and Eleven between MILSHIRV PROPERTIES
LIMITED a Company duly incorporated under the Companies Ordinance Ch. 31
No.1 of the Laws of Trinidad and Tobago and continued under the Companies
Act Ch. 81:01 and having its registered office at 1 El Socorro Extension San Juan
in the Ward of St. Ann's in the Island of Trinidad (hereinafter called "the Lessor"
which expression where the context so admits shall include the reversioner for
the time being immediately expectant on the term hereby created) of the One

DM

Part and the TOBAGO HOUSE OF ASSEMBLY a body corporate established under The Tobago House of Assembly Act No. 40 of 1995 having its principal place of business at the Administrative Complex, Calder Hall, in the Island of Tobago and acting by its Administrator in the Division of Community Development and Culture, Bacolet Street, Scarborough in the Island of Tobago (hereinafter called "the Lessee" which expression where the context so admits include its successors in title and assigns of the Other Part,

WHEREAS:

A. BY Deed of Lease dated the _____ day of _____ 2011 made between the Lessor of the One Part and the Lessee of the Other Part and registered as No. _____ the Lessor became entitled to the lands and hereinafter described in the Schedule hereto (hereinafter referred to as "the said Lands") for a term of unexpired residue of the term of 199 years from the 1st day of _____ 2011 subject to the payment of the rent thereby reserved and to the observance and performance of the covenants and conditions therein contained.

B. The Lessor has constructed an Office Facility on the said Lands and the Lessee has agreed to lease the Office Facility on the terms and conditions hereinafter appearing.

WITNESSETH as follows:-

1. In consideration of the rent hereby reserved the Lessor hereby demise unto the Lessee the Office Facility on the said Lands (hereinafter referred to as "the Demised Premises") TO HOLD the Demised Premises unto the Lessee for the term of twenty (20) years commencing 1st day of the month immediately following the issuance of the Practical Completion Certificate by the Lessor's Architect at the annual rent of Fourteen Million Three Hundred and Seventy Nine Thousand Four Hundred and Ninety Nine Dollars and Thirty Two Cents (\$14,379,499.32) plus Value Added Tax (hereinafter referred to as "the Base Annual Rent") to be paid by equal monthly payments of One Million One Hundred and Ninety Eight Thousand Two Hundred and Ninety One Dollars and Sixty One Cents. (\$1,198,291.61) plus Value Added Tax, subject to an increase only of the Base Annual Rent as herein provided in the Second Schedule hereto

but without any deduction or set off or counterclaim on the first day of each and every month during the said term commencing the first day of the nineteenth month of the term of this Lease.

2. The Lessee shall pay to the Lessor the sum of Twenty One Million Five Hundred and Sixty Nine Thousand Two Hundred and Forty Eight Dollars and Ninety Eight Cents (\$21,569,248.98) on the execution hereof which represents the rent for eighteen (18) months as a security deposit for any breach of the Lessee's obligation for the payment of rent hereunder which sum shall be held in an interest bearing account in the name of the Lessor and the Lessee with First Citizens Bank Limited.

3. The Lessee hereby covenants with the Lessor to the intent that the obligations may continue throughout the said term as follows:-

- (a) To pay the rent hereinafter reserved together with Value Added Tax thereon in advance on the first day of each and every month of the term hereby granted without any deductions whatever.
- (b) To pay interest on any rent or other sum due under this Lease which is not paid on the date on which payment is due whether formally demanded or not from the date on which the rent or other sum is due to the date of payment whether before or after any judgment at two (2) percent per annum over the prime interest rate charged by First Citizens Bank Limited.
- (c) To promptly pay the charges for electricity, water, sewer and telephone used on the Demised premises.
- (d) To pay all rates, taxes and assessments levied on the Demised premises.
- (e) To keep in good order and repair the structure of the Demised Premises.
- (f) At all times during the said term to comply in all respects with the provisions and requirements of the competent authorities and all regulations or orders made by them in respect of the Demised Premises whether as to the permitted user hereunder or otherwise and to indemnify (as well after the expiration of the said term by

but without any deduction or set off or counterclaim on the first day of each and every month during the said term commencing the first day of the nineteenth month of the term of this lease.

2. The Lessee shall pay to the Lessor the sum of Twenty One Million Five Hundred and Sixty Nine Thousand Two Hundred and Forty Eight Dollars and Ninety Eight Cents (\$21,569,248.98) on the execution hereof which represents the rent for eighteen (18) months as a security deposit for any breach of the Lessee's obligation for the payment of rent hereunder which sum shall be held in an interest bearing account in the name of the Lessor and the Lessee with First Citizens Bank Limited.

3. The Lessee hereby covenants with the Lessor to the intent that the obligations may continue throughout the said term as follows:-

- (a) To pay the rent hereinbefore reserved together with Valued Added Tax thereon in advance on the first day of each and every month of the term hereby granted without any deductions whatever.
- (b) To pay interest on any rent or other sum due under this Lease which is not paid on the date on which payment is due whether formally demanded or not from the date on which the rent or other sum is due to the date of payment whether before or after any judgment at two (2) percent per annum over the prime interest rate charged by First Citizens Bank Limited.
- (c) To promptly pay the charges for electricity, water, sewer and telephone used on the Demised Premises.
- (d) To pay all rates taxes and assessments levied on the Demised Premises.
- (e) To keep in good order and repair the structure of the Demised Premises.
- (f) At all times during the said term to comply in all respects with the provisions and requirements of the competent authorities and all regulations or orders made by them in respect of the Demised Premises whether as to the permitted user hereunder or otherwise and to indemnify (as well after the expiration of the said term by

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same at its expense and restore the Demised Premises to their condition prior to the partitioning or installation and remove and take away the same prior to delivering up the Demised Premises.

(b) To keep comprehensively insured at all times throughout the term of the lease all risks and in such a sum as shall be determined from time to time by the Lessor but in any event not to be a sum less than the full replacement value thereof the Demised Premises all fixtures of an insurable nature (other than those which the Lessee is entitled to remove) against loss or damage by fire and any other risks perils and contingencies (and incidental cover costs fees and expenses) as the Lessor may deem expedient together with Architects, Surveyors and other requisite professional advisers fees in relation to the reinstatement of the Demised Premises.

(c) The policies obtained pursuant to this Clause shall name the Lessor and the Lessee as insured parties as well as any mortgagee of any part of the Demised Premises as their respective interests may appear.

(d) Copies of all insurance policies and renewals thereof or other bona fide evidence of insurances shall be delivered to the Lessor and the Lessee and to any mortgagee named as additional insured in any existing policies at least thirty (30) days prior to the expiration date of any such existing insurance policy.

(e) To permit the Lessor its duly authorized agents surveyors and others at all reasonable times upon previous written notice to enter into and upon and view the state and condition of the Demised Premises or the actual user thereof and with due diligence after the Lessor's agents or surveyors shall have given to the Lessee or left on the Demised Premises a notice in writing of any defects or wants of repair found thereupon in accordance with the covenants hereinbefore contained well and substantially to repair and make good the same.

- (k) Not to store or bring upon the Demised Premises any articles of a combustible, inflammable or dangerous nature, and not to do or permit or suffer anything by reason whereof any insurance effected on the Demised Premises may be rendered void or voidable or whereby the rate or premium thereon may be increased and to comply with all recommendations of the insurers as to fire precautions relating to the Demised Premises.
- (l) Not to use the Demised Premises other than for the purpose of carrying on the business of the Lessee in any manner inconsistent with such user or occupation.
- (m) Not to hold or permit to be held any auction on the Demised Premises or to play on the Demised Premises loud music or advertise thereon by means of any speaker or amplifier so as to contravene sub clause (s).
- (n) Not to assign, underlet or part with or share the possession or occupation of the Demised Premises or any part thereof without the previous written consent of the Lessor AND to procure that every permitted assignment or underlease of the Demised Premises shall contain a covenant by the assignee or assignees and underlessee or underlessees with the Lessor to observe and perform the covenants on the part of the Lessee herein contained (except in the case of an underlease the covenant to pay the rents hereby reserved) and in particular a covenant not to assign, underlet or part with or share the possession or occupation of the premises comprised in such assignment or underlease or any part thereof without the previous written consent of the Lessor and in the case of an assignment also a covenant to pay the rents hereby reserved and made payable.
- (o) Not to place or display on the exterior of the Demised Premises or inside the Demised Premises so as to be visible from the exterior of the Demised Premises any sign, name, writing, notice, illuminated sign, display of lights, placard, poster, banner or advertisement.

without the Lessor's prior written consent; such consent not to be unreasonably withheld provided, however on the expiration or sooner determination of the term hereby granted, the Lessee shall remove such signage and make good any damage occasioned to the Demised Premises by the Lessee's removal of such signage.

- (p) To be responsible for and to indemnify the Lessor against all damage occasioned to the Demised Premises or any adjacent premises or to any person caused by any act default or negligence of the Lessee or the servants agents licensees or invitees of the Lessee.
- (q) Not to place or expose for sale or otherwise permit or suffer so to be upon or over the ground outside the front of the Demised Premises any goods or things whatsoever; not to cause or permit any obstruction to the entrance and passages;
- (r) Not to permit or suffer anyone to sleep in the Demised Premises and to use or permit or suffer the use of the same or any part thereof for any illegal immoral or residential purposes;
- (s) Not to do, suffer or cause to be done anything which is or may be deemed to be a nuisance or to be a source of annoyance to the Lessor or any premises in the neighbourhood;
- (t) To indemnify and save the Lessor harmless from any liability for injury or damage in or upon the Demised Premises to any person or property caused or contributed to by the Lessee his servants agents or persons doing business with him whether by negligence or otherwise and for injury or damage to the person and property of the Lessee his servants agents or persons doing business with him by whomsoever caused and whether by negligence or otherwise;
- (u) To yield up the Demised Premises with the Lessor's fixtures and fittings therein (Lessee's movable fixtures excepted) at the expiration or sooner determination of the said term in good and tenantable repair and condition.

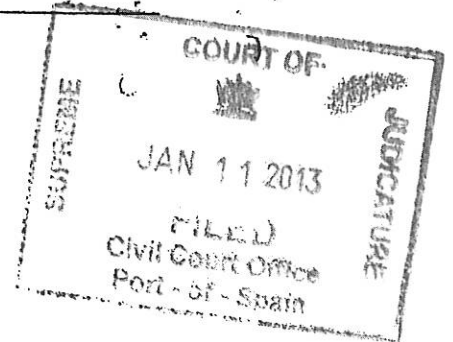
(v) To pay forthwith unto the Lessor its costs and expenses of and incidental to the preparation execution and registration of this Lease and any counterpart thereof.

4. The Lessor hereby covenants with the Lessee that the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on the part of the Lessee contained shall peaceably hold and enjoy the Demised Premises throughout the said term without any interruption by the Lessor or any persons rightfully claiming under or in trust for the Lessor.

5. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that

(a) If the rent hereby reserved on any part thereof shall at any time be unpaid for the period of thirty (30) days after becoming payable (whether formerly demanded or not) or if the covenants on the Lessee's part herein contained shall not be performed or observed or if the Lessee should be adjudged bankrupt or being a company shall be wound up (except for the purpose of reconstruction or amalgamation) or shall be put into receivership and in any such case it shall be lawful for the Lessor at any time hereafter to re-enter upon the Demised Premises or any part thereof in the name of the whole and thereupon this Lessee shall absolutely determine but without prejudice to the Lessor's right of action in respect of any antecedent breach of the Lessee's covenants herein contained.

(b) (i) At any 3 year anniversary of the tenancy hereby created, the Lessee shall have the option of purchasing the Demised Premises for the unexpired residue of the term hereby granted at a price as hereinafter provided.



(ii) The purchase shall be determined by calculating the net present value of the total rental payments payable for the unexpired residue of the term hereby granted at the time of the exercising this option. The discount rate to be used to determine the said net present value shall be First Citizens Bank Limited's prime rate.

(iii) The said option shall be exercisable by notice in writing by the Lessee to the Lessor.

(c) If at any time during the tenancy hereby created the Demised Premises shall be destroyed or damaged by fire, storm, tempest or other Act of God or of the State's enemies so as to become unfit for occupation or use and entitle the Lessee to total suspension or abatement of the rent as herebefore provided then (and in such case the Lessor shall be under no liability to rebuild the Demised Premises) and in case of such destruction either party shall have the right to cancel and determine this lease by giving to the other fourteen days notice in writing of such intention and in case of any difference touching this sub-clause the matter shall be referred to arbitration as hereinafter provided.

(d) The Lessor shall not be liable to the Lessee for any loss, damage, inconvenience or injury suffered by the Lessee or any employee, workmen or customer or invitee or person resorting to the Demised Premises through or as a result of any state of disrepair of the Demised Premises or of any breakdown or unavoidable suspension of or any defect in any fixture or fitting or any service or utility or facility supplied in or about the Demised Premises unless directly caused by the Lessor failing to observe or perform any express

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covenant on the part of the Lessor herein contained, and the Lessor's common duty of care;

- (e) In these presents the singular includes the plural the masculine includes the feminine and the neuter as the case may be and the obligations of the Lessee if more than one individual or corporation shall be deemed to be joint and several obligations
- (f) Any notice required to be served hereunder by the Lessor on the Lessee shall be sufficiently served on the Lessee if left addressed to the Lessee at the address given in these presents or forwarded by registered post addressed to it there and any notice required to be served hereunder on the Lessor shall be sufficiently served on the Lessor if left at its registered office or forwarded by registered post addressed to the Lessor there and a notice sent by post shall be deemed to be received one week after it shall have been posted.
- (g) This lease embodies the entire understanding of the parties relating to the Demised premises and to all the matters dealt with by any of the provisions of this lease.
- (h) The Lessee acknowledges that this lease has not been arranged into reliance wholly or partly on any statement or representation made by or on behalf of the Lessor except any such statement or representation that is expressly set out in this lease.
- (i) If any question, difference or dispute shall arise between the parties hereto or any person, persons or corporation claiming under them respectively concerning or touching the construction of any clause herein contained or of the rights, duties or liabilities of the parties hereto or in any way touching or arising out of these presents the same shall be referred to the determination of a single arbitrator if the parties can agree on one or otherwise to two arbitrators one to be appointed by each party to the dispute or an umpire to be appointed by such arbitrators before proceeding in the reference in accordance with the Arbitration Act Chapter 5:01, or any statutory re-enactment or modification for the time being in force.

