

## DRAFT DEED

Before me, Notary Public Doctor \_\_\_\_\_, there personally came and appeared after I the undersigned Notary identified them in virtue of the hereunder mentioned official documents:

Of the First Part:

who is appearing hereon for and on behalf of the **Lands Authority** which in turn is representing the **Government of Malta** as duly authorised by virtue of

- Hereinafter referred to as '*the Lands Authority*' and/or '*the Government of Malta*' as the case may be.

Relative papers in respect of this deed are file bearing \_\_\_\_\_

Of the Second Part:

who is appearing hereon for and on behalf of **Corinthia Golden Sands Resort Limited**, *previously known as The Heavenly Collection Limited*, bearing company registration number four eight three eight zero (C-48380), as duly authorised by virtue of

- Hereinafter referred to as '*the Company*'.

Deed No:

**Deed of  
Transfer and  
Modification**

Date of  
Enrolment:

No. of  
Enrolment:

Vol. I:

LRA:

Collectively, the Lands Authority/Government of Malta and the Company are at times hereinafter referred to as '*the Parties*'.

It is being declared that the Company changed its name from 'The Heavenly Collection Limited' to 'Corinthia Golden Sands Resort Limited' by virtue of the Alterations to the Memorandum and Articles dated the fifth (5<sup>th</sup>) day of May of the year two thousand and twenty-one (2021). A copy of the relative Certificate is hereon being attached and marked Document '  '.

The Parties hereby declare and premise:

i. Whereas, by virtue of a deed of emphyteutical concession published in the records of Notary Diana Charles of the twenty-third (23<sup>rd</sup>) day of December of the year two thousand and nine (2009), hereinafter referred to as '*the Emphyteutical Deed*', the Government of Malta granted by title of perpetual emphyteusis in favour of Island Hotels Group Limited bearing company registration number one nine four four two (C-19442), which accepted, the two immovables situated in Mellieha:

a. A divided portion of land having an area of circa seventy-nine thousand nine hundred and forty-two square metres (79,942sqm) and bounded on the north, west and east by unnamed public roads or more correct boundaries, bordered in red on the plan bearing Property Drawing number two thousand and eight underscore five hundred and eighty-seven (P.D. 2008\_587) incorporating a site-plan attached to said deed and marked document letter 'E', including the structures and buildings built thereon without name and number and marked as Site one (1) on the said plan; and

b. A divided portion of land having an area of circa three thousand, five hundred and eighty-eight square metres (3,588sqm) and bounded north, west and south with Government property or more correct boundaries and bordered in red on the said plan P.D. 2008\_587 incorporating a site-plan, including all the unnamed and unnumbered structures built thereon and marked as Site two (2) on the said plan;

- Hereinafter referred as '*the Emphyteutical Site*'.

This concession was made for the annual and perpetual groundrent of three thousand Euro (€3,000), payable yearly in advance, and increased every one hundred (100) years based on the proportionate increase in the index of inflation;

ii. Whereas the Emphyteutical Deed was published as subject to *inter alia* clause nineteen (19), which stipulates the following:

*'19. The immovable shall be used for tourism development which includes accommodation, ancillary and supporting facilities. The*

*development shall be used for tourist accommodation and shall not be used for permanent residential occupation or any other use. No unit within the development may be issued with an individual compliance certificate by Mepa nor may any such unit be individually serviced by a water or electricity meter by a national service provider [...]*

- Hereinafter referred as '**Clause 19**';

iii. Whereas, by virtue of an onerous deed of sale published in the records of Notary Nicolette Vella of twenty-third (23<sup>rd</sup>) day of December of the year two thousand and nine (2009), Island Hotels Group Limited sold and transferred in favour of The Heavenly Collection Limited, appearer Company on this present deed, which accepted, the perpetual *utile dominium* of the Emphyteutical Site;

iv. Whereas the Lands Authority, formerly the Government Property Department, recognised the Company as emphyteuta;

v. Whereas the Emphyteutical Deed was published as subject to *inter alia* clause twenty (20), which stipulates the following:

