

RIŻOLUZZJONI DWAR TERMINAZZJONI PARZJALI TA' ENFITEWSI TEMPORANJA U TRASFERIMENT TA' PROPRJETÀ

IL-MINISTRU GHALL-EKONOMIJA, FONDI EWROPEJ U ARTIJET JIPPROPONI ILLI L-KAMRA TAD-DEPUTATI TAPPROVA DIN IR-RIŻOLUZZJONI:-

Billi d-domanda għall-enerġija elettrika hija indikatur ewlieni tal-livell tal-għixien tal-pajjiż.

U billi hija l-politika tal-Gvern illi jiġu pprovduti meżzi għaż-żieda fid-domanda tal-enerġija elettrika bl-aħjar modi possibli fosthom permezz ta' tishih fl-infrastruttura u bini ta' infrastruttura ġdida.

Illi fin-naħa ċentrali tal-pajjiż is-servizz tal-elettriku huwa servut primarjament miċ-Ċentru ta' Distribuzzjoni tal-Mosta (Mosta DC).

Illi minhabba żieda fid-domanda fl-eqqel tal-istaġuni, dan iċ-Ċentru lahaq il-kapaċità massima tiegħu u ma jistax jissupplixxi domanda addizzjonali għall-elettriku għall-żoni ġodda ta' żvilupp fl-inħawi tal-Mosta, n-Naxxar u Ħal Għargħur.

U billi l-Mosta DC esperjenza żieda fid-domanda għall-provvista tal-elettriku ta' iktar minn 50% bejn l-2012 u l-2020 bil-konsekwenza li kien hemm żieda ta' ħsarat fid-distribuzzjoni tal-elettriku minn dan iċ-Ċentru ta' Distribuzzjoni tal-Elettriku.

Illi għaldaqstant l-Enemalta plc (il-fornitur ewlieni tal-elettriku f'Malta) qed tipproponi li tinvesti madwar €7 miljun f'Ċentru ta' Distribuzzjoni ġdid ġewwa n-Naxxar sabiex jgħin lill-Mosta DC mil-piż tad-domanda tal-elettriku fil-lokalitajiet imsemmija. Dan l-investment huwa parti minn investment ikbar ta' €90 miljun fit-tigdid u tishih tas-sistema tad-distribuzzjoni elettrika f'pajjiżna.

Illi l-Enemalta plc identifikat art propjeta tal-Gvern fin-Naxxar li hija ideali sabiex tibni dan iċ-Ċentru ta' Distribuzzjoni. L-art identifikata tiffirma parti minn porzjon ta' art akbar li llum hija mgħoddija b'enfitewsi temporanja lill-Aġenzija Sapport. L-Enemalta plc u l-Aġenzija Sapport għandhom ftehim fil-principju sabiex dan iċ-Ċentru jiġi mibni fuq l-art identifikata.

Għaldaqstant wara li ġie kkunsidrat l-interess pubbliku ta' dan l-iżvilupp, l-Awtorità tal-Artijiet ikkunsidrat li huwa ġustifikabbli li jsir trasferiment ta' art fi triq ġdida fi Triq San Timotju k/m triq ġdida f' San Pawl tat-Targa limiti tan-Naxxar b'qies ta' 1,898 m² murija bl-aħmar fuq il-pjanta P.D. No.: 2011_9_C_1 lill-Enemalta P.L.C. għall-proġett propost b'konċessjoni enfitewtika temporanja ta' 65 sena b' ċens ta' €60,450 fis-sena rivedibbli kull 5 snin abbażi tal-indiċi tal-inflazzjoni jew 10% taċ-ċens imħallas kull sena, skont liem ikun l-oġġla.

Illi qabel isir it-trasferiment tal-art lill-Enemalta P.L.C., it-titolu ta' dawk il-porzjonijiet tas-sit propost murija bil-kulur blu u mmarkati B fuq il-pjanta P.D. No.: 2011_9_C, preżentement miżmuma b' enfitewsi temporanja għand Aġenzija Sapport, jiġu tterminati b'kuntratt pubbliku.

U billi fl-artiklu 31, sub-artiklu (ċ) ta' Taqsima III tal-Att dwar Artijiet tal-Gvern (Kapitolu 573), huwa maħsub li art li tkun proprjeta` tal-Gvern jew amministrata minnu tista' tiġi trasferita skond riżoluzzjoni speċjali tal-Kamra tad-Deputati li tkun fis-sehħ fil-waqt tat-trasferiment.

Billi huwa xieraq li t-trasferiment fuq imsemmi jsir skond riżoluzzjoni speċjali tal-Kamra tad-Deputati;

Għalhekk huwa b'dan riżolut illi issir terminazzjoni parzjali, modifiki relattivi u rettifikazzjoni ta' l-art enfitewtiku tas-sit mgħoddi lill-Aġenzija Sapport, kif ukoll trasferiment lil-Enemalta plc ta' l-art tal-kejl ta' 1,898m² fi triq ġdida fi Triq San Timotju k/m triq ġdida f' San Pawl tat-Tarġa limiti tan-Naxxar murija bil-kulur ahmar fuq il-pjanta P.D. No.: 2011_9_C_1 skond il-pattijiet u l-kundizzjonijiet imsemmija fl-abbozzi ta' kuntratti hawnhekk annessi.

