

## **DRAFT DEED**

Before me, .....duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

Of the first part:

.....hereinafter called '**the Government of Malta**' or '**the Government.**'

The related papers are marked Lands number two hundred and eighty four stroke two thousand and twelve (L. 284/2012).

Of the second part:

\_\_\_\_\_ who is appearing on this deed for and on behalf of \_\_\_\_\_, a private limited liability Company with company registration letter C number \_\_\_\_\_ (C\_\_\_\_) with its registered address at \_\_\_\_\_, (hereinafter referred to as "**Emphyteuta**"), as duly authorised to appear hereon by Board Resolution, herewith attached and marked as Annex A, later on this deed referred to as "**the Emphyteuta**" or "**the Company**" as the case may be.

Of the third part:

\_\_\_\_\_ together with \_\_\_\_\_ who appear on this deed in the name and on behalf of the **Authority for Transport in Malta**, a body corporate established by virtue of the Authority for Transport in Malta Act, Chapter four hundred and ninety nine (499) of the Laws of Malta, having its principal business address at Transport Malta Centre, Marsa, MRS 1917, as duly authorised by virtue of a resolution of the Board of Directors of the Authority for Transport in Malta annexed to this deed as a document marked with the letter "**A**", hereinafter referred to as "**the Authority**".

## **The Parties**

The Government of Malta and the Emphyteuta are in this deed collectively referred to as the "**Parties**" and each one a "**Party**".

Whereas the shareholders in the Company are [-] (the "Shareholders");

Whereas the Shareholders are the owners of the [-] hotels situated at the Strand, Sliema (the "Hotels");

Whereas the Hotels do not enjoy the facilities of a lido for their guests and have identified the land situated at Triq ix-Xatt, Gzira, having an area of approximately two thousand four hundred and seventy six square metres (2,476m<sup>2</sup>), *tale quale*, bounded from the north with Triq ix-Xatt and from the south and east with the sea or more correct boundaries and which site is bordered in red on the plan indicated as Property Division number two thousand and fifteen underscore one thousand and ninety three (P.D. 2015\_1093) and is shown on the Survey Sheet inserted in the same plan, which plan is being hereby attached to the deed and marked as document "**B**" (the "Land"), for the construction thereon of a lido (the "Lido") to serve the guests of the Hotels;

Whereas the Company submitted an application to the Planning Authority for the development of a lido on the Land ref [-] and a development permit was issued on the [-] a copy of which is hereto attached and marked document "**C**" (the "Permit");

Whereas the Government of Malta is desirous of transferring the Land to the Company to be developed and used as a Lido in respect of the Hotels subject to the terms and conditions contained herein;

Now therefore, in virtue of this deed, the Government of Malta, after consulting with the Authority, for any interest it may have, hereby grants on temporary emphyteusis for a period of sixty five (65) years reckoned as from the date hereof to the Emphyteuta, which accepts and acquires, by same title of temporary emphyteusis, the Land situated at Triq ix-Xatt, Gzira, having an area of approximately two thousand four hundred and seventy six square metres (2,476m<sup>2</sup>), *tale quale*, bounded from the north with Triq ix-Xatt and from the south and east with the sea or more correct boundaries and which site is bordered in red on the

plan indicated as Property Division number two thousand and fifteen underscore one thousand and ninety three (P.D. 2015\_1093) and is shown on the Survey Sheet inserted in the same plan, which plan is being hereby attached to the deed and marked as document "**B**", which site is subject to the servitude of a right of public passage shown shaded in yellow on the same plan. This land is on this deed referred to as "**the Emphyteutical Site**". For all intents and purposes, the term "land" shall be that as defined in Chapter five hundred and sixty three (563) of the Laws of Malta.

This emphyteutical concession is being made in consideration of the temporary yearly ground rent of:

- (i) fifty thousand Euro (€50,000) for the first three (3) years of the emphyteutical concession, the first payment being made today and the Government acknowledges due receipt;
- (ii) one hundred and fifty thousand Euro (€150,000) from the fourth (4<sup>th</sup>) year till the twelfth (12<sup>th</sup>) year of the emphyteutical concession, the first payment being made on the \_\_\_\_\_ of the year two thousand and nineteen (2019);

The ground-rent shall be payable yearly in advance as from the date of deed which date is also the date of commencement of this emphyteutical concession.