IN WITNESS WHEREOF the Common Seal of the Lessor was hereunto affixed the day of in the year of Our Lord Two Thousand and Seven and the Common Seal of the Lessee was hereunto affixed the day of in the year of Our Lord Two Thousand and Seven.

THE FIRST SCHEDULE REFERRED TO ABOVE:

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September, 1966 and registered as NO. 11281 of 1966) and bounded on the North by Shirvan Estate on the South by Millford Road on the East by a Road Reserved tiny links wide and on the West by lands of Marjorie Tsot-a-Fatt which said parcel of land is shown coloured pink in the plan annexed and marked "B" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Millford Road on the East by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North and East by Shirvan Estate on the South by lands of George Young

and on the West by Shinvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "D" to the said Deed No. 11281 of 1966.

THE SECOND SCHEDULE ABOVE REFERRED TO:

The Base Annual Rent is currently based on First Citizens Bank Limited's prime rate of 8% per annum ("the said Prime Rate"). If the said Prime Rate shall increase at any time during the term of this lease but not more frequent than three (3) year intervals, the Base Annual Rent or any previous variation thereof shall increase by the same percentage increase as the increase in the said Prime Rate. For example if the said Prime Rate shall increase from 8% per annum to 9% per annum, the Base Annual Rent or any previous variation thereof shall increase by 12.5% per annum. Conversely any reduction in the said Prime Rate in subsequent periods shall result in the same percentage decrease in the Base Annual Rent but in no event shall the Base Annual Rent be less than (\$14,379,499.32) plus VAT.

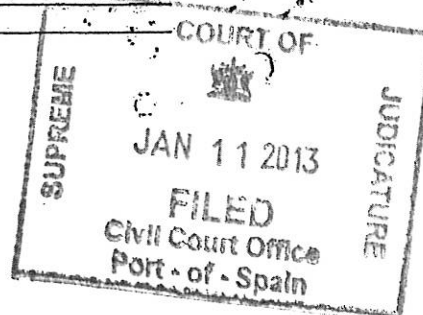
The Common Seal of
MILSHIRV PROPERTIES LIMITED
was hereunto affixed by

its Secretary in the presence of

one of its Directors by order of
the Board of Directors and
signed by them in conformity
with the Articles of Incorporation
thereof in the presence of:

SIGNED AND DELIVERED by the
the within-named
Dr. Ellis Borris


12



Chief Administrator in the office of the)
Chief Secretary for and on behalf of and)
as and for the act and deed of the)
Tobago House of Assembly in the)
presence of:)

6(c) Highlights of Special Lease Provisions

1. Re: Ability of the THA to terminate the agreement on each three (3) year anniversary, during the lease term - - see Office Lease, in (5) (b) (i).

2. Deed of Surrender of Land Lease - - see Land Lease (2) (i).

6(d) The Escrow Account



EXECUTIVE COUNCIL MINUTE

CONFIDENTIAL

No. 385 April 18, 2012

Note No. FED (2012) 48, EC 401

File No. THA(F) 11/11

FOR ACTION	FOR INFORMATION
File No. THA(F) 11/11 Secretary of Finance, Enterprise Development, Consumer Affairs and Cooperatives and Note.	Chief Secretary and Secretary of Public Administration, Planning and Development, Energy, Statelands and Information and Note.
Administrator, Division Finance, Enterprise Development Consumer Affairs and Cooperatives and Note.	Secretary of Agriculture, Marine Affairs, Marketing and the Environment and Note.
	Secretary of Settlements and Labour and Note.
	Secretary of Tourism and Transportation and Note.
	Secretary of Infrastructure and Public Utilities and Note.
	Secretary of Health and Social Services and Note.
	Secretary of Education, Youth Affairs and Sport and Note.
	Secretary of Community Development and Culture, and Note.
	Chief Administrator and Note.

Matter considered by Executive Council on April 18, 2012

Matter confirmed by Executive Council on April 25, 2012

CONFIRMED

EXECUTIVE COUNCIL MINUTE NO. 385 OF APRIL 18, 2012

**Escrow Account Arrangements for the Administrative Complex of the
Division of Agriculture, Marine Affairs, Marketing and the
Environment**

Note No. FED (2012) 48, EC 401 was considered.

The Executive Council agreed:

- (i) that the Escrow Account for the Administrative Complex of the Division of Agriculture, Marine Affairs, Marketing and the Environment be created immediately;
- (ii) that, to give effect to the Account, the attached documents be signed by the Chief Administrator, after consultation with and the advice from the Senior State Counsel.

[Signature]
Manager, Executive Council Affairs

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FILED
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Port of Spain
JUDICATURE

NOTE FOR EXECUTIVE COUNCIL

Escrow Account Arrangements for the Administrative Complex of the Division of Agriculture,
Marine Affairs, Marketing and the Environment

1. The matter for consideration of the Executive Council is the creation of the Escrow Account for the Administrative Complex of the Division of Agriculture, Marine Affairs, Marketing and the Environment.
2. The Executive Council will recall its earlier decision (Minute # 877 of October 12, 2011) to engage in a design-build-lease-transfer arrangement with Milshiry Properties Ltd, for the construction of an Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment. The Executive Council will also recall that part of the arrangements for the construction of the Complex required that an Escrow Account be created at the end of the construction period to facilitate payments of the monthly lease of the facility. However, in order to finalize the financing arrangements for the construction of the Complex, First Citizens, whose Board has already approved the loan for the project, has requested that the Escrow Account be created at the start of construction, all other arrangements remaining unchanged.
3. The Secretary of Finance and Enterprise Development recommends that, given the importance of the project to the Division of Agriculture, Marine Affairs, Marketing and the Environment and to the Assembly, this amendment to the original arrangements be approved, notwithstanding its likely impact for the short-term cash flow situation of the Assembly.
4. The Executive Council is, therefore, asked to agree:
 - (i) that the Escrow Account for the Administrative Complex of the Division of Agriculture, Marine Affairs, Marketing and the Environment be created immediately; and
 - (ii) that, to give effect to this, the attached documents be signed by the Chief Administrator, after consultation with and advice from the Senior State Counsel.

TRINIDAD AND TOBAGO:

11/4/12

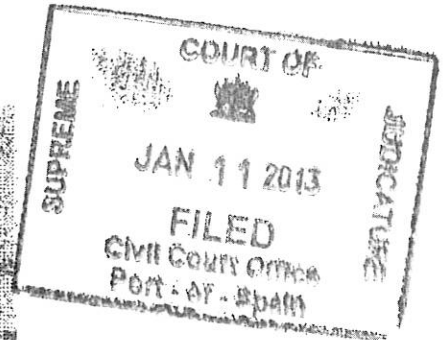
ESCROW AGREEMENT

AN AGREEMENT made between The Tobago House of Assembly a body corporate constituted under the provisions of S.5 of the Tobago House of Assembly Act 25:03 (hereinafter called "the Lessor"); and MILSHIRV PROPERTIES LIMITED a Company duly incorporated under the Companies Act, Ch. 81:01 of the Laws of Trinidad and Tobago and having its registered office at 1 El Socorro Extension Road San Juan in the Ward of St Anns in the Island of Trinidad (hereinafter called "the Lessee") and FIRST CITIZENS BANK LIMITED ("the Escrow Agent").

WHEREAS:

A. By Deed of Lease dated the 21st day of November 2011 registered as No. DE201200109459D001 (hereinafter referred to as "the Principal Deed") made between the Lessor of the one part and the Lessee of the other part the Lands described in the Schedule hereto (hereinafter referred to as "the said Lands") was rented to the Lessee in manner therein mentioned.

B. This agreement is SUPPLEMENTAL to an Agreement dated this _____ day of _____ 2012 and made between the Lessor and the Lessee for the rental of the said Lands whereby the deposit payable thereby is to be held in escrow and the Escrow Agent has agreed to receive the deposit and to hold it until the execution of the Office Lease pursuant to Clause 3(d) of the Principal Deed.



NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. The Lessee shall deposit with the Escrow Agent the sum of Twenty One Million Five Hundred and Sixty Nine Thousand Two Hundred and Forty Eight Dollars (\$21,569,248.00) ("the Deposit").
2. The Escrow Agent shall establish and maintain at all times until this Escrow agreement is terminated an interest bearing account with First Citizens Bank Limited ("the Account") and shall deposit the Deposit therein.
3. The Escrow Agent shall pay the Deposit together with accrued interest thereon to the Lessee:
 - (i) Upon the Lessor executing the Office Lease pursuant to clause 3(d) of the Principal Deed and on account of the rents due under the Office Lease; or
 - (ii) Upon the Lessor's default in not executing the Office Lease pursuant to clause 3(d) of the Principal Deed, as agreed liquidated damages due to the Lessee.
4. Three days prior to the payment of the Deposit by the Escrow Agent to either party, the Escrow Agent shall give notice in writing to both the Lessor and the Lessee stating (1) that it intends to do so and (2) to whom the Deposit will be paid.
5. This agreement will be governed by the laws of Trinidad and Tobago. Unless settled by prior negotiation, a claim or dispute arising out of or in connection with this agreement shall be submitted to mediation by the Dispute Resolution Centre within seven days of one side giving written notice to the other of such dispute and their intention to refer it to mediation by the Centre. A reference to mediation shall not prejudice the legal rights of the parties involved. The cost of referring any

disputes/claims to the dispute resolution centre shall borne/fully paid by the party found to be at fault as determined by the Dispute Resolution Centre.

6. The Lessor and the Lessee jointly and severally agree to indemnify and hold the Escrow Agent, each of its officers and agents harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the performance and administration of this agreement unless arising from the gross negligence or willful misconduct of the Escrow Agent or such of the officers or agents as are seeking indemnification. This provision shall survive the termination of this agreement.

7. The Escrow Agent shall be obliged to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this agreement.

8. The Escrow Agent may rely and shall be fully protected in acting upon any certificate, notice or other paper or document which the Escrow Agent reasonably believes to be genuine and to have been signed or presented by the proper party or parties, or in the case of facsimile transmission, to have been so sent.

9. None of the terms or provisions of this agreement may be waived, altered, modified or amended except in writing and signed by the parties hereto.

10. Any notice required or permitted to be given hereunder shall be in writing and be (i) personally delivered or (ii) sent by facsimile transmission to the parties hereto at the addresses stated herein.

IN WITNESS WHEREOF the Common Seal of the Lessor was hereunto
affixed the day of in the year of Our Lord Two Thousand and
Twelve; the Common Seal of the Lessee was hereunto affixed the
 day of in the year of Our Lord Two Thousand and
Twelve and the duly authorized officer of the Escrow Agent has hereunto set his
hand the day of 2012.

THE SCHEDULE REFERRED TO ABOVE:

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September, 1966 and registered as NO. 11281 of 1966) and bounded on the North by Shirvan Estate on the South by Milford Road on the East by a Road Reserved fifty links wide and on the West by lands of Marjorie Tsol-a-Fatt which said parcel of land is shown coloured pink in the plan annexed and marked "B" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Milford Road on the East by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said Deed No. 11281 of 1966.

TRINIDAD AND TOBAGO

11/4/12

Prepared by me

David Michael Young
Attorney-at-Law
FitzWilliam Stone Furness Smith & Morgan
48-50 Sackville Street
Port of Spain

THIS AGREEMENT is made this _____ day of _____ in the
Year of Our Lord Two Thousand and Twelve Between THE TOBAGO HOUSE
OF ASSEMBLY a body corporate constituted under the provisions of S.5 of the
Tobago House of Assembly Act 25:03 (hereinafter called "the Lessor" which
expression where the context so admits shall include the reverendson for the time
being immediately expectant on the term hereby created) of the One Part and
MILSHIRV PROPERTIES LIMITED a Company duly incorporated under the
Companies Act Ch. 91:01 of the Laws of Trinidad and Tobago and having its
registered office at 1 El Socorro Extension San Juan in the Ward of St. Anna in
the Island of Trinidad (hereinafter called "the Lessee" which expression where
the context so admits include its successors in title and assigns) of the Other
Part.

WHEREAS:

A. This agreement is SUPPLEMENTAL to Deed of Lease dated the 21st day
of November 2011 registered as No. DE201200109459D001 (hereinafter

referred to as "the Principal Deed") made between the same parties hereto for the rental of the Lands described in the Schedule hereto.

B. The Lessor and the Lessee have agreed to vary the Principal Deed on the terms and conditions hereinafter appearing.

IT IS HEREBY AGREED as follows:

1. On the execution hereof, the Lessor shall pay the Lessee the sum of Twenty One Million Five Hundred and Sixty Nine Thousand Two Hundred and Forty Eight Dollars (\$21,569,248.00) being an advance payment of eighteen (18) months rent payable under the Office Lease (the receipt whereof the Lessor hereby acknowledges), and which is to be held in escrow at First Citizens Bank Limited by the Escrow Agent in accordance with the agreement of even date herewith. If upon completion of the said Office Facility, the Lessor defaults in executing the Office Lease pursuant to Clause 3(d) of the Principal Deed, the Lessee shall be entitled to retain the said sum of Twenty One Million Five Hundred and Sixty Nine Thousand Two Hundred and Forty Eight Dollars (\$21,569,248.00) as agreed liquidated damages without prejudice to any other actions or claims by the Lessee against the Lessor under or in respect of this Agreement.