MINISTRU GHALL-EKONOMIJA, FONDI EWROPEJ U ARTIJET

Onorevoli Silvio Schembri

Enc. Abbozz ta' kuntratt ta' terminazzjoni parzjali u modifika ta' enfitewsi (Aġenzija Sapport)

Abbozz ta' kuntratt ta' għoti ta' enfitewsi temporanja (lil-Enemalta plc)

P.D. No.: 2011_9_C

P.D. No.: 2011_9_C_1

Before me, Doctor of Laws _____, a Notary Public 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:

Doctor of Laws Marisa Grech, Notary Public, unmarried daughter of Alfred Grech and Carmen nee` Caruana, born in Pieta`, Malta on the twentieth (20) of August of the year one thousand nine hundred and eighty-two (1982) and residing in Luqa, Malta, holder of Maltese identity card number 451682M, who is appearing on this deed in the name of and in representation of the Government of Malta as duly authorized by virtue of a Board Minute of the Board of Governors of the Lands Authority number one hundred and sixty-nine of the year two thousand and twenty (169/2020) dated twenty-ninth (29th) day of May of the year two thousand and twenty (2020) for and in representation of the **Lands Authority**, hereinafter called '**the Government of Malta**' and/or '**the Government**', and/or '**the Assignor**' as the case may be.

The file bears the letter 'L'

Of the second part:

_____, who is appearing hereon in the name and in representation of **ENEMALTA P.L.C.** bearing company registration number C 65836 having its registered office at Triq il-Belt il-Hazna, Marsa, Malta, as duly authorised, hereinafter referred to as 'the Emphyteuta'.

In virtue of this deed, the Government hereby grants to ENEMALTA P.L.C. on whose behalf the said _____ accepts and acquires on temporary emphyteusis for a period of sixty-five (65) years reckoned as from the date of this deed to the emphyteuta which accepts, **the plot of land situated in a new road in Triq San Timitoju, San Pawl tat-Targa, limits of Naxxar, Malta**, having an area of approximately one thousand eight hundred and ninety-eight metres squared (1,898 m²) bounded from the North and North -East with a new road in Triq San Timotju and on the East with a new road or more correct boundaries as shown bordered in red on the plan indicated as Property Drawing number two thousand and eleven underscore nine underscore letter 'C' underscore one (P.D. No. 2011_9_C_1) attached to this deed and marked as document letter '_____', with all its rights and appurtenances, in consideration of the **temporary yearly ground rent of sixty thousand four hundred and fifty Euros (€60,450).**

Deed Number:	
	/2023
Grant of Temporary Emphyteusis	
Enrolled:	
	/2023
Number:	
	/2023

The immovable granted in virtue of this deed is referred to as “**the Emphyteutical Site**”.

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. Tale Quale

The Property is being granted ‘tale quale’ in its current state and condition.

2. Ground Rent

- (i) The ground-rent shall be payable yearly in advance from the date of this present deed and every yearly anniversary thereafter.
- (ii) Interest at the rate of eight per cent (8%) per annum shall automatically accrue without the need of any other formality, judicial or otherwise, on the ground rent not paid when it falls due with effect from the due date up to the date of effective payment.
- (iii) The yearly pro tempore ground rent shall be increased every (5) five years based on the proportionate increase in the index of inflation or by ten percent (10%), on the ground rent payable annually in terms of this deed in each year in the immediately preceding five (5) year term, whichever is the higher. 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 day of..... the year two thousand and twenty-eight (2028).

3. Free from burdens

Save for any public services currently passing through, under or over the Emphyteutical Site and save as otherwise stated in this deed the Emphyteutical Site is hereby granted as free and unencumbered from all 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 purpose of the construction of a new Electricity Distribution Centre**, later on in this deed referred to as 'The Permitted Use'. The Emphyteuta shall be obliged to duly submit and validate the necessary Development Permission Applications and to obtain a valid completion certificate from the Planning Authority for the Permitted Use within a period of five (5) years from today, failing which the Government shall have the right to terminate the emphyteutical concession the subject matter of this deed.

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

5. Exclusion of Warranty Against Latent Defects

The Government with the acceptance of said Emphyteuta expressly excludes any warranty against latent defects.

6. 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.

7. Modifications to Property

(i) Subject to such permits required by law, the Emphyteuta may carry out on the Property or any part thereof all ancillary works related to the Permitted Use, including demolition of buildings and excavation of the land, and may make thereon any Permitted Reconstruction or Refurbishment 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 Reconstruction or Refurbishment" for the purposes of this deed shall mean such reconstruction or refurbishment which either:

- a. is in the ordinary course of its business, or
- b. is required by law, or
- c. which 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 reconstruction or refurbishment works fall within the definition of "Permitted Reconstruction or Refurbishment" the Emphyteuta may at any time

apply for confirmation to the Government, as the case may be, and when consent is so granted such reconstruction or refurbishment shall be considered a Permitted Reconstruction or Refurbishment for the purposes of this deed.

8. Compliance with law

The Emphyteuta shall, at 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 Property, and shall faithfully observe all conditions included in all licences, permits and authorisations issued to the Emphyteuta or for the Property in relation to the business 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 licenses and permits necessary for the use of the Property in accordance with the Permitted Use.

9. Environmental Obligations

The Emphyteuta expressly recognizes its duty to observe to the highest standards all applicable laws relating to the preservation and protection, of the environment including those aimed at the prevention of pollution. In this regard the Emphyteuta undertakes to co-operate fully in implementing all local and international measures adopted by or binding on the Government of Malta which are designed to enhance standards of operation and safety and to implement preventive and recovery clean up systems in case of accidents.