*'Until satisfaction of the condition set out below in this article, the immovable cannot be transferred except as a whole complex. However leases of a commercial nature for a period not exceeding ten years and time share agreements for a period not exceeding twenty-five years for the purposes of condition nineteen (19) above are permissible. The Emphyteuta shall be entitled at its option to have this restrictive condition disapplied by the payment to the Government of Malta of the sum of three hundred thousand Euros (€300,000). For all intents and purposes of law and this deed this restrictive condition shall be automatically disapplied, as if it was never written in this deed, upon the payment by the Emphyteuta to the Government of Malta of the said sum of €300,000 accompanied by a notice in writing stating that the Emphyteuta wishes to avail itself of the right to have this restrictive condition removed, whereupon the said condition shall be deemed to have been removed and the immovable shall be freed from any such restrictive condition. Such notice shall be given to the Commissioner of Land.*

And whereas by virtue of a deed of payment published in the records of Notary Marco Burlo' of the fourth (4<sup>th</sup>) day of January of the year two thousand and eighteen (2018), the Lands Authority declared to have received the sum of €300,000 together with a notice in writing stating that the Emphyteuta wished to avail itself of the right to have the restrictive condition referred to in Clause 20 removed, and the Parties agreed that Clause 20 no longer applies and is to be deemed as never having been written

and that the Property is freed from any restrictive condition resulting from said Clause 20.

Parties hereby agree and declare that there are no pending rights and obligations arising from and relative to Clause 20, extinguished by said deed published in the records of Notary Marco Burlo' of the fourth (4<sup>th</sup>) day of January of the year two thousand and eighteen (2018). Should there be any such rights and obligations arising therefrom and relative thereto, Parties agree and declare that they are to be considered null and void.

vi. Whereas, by virtue of a deed of redemption of groundrent published in the records of Notary Anthea Marie Grech of the twenty-second (22<sup>nd</sup>) day of July of the year two thousand and twenty (2020), the Lands Authority sold and transferred in favour of the Company, which accepted, the perpetual *directum dominium* of three thousand Euro (€3,000) burdening the Emphyteutical Site;

vii. Whereas the said deed of redemption of groundrent did not terminate the conditions imposed by the Emphyteutical Deed;

viii. Whereas the Planning Authority published the '*Partial Review of the North West Local Plan and the Hal-Ferh Development Brief – Phase 2*' on the fourth (4<sup>th</sup>) day of November of the year two thousand and twenty (2020), previously approved by the Environment and Planning Parliamentary Committee. Subsequently, the Hal-Ferh Development Brief was formally approved by the Planning Authority on the twenty-first (21<sup>st</sup>) day of January of the year two thousand and twenty-one (2021),

- Hereinafter referred to as '*the Partial Review*'.

A copy of said Partial Review is hereon being attached and marked Document ' \_ ';

ix. Whereas the Partial Review has changed the determined use of an as yet undetermined portion of the Emphyteutical Site, measuring approximately thirty thousand six hundred square metres (30,600sqm), from touristic development as stipulated in Clause 19 to residential development;

x. Whereas the Partial Review imposes that only a maximum Gross Floor Area (GFA) of nine thousand square meters (9,000sqm) of the said 30,600sqm can be developed into a residential component, specifically to accommodate twenty-five (25) luxury detached villas including roads and public paths;

xi. Whereas Clause 19 is to be modified in order to allow the change of the determined use of 30,600sqm of the Emphyteutical

Site from touristic development to residential development, as  
aforementioned;

xii. Whereas Clause 19 may be modified as stipulated in the  
Emphyteutical Deed by virtue of Clause 21 :

*'The Commissioner of Land may make modifications of the above  
mentioned conditions sixteen (16) to twenty (20), both numbers  
included, subject to a financial consideration being made payable  
to Government, reflecting the increased value of the immovables  
as a result of such modification or modifications, as fixed by an  
architect or architects appointed by Government in its absolute  
discretion.'*

*(the Commissioner of Land is substituted by the Lands Authority  
in terms of Chapter five hundred and sixty-three (563) of the Laws  
of Malta);*