2. Subject only to the variations herein contained and such other alterations (if any) as may be necessary to make the Principal Deed consistent with this agreement the Principal Deed shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of this agreement were inserted therein by way of addition or substitution as the case may be.

IN WITNESS WHEREOF the Common Seal of the Lessor was hereunto affixed the _____ day of _____ In the year of Our Lord Two Thousand and Twelve and the Common Seal of the Lessee was hereunto affixed the _____ day of _____ In the year of Our Lord Two Thousand and Twelve.

THE SCHEDULE REFERRED TO ABOVE:

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North by Shivan Estate on the South by Milford Road on the East by a Road Reserved fifty links wide and on the West by lands of Harpoot Teoh-Fai which said parcel of land is shown coloured pink in the plan annexed and marked "B" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Milford Road on the East by lands of George Young and on the West by Shivan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said Deed No. 11281 of 1966.

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded

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Port - of - Spain
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on the North and East by Shirvan Estate on the South by lands of George Young
and on the West by Shirvan Road which said parcel of land is shown coloured
pink in the plan annexed and marked "D" to the said Deed No. 11281 of 1966.

SIGNED AND DELIVERED by the
the within-named
Dr. Ellis Burris
Chief Administrator in the office of the
Chief Secretary for and on behalf of and
as and for the act and deed of the
Tobago House of Assembly in the
presence of:-

The Common Seal of
MILSHIRV PROPERTIES LIMITED
was herunto affixed by
its Secretary in the presence of
one of its Directors by order of
the Board of Directors and
signed by them in conformity
with the Articles of Incorporation
thereof in the presence of:-
In the presence of:-

COURT OF

11 2013
Office
JUDICATURE

ALL AND SINGULAR that parcel of land situate in the Parish of St. Patrick in the Island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September 1966 and registered as No. 11281 of 1966) and bounded on the North and East by Shirvan Estate on the South by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked 'D' to the said Deed No. 11281 of 1966.

SIGNED AND DELIVERED by the
the within-named
Dr. Ellis Burns,
Chief Administrator in the office of the
Chief Secretary for and on behalf of and
as and for the act and deed of the
Tobago House of Assembly in the
presence of

The Common Seal of
MILSHIRV PROPERTIES LIMITED
was hereunto affixed by
its Secretary in the presence of
one of its Directors by order of
the Board of Directors and
signed by them in conformity
with the Articles of Incorporation
thereof in the presence of
in the presence of

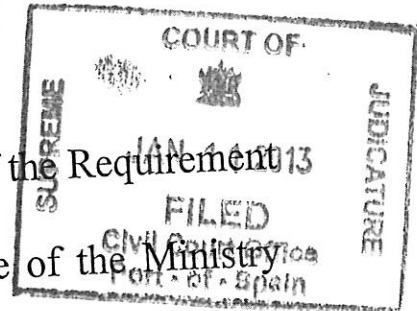
SIGNED by the within named
Escrow Agent
FIRST CITIZENS BANK LIMITED
in the presence of:

)
)
)

THIS INSTRUMENT IS VALID AND EFFECTIVE
IN THE STATE OF ILLINOIS
ON THE _____ DAY OF _____
19____ AT _____
IN THE COUNTY OF _____
STATE OF ILLINOIS

7. Appendix

- (7a) The Assembly's Negation of the Requirement of Approval or Concurrence of the Ministry of Finance for a THA BOLT Operation
- (7b) The Authority of the THA to Engage in a BOLT Operation - - A Legal Opinion with specific reference to The Division of Education Youth Affairs and Sport.
- (7c) The Authority of the THA to Engage in a BOLT Operation - - A Legal Opinion with specific reference to The Division of Agriculture, Marine Affairs, Marketing and the Environment.
- (7d) Legal Disputes Between the Tobago House of Assembly and the Government of the Republic of Trinidad and Tobago.



**(7a) The Assembly's Negotiation of the
Requirement of Approval or Concurrence
of the Ministry of Finance for a THA
BOLT Operation**



Office of the Secretary of Finance and Planning
Tobago House of Assembly
Sandy Hill, Bacolet Street
Scarborough, Tobago

Tel# 635-1203

Fax# 639-4927

Email: thasec@tstt.net.tt

TO : Mr. LeRoy Meyers,
Permanent Secretary,
Ministry of Finance,
Government of Trinidad and Tobago

FROM : Anselm London
Secretary of Finance and Planning
Tobago House of Assembly

DATE : 2nd August 2002

SUBJECT : THE FINANCING OF URGENT THA CAPITAL PROJECTS

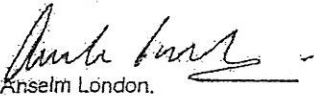
1. The purpose of this memorandum is to follow-up on our discussions held at the Tobago Hilton on Saturday July 27th 2002; and, as promised at the conclusion of those discussions, to submit, for further discussion, our proposals with respect to the subject matter indicated above.
2. We would wish to indicate at the outset that the proposals contained herein are considered by the Tobago House of Assembly as reinforcing the ideas raised in the THA document "*A Medium Term Public Sector Investment Programme for Tobago*" which was submitted to the Prime Minister and Minister of Finance, to Minister Conrad Enil and to you earlier this year. The THA's principal concern at this time is to secure the financing for the projects listed in Annex 1 - - all of which projects have, as I have been advised, already been prepared and appraised and are ready for immediate implementation.
3. You will recall that at our meeting at the Tobago Hilton, you stressed the negative consequences of any additional Central Government borrowing (direct or indirect) for its debt ratios and for your forthcoming rating agency review exercises. Accordingly, you indicated that it would be difficult to finance all of the proposed capital projects through debt. I can assure you that the Chief Secretary and the other members of his

Administration fully share the concern of the Ministry of Finance that, on both fiscal and monetary fronts, all must be done to protect and enhance the debt rating of Trinidad and Tobago.

4. In the circumstances, given both the imperatives of the capital markets and the imperatives of Tobago's development agenda, we suggest that additional mechanisms must be explored to enable the THA to proceed with certain capital investments, without impairing the credit rating of the Central Government. While we are well aware that these projects have been included in our 2002/2003 budget proposals, it is important to the THA that work on these projects commence without much further delay. At present the only constraint is one of financing, but, as recommended to me by Minister Enli at our meeting in Tobago (a recommendation with which I fully concur) both our teams must do what is possible within the constraints faced by both sides.
5. With this in view, we are pleased to inform you that our discussions with various local financial institutions indicate that non-debt-creating financing mechanisms are available to the THA. This notwithstanding, we also view it as strategically important both to the Central Government and to the THA to have the current Minister of Finance give practical operational effect to, and go beyond, the verbal undertakings made by the former Minister of Finance in the 2001/2002 budget, by breaking new ground and actually approving some level of borrowing by the THA.
6. We, therefore, propose:
- (i) that the THA finance a significant number of the projects identified in Annex 1 through least-cost BOLT arrangements with certain national financial institutions, such as NIPDEC, FINCOR, RBT etc, who have all expressed a keen interest in engaging in BOLT arrangements with the THA;
 - (ii) that the THA finance some projects through UDECOTT, with Cabinet's prior approval;
 - (iii) that the THA be authorised by the Minister of Finance, to undertake some borrowing to finance at least one project, on terms and conditions mutually agreed upon between the THA and the Minister of Finance.

7. We propose further that the distribution of the financing among the various sources be a matter for our joint consideration and recommendation to the Minister. We wish to note, in this context, that if all the projects proposed were to be financed through BOLT arrangements, there will be no direct impact on Trinidad and Tobago's debt ratios and hence on its debt rating. Moreover, with an appropriate distribution of the financing among different funding sources, the impact of the direct and indirect debt [(ii) and (iii) above] on the debt ratios could be insignificant and negligible.
8. In all this, we must indicate that a BOLT arrangement undertaken by the THA does not require the approval or concurrence of the Ministry of Finance, except that agreement should normally be reached, *ex ante*, that budgetary resources would be allocated *ex post* to service these arrangements. Our discussions with various financial institutions suggest that, in the limiting case, even if all the projects were to be financed through BOLT arrangements, the resources required annually for a period of, say, 10 years could more than adequately be met from the \$112 million already set aside for overdraft repayments in the 2001/2002 budget, and which, as recommended in the THA 2002/2003 budget proposals, should be carried forward into subsequent fiscal years. Furthermore, a BOLT arrangement can be so structured that there would be no additional call on the Consolidated Fund for fiscal 2001/2002, with some of the resources probably required only in late fiscal 2002/2003, when the overall Central Government revenue situation is expected to be considerably better.
9. Therefore, as we had agreed at our meeting at the Tobago Hilton, we would expect to consider these proposals with you at the meeting that we agreed should take place during the week of 5th August, with a view to reaching a consensus on resolving this issue and making appropriate joint recommendations to the Minister. We would, of course, be open to exploring any option that you may wish to propose to move the process quickly forward.
10. Please accept, Sir, the assurances of my highest consideration.

Sincerely,



Anselm London.

Secretary of Finance.

cc. The Honourable Orville London
Chief Secretary

**(7b) The Authority of the THA to Engage in a
BOLT Operation - - A Legal Opinion with
specific reference to The Division of
Education Youth Affairs and Sport.**

CONFIDENTIAL

 **Hamel-Smith**
ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

M. Hamel-Smith & Co.
P.O. Box 219
Eleven Albion
Cor. Dere & Albion Streets
Port of Spain
Trinidad & Tobago
TEL: (868) 821-5500
FAX: (868) 821-5501
E-MAIL: mhs@trinidadlaw.com
WEB: www.trinidadlaw.com

Our Ref: THS/GHS/MI/1a/10298/1

January 3, 2011

AIC Capital Market Brokers Limited
82 Independence Square
Port of Spain.

By E-Mail: OMurray@aicfg.com

Attention: Mr. Otis Murray

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT WORK PRODUCT

Dear Sirs,

Re: ~~Advice re: Capacity of the Tobago House of Assembly (the "THA") to enter into a Lease/Leaseback Arrangement to Develop an Administrative Centre for Education, Sport and Youth purposes.~~

We refer to your request for our advice on the power and authority of the THA to enter into this proposed sale and leaseback transaction.

We have been advised and assume that the THA has determined that it requires an administrative building to be used for Education, Sport and Youth purposes. Following advice from AIC as Arranger, the THA has concluded that an appropriate structure to accomplish same would be as follows:

- I. A long lease over land vested in the THA is to be granted by the THA to a special purpose vehicle ("SPV") with the intention that the SPV will construct the building to house the administration centre and THA will lease-back the land and building.
- II. AIC will form the SPV which would raise financing by way of a bond issue to construct the administrative centre.
- III. On completion of the administrative centre, the THA will lease-back the land and the building for a period of time and at a rate that will cover the cost of financing the construction of the building.

We were instructed to provide an opinion on whether the THA has the necessary power and authority to do the following:

1. Grant a lease over land vested in the THA to a third-party Special Purpose Vehicle (SPV); and
2. Lease-back the property following the construction of an administrative building by the SPV.

Partners

Philip Hamel-Smith - Sen. Timothy Hamel-Smith - Grantley L. Wiltshire
Nicole Ferreira-Aaron - Debra Bharath Thompson - Jonathan Walker
M. Glenn Hamel-Smith - Gregory Pariza - Anthony Gonsalves
Associates
Tiffany Castillo - Nadia Henriques - Kevin R. Nurse - Luke Hamel-Smith
Fania Punch - Catherine Rhammarine - Keomal Lourenco - Stacy Lee Daniell
Partners Emeritus: Christopher Hamel-Smith S.C. - Myrna Robinson-Walters
Associate Firm - St. Kitts/Nevis: Gonsalves & Hamel-Smith

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Our advice turns on the purpose for which the THA was established and its powers and a review of the relevant case law.

Summary of Advice

The THA is a statutory corporation that is required to closely adhere to its governing Act. While certain powers may not be specifically granted to it, the THA has been given the power to do all such acts and take all such steps that are incidental to the exercise of its powers or for the discharge of its duties. Furthermore, the THA is specifically permitted to enter into such contracts as it deems fit for the discharge of its functions under the Act.

On the basis that the THA has responsibility for education, sports and state lands in Tobago and is required to formulate and implement policy in relation to such responsibilities, leasing the said lands can be considered to be an extension of such power, or alternatively, incidental to such power. Indeed, as there is no express prohibition disallowing the THA from dealing with the land vested in it, and the THA is permitted to enter into such contracts as it deems fit for the discharge of its functions, leasing and leasing back the property with the view of acquiring an administrative center to be used for education, sport and youth purposes may well be considered within the powers of the THA, and, in any event, incidental to such powers.

1. The THA

The Tobago House of Assembly (the 'THA') is a creature of statute and is thus governed by the Tobago House of Assembly Act (CH 25:03 (the Act)). The purpose of the Act is to provide for the membership, powers, and the functions of the THA and its Executive Council and matters incidental thereto.

The THA was initially formed in 1980 for the purpose of making better provision for the administration in Tobago and for the matters therewith. Thus, the Act prescribes that the Assembly has responsibility over areas such as state lands, education, public buildings, tourism, sports, community development, town and country planning, and infrastructure.

Taking these functions into consideration and considering the powers granted by the Act, the relevant question is whether or not (1) the leasing of land that is vested in THA to the SPV and (2) the taking of a lease over that land, both with the view of obtaining an administrative center for the use of education, sport and youth purposes, will be within the powers of the THA.

In his dissenting judgment in the case of *Attorney-General v Mersey Railway Company*¹, Lord Buckley held that a statutory corporation can do only that which is by statute authorised. Thus, as a statutory corporation, the THA is thus bound to act within the parameters of the Act.