This emphyteutical grant shall be governed by the following terms and conditions and, except to the extent excluded or modified hereby, also by the provisions of the Civil Code relating to emphyteusis.

## **1. GROUNDRENT**

- (i) Interest at the rate of eight per cent (8%) per annum shall accrue following a Default Notice given by the Government of Malta to the Emphyteuta and the passage of the Cure Period in accordance with clause twenty two (21), on the groundrent

not paid when it falls due with effect from the due date up to the date of effective payment.

- (ii) The yearly pro tempore ground rent shall be increased on the twelfth (12<sup>th</sup>) year of the emphyteutical concession and every five (5) years thereafter, based on the increase in the index of inflation. In view that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be that for the preceding year, both in respect of the basis year and the year of the revision. The first such revision shall take place on the \_\_\_\_\_ of the year two thousand and thirty (2030).

## **2. WARRANTY OF PEACEFUL POSSESSION**

The Government of Malta warrants the peaceful possession and real enjoyment of the Emphyteutical Site in favour of said Emphyteuta.

## **3. FREE FROM BURDENS**

Save as otherwise stated in this deed the Emphyteutical Site is hereby granted as free and unencumbered from all groundrents, burdens, other servitudes, hypothecs and privileges, and free from all rights, both real and personal and of whatever nature, in favour of third parties.

## **4. USE**

Without prejudice to the Emphyteuta's obligations and rights of the Government of Malta pursuant to this Deed, the Emphyteuta shall be entitled to enjoy and make full use of the Emphyteutical Site solely for the setting up of a lido (the "Lido") with ancillary facilities, these being :

- i the setting up of a Play Area;
- ii the construction of Restaurants;
- iii the construction of a Pool Area, and;
- iv the setting up of an Exhibition Area,

,for the sole and exclusive use of the Hotels in respect of its guests, in accordance with the terms and conditions of the Permit later on in this deed referred to as **"the Permitted Use"**.

The Emphyteuta shall bear any and all costs and expenses, whether ordinary or extraordinary, that may be necessary or desirable in connection with the permitted use and in accordance with the Emphyteuta's rights over the Emphyteutical Site. Land reclamation works and costs as permitted by the competent Authority shall also be at the charge and cost of the Emphyteuta. The Emphyteuta shall be entitled to retain all revenues generated from the operation of the Emphyteutical Site.

The Emphyteuta undertakes to continue to operate the Emphyteutical Site for the duration of this emphyteutical grant.

No other use is permitted unless otherwise expressly approved and agreed in writing by the Government of Malta, which approval and agreement can be refused without the obligation to give reasons for such refusal.

## **5. MODIFICATIONS TO PROPERTY**

(i) Subject to such permits required by law, the Emphyteuta may carry out on the Emphyteutical Site or any part thereof all ancillary works related to the Permitted Use, including land reclamation, demolition of buildings and excavation of the land, and may make thereon any Permitted construction or reconstruction or Refurbishment (as this term is hereunder defined) at its discretion. The Emphyteuta shall be obliged to notify the Government with copies of all plans and permits relative to such works prior to commencement of such works.

(ii) The term **"Permitted Construction or Reconstruction or Refurbishment"** for the purposes of this deed shall mean such construction, reconstruction or refurbishment which either:

- a. is necessary for or conducive to the carrying on of the activities for which the Emphyteutical Site can be

used in terms of the Permitted Use as defined in clause four (4) above; or

- b. is required by law; or
  - c. may be agreed to in advance by the Government in writing only if such works are intended for the Emphyteuta to continue to comply with its obligations in terms of this deed.
- (iii) For the avoidance of doubt as to whether any construction or reconstruction or refurbishment works fall within the definition of "Permitted Construction or Reconstruction or Refurbishment", the Emphyteuta may at any time apply for confirmation to the Government, as the case may be, and when confirmation is so granted such reconstruction or refurbishment shall be considered a Permitted Construction or Reconstruction or Refurbishment for the purposes of this deed.
- (iv) Each of the two structures above ground floor level to be built on the site intended for the use of restaurants shall not exceed the building footprint area of two hundred and seventy five square metres (275m<sup>2</sup>) and a height of four point seven eight metres (4.78m).
- (v) No roof structures and services shall be permitted to be placed on the roof of the structures described in the preceding paragraph.