Whereas the increased value of the immovable in question has  
been valued at ten million, three hundred and thirty-six thousand  
Euro (€10,336,000);

Whereas such change in condition/modification falls under the  
definition of 'transfer' in the Government Lands Act, Chapter five  
hundred and seventy-three (Cap 573) of the Laws of Malta;

And whereas the Parties are desirous to modify Clause 19, and  
are appearing hereon to consent to and effect such modification  
in line with the contents of the Partial Review;

Now therefore, by virtue of this present deed, the Parties hereby  
agree and give their consent to modify Clause 19 of the  
Emphyteutical Deed, as follows :-

*'19. The immovable, excluding a portion measuring  
approximately thirty thousand six hundred square metres  
(30,600sqm), shall be used for tourism development which  
includes accommodation, ancillary and supporting facilities. The  
development, excluding the aforementioned 30,600sqm, shall be  
used for tourist accommodation and shall not be used for  
permanent residential occupation or any other use. No unit within  
the development may be issued with an individual compliance  
certificate by the PA (formerly MEPA) or any competent  
authority, nor may any such unit be individually serviced by a  
water or electricity meter by a national service provider [...].*

*The aforementioned portion measuring approximately thirty  
thousand six hundred square metres (30,600sqm) shall be  
developed for residential purposes, in conformity with the Partial  
Review hereon being attached and marked Document ' \_ ';*

*Provided that the residential Gross Floor Area (GFA) of the aforementioned portion measuring approximately thirty thousand six hundred square metres (30,600sqm) shall not exceed circa nine thousand square metres (9,000sqm), specifically to accommodate twenty-five (25) luxury detached villas including roads and public paths, and provided also that the total allowable maximum floor space on the Emphyteutical Site does not exceed the total developable floor space specified in the Emphyteutical Deed, and this in conformity with the Partial Review.'*

*Provided that the owner, present or future, shall be excluded from developing the immovable beyond or in excess of the permitted development as described in this clause and as approved in the Partial Review and consequential Development Brief herewith attached and marked as document ' \_ ', and this regardless of any future changes in the development potential of the immovable by means of any subsequent development plan or policy review.*

This modification is being made and accepted as subject to the following conditions :-

1. For the consideration of ten million, three hundred and thirty-six thousand Euro (€10,336,000), of which consideration the sum of one million, three hundred and thirty-six thousand Euro (€1,336,000) is hereby being paid by the Company to the Government, which accepts and tenders due receipt in terms of law; the remaining balance of nine million Euro (€9,000,000) shall be divided into twenty five (25) equal amounts of three hundred and sixty thousand Euro (€360,000), each being a mandatory payment to Government upon the signing of each individual contract of sale of the twenty-five (25) residential villas. Provided that the whole balance shall be paid in full by not later than ten (10) years from the signing of this deed.

Provided that, the Company shall be obliged to pay an amount of at least three million and six hundred thousand Euro (€3,600,000) from the remaining balance of nine million Euro (€9,000,000) to the Government, by not later than five (5) years from the date of signature of this present deed, regardless of the number of villas which shall be sold by the Company within this five (5)-year term.

The Company shall be obliged to notify the Government of the transfer of each of the aforementioned twenty-five (25) villas, which notification shall be made in writing upon the signature of the relative preliminary agreement which shall be signed between the Company and the proposed Purchaser or Purchasers of the relative villa; in cases where no preliminary agreement shall be signed between the Company and the proposed Purchaser or

Purchasers of the relative villa, the Company shall be obliged to notify the Government in writing at least six (6) weeks before the publication of the deed of transfer of any of said villas.

Provided also that the Company shall be obliged to send a copy of the deed of transfer of each of said villas by not later than three (3) months from the date of signature of such deed of transfer.

Provided that, should the Executable Full Development Permission (as defined in clause 5) not be issued by the competent authorities as stipulated in clause 5, within five (5) years from the date of publication of this present deed, the Company shall be entitled to claim the refund of the sum paid on this present deed, without any interests, by a demand in writing made by the Company to the Government by not later than six months from the expiration of the five-year term. In such eventuality, the Parties shall appear on a deed of rescission, whereupon the conditions stipulated in this present deed shall be declared to be ineffectual in terms of law and the conditions stipulated in the Emphyteutical Deed are to remain valid and applicable.