Recently affirming this position, the court in the case of *Credit Suisse v Allerdale Borough Council*² noted that statutory requirements on a creature of statute are to be obeyed down to the 'minutest detail'. As a result, a contract that is entered into by an entity, but not authorised or permitted by the governing Act, must be treated as *ultra vires* (beyond the capacity of the entity). Such contracts will be considered

¹ [1907] 1 Ch 81

² [1997] QB 306

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wholly null and void. The THA must thus look to its Act in determining whether it is able to lease or lease-back land.

(a) Section 25 - The Responsibilities of the THA

Section 25 of the Act sets out the responsibilities of the THA and reads as follows:

25(1) Without prejudice to section 75(1) of the Constitution, the Assembly shall, in relation to Tobago, be responsible for the formulation and implementation of policy in respect of the matters set out in the Fifth Schedule.

(2) For the better performance of its functions, the Assembly is hereby empowered to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duties and in particular the Assembly may—

(b) enter into such contracts as it deems fit for the efficient discharge of its functions.

As mentioned above, the Fifth Schedule establishes the various areas over which the THA is to be responsible. By that schedule, the THA is also made responsible for State Lands. Also in relation to land, section 54 states, *inter alia*, that all lands and other property of every kind located in Tobago vested in the State, except the residences of the President and Prime Minister, are to be vested in the Assembly in right of the Republic of Trinidad and Tobago.

Nonetheless, no specific rights to deal with the land are granted to the THA by the Act. However, the THA is permitted by subsection 25(2)(b) to enter into such contracts that it considers fit for the efficient discharge of its functions. It must therefore be determined whether granting a lease over land vested in the THA to be used to construct an administration center for education, sports and youth purposes to be leased-back to the THA will be considered to be appropriate for the efficient discharge of its functions.

The function of the THA, as mentioned, is to provide for the administration in Tobago and to formulate and implement policies in respect to its areas of responsibility. The question therefore arises as to whether granting a lease over its lands or taking a lease over land will be considered to assist or provide for the discharge of those functions. This begs the question of what is the purpose of the granting or the taking of such leases.

In this instance, the purpose of granting a lease over the land is to allow for the construction of an administrative center by a third party on the basis that the THA will lease-back the land and building for the purposes of education, sport and youth following its construction. Does a lease for these purposes equate to the entering into of contracts to allow for the efficient discharge of the THA's functions?

³ *Ashbury Railway Carriage and Iron Co Ltd v Riche* (1875) LR 7 HL 653

So all lands
competently
acquired are
vested in THA

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By granting these transactions, the THA avoids having to undertake the construction of an administration center itself. It provides what may be considered to be a cost-effective and financially viable route to obtaining an administrative center. Thus, in the case of *Halifax Building Society v Meridian Housing Association Limited*,⁴ the court was left to determine whether the construction of new buildings, the ground floor of which would be office units and the upper stories as flat, was incidental to the Housing Association's function of providing housing. In this case, the office part of the development was pre-sold and thus provided the necessary funding making the development financially viable and provided an element of guaranteed funding. The Court held that in such circumstances the Association was empowered to carry out the construction in the manner contemplated, albeit the ground floor was not a residential housing unit but was used as a financing mechanism.

Here, the main issue in contention is whether the THA is permitted to grant a lease or take a lease over land. In by sub-section 25(2)(b), the THA is able to enter into such contracts as it deems fit to ensure the efficient discharge of its functions, these leases may well be considered to fall within this power. Indeed, on the basis that an administrative center is necessary for the THA to carry out its functions under the Act, and on the basis that leases are considered contracts under the sub-section, the decision by the THA to lease the property and subsequently to lease-back same appears to well be within the THA's powers.

The case of *Re London and Colonial Co, Horsey's Claim*⁵ is also instructive. Here, the courts determined that it was not for the court to judge the decision of the directors of the company to take a lease over office space that was far too large for it. Instead, the proper question was whether it was *intra vires* for the company to take a lease over the property pursuant to its power to hire premises for the purpose of the company's business. In its consideration, the court noted that the important aspect in determining whether the exercise of powers was *intra vires* was whether the company in question had speculated. The Court concluded that the company did not speculate in deciding to take a lease over the office space, but determined that such space was necessary and any excess would be sublet to a third party.

Similarly, on the basis and to the extent that that the THA has appropriately determined that an administrative center is necessary for carrying out its functions under the Act, and on the basis that leasing the land vested in it to allow the center's construction and simultaneously entering into an agreement to lease-back the land and building is an effective and appropriate route to acquiring the center to carry out its functions, such decisions are not speculative.

Having regard to the ratio in the Halifax Case and in Horsey's Claim and in light of the facts and matters in our instructions, we conclude that the sale and leaseback arrangement falls within the powers and functions of the THA.

(b) The Incidental Powers of the THA

In any event, the THA is also granted the wider power to do all such acts and take all such steps as may be necessary for, or incidental to, the exercise of its powers or for the discharge of its duties. Thus, while the THA is required to closely adhere to the Act and the powers granted to it thereunder, statutory corporations will not be unreasonably restricted to those acts that are specifically mentioned or referred to in the statute.⁶ Indeed, statutory corporations are granted the ability to perform acts that may fairly be regarded as incidental to, or consequential upon, the things that an Act has authorized.⁷

⁴ [1994] 2 ECLR 540

⁵ (1858) LR 5 Eq 561

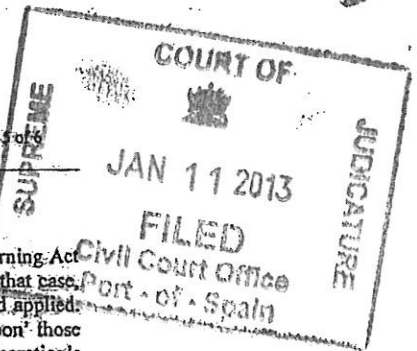
⁶ Per Lord Buckley [1907] 1 Ch 81

⁷ *Attorney-General v. Great Eastern Ry. Co.* 5 App. Cas. 478

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The principle that statutory entities would not be strictly and unreasonably confined to its governing Act arose in the House of Lords case of *Attorney-General v Great Eastern Railway Company*⁸. In that case, the Law Lords held that the doctrine of *ultra vires* should not be unreasonably understood and applied. Instead, whatever may fairly and reasonably be considered 'incidental to' or 'consequential upon' those things authorised by the legislation should be considered as *intra vires*, or within the corporation's capacity, unless expressly prohibited. It has also been noted that what is considered to be incidental will be a question of fact and is dependant on the circumstances of each individual case. This can be seen when examining the plethora of case law determining an entity's capacity to perform certain powers.

One such example is the case of *Hazell v Hammersmith and Fulham London Borough Council and Others*⁹. The court was asked to consider whether a local authority had the power to enter into interest rate swap transactions by virtue of its governing Act. While the local authority was granted the power to borrow by its governing statute, the interest rate swap transactions were not considered to be within the local authority's powers. Furthermore, in its consideration, the court noted that the transactions did not facilitate the local authority's performance of those functions nor were they conducive to the discharge of same. As such, the transactions were not saved by the local authority's ability to perform those powers that were incidental to the local authority's functions.

Conversely, the case of *Deuchar v Gas Light and Coke Company*¹⁰ provides an example of functions that were considered to be incidental to the functions of a statutory entity, namely the Gas Light and Coke Company (GLCC). GLCC was empowered to make and supply gas; to convert, manufacture and sell residuals from gas-making; and to make and sell all articles so produced. In converting the residuals, GLCC required caustic soda, an outside chemical reagent. Following the determination that it was more cost effective to produce caustic soda rather than outsourcing it, GLCC constructed a factory on its land to make the chemical. The court considered whether the manufacture of the caustic soda was beyond the powers of the company. It determined that as there was no prescribed method of providing the material required for the conversion of the residuals, GLCC was impliedly authorised to manufacture the caustic soda themselves. In coming to this conclusion, the court noted that there was a clear need for caustic soda in the conversion process. The power to manufacture the chemical itself was therefore merely a power that was incidental to GLCC's functions.

Helpfully, the *Credit Suisse* case offered guidance on how the court will approach questions considering what will fall within the incidental functions of a corporation. The court noted that in determining what is 'incidental' the exercise of power should be considered in light of the relevant statutory functions of the company. The word 'functions' was considered to mean 'all the duties and powers of an entity'.

This can be seen in the case of *Re Kingsway Collieries Limited and Moore's Contract*¹¹. Here, the question was considered whether the company in question could sell its land, in the absence of an express power to do so. The court considered the purpose of the company along with its objects and determined that prohibiting the company from doing so would be contrary to the previous decision in the case of *Johns v Balfour*¹². In that case the question was whether the company had the power to purchase land where the company had for its objects the purchase of mines in Russia for the purpose of working iron and coal mines. In relying on the decision in *Attorney-General v Great Eastern Railway Company*, the court held that the objects of the company are to be construed in a reasonable way. Thus the question was

⁸ [1874 - 1880] All ER Rep Ext 1459

⁹ [1991] 2 W.L.R. 372

¹⁰ [1924] 2 Ch 426

¹¹ [1907] 2 Ch 259

¹² [1891] 1 Q.B. 194

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whether it was beyond the objects of the company to acquire the fee simple of the property. The court determined that if the company were able to acquire the mines, there is no good reason why it should not be permitted to acquire the surface of the same. Similarly, in the *Re Kingsbury* case the court held that the company, carrying on the business that it did, would be in the position to sell its land from time to time in the proper way. As such, while there was no express power to do so, the court held that selling such land would not be *ultra vires*.

These examples serve to confirm the fact that the court's interpretation of what is incidental to a corporation's functions will be dependant on the entity's purpose and its functions granted by its governing Act. They confirm the fact that an Act governing a statutory corporation will not be unreasonably applied in the circumstances, where the corporation seeks to perform functions are incidental to its purpose and its statutory functions.

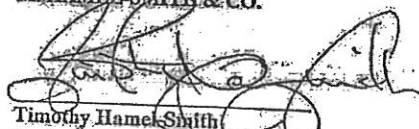
Indeed, there is no express prohibition on the THA restricting its ability to deal with its land. If the Act was then to be construed that it could not do so without reverting to Parliament each time, any dealings with land in Tobago that is currently vested in the State would result in a lengthy and unreasonable process that would severely hamper its ability to carry out its authorised functions. It is unlikely that Parliament intended such a process to take place if indeed the THA was formed to allow for better administration of the various Schedule Five matters, including education, sport, and state lands, in Tobago.

Thus, on this basis and that the THA is given the wide power to enter into such contracts as it sees fit for the discharge of its functions, it is likely that the THA, having the responsibility for state lands, does also have the incidental power to deal with the said lands where doing so is necessary for it to carry out its authorised functions. In doing so, it should also be able to lease and lease-back such lands, especially where the purpose of doing so is to provide an administrative center which it has determined is necessary for it to fulfill its functions under the Act.

This opinion is given to AIC Capital Market Brokers Limited for its sole benefit and for the purpose of entering into financial arrangements with the Tobago House of Assembly to provide financing for the construction of an Administrative Centre for Education, Sport and Youth purposes. It is given on condition that it is governed by and shall be construed in accordance with Trinidad and Tobago law and that any action arising out of it is subject to the exclusive jurisdiction of the Trinidad and Tobago courts. It may not be delivered to nor relied upon by any other person or for any other purpose, nor is it to be quoted or referred to in any document or filed with any person, in any case without our prior written consent, other than your auditors and regulators for which our consent is granted.

Notwithstanding any language to the contrary in this letter, you are authorised to make a copy of this letter available to the THA, but in so doing we are not undertaking or assuming any duty or obligation to the THA or establishing any lawyer-client relationship with them.

Yours faithfully,
M. HAMEL-SMITH & CO.


Timothy Hamel-Smith
Partner - Banking & Finance Group
Direct Lines: 1(868) 821-5512

**(7c) The Authority of the THA to Engage in a
BOLT Operation - - A Legal Opinion with
Specific Reference to The Division of
Agriculture, Marine Affairs, Marketing
and the Environment.**

OPINION

Ex Parte Milshirv Limited, the
Tobago House of Assembly and First Citizen's Bank

I have been asked to advise the Tobago House of Assembly (hereinafter "the THA") on the following with respect to the captioned matter:

- Whether the transactions described below breach any existing law with respect to procurement/tendering.
- Whether the THA has power to enter development financing (specifically BOLT [Build, Operate, Lease, Transfer]) arrangements.
- Whether the transactions described below are in breach of any prohibition or limitation placed on the THA to borrow (subject to or otherwise, prior permission having been obtained from the Ministry of Finance).

The facts

The THA was initially approached by Amera Caribbean Development Limited (hereinafter called "the Developer"), a real estate development company, with a proposal to construct a mall on lands at Shirvan Road, Tobago (hereinafter called "the said lands") then owned by Dankett Limited, an affiliate of the Developer.

The Developer made the proposal to the THA with a view to providing accommodation for an Administrative Complex to house the various

divisions of the Department of Agriculture, Marine Affairs and the Environment.

The THA subsequently purchased the said lands from Dankett Limited at a price of twelve million dollars (\$12,000,000.00) pursuant to a valuation of the said lands done by the Ministry of Finance, Valuation Division in 2010.

However, for the purposes of constructing the Administrative Complex, the THA entered into a BOLT (build, own, lease, and transfer) arrangement with the Developer whereby the Developer would build, own, lease and at the expiry of twenty (20) years transfer the Administrative Complex to the THA.