10. 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 be bound to carry out all obligations imposed on the owners of buildings, lands, installations and improvements falling under this deed, and the Government shall not be bound under any circumstance to contribute to the expense required for the carrying out of any such obligations whatever may be the amount of such expense and whatever may be the remaining period of the Emphyteutical Grant when such obligations fall due to be carried out.
- ii. 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.

iii. 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 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, Chapter sixteen (16) of the Laws of Malta, shall not automatically apply to this Emphyteutical Grant.

iv. The Emphyteuta shall not permit oil, grease, trade wastes or other deleterious matter to enter the drains and sewers of the Government and to employ such plant for treating any deleterious effluent before permitting the same to enter such drains and sewers as may be reasonably required by the Government or by law, from time to time.

v. 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 (including but not limited to all old remains such as caves, tombs, wells, stonewalls, pottery, coins, bones and other objects of a similar nature) on the Property. 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 Property 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, the Government shall have the right to rescind the emphyteutical grant, on giving notice thereof to the Emphyteuta. In such event, the Emphyteuta shall not be entitled to any compensation of any sort;

Provided further that:

- a. the Emphyteuta may nonetheless opt either to retain that part of the Emphyteutical Site not affected by such finds with a relative diminution of ground rent or where this is possible integrate such finds within the Emphyteutical Site; and
 - b. 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.
- vi. The Emphyteuta shall not cause damage to existing public services passing through, under or above the Property and when damage is caused or the temporary removal is necessary it shall be bound to re-instate same as soon as possible.
- vii. The Emphyteuta shall not subject the Property to any kind of easement without the prior written consent of the Government.
- viii. The Emphyteuta shall not, without the prior written consent of the Government, hypothecate its rights arising from this deed or in any other manner burden the Emphyteutical Site in favour of any third party.

11. 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 Lands Authority, which consent by Lands Authority shall not be unreasonably withheld.

12. 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.

The Government of Malta may at all times request the Emphyteuta to produce proof that such insurance has been validly affected and is being renewed.

13. Repairs and Maintenance

The Emphyteuta shall at its own expense, maintain 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 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 and with no right to compensation. The obligations of repair and maintenance by the Emphyteuta in terms of this clause shall extend to all improvements, including buildings, facilities, services or other erections made on the Emphyteutical Site.

14. Indemnity

The Emphyteuta shall be responsible for and shall indemnify, keep indemnified and hold the Government/ Lands Authority (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 willful misconduct of the Emphyteuta in relation to the Emphyteuta's possession, operation and maintenance of, or failure to operate and maintain, the Emphyteutical Site.

15. 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.

16. Rights of Entities established by Law

Any entity that is required by law or administrative order to have a presence at the Emphyteutical Site, especially in those immovables falling within the emphyteutical land shall be entitled to occupy, free of charge, that part of the Emphyteutical Site and of such size as may be assigned to them by the Emphyteuta, from time to time, as is reasonably necessary for them to fulfil their operational duties. The Emphyteuta shall have the right to alter the size and location of any part of the Emphyteutical Site so occupied by such entities, acting reasonably.

17. Verification of Conditions

The Emphyteuta shall permit the Lands Authority or his representative 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. In the event that the Emphyteuta defaults in its obligations under this clause, it shall incur a penalty of two hundred thirty-two Euros and ninety-four cents (€232.94) for each and every occurrence.

18. Public Utilities

The Government or other public utility operators whether owned by the Government or otherwise, shall have the right to create on any part of the Emphyteutical Site, any kind of easement which may be necessary for the provision of public services. The Emphyteuta shall not be entitled to object to the passage of public services by Government or the said public utility operators through the Emphyteutical Site provided that this does not materially adversely affect the business of the Emphyteuta. 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.

Provided that the Government or the public utility operator shall have a duty to pass such services and utilities in the manner which is least injurious to the Emphyteuta.

19. Transfers

(i) The Emphyteuta shall not transfer or otherwise dispose of the Emphyteutical Grant or the Property or improvements thereon in whole or in part without first obtaining the written consent of the

Government, which consent shall lie within the absolute discretion of the Government and can be refused without the obligation to give reasons for such refusal.

(ii) For the purposes of this clause any shared 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.

(iii) The Government shall give its consent to the transfer of the Emphyteutical Grant or the Property as requested in the application, without delay, if:

- a. the terms and conditions of the proposed transfer are consistent with the terms and conditions of this deed; and
- b. the proposed transferee is, in the reasonable opinion of the Government, not an Undesirable Person.

(iv) 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 for 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.

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

20. Nothing in Clause nineteen (19) shall be deemed to waive the obligations of the Emphyteuta and / or the prospective transferee arising from any other law concerning the transfer of immovable property in Malta.

21. Nothing in Clause nineteen (19) shall be construed as prohibiting the enforcement by banks granting banking facilities to the Emphyteuta and having a security interest over any part of the Property or improvements thereon from enforcing their rights over such property, including by way of judicial sale by auction. The Government, however reserves the right, at all times, to refuse to recognise a potential acquirer on the basis that it is an Undesirable Person as defined in this Clause.

22. Conditions applicable to transfers

Should the Emphyteuta be permitted to dispose of its interest as provided under the preceding Clauses the following conditions shall apply:

i. The Emphyteuta shall not impose in its favour any additional groundrent or other yearly burthen on the Property.

ii. A recognition fee (laudemium) equivalent to one (1) year's groundrent shall be due to Government and should the transferee fail to pay the said 'laudemium' within forty (40) days of the relative deed of transfer the Emphyteuta and the transferee shall be jointly liable to pay a penalty of one thousand one hundred and sixty-five Euro (€1,165), over and above the said recognition fee, per day of default for mere delay.

iii. The Emphyteuta shall within forty (40) days of any transfer of Property inform the Lands Authority of such transfer by registered letter and cause a copy of the relative deed to be forwarded to the Lands Authority. Should it fail to do so, it shall be liable to pay a penalty of one thousand one hundred and sixty-five Euro (€1,165) per day of default for mere delay.

iv. The Emphyteuta shall include in the deed of transfer all the obligations of the Emphyteuta arising from this deed.

v. The Government is moreover entitled to impose any such conditions as it deems appropriate.