In such eventuality, the present deed shall be considered to be rescinded as at date of expiration of the five-year term, the Government is to reimburse the Company with the payments made on this present deed, and this deed, together with all the terms and conditions listed herein, is to be considered ineffectual in terms of law.

2. Whereas the parties agree that the balance of nine million Euro (€9,000,000) shall be guaranteed by the granting of a corporate guarantee from International Hotel Investments Limited p.l.c. (C-26136) in favour of the Lands Authority which corporate guarantee is being executed by International Hotel Investments Limited p.l.c. and the Parties contemporaneously with the execution of this deed.
3. Parties hereon agree and declare that the said modification is being made and accepted as strictly limited to and in conformity with the contents of the Partial Review.
4. The Parties hereon agree that the Company shall submit a Full Development Permission Application for the construction of the Project to the Planning Authority, which Application shall be duly validated by publication in the Government Gazette, not later than six (6) months from the effective date of this deed. For the purposes of this clause, the term "Project" shall mean the entire complex of tourism and residential development envisaged by the Hal-Ferh Development Brief, dated January 2021, including the required excavations,

demolition of buildings, restoration, construction of buildings, infrastructure, landscaping, and detailed external design.

5. The Parties also agree that the Project shall be completed within five (5) years from the issue of the Executable Full Development Permission. For the purposes of this deed, the Permission shall be considered to be an Executable Full Development Permission if it is consequent to the application to be submitted in accordance with Clause four (4) above, and it is valid and immediately effective, and it is not subject to any form of review or appeal, including, but not limited to, any third party appeal, or to an appeal or review by the Company itself, in any Tribunal or Court of Law, and that the statutory period for the filing of any review or appeal has expired. In the case of such a review or appeal, the time elapsed between the first issue and the coming into effect of the Full Development Permission shall be added to the five (5) year term. For the purposes of this clause, the term "completed" shall mean developed, constructed and in a state of practical completion in accordance with the Executable version of the Full Development Permission and Development Planning Laws, and is in a state of readiness and certified fit for use in accordance with the permitted uses.
6. Provided that the Company agrees to pay to the Government a penalty of one thousand two hundred Euro (€1,200) for each day of delay in default of the time frames established in Clauses 4 and 5 above.
7. If the Company is prevented from doing, accomplishing or performing any act or thing required of the Company under the terms of this deed due to Force Majeure, then the time provided in this deed for doing, accomplishing or performing such act or thing shall be extended in order to provide the Company with the same number of days to accomplish or perform such act or thing after termination of the Force Majeure as the Company would have had in the absence of the Force Majeure. The term 'Force Majeure' means any unforeseen and extraordinary circumstances which are completely beyond any form of control of the Company and which prevent the Company from performing its obligations undertaken pursuant to this deed.
8. Any clause and/or condition listed in the Emphyteutical Deed which runs counter to the contents of this current deed and of the present modification, is to be considered null and void.



Save what was stated above, the Parties hereby confirm the validity and applicability of all the other terms and conditions of the Emphyteutical Deed published in the records of Notary Diana Charles of the twenty-third (23<sup>rd</sup>) day of December of the year two thousand and nine (2009).

### **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 property in question. It is hereby declared that the value given to the property by virtue of this deed 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 \_\_\_\_\_.

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 is exempt from the payment of tax.

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 \_\_\_\_\_.

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 purposes of Article nine sub article two (9[2]) of the Duty on Documents and Transfers Act, Chapter three hundred and sixty four (364) of the Laws of Malta, it is hereby being declared by all Parties that \_\_\_\_\_.

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 emphytueta declares that I the undersigned Notary explained to them the importance and consequences of such exemption.

For the purposes of the Government Lands Act (Chapter 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 at the Lands Authority, without number in Saint Sebastian Street, Valletta, Malta.