More particularly:

- By *Deed of Conveyance* dated 15th November 2011, registered as No. DE201200905514D001 the following lands (hereinafter "the said lands") were conveyed by Dankett Limited to the THA:

"All and singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September, 1966 and registered as No. 11281 of 1966) and bounded on the North by Shirvan Estate on the South by Milford Road on the East by a Road Reserve fifty links wide and on the West by lands of Marjorie Tsoi-a-Fatt which said parcel of land is shown coloured pink in the plan annexed and marked "B" to the said Deed No. 11281 of 1966."

"All and singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising ONE ACRE (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September,

1966 and registered as No. 11281 of 1966) and bounded on the North by lands of Herbert C. Phillips on the South by Milford Road on the East by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "C" to the said Deed No. 11281 of 1966."

"All and singular that parcel of land situate in the Parish of St. Patrick in the island of Tobago comprising **ONE ACRE** (being a portion of the parcel of land described in the Second Part of the Schedule to a certain Deed dated 24th September, 1966 and registered as No. 11281 of 1966) and bounded on the North and East by Shirvan Estate on the South by lands of George Young and on the West by Shirvan Road which said parcel of land is shown coloured pink in the plan annexed and marked "D" to the said Deed No. 11281 of 1966."

• By Deed of Lease dated 21st November 2011, registered as No. DE201200109459D001, (hereinafter called "the Land Lease"), the THA leased the said lands to Milshiry Properties Limited (hereinafter called "Milshiry"), a company formed for the special purpose of managing the BOLT arrangement, for a term of 199 years commencing on 1st December 2011, at an annual rent of \$10,00 payable on 1st January each year of the term.

- The Land Lease provides that Milshiry agrees with the THA to construct an office building and facilities (being 82,954 sq. ft. over 3 floors in extent) ("the said office facility") on the said lands in accordance with plans and specifications annexed thereto; and
- On completion of the said office facility, Milshiry will lease same to the THA for a term of twenty (20) years in accordance with a draft Lease annexed to the said Lease (hereinafter referred to as "the Office Lease"), at an annual rent of \$14,379,499.32 plus VAT

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to be paid by equal monthly payments. A deposit of \$21,569,248.98 (a sum equivalent to eighteen (18) months' rent) to be paid on the execution of the Office Lease).

- By *Deed of Licence* dated 27th August 2012 entered among the THA, Milshiry and First Citizens' Bank Limited (hereinafter called "FCB") the THA granted Milshiry a licence:
 - to assign the said lands by way of security under the Mortgage in favour of FCB for the unexpired residue of the term granted by the said Lease (i.e. the residue of 199 years); and
 - to grant FCB security against forfeiture or surrender of the said Lease
- By *Deed of Confirmation*, undated September 2012, the intention of the parties of the said Lease was confirmed (as the execution of the said Lease was made by the Chief Administrator in the office of the Chief Secretary, and therefore not in accordance with the THA's procedure for execution of Deeds of Lease).

The various transactions cumulatively entered between the THA and Milshiry set out have become a matter of public interest. The Prime Minister in her contribution to the Budget Debate raised concerns that the "the THA has negotiated an arrangement which was designed to bypass and circumvent the provisions of the THA Act. In particular section 51 of the Act where it states:

51. The Secretary may—

(a) with the approval of the Assembly, borrow by way of overdraft, such sums as the Assembly considers fit for the discharge of its functions; or

(b) with the approval of the Minister, borrow sums by way of term loans for the purposes of capital investment."

The Prime Minister also raised concerns with respect to *"the use of the BOLT structure without the knowledge or the approval of the Minister and the Cabinet"* in contravention of section 51(b) of the Act. Further, the Prime Minister in her Budget contribution indicated that *"these BOLT arrangements are in effect borrowing by the THA contrary to the THA Act, section 51"*.

The issues

I am asked to determine a number of questions in respect of the transactions set out above.

Specifically I am asked to determine whether the THA has the legal authority to enter development financing arrangements such as BOLT?

If the answer to the above is in the affirmative I am asked to determine whether the transactions set out above require the permission of the Minister of Finance and the Economy (hereinafter 'the Minister') with respect to borrowings by the THA?

I have also been asked to determine further supplemental questions. Whether on the assumption that the prior authorization by the Minister is a pre-requisite for borrowings by the THA, what is the position where no such authorization is forthcoming? I have also been asked to determine whether in point of fact the THA has breached s. 51 of the Act. Finally I

have been asked to determine whether the THA has breached any provision of the Central Tenders Board Act?

My answer to each of these separate issues is set out hereunder.



The power of the THA to enter a bolt transaction

The THA

The THA was established by the Tobago House of Assembly Act 1980, which was repealed and replaced by the Tobago House of Assembly Act, [Act No. 40 of 1996] (hereinafter "the Act"). Having been created by statute the THA as a creature of statute has only such powers as are conferred on it by the enabling statute, save where other legislative provisions expressly extend the said powers of the THA.

The statutory provisions which govern the powers and functions that are material for present purposes are contained in the Act.

Section 25 (1) of the Act provides:

25, (1) Without prejudice to section 75(1) of the Constitution, the Assembly shall, in relation to Tobago, be responsible for the formulation and implementation of policy in respect of the matters set out in the Fifth Schedule.

Section 75(1) of the Constitution provides:

75. (1) There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the government of Trinidad and Tobago and shall be collectively responsible therefor to Parliament.

The Fifth Schedule of the Act, *inter alia*, sets out the following areas for which the THA is responsible:

- Finance, that is to say the collection of revenue and the meeting of expenditure incurred in the carrying out of the functions of the Assembly;
- State lands
- Land and marine parks
- Public buildings
- Agriculture
- Fisheries
- Industrial Development
- The Environment

Section 25 (2) of the Act provides:

25. (2) For the better performance of its functions, the Assembly is hereby empowered to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duties and in particular the Assembly may—

(a) devise mechanisms to ensure the protection and security of property, buildings, or other assets under its control;

(b) enter into such contracts as it deems fit for the efficient discharge of its functions;

Section 27 of the Act provides:

27. Where services fall within the responsibility of the Assembly pursuant to section 25(1) or where the Assembly acts as agent of the Government, statutory authority or State enterprise pursuant to section 26(2), the services shall be administered by the Assembly.

On a strict interpretation of the Act, the THA has the power *"to do all such acts and take all such steps as may be necessary for or incidental to the exercise of its powers or for the discharge of its duties and in particular... may... enter into such contracts as it deems fit for the efficient discharge of its functions"*.

The relevant function being discharged by the THA for the present purpose is the provision of an Administrative Complex to house the various divisions of the Department of Agriculture, Marine Affairs and the Environment, departments which are listed in the Fifth Schedule of the Act and therefore fall under the THA's responsibility.

For the purpose of determining this issue, it is necessary for me to consider the "BOLT" arrangement between the THA and Milshirv and what it involves.

- By virtue of the Land Lease it is contemplated that Milshirv will:
- B - Build the Office Facility in accordance with plans and specifications annexed to the Land Lease;
 - O - Own the said lands for a term of 199 years under the Land Lease;
 - L - Lease the Office Facility to the THA for a 20 year term;

T- Transfer ownership of the said lands to the THA, upon the satisfaction of the terms and conditions of the Office Lease by executing a Deed of Surrender.

In substance what the THA has done is to:

- Purchase land (for the purposes of constructing an Administrative Complex to house offices for the various divisions of the Department of Agriculture, Marine Affairs and the Environment).
- Lease the said land to Milshirv for 199 years.
- Grant a licence to Milshirv to mortgage the said land to FGB for the 199 year term.
- Agree to lease the Office Facility constructed by Milshirv on the said land (after its completion) for 20 years with an option to purchase same after the 3rd anniversary and on each subsequent 3 year anniversary during the 20 year term.

The question then to be considered is whether the THA has the power to purchase land, grant a lease of land, give consent for the assignment of a lease and to itself lease premises.

There is within the Act no express power given to the THA to do any of these acts, however, by virtue of s. 25 (2) the THA has been given a general power "*to do all such acts and take all such steps as may be necessary for or incidental to the exercise of its powers or for the discharge of its duties*" and a specific power to "*enter into such contracts as it deems fit for the efficient discharge of its functions.*"

The power to do the above acts not being express powers, must as a condition of their lawful performance, be necessary or incidental to the

exercise of the THA's powers or for the discharge of its functions to be *intra vires* the powers conferred on the THA by the Act.

Pennycuick J. in *Attorney-General v. Crayford Urban District Council*,¹ stated, so far as is material that:

"The law is not in doubt. The council, as a corporation established by statute, has only such powers as are conferred upon it by statute, or as may fairly be regarded as incidental to, or consequential upon them;"

Pennycuick J went on to refer to the case of *Attorney-General v. Great Eastern Railway Co*² and in particular to *dicta* of Lord Selborne L.C. who said:

"But I agree with James L.J. that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires";

Pennycuick J then referred to a passage from the judgment of Lord Blackburn in which he said:

"My Lords, I quite agree with what James L.J. has said on this first point as to prohibition, that those things which are incident to, and may reasonably and properly be done under the main purpose, though they may not be literally within it, would not be prohibited."

Pennycuick J further commented:

¹ [1960 A. No. 1905.] - [1962] Ch. 246

² (1880) 5 App.Cas. 473, H.L.

"In this connection it should be observed that the expression "incidental to" is not equivalent to "in connection with" but has a narrow meaning, expressed by Lord Macnaghten in Amalgamated Society of Railway Servants v. Osborne³ as "what might be derived by reasonable implication from the language of the Act."

In *Hazell v Hammersmith and Fulham London Borough Council*⁴ Lord Templeman pointed out at page 31 that:

"The authorities ... establish the general proposition that when a power is claimed to be incidental, the provisions of the statute which confer and limit functions must be considered and construed... The authorities also show that a power is not incidental merely because it is convenient or desirable or profitable."

I consider that the law is accurately stated in the *Attorney General v Crawford Urban District Council* and in the most recent case of *Hazell v Hammersmith and Fulham London Borough Council*. The first task must be to determine what the statute provides and where there is no express provision made for a power to determine whether as a matter of statutory construction the power can fairly be said to be incidental to the functions conferred on the relevant statutory authority:

The entire purpose of the Act must be considered. So construed I consider that the power to purchase land, the grant of a lease of land, the giving of consent for the assignment of a lease and the lease by the THA

³ [1910] A.C. 87, 97; 26 T.L.R. 177, H.L.

⁴ [1992] 2 A.C. 1

itself of premises to house departments under its responsibility are incidental to the exercise of its powers in the discharge of its statutory functions. These are not powers that can be said to be merely convenient or desirable or profitable. These are powers that are necessarily incidental to the discharge of the statutory functions of the THA. These are not unusual powers such as those sought to be defended in *Hazel* involving speculative and uncertain financial transactions of a complex nature, which were engaged in by the statutory authority for the purpose of attempting to make a profit from uncertain market conditions. These are powers, which are sought to be exercised to house departments of the Assembly in respect of which the Assembly is given an express statutory responsibility to act.



I am fortified in my view by the use in the statute of the words in the general enabling powers in section 25(2) of the Act. (Even if this provision were not present I consider that the ordinary principles of statutory construction would imply words to similar effect) in particular the THA is expressly empowered by s. 25 of the Act *to do all such acts and take all such steps as may be necessary for or incidental to the exercise of its powers or for the discharge of its duties and in particular... may... enter into such contracts as it deems fit for the efficient discharge of its functions?*

The fact that these words are in fact present and are expressed in the Act can only serve to underscore that the legislature intended to confer on the THA powers which were not in fact specifically expressed in the Act (otherwise there would have been no need for the provision). If that was the intention of the legislature as it must indeed have been there can be no power more necessary to the exercise of the statutory functions of the THA than the power to house those Departments entrusted to the THA in carrying forward its Scheduled functions, under the Act

I am therefore of the view that the THA has acted, on a fair construction of the Act, *intra vires* the provisions of the Act to take steps that it would have deemed necessary for or incidental to the exercise of its powers for the provision of office facilities for departments under its purview.

For that purpose the THA entered into the above-mentioned "contracts"/arrangements that it would have deemed fit for the efficient discharge of its statutory functions.

In this specific instance the THA has acquired and leased the said lands for the purposes of constructing the Administrative Complex with a view to leasing the said office facility for 20 years after which time the said lands and the Office Facility thereon are to be transferred back to the THA in accordance with the provisions of the Land Lease set out above.

The power of the THA to borrow

I consider the THA's statutory power to borrow together with the following questions that have been asked of me:

- Does the Minister have to authorize the borrowings of the THA?
- If authorization by the Minister is a pre-requisite for the THA's borrowings, what is the position where no such authorization is forthcoming?
- Has the THA breached s. 51 of the Act?

It is necessary to resolve first the s. 51 question. Section 51 of the Act makes provision for the THA's powers to borrow and provides:

51. *The Secretary may—*

(a) with the approval of the Assembly, borrow by way of overdraft, such sums as the Assembly considers fit for the discharge of its functions; or

(b) with the approval of the Minister, borrow sums by way of term loans for the purposes of capital investment.

By virtue of s.51 of the Act, it is evident that, the Secretary has two alternatives with respect to the power to borrow and with respect to two different purposes, albeit both are subject to some form of approval namely:

- 1) For the purpose of discharging the functions of the THA, the Secretary may borrow by way of overdraft, *with the approval of the Assembly; OR*
- 2) For the purposes of capital investment, the Secretary may borrow by way of term loans, *with the approval of the Minister of Finance.*

I consider that it cannot be argued other than that land and buildings are properly to be considered as capital and borrowing for the purposes of acquiring same would therefore be capital investment and would as a consequence require the approval of the Minister of Finance.

However, in the present scenario, the THA did not exercise its power to "borrow", but rather entered into an arrangement whereby the said lands

would be purchased and then leased to Milshiry, Milshiry would covenant in the Land Lease to construct the required Office Facility and the THA on completion would lease the said Office Facility from Milshiry at a rent, for a term of 20 years, thereby offsetting the costs of construction.