23. Leases and Management Agreements

(i) Nothing in this deed shall prohibit the Emphyteuta from granting on lease or under management agreement, for operational reasons only, to a person who is not an Undesirable Person, the whole or parts of the Property, provided that such lease or management agreement is:

- a. granted by the Emphyteuta for the Permitted Use;
- b. in the normal course of the business of the Emphyteuta;
- c. subject to the condition that if this Emphyteutical Grant be dissolved for any reason, the lease or management will terminate automatically and simultaneously; and
- d. 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 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 its rights under this article, a one-time recognition fee equivalent to one (1) year's ground-rent shall be due by the Emphyteuta to the Government, which ground-rent shall be equivalent to a proportionate amount of ground-rent payable at the time of the lease/management agreement in proportion with the area in square meters 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.

(ii) 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 and or manager.

24. 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 for three years or if although it has made part payments in each year, a sum equal in amount to three year's ground rent is still owed to Government whether by way of groundrent or interest thereon;
- ii. if the Emphyteuta 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 the Emphyteuta, for reasons directly or indirectly attributable to the Emphyteuta, ceases for a period exceeding twelve (12) months to operate its business from the Property hereof or for such period otherwise abandons the Property;

Provided that for the purposes of this sub-clause only, the interruption of operations for any Permitted Reconstruction or Refurbishment shall not be treated as a cessation of operations.

- vii. 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.
- viii. If the necessary building/construction permits are not obtained from the competent authorities within a period of five (5) years from today.

25. Procedure for defaults and dissolution of grant

Default Notice

- (i) On the occurrence of any one of the circumstances mentioned in Clause twenty-four (24) of this deed and any time thereafter for such time as such circumstance shall continue the Government 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:
 - (a) either to state why in its reasonable opinion there is no default; or
 - (b) to undertake to the Government that it will rectify the default within the period stated in the Default Notice, in which case it may also demand that the Cure Period be extended to a date to be stated in such response.
- (iii) Unless the Government 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.

- (iv) Failure by the Emphyteuta to contest the Default Notice in accordance with Clause twenty six roman two [(26) (ii)] or to refer the matter to arbitration in accordance with Clause twenty six roman three [(26) (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, who may establish a longer Cure Period, which period may be extended by the arbitrator as may be just and reasonable in the circumstances. 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 shall have the right to demand the dissolution of the Emphyteutical Grant and all related rights.

Such right shall be exercised by the issue of a Termination Demand notified to the Emphyteuta by means of 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:

- a) to determine whether such action as has been taken is satisfactory rectification of the default, or
- b) to grant a further period for the rectification of the default under specific terms and conditions, or
- c) to declare the termination of the Emphyteutical Grant, and/or
- d) 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 Property and return, through the execution of such deeds as may be necessary, the Property with all improvements thereon to the Government 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 twenty-three thousand two hundred and ninety-four Euro (€23,294) 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 shall be entitled to access the Property 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 property.

26. 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, whatever may be the value of the buildings and installations on the emphyteutical site and whatever may be the remaining period of the Emphyteutical grant.

27. 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 groundrent (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.

28. 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.

29. 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.

30. 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.

31. Applicable law

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

32. 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.

33. 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.

34. Security

In order to secure payment of the said groundrent 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 on whose behalf the said Lands Authority accepts all the said property in general present and future of the Emphyteuta.

Statutory Declarations

For the purposes of the Government Lands Act (chapter five hundred and seventy-three [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

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 .

For the purposes of sub-article two of Article nine (9[2]) of Act Seventeen (XVII) of the year nineteen ninety-three (1993) on Duty on Documents and Transfers Act, Chapter three hundred sixty-four (CAP 364) of the Laws of Malta, the Parties hereby declare that Said declaration is being made after I the undersigned Notary duly warned the Parties of its import, and after I the undersigned Notary duly warned them of the penalties contemplated In Article nine (9) of the same Act, should said declaration prove to be false, incomplete or misleading.

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,

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.

Fees and expenses relative to the contract, including notarial fees will be at the charge of the Emphyteuta.

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.

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 offices of the Lands Authority, without number in Saint Sebastian Street, Valletta, Malta.

Before me, Doctor of Laws _____, a Notary Public 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:

Doctor of Laws Marisa Grech, Notary Public, unmarried daughter of Alfred Grech and Carmen nee` Caruana, born in Pietà, Malta on the twentieth (20) of August of the year one thousand nine hundred and eighty-two (1982) and residing in Luqa, Malta, holder of Maltese identity card number 451682M, who is appearing on this deed in the name of and in representation of the Government of Malta as duly authorized by virtue of a Board Minute of the Board of Governors of the Lands Authority number one hundred and sixty-nine of the year two thousand and twenty (169/2020) dated twenty-ninth (29th) day of May of the year two thousand and twenty (2020) for and in representation of the **Lands Authority**, hereinafter called '**the Government of Malta**' and/or '**the Government**', and/or '**the Assignor**' as the case may be.

The file bears the letter 'L/0270/2012.'