[IHI Letterheaded paper]

To: LANDS AUTHORITY

Dear Sirs,

Guarantee in the amount of €9,000,000 (nine million euros) (the "guaranteed amount").

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We refer to the deed in the records of Notary Dr.[.] of the [-], entered into by and between the Lands Authority representing the Government of Malta and Corinthia Golden Sands Resort Limited (the "Deed"), in terms of which:

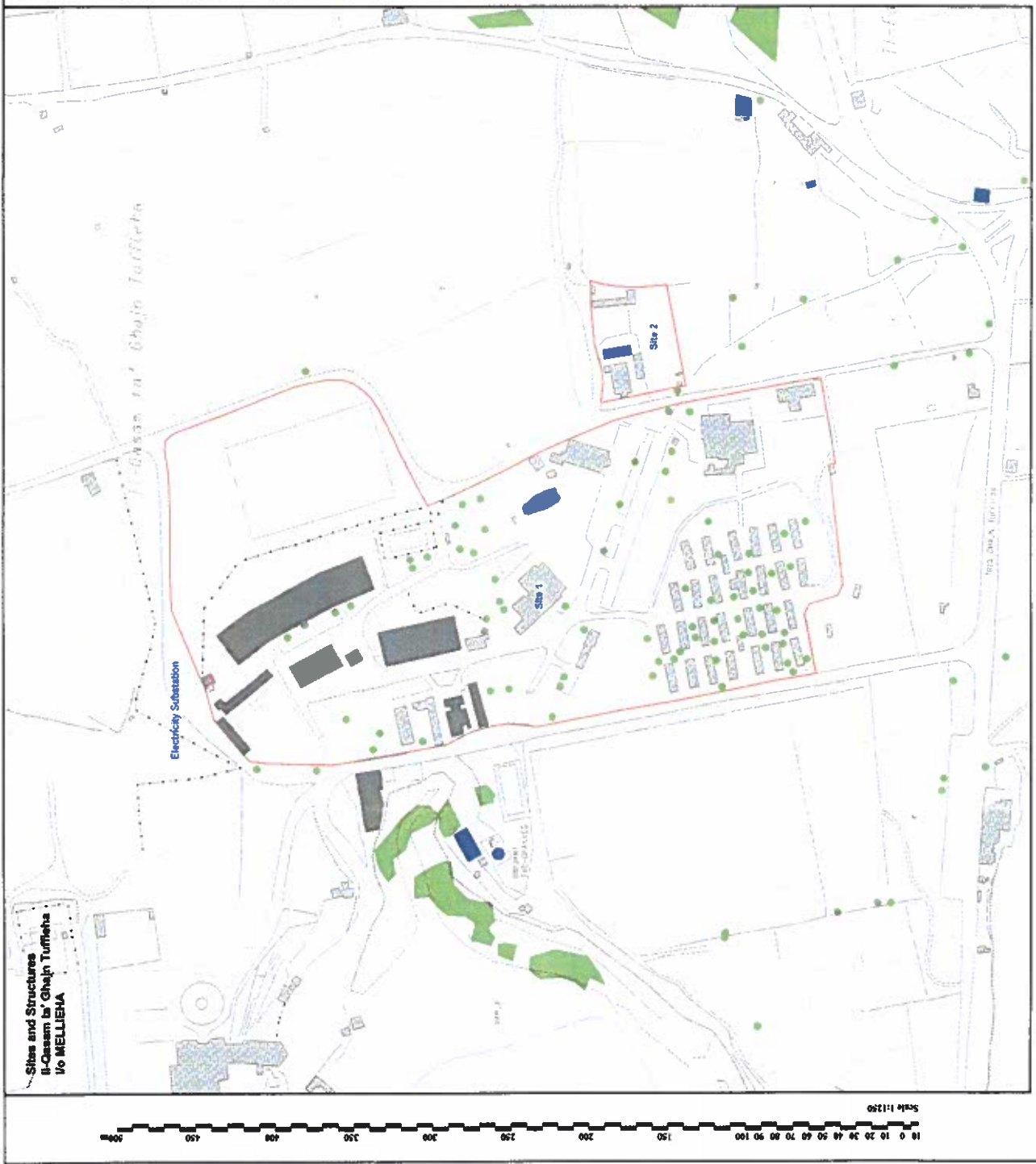
- (a) Corinthia Golden Sands Resort Limited, has undertaken certain payment obligations in your favour, and specifically the obligation to pay, in accordance with the terms of the Deed a sum equivalent to the guaranteed amount; and
- (b) To procure this corporate guarantee