I have already expressed the view that the THA would have entered this arrangement as a necessary and incidental exercise in discharge of its duties for the efficient discharge of its statutory functions.

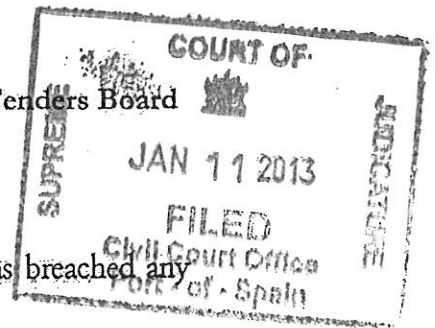
In the circumstances therefore, I consider that the THA cannot be said to have breached s. 51(b) of the Act as the THA cannot be said to have either in substance or in form "borrowed" any sums (by way of a term loan, overdraft or otherwise) for any of the purposes set out in the section be they capital investment or otherwise. As such no authorization would have been required by the Minister to engage in the subject transactions.

I hasten to add however that the statute is clear that if the THA wishes to borrow for the purpose of capital investment and does in fact do so the prior approval of the Minister is necessary to enable the Secretary to do so lawfully and if the THA wishes to borrow for the discharge of its functions and does in fact do so the prior approval of the Assembly must be given to the Secretary.

If there is non-compliance with s. 51 the borrowing is void or voidable.

I do not consider this point further as I have already expressed the view that the instant transaction does not constitute a borrowing.

Has the THA breached the provisions of the Central Tenders Board Act?



I turn now to consider the question whether the THA has breached any provision of the Central Tenders Board Act.

Section 28 of the Act provides that:

28. The Assembly, in pursuance of its functions, shall be subject to the Central Tenders Board Act until such time as there is in effect alternative provision therefor made by the Assembly under section 52.

Section 52 of the Act provides:

52. Within two months of the coming into force of this Act, the Assembly shall, subject to the approval of the President, make such Financial Rules as are necessary for the proper management of its finances and such Rules shall, when made, be laid in Parliament.

Section 78 of the Act provides:

78. (1) Notwithstanding the repeal and replacement of the former Tobago House of Assembly Act, 1980 by this Act, the Tobago House of Assembly Financial Rules, 1990 (made under the said former Tobago House of Assembly Act) shall, until such time as Financial Rules made under section 52 come into force, remain in force and apply to the Assembly with such modifications as are necessary for conformity with this Act.

No alternative provision having yet been made by the Assembly under section 52 of the Act, the Tobago House of Assembly would, in pursuance of its functions and in accordance with s.28 of the Act, therefore, still be subject to the Central Tenders Board Act.

Further, section 3 (1) of the Central Tenders Board Act provides:

3. (1) *This Act applies to such of the statutory bodies as are set out in the First Schedule to this Act notwithstanding any general or special power or authority vested in such statutory body either by Act or by virtue of its incorporation.*

Section 4 of the Central Tenders Board Act provides:

4. (1) *There is hereby established a Central Tenders Board which save as is provided in section 20A and in section 35 of this Act shall have the sole and exclusive authority in accordance with this Act—*

(a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any of the statutory bodies;

The THA is one of the statutory bodies listed in the First Schedule of the Central Tenders Board Act. As indicated earlier, the THA by virtue of s. 25 (2) of the Act has been given both a *general power* as well as a *specific power* in relation to the discharge of its functions. Section 3 (1) of the Central Tenders Board Act however, specifically states "*notwithstanding*

any general or special power or authority vested in [a] statutory body" such as the THA, the Central Tenders Board Act would still apply.

As such, the THA, in the discharge of its functions, is subject to the procedure provided in the Central Tenders Board Act for "inviting, considering and accepting or rejecting offers for the ...undertaking of works or any services in connection therewith, necessary for carrying out the functions of the [THA]", consistent with section 28 of the Act.

Section 20 of the Central Tenders Board Act provides:

20. (1) *Subject to section 19, whenever articles or works or any services in connection therewith are required to be supplied to or undertaken on behalf of the Government or a statutory body to which this Act applies, the Government or such statutory body shall make written request to the Board to invite on its behalf offers for the supply of those articles or for the undertaking of the works or services in connection therewith.*

20A. (1) *Notwithstanding the provisions of section 20(1), the Government (of Trinidad and Tobago) may act on its own behalf where—*

(a) as a result of an agreement for technical or other co-operation between it and the Government of a foreign State, the latter designates a company to supply the articles or to undertake the works or any services in connection therewith;

(b) the articles or works or any services in connection therewith are to be supplied or undertaken by a company which is wholly owned or controlled by a foreign State;

(c) it enters into a contract with the National Insurance Property Development Company Limited or a company which is wholly owned by the State, for the

supply of articles or for the undertaking of works or services in connection therewith;

(d) it enters into a contract with a company for the purchase of books for official purposes;

(e) as a result of the occurrence or anticipation of flooding, hurricane, landslide, earthquake or other natural disasters, the Minister is of the opinion that an emergency situation has arisen in any part of Trinidad and Tobago, the abatement, prevention or alleviation of which necessitates the obtaining of articles or the undertaking of immediate works or services by the Government; or

(f) items and services listed in the Third Schedule are approved by the Minister as being required for the purposes of the Trinidad and Tobago Defence Force or for the protective services.

20A (3) The provisions of the Act shall not apply where the Government exercises the power conferred on it by subsection (1).

26. (1) Where an offer has been accepted by the Board or a committee acting for and on behalf of the Board, the Government or the statutory body at whose request the invitation to offer was issued and the person whose offer has been accepted shall enter into a formal contract for the supply of the articles or the undertaking of the works or services, as the case may be.

35. (1) The President may make such Regulations as may appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act and, without limiting the generality of the foregoing, may make Regulations—

(a) prescribing the procedure to be adopted by the Board in the exercise of the authority vested in it by this Act;

(d) prescribing the forms of contract to be used;

(e) prescribing the financial limits within which contracts may be awarded by public officers and officers of statutory bodies and the limit of the value of articles which may be purchased by such officers without inviting tenders;

(h) prohibiting the entering into of contracts for the supply of articles or the undertaking of works or any services connected therewith with members of statutory bodies to which this Act applies or any officers thereof or with such other persons as may be specified in the Regulations.

Section 10 of the Central Tenders Board Regulations provides:

10. Every formal contract shall be in such form as the Board on the advice of the State Solicitor may from time to time determine and shall specify, inter alia, whenever applicable—

(a) a description of the articles to be supplied or the works or services to be undertaken;

(b) the price to be paid for the supply of such articles or the undertaking of such works or services;

(c) the period within which the matters contemplated by the contract are to be performed;

(d) the amount of damages payable by the Contractor for delay or non-completion within the period stipulated; and

(e) provision for termination on breach.

As detailed above, with respect to the undertaking of works or any services connected therewith, the THA is subject to the provisions of the Central Tenders Board Act.

On the facts, however, the THA has not in fact entered into any contract with Milshirv for the construction of the office facility. Rather the THA has granted a lease to Milshirv, wherein Recital B states:

"The Lessee (Milshirv) has agreed with the Lessor (the THA) to construct an office building and facilities (being 82,954 s.f. floors in extent) on the said Lands (the said Office Facility) in accordance with plans and specifications hereto annexed and marked "A"."

and Milshirv has covenanted as follows:

"to construct the Office Facility on the said Lands in accordance with the attached plans and specifications."

Milshirv has been granted a long lease (for 199 years) of the said lands by the THA and Milshirv is, for that term, unless determined sooner, the "owner" of the said Lands. The THA as Lessor has agreed with (or has given permission) to Milshirv, its tenant, to construct a building on the said Lands.

Not having entered into any contract nor having contracted Milshirv to construct the office facility the THA is not within the language of the tendering process provided for in the Central Tenders Board Act.

I consider therefore, that the BOLT arrangement between the THA and Milshirv was not subject to a tendering process in accordance with the provisions of the Central Tenders Board Act as set out above. As such, the THA is not in breach of the said Act.

Conclusion:

First, with respect to the THA's powers to enter development financing arrangements such as BOLT, on a strict interpretation of the provisions of the Act namely, s. 25 (1) and (2), the THA has a wide power to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duties. On a fair reading of the Act the THA by virtue of the Act is also entitled to enter into such contracts as it deems fit for the efficient discharge of its functions. It follows therefore that the THA can enter arrangements of the type hereinbefore set out.

The THA's wide power is however limited to acts that are necessary or incidental to the exercise of its powers and to the discharge of its functions and must therefore not be acts that are merely desirable or convenient or profitable. The exercise of these powers must also be limited to such acts that may reasonably and properly be done under the main purpose of the Act, even though they may not be expressly set out in the Act such acts would not be prohibited.

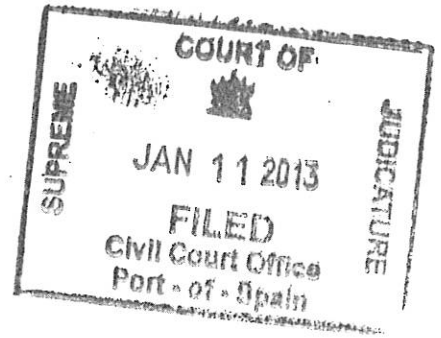
Secondly, with respect to the THA's powers and the limitations contained in the Act with respect to the power to borrow, as stated before, the Secretary has two alternative powers and they are established for two different purposes. The THA's power to borrow is limited, in the case of discharging its functions, to a loan by overdraft and to the approval of the Assembly without which the Secretary may not borrow; whereas for the purposes of capital investment, the THA is limited to borrowing by way of term loans and this requires the prior approval of the Minister of Finance without which the Secretary may not borrow.

The THA by virtue of the BOLT arrangement, not having "borrowed" any monies for the purposes of constructing the office facility or otherwise cannot be said to be in breach of s. 51 of the Act.

Thirdly, with respect to the issues of procurement and tendering under the Central Tenders Board Act, I consider that the BOLT arrangement, not being a contract entered by the THA with Milshirv for construction of an office facility but rather being in substance an arrangement for the purchase of lands and the lease back of same where the parties then have in contemplation the construction, the ownership (by a third party) the lease (by the THA) and the transfer of the facility (to the THA) in accordance with the terms of the arrangement, is not a contract that is caught by the provisions of the Central Tenders Board Act. I consider that the THA therefore is not in breach of the provisions of that Act.

I advise accordingly.

John S Jeremie SC



**(7d) Legal Disputes Between the Tobago House
of Assembly and the Government of the
Republic of Trinidad and Tobago: An
Example.**

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

NO. 3437 of 1982



BETWEEN

THE TOBAGO HOUSE OF ASSEMBLY

PLAINTIFF

AND

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

DEFENDANT

Before the Honourable
Mr. Justice K.D. McMillan

A. Wharton S.C., A. Alexander S.C. and S. Maharaj for the plaintiff
B. Brocote S.C., M. de la Bastide S.C. and Miss Christopher for the
Attorney General.

JUDGMENT

The island of Tobago has had an eventful history. Believed to have been discovered by Columbus in 1498, it has seen the men and ships of the European maritime powers which waged war in the western Atlantic Ocean and Caribbean Seas in their quest to conquer and to colonise. Even the Americans tried in 1778 to capture it, but failed. Until 1814 when it was finally ceded to the British Crown, attempts at colonising her had been made by Englishmen, Zeelanders and Courlanders and the island belonged in turn to the Dutch, British and French. Place names in Tobago attest to their presence, though some names were changed as often as the flag.

In 1877 Tobago became a Crown Colony with a resident Administrator under command of the Governor in Chief of the Windward Islands. Following

several unsuccessful attempts to link it permanently with the Windward Islands the island was amalgamated with Trinidad as a Joint Colony (Trinidad & Tobago) as from January 1, 1889.

Prior to its amalgamation with Trinidad Tobago had enjoyed its own Legislature but, on amalgamation with Trinidad, it was administered by a Commissioner appointed by the Governor of the Colony who was resident in Trinidad. It continued however to raise and control its own revenue under a Financial Board appointed by the Governor. In 1877 it was declared to be a Ward of the Colony of Trinidad and Tobago and the revenue, expenditure and debt of Tobago merged with that of Trinidad. The Commissioner was replaced by a Warden. In 1946, Tobagonians began enjoying greater participation in the islands affairs as a result of the establishment of a County Council for the Island. In 1958 it was administered as a Department of the Prime Minister's Office. In 1962 Trinidad and Tobago moved from Colonial Status into Independence as part of the (British) Commonwealth with the Queen as titular Head of State. The Constitution provided for the Westminster ^{of} system/Parliamentary Government. In 1976 Trinidad and Tobago adopted a republican status under a new Constitution but retained the Westminster System of Parliamentary Government. To those nurtured on the English Common-law and Constitutional traditions that system of Government should need no explanation.

Following the attainment of Independence in 1962 Tobago continued to be administered as a Department of the Prime Minister's Office until 1964 when a Ministry for Tobago Affairs was established with full responsibility for Tobago. After the general elections in 1976 that Ministry seemed to exist in a fluid state leading to a call by Tobagonians for a greater say in administering the affairs of the island. Eventually, the Tobago House of

Assembly Act, 1980 was passed. It came into operation on September 23, 1980.