Of the second part:

_____, who is appearing hereon in the name and in representation of **Agenzija Sapport**, a body corporate established under the Public Administration Act, Chapter five hundred and seventy-three (573) of the Laws of Malta, by virtue of Legal Notice one hundred and four (104) of the year two thousand and sixteen (2016), having its address at Father Gwann Azzopardi Street, Santa Venera, Malta, as duly authorised, hereinafter referred to as '**the Agency**' and/or 'the Emphyteuta'.

The Government of Malta and Agenzija Sapport are sometimes in this deed hereunder collectively referred to as 'the parties to this deed'.

By virtue of this **first part** of the deed, the parties hereby declare and premise that by a deed in the records of Notary Maria Micallef dated seventeen May of the year two thousand and eighteen (17/05/2018), Agenzija Sapport acquired from the Government of Malta by title of temporary emphyteusis for a period of forty five (45) years reckoned as from the date of the deed, the unnumbered and unnamed site, situated off Triq San Timitoju in Naxxar, Malta, having an area of

Deed Number:
/2023

Partial
Termination to
Temporary
Dominium Utile

Enrolled:
/2023

Number:
/2023

approximately ten thousand six hundred and thirty-three square metres (10,633 m²) bounded from the North-East by Saint Timothy Street, South-East and South with property of the Government of Malta or more correct boundaries as shown bordered in red on the plan indicated as Property Drawing number two zero one one *underscore* nine *underscore* letter 'B' (P.D. 2011_9_B) attached to the aforementioned deed, and as subject to the temporary yearly ground rent of seventy-four thousand Euro (€74,000).

Whereas the parties to this deed expressed their intention to terminate the present temporary emphyteutical grant burdening part of the afore-mentioned property, namely two sites, the first site being that situated in a new road in Triq San Timitoju, San Pawl tat-Targa, limits of Naxxar, Malta, bounded from the North and North -East with a new road in Triq San Timotju and on the East with a new road, the second site being that situated in a new road in Triq it-Torri Gauci, San Pawl tat-Targa, limits of Naxxar, Malta, or more correct boundaries, both sites as shown bordered and hatched in blue and marked with the letter 'B' on the plan indicated as Property Drawing number two thousand and eleven *underscore* nine *underscore* letter 'C' (P.D. No. 2011_9_C) attached to this deed and marked as document letter ' '.

Therefore, by virtue of this **second part** of the deed, the Government of Malta is hereby irrevocably and with immediate effect terminating in favour of the emphyteuta, who accepts, the temporary dominium utile granted to it by virtue of the deed afore-mentioned, solely and specifically in respect of the sites as described above and as shown bordered and hatched in blue and marked with the letter 'B' on the plan indicated as Property Drawing number two thousand and eleven *underscore* nine *underscore* letter 'C' (P.D. No. 2011_9_C) attached to this deed and marked as document letter ' ', for the period which remains from the term of the emphyteutical grant, and therefore the Agency hereby gives and returns unto the Government, the said sites with free and vacant possession.

The said termination is being made by the Government of Malta in favour of Agenzija Sapport, who accepts without any consideration.

For all intents and purposes and for clarity's sake, it is hereby declared by the parties to this deed that the conditions stipulated in the deed of temporary emphyteutical grant in records of Notary Maria Micallef dated seventeen May of the year two thousand and eighteen (17/05/2018) are to be considered as extinct and without any effect with immediate effect as from today, but this only in so far as these affect that part of the property as described above, otherwise the conditions remain valid, firm and unimpaired.

For all intents and purposes and for clarity's sake, it is hereby declared that by virtue of the present termination, the Government of

Malta is becoming the absolute owner of the property described above in the second part of this deed.

on behalf of **Agenzija Sapport** is also hereby declaring and guaranteeing in favour of the Government of Malta, which accepts that the above-described property is free from any litigation procedures and that the property is being transferred to the Government of Malta with vacant possession, and free from any third party rights and/or claims, free from any subgroundrent, hypotech, charge and privilege burdening the same.

The Government acknowledges that as a consequence of the termination of the temporary utile dominium over the aforementioned land in the second part of the deed, all the obligations of the Agency arising from the Deed of Emphyteusis, insofar only as such obligations affect or refer to the land mentioned as described in this deed, are terminated and extinguished.

The Government and the Agency agree that the termination by the Government of the temporary utile dominium utile over the land indicated in the second part of the deed shall, with effect from the date of this deed, bring about the proportionate diminution of the annual temporary ground rent to a consideration of **sixty thousand and eighty-one Euros (€60,081)**, which shall be revisable and payable in terms of the deed in the records of Notary Maria Micallef dated seventeen May of the year two thousand and eighteen (17/05/2018) and that the Ground-rent burdening the remaining emphyteutical land following the said termination by the Government shall be reduced to the site as shown bordered in red and marked with letter 'A', measuring circa eight thousand six hundred and thirty-three square metres (8,633 m²) on the plan indicated as Property Drawing number two thousand and eleven *underscore* nine *underscore* letter 'C' (P.D. No. 2011_9_C) attached to this deed and marked as document letter ' ', but shall otherwise remain regulated by the terms and conditions of the said deed in the records of Maria Micallef dated seventeen May of the year two thousand and eighteen (17/05/2018).

The parties are hereby declaring that the boundary of the original site granted on emphyteusis is being modified and revised to reflect this partial termination of emphyteusis and to conform with the current approved Planning Authority street aglinments as delineated in red and marked with letter 'A' on Property Drawing number two thousand and eleven *underscore* nine *underscore* letter 'C' (P.D. No. 2011_9_C), which plan is being attached to this deed and marked as letter ' '.