Now therefore in satisfaction of the obligations undertaken by Corinthia Golden Sands resort Limited under article 2 of the Deed we, International Hotel Investments plc (C26136), hereby stand surety with Corinthia Golden Sands Resort Limited in your favour for an amount not exceeding the guaranteed amount, that is nine million euros (€9,000,000), and hereby undertake to pay to you any amounts that shall become properly due to you for payment by Corinthia Golden Sands Resort under the Deed in accordance with the payment terms set out in the Deed, in the event that Corinthia Golden Sands Resort shall fail to pay the amounts falling due for payment under the said deed.

Our payment obligations hereunder shall be subject to the following additional terms and conditions:

1. We shall pay under this guarantee against your written demand addressed to us stating (i) the amount claimed by you in your written demand has fallen due under the Deed; and (ii) confirming that Corinthia Golden Sands Resort Limited, having been solicited in writing to pay the amounts fallen due under the Deed failed to do so within 30 days from the date of such solicitation;
2. Our liability under this guarantee shall be reduced by any amounts that Corinthia Golden Sands Resort may pay to you under the Deed;
3. Our liability under this guarantee shall remain in effect until such time that the conditions and obligations of the Deed, in terms of full payment of the guaranteed amount, are fully satisfied.





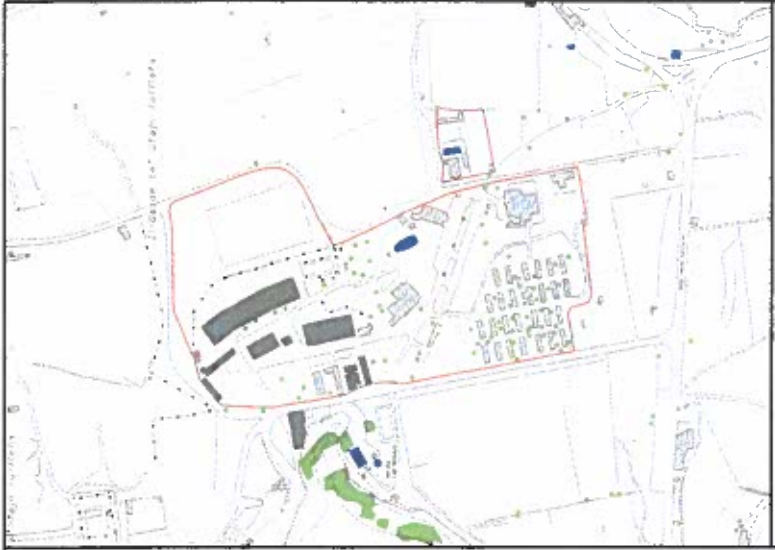
Sites and Structures  
 Il-Qasam ta' Ghajn Tumleha  
 Ilo MELLIEHA

Electricity Substation

Site 1

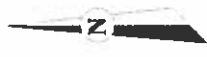
Site 2

Il-Qasam ta' Ghajn Tumleha



Site Plan  
 S.C. 4876/4877

Scale  
 1:2500  
 Map No. 717



TRIBUTORY No. 02700  
 AREA: 78.82sqm

TRIBUTORY No. 02800  
 AREA: 11.02sqm

GOVERNMENT PROPERTY DIVISION  
 ESTATE MANAGEMENT DEPARTMENT

LOCALITY: MELLIEHA

P.D. No: 2008/587

SCALE: 1:1250

FILE/L 14970/18

APPLY DATE: 18/02/2009

APPROVED DATE: 18/02/2009