## **6. COMPLIANCE WITH LAW**

The Emphyteuta shall, at the Emphyteuta's sole cost and expense, comply with all legislation, rules, regulations, and administrative orders applicable to Malta, whether made by the Government, or otherwise, now in force, or which may hereafter be in force, pertaining to the Emphyteutical Site, and shall faithfully observe all

conditions included in all licences, permits and authorisations issued to the Emphyteuta or for the Emphyteutical Site in relation to the activities being carried out, now in force or which may hereafter be in force. In particular but without prejudice to the generality of the foregoing the Emphyteuta shall obtain and comply with all licences and permits necessary for the use of the Emphyteutical Site in accordance with the Permitted Use.

## **7. ACCESS**

The Emphyteuta binds itself to grant all necessary rights to competent authorities in the exercise of their duties in respect of the Emphyteutical Site.

## **8. ANCILLARY OBLIGATIONS OF THE EMPHYTEUTA**

Without limitation to other obligations of the Emphyteuta arising from applicable laws or from this deed:

i. The Emphyteuta shall keep the Emphyteutical Site and all installations and improvements now existing thereon or which may in the future be constructed or erected thereon at all times in a good state of repair in accordance with applicable law and internationally recognised industry standards, and on the termination of the Emphyteutical Grant by expiration of time or on dissolution of such grant for any other reason, it shall relinquish the Emphyteutical Site and any permanent improvements thereon in a good state of repair and operation, fair wear and tear excepted, without any right of compensation.

ii. Any damage occurring not only through ordinary causes but also through fortuitous, extraordinary and unforeseen circumstances or by Act of God, even if the Emphyteutical Site perishes in whole, shall be made good without delay by the Emphyteuta who shall be bound to reconstruct, repair or replace the whole or part of the Emphyteutical Site, including all the buildings, installations and improvements existing at the moment of the events causing the damage, and this at its own cost, so as to render the Emphyteutical Site capable of being operated in accordance with the 'Permitted Use', in the most expeditious manner possible.

For the avoidance of doubt, the Government and the Emphyteuta agree that the provisions arising from section one thousand five hundred and fifteen (1515) of the Civil Code, shall not automatically apply to this Emphyteutical Grant.

iii. The Emphyteuta shall give immediate notice to the competent authority of the discovery of any trace of objects or monuments of local antiquarian or archaeological importance on the Emphyteutical Site. Any find of such movables shall "ipso facto" become the property of the Government. On obtaining information of each such discovery the Government shall have the right to access any part of the Emphyteutical Site to which the finds purport to relate, for the purposes of causing the latter to be inspected by any person delegated for the purpose and on ascertaining the existence of such finds, Government shall have the right to rescind the emphyteutical grant, on giving notice thereof to the Emphyteuta. In any such event, the Emphyteuta shall be entitled to compensation only for and to the extent of the actual value of such works as it may have carried out on the site; and at a valuation of the same to be made by the Government, and it shall not be entitled to any other compensation of any sort, provided that the Emphyteuta may opt either to retain that part of the emphyteutical grant not affected by such finds with a relative diminution of ground rent or where this is possible integrate such finds within the development, provided further that should action by any Government Agency or Department relative to any such discovery, cause any hindrance or delay in the progress of the works, a pro-rata reduction of ground rent for the duration of such hindrance and delay and an extension of all applicable and relative time limits will become effective.

iv. The Emphyteuta shall not cause damage to existing public services passing through, under or above the Emphyteutical Site and when damage is caused or the temporary removal is necessary it shall be bound to re-instate same as soon as possible.

v. Saving for the part to be reserved by the Government for the use of a public passage, the Emphyteuta shall not subject the



Emphyteutical Site to any kind of easement without the prior written consent of the Government.

## **9. PROHIBITION AGAINST ENCROACHMENT ON ADJACENT LAND**

The Emphyteuta is prohibited from extending in any manner any building or structure constructed or erected on the Emphyteutical Site onto adjacent land, whether such land is also owned by the Emphyteuta or otherwise, without the prior written consent of the Government.