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 Agenzija Sapport acquired the utile dominium

over the property described in the second part of this contract by virtue of a deed in the records of Notary Maria Micallef dated seventeen May of the year two thousand and eighteen (17/05/2018).

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 no duty is due since the Government of Malta is exempt from the payment of Duty on Documents.

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

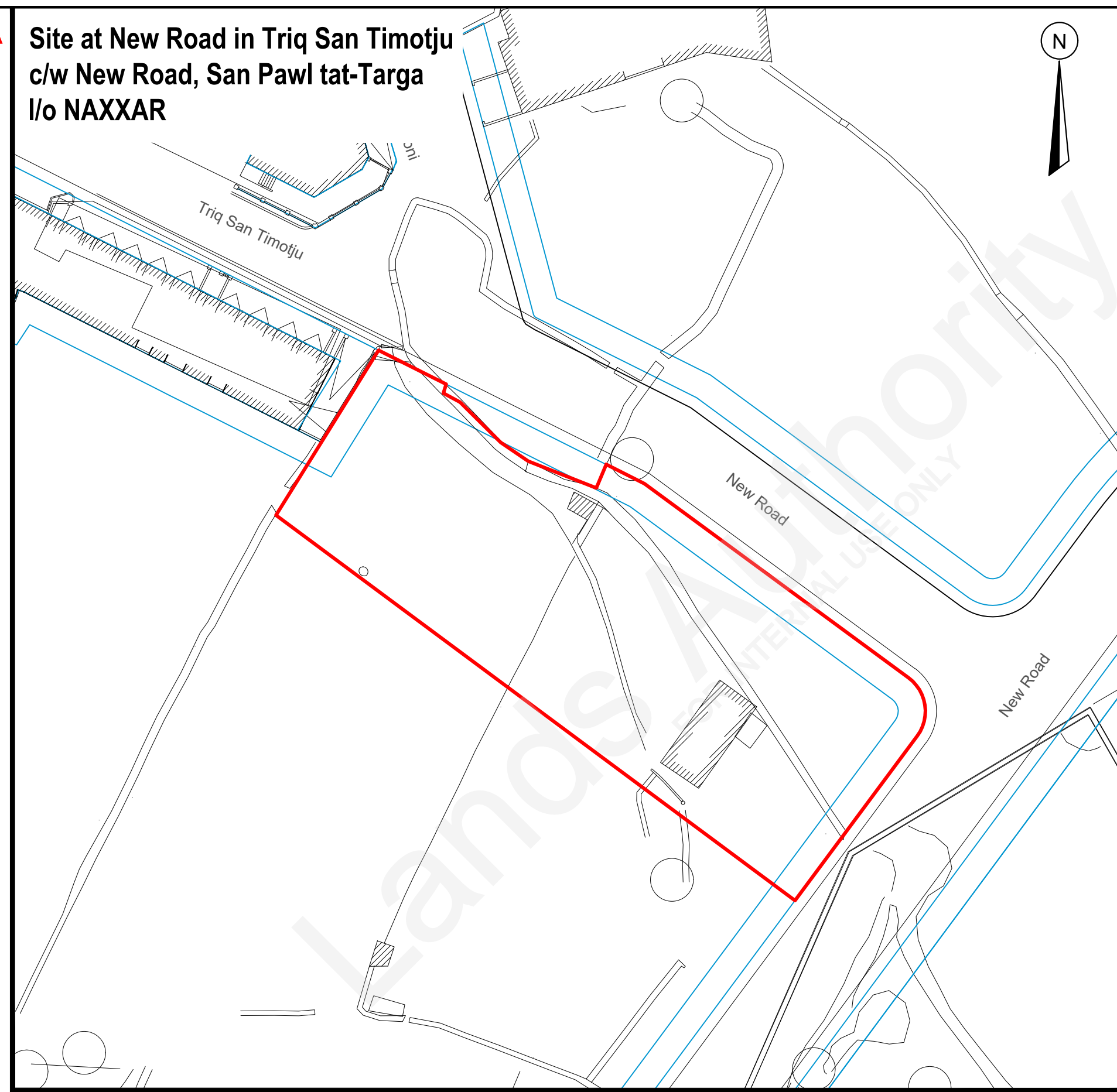
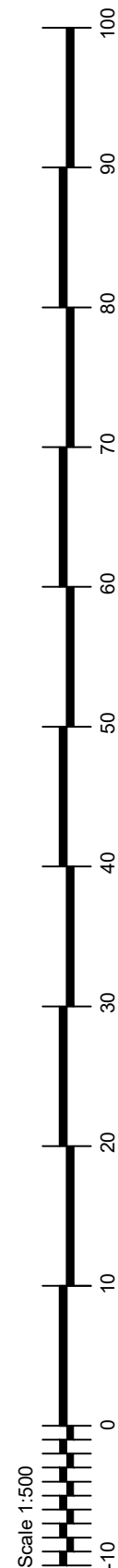
For the purposes of subarticle twelve (12) of article five capital A (5A) of the Income Tax Act, the parties declare that they have declared to the undersigned notary all the facts that determine if the transfer is one to which article 5A applies and that are relevant for ascertaining the proper amount 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 'f' 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 acquires declare that I the undersigned Notary explained to them the importance and consequences of such exemption.

This deed was done read and published after due explanation by me to the parties hereto in Malta, in Valletta, in Saint Sebastian Street, at the Auberge de Baviere, at the Lands Authority, without number.