By its long title the Act was passed "to establish the Tobago House of Assembly for the purpose of making better provision for the administration of the Island of Tobago and for matters connected therewith." The Assembly thereby established is a body corporate. Its functions are detailed in section 21. Section 21 (1) states: -

"(1) The Assembly shall formulate and implement policy on all matters referred to it by the Minister and the Minister of Finance shall consult the Assembly on matters of national importance such as the annual national budget, development projects, and the operation and use of the long-term funds as they relate to Tobago and subject to this Act, the Assembly shall be responsible for implementing in Tobago, Government policy relating to -

- (a) finance and in particular the raising and collection of revenue and the meeting of expenditures incurred in carrying out the functions of the Assembly specified in this Act;
- (b) economic planning, programming and development of the resources of Tobago with special emphasis on agriculture, fisheries, forestry, industrial development and tourism;
- (c) the conservation and improvement of the environment;
- (d) the provision of adequate infrastructure so as to facilitate the supply of water and electricity, the operation of telecommunication services and road, sea and air transport facilities;

- (e) the establishment and maintenance of a system of comprehensive community services including the operation of educational and health facilities and the provision of training in arts and crafts."

Sub-section (2) then provides that "in addition to the functions set out in sub-section (1) the Assembly shall undertake" a number of other specified functions most of which were functions exercisable by the former Tobago County Council, but some are new. Among the new ones are those stated in paragraphs (t), (u) and (v), namely: -

- " (t) the introduction, in collaboration with the Ministry of Education, of programmes for the preservation and appreciation of Tobago folk art forms and the inclusion of such programmes in school curricula;
- (u) the identification and preservation of places of historical interest and natural beauty and the establishment of a natural history museum and a Tobago Trust;
- (v) the encouragement of the tourist industry by the provision and maintenance of beach facilities, by organising tours to places of interest and by sponsoring programmes of entertainment with particular emphasis on folk theatre. "

Section 22 then gives the Assembly power to make bye-laws but only for the proper management of any facilities established or operated by it under section 21 (2). Section 23 gives to the Assembly power to monitor the efficiency of the services provided in Tobago by public utilities specified in the Third Schedule to the Act. Section 24 then provides for

- 3 -

mutual consultation between the Assembly on the one hand and Ministries, Government departments or Statutory Authorities or the other. It is in these terms:

"24.(1) Where the co-operation of the Assembly would facilitate the carrying out of any public business which is the responsibility of a Ministry or department of Government or a statutory authority, that Ministry or department of Government or statutory authority shall consult the Assembly and the Assembly shall render all possible assistance.

(2) Where in order to discharge its functions the Assembly requires the co-operation and assistance of a Ministry, department of Government or statutory authority, the Assembly shall consult with the Ministry, department or statutory authority which shall render prompt assistance."

The County Councils Act, Chap. 25:04, contains a provision similar to subsection (1), but subsection (2) is new.

Sections 45 to 53 inclusive deal with financial provisions. Section 45 creates a fund (The Tobago House of Assembly Fund) "to which shall be credited all sums appropriated by Parliament for the use of the Assembly as well as all moneys collected by the Assembly in respect of fees or charges imposed by it under its bye-laws." Significantly, all moneys collected by the Assembly in respect of the functions set out in section 21(1) shall be handed over to the Head of Department referred to in section 59; (section 47).

Estimates of the Assembly's revenue and expenditure for each year are subject to the approval of the Minister to whom responsibility for the administration of Tobago is assigned and the Minister may in approving them make such modifications as he considers appropriate: (section 50).

The
/Exchequer and Audit Act, Chap. 69:01, provides further financial controls common to all statutory bodies and section 53 provides that the accounts of the Assembly shall be subject to audit by the Auditor General in all respects as if they were the public accounts of Trinidad and Tobago. Finally, section 59 provides for the administration of what can be described as the residual functions and is in these terms:

"59. Functions relating to the public administration of Tobago and not by this Act made the responsibility of the Assembly, remain to be exercised by the Government and shall be so exercised through a department the most senior post in which shall be in rank and status not less than to that of Permanent Secretary and the holder of that post shall be responsible to a member of the Cabinet."

The department set up to administer these residual functions is known as the Central Administration Services, Tobago, and is headed by a Permanent Secretary under the Minister to whom responsibility for the administration of Tobago is assigned. The Act abolished the Tobago County Council.

Following the formal inauguration of the Assembly meetings were held between representatives of the Assembly (sometimes the full Assembly) and representatives of Government often at ministerial level, with a view to an orderly assumption by the Assembly of its functions. From the inception the Government's view was that the functions assigned to the Assembly by section 21(2) were to be undertaken by the Assembly on its own initiative, but those set out in paras. (a) to (e) of section 21(1) could only be undertaken on the advice or instruction of the Minister. Following the expression of that view by the Deputy Solicitor General in December, 1980, the then Attorney General on February 25, 1981, wrote the Chairman (of the Assembly) further amplifying the official view. With regard to section

21 (1) he stated:

"Three distinct functions are envisaged for the Assembly in the above subsection -

- (1) Formulation and implementation of policy on all matters referred to it by the Minister;
- (2) Consultation with the Minister of Finance on matters of national importance relating to Tobago;
- (3) Implementation of Government policy relating to (a) to (e) above.

The duty to implement Government's policy in Tobago relating to matters set out at (a) to (e) of section 21 (1) of the Act makes the Assembly the "agent" of the Government in much the same way as any other "agency" set up to carry out Government's policy in any other sphere. The "agent" must be subject to the control of the principal but as between Government and the Assembly, certain mutual obligations are created at law.

Government's policy with regard to the various matters falling under (a) to (e) above can only be enunciated by the Minister with responsibility for Tobago Affairs either personally or through his Permanent Secretary-level administrative officer. The duty of ensuring that the said policy is implemented in accordance with sound Governmental practices and procedures must also lie with the Minister.

The canons of interpretation require that the Act be looked at as a whole. The language of one section may affect the construction of another. The raison d'être of the Act is to establish the Tobago House of Assembly for the purpose of making better provisions for the Administration of the Island of Tobago for matters connected therewith.

The Tobago House of Assembly is the instrument devised by Parliament to achieve the aim of better administration of the affairs of Tobago, and I am of opinion that section 21 (1) of the Act contains all the necessary provision for giving effect to Parliament's wishes."

The Assembly accepts the Attorney General's classification of the three functions granted to it by section 21(1), but strongly opposes the view that it is the agent of Government and that the duty of ensuring that government policy is implemented in accordance with sound government practices and procedures must lie with the Minister. It takes the view that with regard to the implementation of policy with respect to the functions specified in paragraphs (a) to (e) of s. 21(1) that the Act has effectively assigned them to the Assembly and, as with the s. 21(2) functions, they are to be undertaken by the Assembly without Ministerial interference.

Further meetings were held and on July 29, 1981, the Minister of Energy and State Enterprises wrote the Chairman summarising Cabinet's decisions on the various matters discussed. Two of the matters identified by the Minister as having been discussed and the Cabinet's views thereon ((x) and (xi) of the letter) indicated clearly that Government was adhering still to the views expressed by the Deputy Solicitor General and the Attorney General, namely:

- (a) the need for "assignment of the Central Government's responsibilities" to the Assembly of some of the matters specified in paragraphs (a) to (e) of section 21(1), "to be discharged on behalf of the Central Government.";
- (b) supervision and monitoring of the



and completed in March 1982 at considerable cost (\$500,000) pains being "taken to use materials and maintain a design which were in keeping with the building in its original state and its location on a historic site." In other words it was restored.

In October 1981, the Chairman of the Assembly expressed to the Permanent Secretary, Central Administration Services Tobago, his and the Assembly's objections to, inter alia, the proposed use of the building as an out-patient's psychiatric clinic. He also indicated their objection to its occupation by a female medical social worker (who was then occupying it) and requested that her occupation should cease. The Chairman also expressed the view that no personnel from the Ministry of Health should be allowed to use or occupy any of the buildings on the compound of the Fort and that quarters on the eastern side of the compound occupied as living quarters by Hospital personnel should be vacated. In deference to the Chairman's wishes and pending a decision at Ministerial level, the Permanent Secretary gave instructions to the effect that the social worker should no longer use the old wireless building and that upon completion of the renovations, the building should be locked and the keys handed over to him. That allegation by the Permanent Secretary in his affidavit has not been challenged. I accept it as the reason for the delay in setting the clinic in the building, and reject the Chairman's allegation that the decision to site it there was rescinded. Again however, it is immaterial whether it was in fact rescinded since on January 13, 1982 at a meeting in Scarborough chaired by the Minister of Health and Environment ^{and} at which a Mr. K. Jones, described by the Permanent Secretary as Chairman of the Health, Sanitation and Environmental Committee of the Assembly, was present, the establishment of the Clinic at the Fort was discussed and according to the Permanent Secretary agreement reached as follows:

- (1) the old wireless building should be used as a

Psychiatric Out Patients Day Clinic after the Works Division had constructed steps to the back of the building leading from the hospital compound and had fenced the compound of the building to ensure that patients would not have easy access to the Fort area;

- (ii) the building would be used as a clinic until such time as the former Children's Ward on the Hospital compound was converted and furnished as a Psychiatric Out Patients Clinic.

In the light of the Assembly's insistence subsequently that the clinic should not be sited there, it may be that the Minister of Health merely reiterated Government's decision to site the clinic there. Whichever it was, it was a policy decision and instructions were at the same time given to Mr. W. Koo, an architect, and Mr. N. Stöckle, an engineer, (both present at the meeting) to make on-the-spot investigations of the former Children's Ward and provide an estimate of the cost of renovation works for consideration by the Minister of Health and Environment.

Further, as the Ministry of Health had financed the renovation and refurbishing of the old wireless building and the Assembly and the Trinidad and Tobago Tourist Board had both voiced objections to its use as a Psychiatric Clinic, it was considered reasonable that the Tourist Board and the Assembly should be asked to bear the cost of renovating and refurbishing the old Children's Ward in order to facilitate the removal of the Psychiatric Clinic from the Fort area to the Hospital compound. Mr. Jones (Chairman of the Assembly's Health, Sanitation and Environment Committee) was to report to the Assembly on, and seek its ratification of, all these matters.

In due course the Works Division, Tobago (which is under the direction and control of the Assembly) proceeded to construct a rear entrance to the old Wireless building, to provide railed steps leading thereto, and to erect a 5 ft. length wooden picket fence to separate the building and its immediate precincts from the rest of the Fort compound. This was to prevent out patients from having direct access to the rest of the Fort area.

On March 8, 1982 the Permanent Secretary, Central Administration Services, Tobago wrote the Clerk of the Assembly as follows:

Ref: CAST (D) 5/1/22

Dear Sir,

Establishment of a Psychiatric Clinic
at Fort George, Tobago

It was agreed at a meeting with the Minister of Health and Environment on 13th January, 1982 that the former Children's Ward on the compound of the County Hospital, Scarborough, be converted and furnished as a Psychiatric Out Patient Clinic.

It was further agreed that since the Ministry of Health had financed the renovation and refurbishing of the building on the Fort for use as an Out Patients Clinic, which building the Assembly and the Tourist Board had indicated they had other uses for, the Assembly and the Tourist Board should be asked to bear the cost of renovating and refurbishing the old Children's Ward in order to facilitate the removal of the Psychiatric Clinic from the Fort area.

Mr. Jones, Chairman of the Health, Sanitation and Environment Committee, Tobago House of Assembly, attended that meeting and was requested to report on the discussion taken to the Assembly and seek its ratification in the matter.

I would be grateful to receive the comments and views of the Assembly on the proposals at paragraph (1) and (2) at your earliest convenience."

The Clerk replied the same day as follows:

"With reference to your letter CAST (D) 5/1/22 dated 8th March, 1982, I am directed to inform you that the Tobago House of Assembly agrees with and indeed welcomes the proposal in paragraph 1, and has no objection to the proposal in paragraph 2 of your letter."

That reply has been interpreted by the Permanent Secretary, Central Administrative Services, Tobago (CAST) in his affidavit indicating the Assembly's "agreement to the proposed conversion of the former Children's Ward into a Psychiatric Out-patient's Clinic and its willingness to assume responsibility (whether with or without contribution from the Tourist Board was not made clear) for the cost of the said services." This view has not been challenged.

On March 26, 1982 Mr. Jones, as Secretary of the Assembly's Health Committee wrote the Minister of Health and Environment as follows:

"Dear Minister,

Subject: Establishment of Psychiatric Clinic at Fort George, Tobago.

My apology for the delay to inform you of the decision taken at our Administrative Committee Meeting on the subject matter.

This matter was sympathetically discussed, and it is the view of the Assembly that such a clinic should not be housed at the proposed building, because of damaging effect to the Tourist Industry and the reputation of the Fort as a historic and recreational site.

The Assembly agreed with the alternative building as was

discussed at the meeting on the 13th January, 1982, and will render and assistance needed to have the building in an acceptable form, so that the people of Tobago could have a good Psychiatric Clinic service.

Yours sincerely,

/s/ Kenneth Jones,
Secretary for
Health, Sanitation
and Environment."

That letter must have come as a surprise in view of the second paragraph of the Permanent Secretary's letter of March 9, 1982 to the Clerk of the Assembly and the Clerk's reply thereto.

It was followed up by a memorandum dated April 15, 1982 from the Clerk of the Assembly to the Permanent Secretary, Central Administrative Services, Tobago (CAST) to which was attached a copy of a resolution passed by the Assembly the previous day and requesting the Permanent Secretary's assistance "in accordance with the Tobago House of Assembly Act ... in the compliance with the terms of the resolution by all concerned." The Resolution was:

"That the House of Assembly call upon the appropriate Government Authorities and all citizens of this Country to take all necessary measures within the law to ensure the preservation of this site (i.e. the first area including the old Wireless building) as one of the greatest value as a major tourist attraction, historical site and recreational outlet to the citizens of Trinidad and Tobago, particularly the young children, as well as visitors to the island."

Despite the clear indications of the Assembly's objection to housing of the clinic in the old Wireless building, the Minister of Health and the

Minister with responsibility for the Administration of Tobago decided that, having regard to the conditions existing at the Scarborough Hospital (described by the Chairman of the Assembly as "a potentially explosive issue"), it was necessary to use the old Wireless building for the purposes of the Clinic and Day Care Centre until more suitable and permanent accommodation could be prepared. Again, that was a policy decision, and towards the end of April, 1982 the necessary staff moved into the building and the first clinic was held on May 7, 1982.