## **10. INSURANCE**

The Emphyteuta shall insure and keep insured throughout the duration of the emphyteusis the Emphyteutical Site and any improvements thereon in its full value against loss or damage including malicious damage resulting from fire and/or explosion, including fire and/or explosion that may be attributable to negligence and such other risks as are customarily insured against with respect to property of a similar character in or bordering the Mediterranean. Such insurance shall be effected by the Emphyteuta at its own expense;

**Provided that** in the event that if such insurance cover is not ordinarily available or commercially feasible whether on the national or international market, the Government and the Emphyteuta shall meet to discuss and within the period of six (6) months thereof decide how best to protect their interests, in default of such a decision the obligation to obtain an insurance cover shall apply. The lack of insurance cover during such period shall not be deemed to be a breach of the conditions of this deed on the part of the Emphyteuta.

## **11. REPAIRS AND MAINTENANCE**

The Emphyteuta shall at its own expense, maintain the Emphyteutical Site and any construction built on the Emphyteutical Site in a good state of repair and shall carry out such preventive and remedial maintenance as may be necessary in accordance with

generally accepted international industry standards. In addition, the Emphyteuta shall (i) at its own cost and expense carry out all ordinary and extraordinary repairs and maintenance including structural repairs or maintenance to the Emphyteutical Site including all the facilities and services thereon; and (ii) return to the Government the Emphyteutical Site with all the facilities and services thereon together with any improvements made thereon at the termination or expiration of this deed, in a good state of repair and maintenance and fully operational in accordance with generally accepted international industry standards, fair wear and tear excepted, and with no right to compensation. The obligations of repair and maintenance of the Emphyteuta in terms of this clause shall extend to all improvements, including buildings, facilities, services or other erections made on the Emphyteutical Site.

## **12. INDEMNITY**

15.1 The Emphyteuta shall be responsible for and shall indemnify, keep indemnified and hold the Government (its officers, directors, employees and agents), Government departments and Government entities harmless from and against all losses, damages, injuries, costs, expenses and liabilities of any kind (including legal fees and expenses) arising out of and in relation to:

- a) third party liability,
- b) loss or damage to third party property, and
- c) any other liability,

in each case arising out of any negligent acts or omissions or wilful misconduct of the Emphyteuta in relation to the Emphyteuta's possession, operation and maintenance of, or failure to operate and maintain, the Emphyteutical Site.

## **13. UTILITIES**

The Emphyteuta shall be responsible for procuring and contracting directly with any and all utility providers on its own account for any

utility service required to fulfil its obligations and enjoy its rights in terms of this deed.

#### **14. VERIFICATION OF CONDITIONS**

The Emphyteuta shall permit the Government's representatives at all reasonable times to have access to the emphyteutical site and to the improvements thereon and when requested to do so, the Emphyteuta shall give all possible facilities and aid to enable him to verify whether the conditions of this grant are being or have been complied with.

#### **15. PUBLIC UTILITIES**

The Government or other public utility operators whether owned by the Government or otherwise, in consultation with the Emphyteuta, shall have the right to create on any part of the Emphyteutical Site, any kind of easement which may be necessary for the provisions of public services. The exercise of such rights shall be without any obligation on the part of Government or any operator to pay any compensation for such easement and access.

#### **16. TRANSFERS**

16.1 The Emphyteuta may not transfer or otherwise dispose of the Emphyteutical Site and the improvements made thereon, in whole or in part, without first obtaining the written consent of the Government, which consent shall lie within the absolute discretion of Government and can be refused without the obligation to give reasons for such refusal.

16.2 For the purpose of seeking the written consent of the Government the Emphyteuta shall notify the Government in writing of such proposed transfer together with the relevant details of the prospective transferee.

**"Person"** means an individual or a legal entity, whether registered or not and this irrespective of citizenship, place of registration, residence or management.

For the purposes of this clause any share transfer agreement or any other contract sui generis implying transfer or assignment, entered into by the Emphyteuta and a third party, even if in respect of part of the shares in the Company shall be deemed to be a prohibited transfer or disposal and prior written approval by the Government has to be obtained.