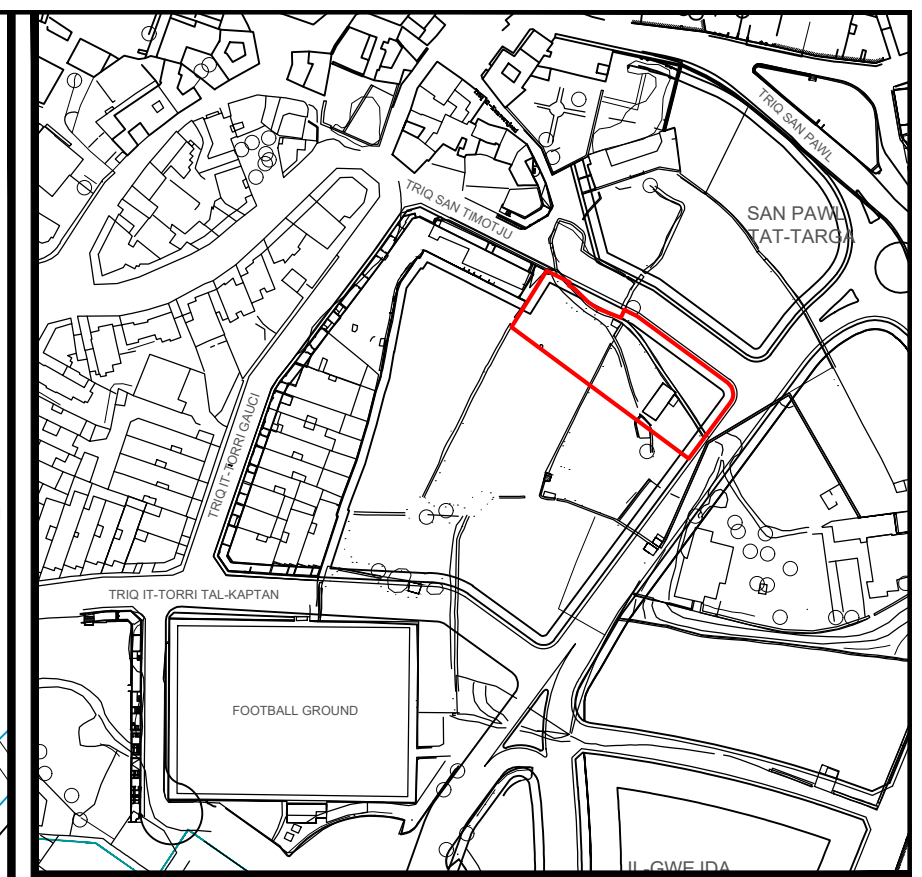
1A

**Site at New Road in Triq San Timotju
c/w New Road, San Pawl tat-Targa
I/o NAXXAR**



Scale 1:500

Extent interpreted from PD 2011_9_C & drawing approved by the Planning Authority: PC/00038/16/69B - Survey No. Nxr 2851-17.



Site Plan
S.S. 4875

Scale 1:2500
Map Ref.: 49755
75244

- PROPERTY NO.: **E271097**
AREA : **1,898m²**
- SCHEME ROAD ALIGNMENT
AS APPROVED BY THE
PLANNING AUTHORITY
IN PC/00038/16



Auberge de Baviere
St. Sebastian Str, Valletta
Phone (00356) 2295 3238/39/40/42
Website landsauthority.org.mt

Estate Management & Business Development

Locality: **NAXXAR**

P.D. No.: **2011_9_C_1** Scale : **1 : 500**

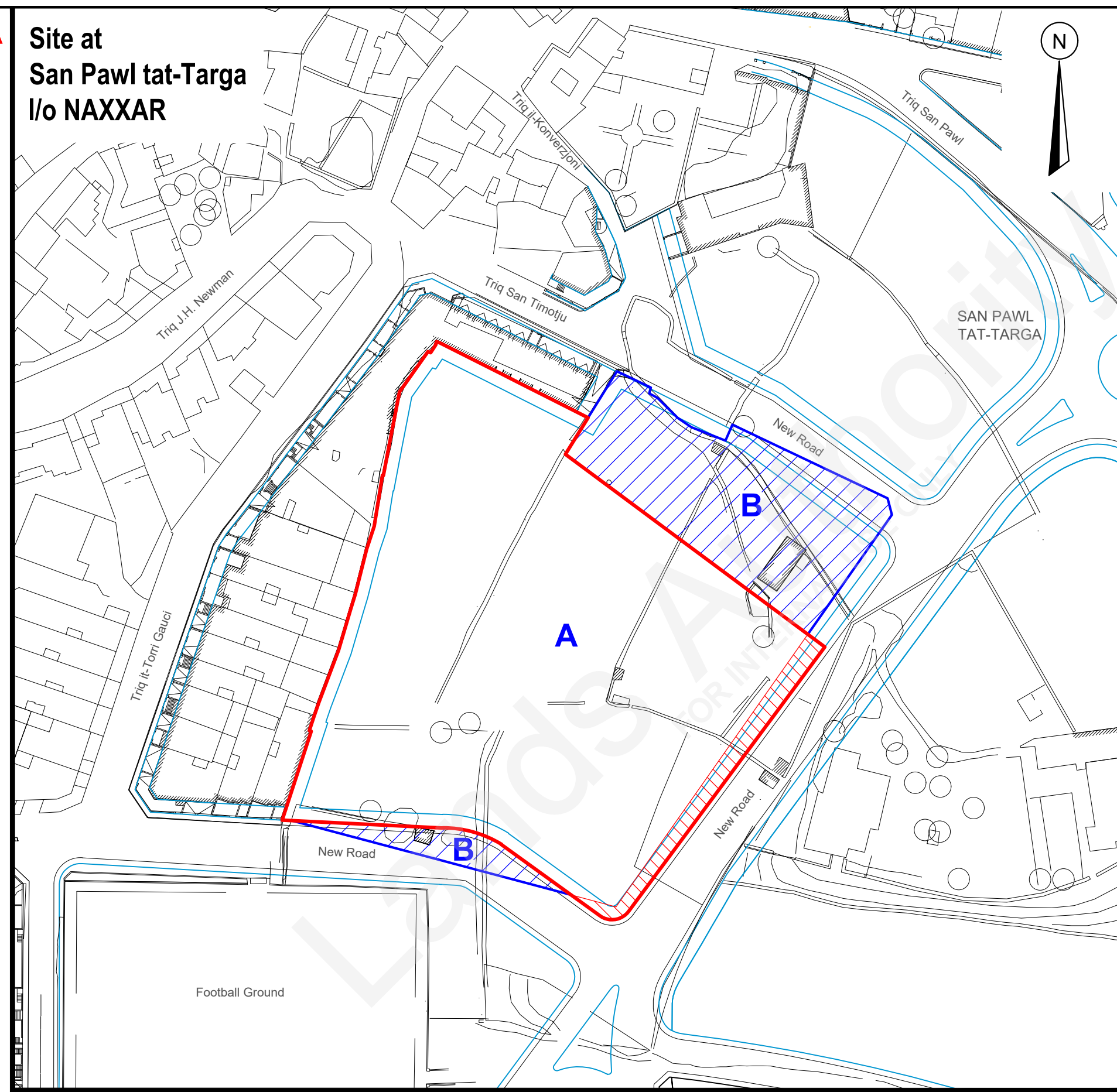
File No.: **L/0270/2012/0001** Drawn by : **bugem151**