These are the facts as I find them from the affidavits and annexures thereto and which alone I think are necessary to determine the matters raised by the Originating Summons issued in these proceedings. By it, the Assembly seeks the determination by the Court of the following questions:

1. Whether upon the true construction of section 21 of the Tobago House of Assembly Act, 1980 (hereinafter referred to as "the Act") exclusive responsibility for implementing Government's policy relating to the matters specified in paragraphs (a) to (e) of sub section (1) thereof resides solely in the Tobago House of Assembly (hereinafter called "the Assembly") without any power or discretion in the Minister and/or the Government to assign to or withhold from the Assembly its said responsibility in respect of any of the said matters.
2. Whether upon the true construction of section 21 (1) (e) of the Act the establishment, operation and maintenance of health facilities in Tobago including psychiatric clinics pursuant to Government's policy in that behalf are the exclusive province of the Assembly.

3. Whether the siting by the Government of Trinidad and Tobago of the psychiatric clinic in the curtilage of Fort George against the wishes of the Assembly and in particular contrary to the decision of the Assembly was and continues to be invalid and in breach of the terms of Section 21 (1) (e) and Section 21 (2) (u) of the Act."

Mr. Procope for the Attorney General submitted that questions 1 and 2 are purely hypothetical and that the Court should decline to answer them. He referred to the speech of Lord Diplock in *Cherwell District Council v Thames Water Board* 1975 1 W.L.R. at pages 451/2. I am satisfied, however, that there is a difference of opinion, not as to the three functions envisaged for the Assembly by section 21 (1), but as to -

- (a) the position and status of the Assembly vis-a-vis the Central Government;
- (b) what if anything, is necessary to enable the Assembly to undertake the implementation of Government's policy relating to the matters specified in paragraphs (a) to (e) of section 21 (1); and
- (c) whether Government can reserve for itself any of those functions and to what extent.

It is a difference of opinion aptly described by Mr. Wharton for the Assembly as resulting more in delay on the part of the Central Government in implementing the Act rather than a conflict, but it involves a question of ascertaining the true meaning and effect of the Act. It is sufficiently raised by the first question which should, therefore, be answered.

The second question is a restricted form of the first question the

the first part of which is: Does the Assembly have exclusive responsibility for the matters specified in paragraphs (a) to (e) of section 21 (1)? Both questions may be conveniently answered together. The third question arises out of the siting of the Clinic on the old Wireless building.

I agree with the Attorney General that the Act must be looked at as a whole in determining its true meaning and effect. The Act as a whole and the status of the Assembly must be considered in the light of the general law and the Constitution. It has not been suggested that the Act is unconstitutional or that Parliament could not create the Assembly and confer on it the functions specified in section 21 of the Act.

The provisions of the Act as a whole show that while the Assembly enjoys a functional status superior to that of a County Council and has power to make bye laws, it is not a full legislature. As a Statutory Corporation it has only such powers as are conferred on it by Parliament which, for present purposes, means its Act of incorporation; it is subject only to such direction, control and supervision of the Government (i.e. the Cabinet or a Minister) to the extent that Parliament has legislated for such direction, control and supervision.

Speaking of central control, i.e. Government or Ministerial Control, of local authorities in England, Cross in his Principles of Local Government states (at p. 228 para. 11 - 01):

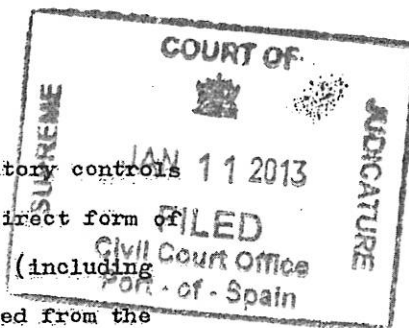
"In one sense local authorities are subject to control for Parliament is omnipotent. Parliament may allocate functions to local bodies or take them away. It may prescribe the way these functions shall be carried out

and may change the structure of local government as it chooses. The control here considered is, however, the control exercised by Ministers of the Crown and by the departments for which they are responsible, and in this connection the point must first be made that neither Ministers nor departments have an overall control of the work of local authorities. All formal control must be specifically authorised by statute."

This is the position as a matter of law. However, the most carefully thought out legal code seldom, if ever, gives the answers to all questions that may arise. Consequently, in practice, therefore, the position of the Government as a substantial contributor of finance and as the repository of confirming or consenting powers is often one of dominant influence on all major policies. Where influence fails to persuade problems are likely to arise as in the instant case. Accordingly, it is advisable to provide by legislation for some measure of Ministerial control to ensure compliance with Government's policy.

The only direct control of the Assembly that may be possible, as a matter of law under the Act, would seem to stem from:

- (a) the need for Ministerial approval of the Assembly's estimates of revenue and expenditure and the fact that the Minister in approving them may make such modifications as he considers proper (sec. 50 (3));
 - (b) the need for approval of the Assembly's bye-laws (which in any event can only relate to the management of facilities established or operated under section 21 (2): (see section 22); and, to a lesser extent;
 - (c) audit of the Assembly's accounts by the Auditor General (section 53),
- ... whether payments have been



Save for the above there are no other statutory controls provided and it is perhaps significant that the direct form of control which is exercisable over county councils (including the former Tobago County Council) has been omitted from the Act. I refer in particular to section 42(2) of the County Councils Act, Chap. 25:04, which enables the Minister, in the case of failure of a council to comply with the statute or any written law or statutory order, to give directions to the Council to comply therewith within a specified time, and gives the President power to transfer to the Minister such of the functions of the Council as may be specified by order in the event of noncompliance with those directions. This would seem to suggest a deliberate attempt to relax Executive control,

On behalf of the Attorney General, however, it was submitted that since the Assembly was "responsible" for implementing Government policy it must be answerable to the Minister to whom it must report. In further support of this submission Counsel added that under s. 79 of the Constitution responsibility for the administration of Tobago was assigned by the President to the Minister in the Ministry of Finance and Planning and that unless the Constitution was amended appropriately that responsibility remains with the Minister. It had not been suggested, he said, that the effect of the Act was to amend the Constitution. He sought to make a distinction between section 80 of the Constitution (which generally requires the President in the exercise of his functions under or any other law the Constitution, to act in accordance with the advice of the Cabinet except where provision is made otherwise in the Constitution or any other law and section 79(1) of the

deal with the Cabinet, the appointment of Ministers and allocation of their portfolios), and submitted that since section 74 vests the executive authority in Trinidad and Tobago in the President, then subsection (3) thereof (which provides that nothing in section 74 shall prevent Parliament from conferring functions on persons or authorities other than the President) relates to the President's powers which are exercisable by him either directly or indirectly. I agree that the functions referred to in subsection (3) are the executive functions or powers of the President, and it is just those functions or powers (other than the supreme command of the armed forces) which the conjoint effect of s. 53 (which deals with Parliament's powers to enact laws for the peace, order and good government of Trinidad and Tobago) and s. 74(3) enables Parliament to confer on persons or authorities other than the President (i.e. the Executive).

Writing on Article 53 of the Indian Constitution (which contains provisions almost identical with s. 74 of our own Constitution) one commentator states:

"When Parliament thus confers executive functions on authorities other than the President, the President is to that extent relieved of his responsibility which he has for the acts of 'subordinates' under Clause (1) of this Article (our own section 74(1)). In such a case, the responsibility is transferred to the authority to which this function is transferred by the legislature."

See Basu's Commentaries on the Indian Constitution (5th Ed.) Vol. 2 p. 372. I adopt that view. That should, I think, answer the question whether under a written constitution, such as ours, Parliament can confer executive functions on persons other than the President (the Executive).

To accept otherwise would be to surrender almost at the close of the 20th century, a right of control over the executive which had been won from Stuart kings in the 17th Century in a country whose system of government we have adopted by our Constitution.

Now let me just return to the submission that if Parliament intended to amend the Constitution it should have done so appropriately. It was not developed.

Parliament has power to alter the Constitution. Save for the matters specified in subsections (2) and (3) of section 54 (the entrenched provisions), a bill for an act to amend the Constitution can be passed by a simple majority vote in either House. The only other requirement is provided by section 54(5):

"No Act other than an Act making provision for any particular case or class of case, inconsistent with the provisions of this Constitution, not being those referred to in subsections (2) and (3), shall be construed as altering any of the provisions of this Constitution . . . unless it is stated in the Act that it is an Act for that purpose."

Assuming it can be said to be inconsistent with the provisions of s. 74 to 80 of the Tobago House of Assembly Act, 1980 is, to my mind an Act making provision for a particular case, namely better provision for the administration of the island of Tobago and, therefore, there was no need to state therein that it was intended to alter any of the provisions of the Constitution.

Since the Act is valid and the duty of implementing government policy relating to the matters specified in paragraphs (a) to (e) of section 21(1) has been transferred to the Assembly it may seem, at first blush, that the answers to the first two questions should be answered in the affirmative. The questions however, ask whether the Assembly has exclusive responsibility

for the implementation of that policy and while, in most cases, it may be exclusive, there may be exceptions. I can think of one to which I shall shortly advert. I shall turn first to the third question.

There is, to my mind, nothing inconsistent with the use of a building for a purpose which does not destroy its essential character as a place of historical interest and natural beauty. One is familiar with the continued occupation in the United Kingdom of stately homes which are being preserved as places of historical interest.

In the instant case, not only is the user of the old wireless building as a psychiatric out-patient clinic and day care centre intended to be temporary, but it is, on the chairman's own admission, to be used as such one day per fortnight only. The building and its immediate environs are fenced off from the rest of the Fort area, and such user as is envisaged can hardly be inimical to its preservation as a place of historical interest and natural beauty, although I hardly think that the expression "place of natural beauty" appropriately refers to a man-made object - the building.

In any event it is agreed that section 21(1) clearly envisaged three functions for the Assembly, the last of which is responsibility for implementing certain government policy. In this regard the position of the Assembly can be distinguished from that of the local authority in the Tameside case, Secretary of State for Education and Science v. Metropolitan Borough of Tameside 1976 3 All E.R. p. 665, referred to by senior counsel for the Assembly. In that case the Council of the Borough was the education authority with wide statutory powers. It was entitled to implement

proposals submitted by it and approved by the Secretary of State but (and this is the crux of the case) was under no duty to do so. Here, it is the duty of the Assembly to implement Government policy, and it is not expected that the Assembly will behave as an unruly horse.

Now, Government took a policy decision:

- (a) to site the clinic temporarily in the old wireless building until such time as it could conveniently be moved over to the former children's ward in the hospital; and
- (b) that the children's ward was to be renovated and refurnished for the purpose.

If the answers to the first two questions should be in the affirmative then it is the duty of the Assembly without any further instructions from Government to get on with the job of implementing that decision since it relates to the establishment and operation of a health facility. Failure to do so would be a breach of the Assembly's statutory duty, with all the consequences that such failure can entail. And this is so whether or not the Assembly has exclusive responsibility.

Can Government implement that policy decision? Section 59 of the Act, it seems, envisages a separation of functions and responsibility for implementing certain policy decision is transferred to the Assembly by section 21 (1). However while responsibility is transferred, the exercise of the function by

would stand in their way where the Assembly fails in its duty: (a) the need for Parliamentary approval to expend public moneys, and (b) the need for statutory powers in order to exercise a function, e.g., where the rights of individuals would be infringed. Here the building was restored at a cost of \$500,000. and one can only assume that the necessary approval was obtained. However, that is not a matter for this Court in these proceedings.

Are statutory powers necessary? I think not. Many clinics and hospitals have been privately owned and operated in this country without any statutory powers, and without licence or regulation by anyone before the Private Hospitals Act, Chap. 29:03, came into force in January, 1964. In any event there is the Hospitals Ordinance Chap. 12 No. 9 which though antiquated, enables the Government to establish and maintain hospitals and asylums.

I can think of nothing, therefore, once parliamentary approval of expenditure is obtained, that could prevent the Government from establishing, operating and maintaining on State property under its control, a public service that does not infringe the rights of individuals where the Assembly fails in its duty to do so. The Assembly can hardly complain if Government does that which the Assembly fails in its duty to do. This then is the exception that came to mind when dealing with questions 1 and 2 namely, where the Executive does not require statutory powers to be conferred on it in order to implement policy. Both questions 1 and 2 asked, in effect, whether upon the true construction of section 21(1) exclusive responsibility for implementing Government policy in respect of matters specified in paras. (a) to (e) of the subsection resides with the Assembly. Since there is at least one case in which, in my view, Government can implement its own decisions, I must answer them, no.

The answers to the three questions then, is in the negative.

Let me however end with these observations. Local government is essentially a method of getting various services done for the benefit of the community. It has to be fitted into the whole pattern of government. Consequently, there should be a working relationship between it and the Central Government. In so far as the implementation of government policy is concerned, a local authority should not be too sensitive if it is referred to loosely as Government's "agent" as in theory there is some sort of "Executive agency". It is not in fact Government's agent.

Government policy is not static, it is subject to change. It cannot be implemented unless clearly defined and enunciated. Accordingly, where consultation is sought and memoranda and circulars submitted to indicate, explain and amplify Government policy with a view to its proper implementation a local authority should not be unduly perturbed. Equally, however, the Central Government and its agencies must remember that the authority to function in a given field, once transferred by Parliament to a local authority may, in many cases, become the exclusive preserve of the authority subject only to such controls as are stipulated. A happy balance must be struck and, possibly, that is what s. 24 was intended to achieve.

The Attorney General shall have the costs of this action, to be taxed in default of agreement.

Dated this 4th day of April, 1984.

K. C. McMillan.

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