## **17. CONDITIONS APPLICABLE TO TRANSFERS**

Should the Emphyteuta be permitted to transfer or dispose, in whole or in part, the Emphyteutical Grant or the Emphyteutical Site and the improvements made thereon or any rights granted in relation thereto by virtue of this deed, as provided under the preceding Clauses the following conditions shall apply:

- (i) A recognition fee (laudemium) equivalent to one (1) year's groundrent shall be due to Government. This fee shall be paid upon the relative transfer, on pain of nullity of the transfer if the fee is unpaid; Provided that no recognition fee shall be payable if the transfer or disposal as consented by Government is in favour of the Emphyteuta's subsidiaries or associated companies;
- (ii) The Emphyteuta shall within forty (40) days of any such transfer or disposal by registered letter cause a copy of the relative deed to be forwarded to the Government;
- (iii) The Emphyteuta shall include in the deed of transfer or disposal all the obligations of the Emphyteuta arising from this deed, it being understood that the aforesaid obligations may be included by reference to this deed.
- (iv) Government is moreover entitled to impose any such conditions as it deems appropriate.

## **18. LEASES**

- (i) Nothing in this deed shall prohibit the Emphyteuta from granting, in whole or in part, the Emphyteutical Site or the permanent improvements made thereon or any rights granted in relation thereto by virtue of this deed, on lease or under

management agreement for the Permitted Use, to a person who is not an Undesirable Person:

Provided that such lease or management agreement is:

- a. granted by the Emphyteuta for the Permitted Use;
- b. subject to the condition that if this Emphyteutical Grant be dissolved for any reason, the lease or management agreement will terminate automatically and simultaneously; and
- c. subject to the further condition that if the lessee or manager is or at any time becomes an Undesirable Person the said lease or management agreement may be terminated on simple notice by the Emphyteuta to the lessee or the manager, and that in such circumstances the Emphyteuta shall give such notice when so requested by the Government of Malta.

And provided further that if the Emphyteuta exercises his rights under this article, a one-time recognition fee equivalent to one (1) year's groundrent shall be due by the Emphyteuta to the Government, which groundrent shall be equivalent to a proportionate amount of groundrent payable at the time of the lease/management agreement in proportion with the area in square metres as granted by virtue of the said agreement when compared to the total area of the emphyteutical site.

It is agreed that for the purposes of this Clause "lease" and "management agreement" shall include any form of arrangement under whatever name which has the same effects.

It is being specifically agreed that a "lease" and "management agreement" of the Emphyteutical Site shall not be deemed to be a transfer or disposal in terms of Clause nineteen (18).

- (iii) Nothing in this Clause shall be deemed to exonerate the Emphyteuta from its obligations arising from this deed or applicable law and the Emphyteuta shall be jointly and severally liable with the lessee or manager.

For the purposes of this deed an **Undesirable Person** shall be a Person who:

- a. Has been convicted of a crime, wherever committed:
  - i) against the safety of the Government of Malta in terms of Articles fifty five (55) to fifty nine (59), both Articles included, of the Criminal Code (Chapter Nine of the Laws of Malta), or
  - ii) against public safety in terms of Articles three hundred and eleven (311) to three hundred and seventeen (317), both Articles included, of the Criminal Code, or
  - iii) specified in the Schedule to the Extradition Act (Chapter two hundred and seventy six (276) of the Laws of Malta) and liable to a term of imprisonment of more than three (3) years;
  - iv) against the Prevention of Money Laundering Act (Chapter three hundred and seventy three (373) of the Laws of Malta);
  - v) in violation of the Articles three hundred and seven (307) to three hundred and fifteen (315) of the Companies Act (Chapter three hundred and eighty six (386) of the Laws of Malta) and in violation of Article one hundred and ninety one (191) of the Criminal Code;
  - vi.) against the laws or by the courts of another country with respect to the crimes specified in (i), (iv) and (v) above.
  
- b. Is the subject of sanctions or restrictions issued by the United Nations or other international Governmental body of which Malta is part and which are adopted by the Government of Malta in terms of the National Interest (Enabling Powers) Act (Chapter three hundred and sixty five (365) of the Laws of Malta), and this for such time as such sanctions remain in force.