A&CE **sgd (J. Schembri)**

Date : **22nd July, 2022**

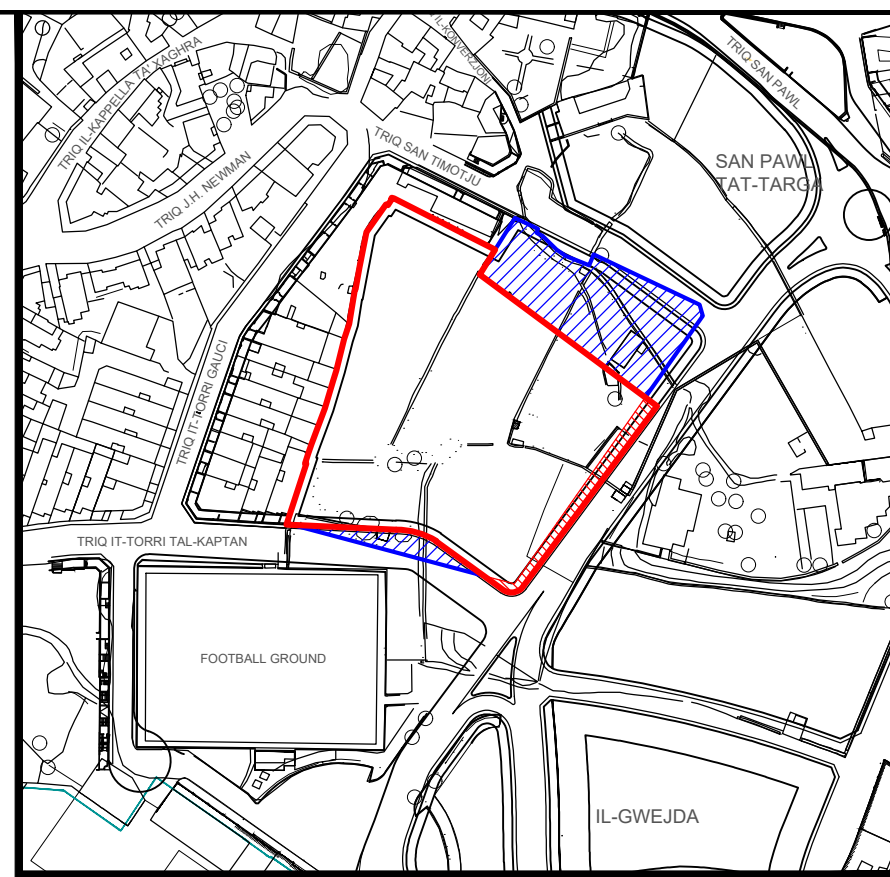
3A
Site at
San Pawl tat-Targa
I/o NAXXAR

Scale 1:1000



Scale 1:1000

Extent interpreted from PD 2011_9_B & drawing approved by the Planning Authority: PC/00038/16/69B - Survey No. Nxr 2851-17.



Site Plan
 S.S. 4875

Scale 1:2500
 Map Ref.: 49755
 75244

- A** NEW EXTENT OF SITE SHOWN ON PD 2011_9_B FOLLOWING CHANGES IN ALIGNMENT & TERMINATIONS
 PROPERTY NO.: E26271
 AREA : 8,633m²
- ADDITIONAL SITE DUE TO CHANGE IN ALIGNMENT
- B** TERMINATION OF EMPHYTHEUSIS I/C/W RE-ALLOCATION OF SITE & APPROVED ROAD ALIGNMENT
- SCHEME ROAD ALIGNMENT AS APPROVED BY THE PLANNING AUTHORITY IN PC/00038/16



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Estate Management & Business Development

Locality: NAXXAR	
P.D. No.: 2011_9_C	Scale : 1 : 1,000
File No.: L/0270/2012	Drawn by : bugem151

A&CE **sgd (J. Schembri)**
 Date : **25th July, 2022**