- c. Is the subject of an international arrest warrant or is otherwise wanted by INTERPOL or other equivalent trans-national police organisation, and this for such time as he so remains.
- d. Is insolvent or bankrupt and unable to pay his debts as they fall due.
- e. Being a legal entity, the director or other officer, or the controlling shareholder of which is:
  - i) an Undesirable Person; or
  - ii) in case of a director or officer, disqualified to be a director of a Company in terms of the Companies Act (Chapter three hundred and eighty six (386) of Laws of Malta) or of a similar law of a jurisdiction of which the director or officer is a national or resident and this for as long as such person remains so disqualified

## **19. DISSOLUTION AND TERMINATION**

The Government shall have the right to dissolve this Emphyteutical Grant granted by virtue of this deed, for any of the following reasons:

- i. if the Emphyteuta fails to pay the annual groundrent or if although it has made part payments, a sum equal in amount to one year's ground rent is still owed to Government whether by way of groundrent or interest thereon, or is otherwise in breach of any of the conditions of this deed and fails to remedy such breach within fifteen days from being notified to remedy the breach;
- ii. if the Emphyteuta or any person or entity authorised by him uses the Emphyteutical Site for any purpose which does not fall within the definition of Permitted Use;
- iii. if the Emphyteuta extends without the written consent of the Government of Malta in any manner any building or structure constructed on the Emphyteutical Site or onto land adjacent to the Emphyteutical Site, whether such land is also owned by the Emphyteuta or otherwise;

- iv. if the Emphyteuta fails to obtain and keep in full effect the insurance cover it is required to keep in accordance with the terms of this deed;
- v. if the Emphyteuta transfers the Emphyteutical Grant or the Emphyteutical Site or improvements thereon or part thereof, without the prior written consent of the Government;
- vi. if either because of supervening circumstances or if because there is a change in either management or control of the Emphyteuta or in the beneficial ownership of an entity which determines management and control of the Emphyteuta it results that the Emphyteutical Site or part thereof, is being controlled by an Undesirable Person as defined.
- vii. for any other reason contemplated at law.

## **20. PROCEDURE FOR DEFAULTS AND DISSOLUTION OF GRANT**

Default Notice.

(i) On the occurrence of any one of the circumstances mentioned in Clause nineteen (19) of this deed and any time thereafter for such time as such circumstance shall continue the Government of Malta may give notice (the "**Default Notice**") by means of a registered letter to the Emphyteuta of the alleged breach under the provisions of this deed and of a time period ( hereafter referred to as a "**Cure Period**"), being not less than sixty (60) days from receipt of the Default Notice, for the Emphyteuta to rectify the default.

During any Cure Period, whether established by the Default Notice, the agreement of the parties or the arbitrator as stated below, the Emphyteuta shall be bound to rectify the default.

Emphyteuta's Options:-



(ii) The Emphyteuta shall have the option, to be exercised within thirty (30) days of receipt of the Default Notice, by means of a registered letter to the Government of Malta:

(a) either to state why in its reasonable opinion there is no default; or

(b) to undertake to the Government of Malta that it will rectify the default within the period stated in the Default Notice, in which case it may also demand, subject to Government's approval, that the Cure Period be extended to a date to be stated in such response.

(iii) Unless the Government of Malta signifies by means of a registered letter to the Emphyteuta, within fifteen (15) days of the receipt of the response, that it agrees with the Emphyteuta that:

(a) there is no default, or

(b) the proposed extension of time to the Cure Period is acceptable, the Emphyteuta shall be entitled to refer the matter to arbitration by not later than thirty (30) days from the dispatch of its response to the Government of Malta.

(iv) Failure by the Emphyteuta to contest the Default Notice in accordance with Clause twenty roman number two [(20) (ii)] or to refer the matter to arbitration in accordance with Clause twenty roman number three [(20) (iii)] shall constitute acceptance by the Emphyteuta of the Default Notice in accordance with its terms.

Disputes as to existence of Default

(v) Any disputes relating to the existence or otherwise of a default referred to arbitration in terms of the above shall be determined by a panel of three arbitrators.

Disputes Relating to the Cure Period

(vi) Any disputes relating to the duration of the Cure Period referred to arbitration in terms of the above shall be determined by one arbitrator. The arbitrator shall enjoy all the powers of the Court in this regard as stated in the Civil Code in the Title on Emphyteusis.

Lapse of Cure Period

(vii) On the lapse of the Cure Period without a default being rectified, the Government of Malta shall have the right to demand the dissolution of the Emphyteutical Grant and all related rights which demand for termination shall be made by notifying the emphyteuta by means of a registered letter.

#### Disputes in relation to Rectification of Default

(viii) In the event of disagreement as to whether a default has been satisfactorily remedied or not, any of the parties may refer the matter to arbitration by three arbitrators. The arbitrators shall be empowered :

to determine whether such action as has been taken is satisfactory rectification of the default, or

to grant a further period for the rectification of the default under specific terms and conditions, or

to declare the termination of the Emphyteutical Grant, and/or

to give such other directives as the tribunal may decide, including in case of termination, the right, which right is hereby expressly granted by the parties, to appoint a Notary to publish the deed of termination of the Emphyteutical Grant, to determine a day, time and place for the publication of the relative deed and to appoint a third party to execute such deed on behalf of the Emphyteuta in the event that the Emphyteuta fails to appear for the publication of the aforesaid deed on the day, time and place so determined.

#### Disputes following acceptance of a Default Notice

(ix) In the event of disputes following acceptance of a Default Notice, the parties may refer the matter to arbitration by three arbitrators. The arbitrators shall be empowered:

(a) to declare the termination of the Emphyteutical Grant, and

(b) to give such other directives as the tribunal may decide, including, the right, which right is hereby expressly granted by the parties, to appoint a Notary to publish the deed of termination of the Emphyteutical Grant, to determine a day, time and place for the publication of the relative deed and to appoint a third party to execute such deed on behalf of the Emphyteuta in the event that the Emphyteuta fails to appear for the publication of the aforesaid deed on the day, time and place so determined.

#### Dissolution

(x) The Emphyteutical Grant shall be dissolved 'ipso jure' upon the registration with the Malta Arbitration Centre of the final award to that effect by the arbitration tribunal.

Within seven (7) days of the dissolution of the Emphyteutical Grant by a final arbitration award, the Emphyteuta shall vacate the Emphyteutical Site and return, through the execution of such deeds as may be necessary, the Emphyteutical Site with all improvements thereon to the Government of Malta in accordance with the terms of this deed and in case of default the Emphyteuta shall be liable to pay a penalty to the Government of Malta of twenty three thousand two hundred and ninety three Euro and seventy four cents (€23,293.74) per day of default for mere delay.

Provided that with effect from the lapse of seven (7) days from the date of the communication of the final arbitration award, the Government of Malta shall be entitled to access the Emphyteutical Site and place a representative on site and the arbitrator shall be entitled to give all necessary orders in relation to the re-possession of the Emphyteutical Site.

#### **21. RETURN OF PROPERTY ON TERMINATION**

On the termination of the Emphyteutical Grant and of the rights granted under this deed by expiration of time, or on dissolution of such grant and termination of such rights for any other reason whatsoever the Emphyteuta shall hand over to the Government of Malta the Emphyteutical Site together with all buildings, and other improvements which shall exist on the Emphyteutical Site at such

time, in good state of repair, fair wear and tear excepted, according to law. The Emphyteuta shall have no right to compensation whatever may be the cause of termination, the value of such buildings installations, and other improvements, or the remaining period of the Emphyteutical Grant.

## **22. TRANSFER OF GOVERNMENT RIGHTS**

Government of Malta shall have the right to sell, assign or transfer in any manner whatsoever the 'directum dominium' of the Emphyteutical Site or the right to receive the payment of the ground-rent (as a separate receivable).

Furthermore the parties agree that notwithstanding the assignment, sale or transfer of the 'directum dominium' or the right to receive payment of the ground-rent, all consents or approvals required from the Government of Malta pursuant to this deed shall continue to be exclusively required from the Government of Malta.

## **23. SEVERABILITY**

If any part, clause or provision of this deed shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of law or other tribunal finds that any provision of this deed is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

## **24. WAIVERS**

No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's approval or consent to any subsequent act by the other shall not be deemed to render unnecessary the obtaining of any consent or approval of any subsequent act by the other party.

## **25. ARBITRATION AND APPLICABLE LAW**

The parties agree that any dispute, controversy or claim, which may arise out of or in relation to this Emphyteutical Grant, or of any rights granted in virtue of this deed or the breach, termination or invalidity thereof shall be referred to arbitration in terms of part four (IV) (Domestic Arbitration), of the Arbitration Act, Chapter three hundred and eighty seven (Cap. 387) of the Laws of Malta.

## **26. APPLICABLE LAW**

This deed shall be governed by and construed according to the Laws of Malta.

## **27. NOTICES**

Any notice required or permitted to be given in terms of this deed, shall be in writing and may be served personally or by registered mail, return receipt requested. Such notices shall be effective upon delivery.

## **28. COSTS**

All Notarial fees and expenses and other related fees payable upon publication of this deed shall be at the charge of the said Emphyteuta. Each party shall be responsible for the payment of the fees of its own advisors.

## **29. SECURITY**

In order to secure payment of the said ground-rent and the proper performance of all the obligations hereby undertaken, the Emphyteuta, in addition to the privilege established by law in respect of the said Emphyteutical Site, hereby hypothecates in favour of the Government of Malta which accepts all its property in general present and future of the Emphyteuta.

## **Statutory Declarations**

I, the undersigned Notary declare to have explained to the parties the importance of the veracity of their declarations in respect of the value of the whole Emphyteutical Site. It is hereby declared that the value given to the whole Emphyteutical Site in virtue of this temporary emphyteutical grant is fair and just after I explained to the contracting parties about the importance of this declaration.

For the purposes of the Duty on Documents and Transfers Act, Chapter three hundred and sixty four (364) of the Laws of Malta, it is hereby declared that the duty payable on this deed by the Emphyteuta amounts to fifty seven thousand eight hundred and fifty Euro (€57,850).

For the purposes of the Income Tax Act, Chapter one hundred and twenty three (123) of the Laws of Malta and for the purposes of the Income Tax Management Act, Chapter three hundred and seventy two (372) of the Laws of Malta, it is hereby declared that no capital gains tax is due since the Government of Malta is exempt from the payment of tax.

For the purposes of the Immovable Property (Acquisition by Non-Residents) Act, Chapter two hundred and forty six (246) of the Laws of Malta (the "AIP Act"), the Emphyteuta declares that it qualifies to acquire the property above being transferred without the necessity of a permit for the acquisition of immovable property by non-residents in view of the fact that:-

Not less than seventy five per cent (75%) of the share holding in the said Company and not less than seventy five per cent (75%) of the controlling shares of the said Company belong to European Union Citizens who have resided continuously in Malta for at least five years during their lifetime and that all directors are also European Union Citizens who have resided continuously in Malta for at least five years during their lifetime. This declaration is being made after due explanation of its importance according to Law was made by the undersigned Notary.

For the purposes of Land Registration Act, Chapter two hundred and ninety six (296) of the Laws of Malta, it is hereby declared that the property is registered in the Land Registry.

For the purposes of sub article twelve (12) of article five capital A (5A) of the Income Tax Act, the parties declare that they have declared to the undersigned notary all the facts that determine if the transfer is one to which article 5A applies and that are relevant for ascertaining the proper amount of tax chargeable or any exemption, including the value which, in their opinion, reasonably reflects the market value of the said property, if this value is higher than the consideration for the transfer. The parties make such declaration after the undersigned notary warned them about the importance of the truthfulness of this declaration of theirs.

For the purpose of the second proviso to Sub-Article five (5) of Article eighty four letter C (84C) of the Notarial Profession and Notarial Archives Act, it is being declared that paragraph letter 'd' of the regulation number four (4) of the Legal Notice regarding the 'Examination of Title Regulations', the Notary is exempt '*ipso iure*' from examining the title with regards to the immovable property being acquired by means of this deed and the emphyteuta declares that I the undersigned Notary explained to them the importance and consequences of such exemption.

For the purposes of the Lands Authority Act, Chapter five hundred and seventy-three (Cap. 573) of the Laws of Malta, this deed and each one and all its Parts and the transactions contained therein have been approved by the House of Representatives of Malta by special resolution made during the sitting of the \_\_\_\_\_

This deed has been done, read and published after I the undersigned Notary explained the contents hereof to the parties hereto according to law \_\_\_\_\_.