

## **RIŻOLUZZJONI DWAR TRASFERIMENT TA' PROPRJETÀ**

### **IL-MINISTRU GHALL-EKONOMIJA FONDI EWROPEJ U ARTIJIET JIPPROPONI ILLI L-KAMRA TAD-DEPUTATI TAPPROVA DIN IR- RIŻOLUZZJONI:-**

Billi huwa l-ghan tal-Gvern illi jippromovi dawk l-inizzjativi kollha li huma ta' beneficju ghal holqien ta' impjegi u tkabbir ta' l-ekonomija mhux l-inqas fil-prodott turistiku.

Billi l-prodott turistiku Malti dejjem qed izid fil-popolarita, u billi l-pajjiz qieghed dejjem jiffoka aktar minn qatt qabel fuq prodott turistiku ta' kwalita'.

Illi anki r-rezident lokali dejjem iffitejx postijiet ta' divertiment u fejn jghaddi l-hin liberu f'ambjent ta' kwalita ghola u ahjar.

Illi bil-holqien ta' diversi progetti bhal ma huma dawk li jinstabu fil-ponta ta' Tigne' u fl'inhawwi ta' madwar, sabiex il-prodott turistiku jkun jista jikkompeti ma dawk ta' pajjizi girien taghna u jaqdu l-kriterji odjerni tal-industrija turistika moderna, dejjem jizjed il-bzonn ta' aktar facilitajiet ta' divertiment u servizzi innovattivi.

Illi l-kumpanija Fortina Developments Ltd li hija wahda mill-kumpaniji li lesta biex tinvesti f'facilitajiet ta' l-aqwa standards internazzjonali fl'industrija turistika, tant illi qieghda tipproponi nvestment ta' madwar tlieta u erba miljun ewro (€3m - €4m) fir-rinovazzjoni u tkabbir tal-lido gia ezistenti, propjeta ta' l-istess Fortina/Fortel u f'mollijiet fuq wicc il-bahar ghall-imbark u l-isbark minn ingenji tal-bahar. Huwa kkalkulat illi dan l-izvilupp se jzid madwar tletin impjeg dirrett.

Billi b'kuntratt fl'atti tan-Nutar Vincent Miceli datat 12 ta' Gunju 1991 il-kumpanija Fortel Services Limited, li jghamlu parti mill-Fortel/Fortina Group, kienu akkwistaw medda t'art, franka u libera fix-Xatt ta' Tigne tal-kejl superficjali ta' madwar 1346 m<sup>2</sup> u din specifikament bil-kundizzjoni li sservi bhala estenzjoni tal-facilitajiet turistici tal-Fortina Hotel.

Illi l-istess medda t'art giet zvilupata mill-Fortel/Fortina group f'lido b'attrezzamenti adekwati ghal-dawk iz-zmienijiet.

Illi l-kumpanija Fortina Developments Limited urew ix-xewqa li jtejbu l-lido ezistenti billi jirrenovawh u jkabbruh f'wiehed illi jikkomplimenta l-lukanda ta'hames stillel li huma presentament qed jizviluppaw fix-Xatt ta' Tigne u dan billi jzidu facilitajiet u servizzi li jaqdu sew il-klijenti tal-Fortina Hotel Complex kif ukoll klijenti esterni.

Ghal dan il-ghan, wara kunsultazzjonijiet rigoruzi mad-diversi entitajiet koncernati nhareg permess mill-Awtorita' ta' l-Ippjanar (PA 4590/19) sabiex jtkabbar il-Lido ezistenti.

Dan l-izvillup propost huwa deskritt illi jikkonsisti fis-segwenti:

*'Demolition of an existing (Lido) restaurant terrace; removal of swimming pools and levelling of existing lido platform; extension of (the existing) lido platform to create a new swimming pool and extension of public foreshore access around platform; construction of a class 4D restaurant with kitchen (to serve Fortina Hotel) below promenade level; creation of public open space at promenade level above restaurant'*

Illi l-lido l-gdid kif propost, jirrekjedi zieda t'art tal-kejl ta' circa 504 m<sup>2</sup> kif murija mmarkata b'l-ittra A fil-pjanta PD 76\_91\_1\_1\_A. Illi din il-medda t'art tikkonsisti f' 356 m<sup>2</sup> f'arja mill-bahar kif ukoll 148 m<sup>2</sup> t'art presentament okkupata mill-passagg pubbliku li jinstab mal-periferija tal-lido ezistenti.

Illi bil-permess mahrug mill-Awtorita ta' l-Ippjanar (PA4590/19), Fortina Developments Limited huma obbligati, li jibnu passagg għall-uzu tal-pubbliku f'kull hin, a spejjes tagħhom, minghajr ebda kumpens jew fondi pubblici, bhala estenzjoni tal-passagg ġia ezistenti madwar ix-Xatt ta' Tighe' u illi l-passagg imsemmi għandu jdur mal-periferija tal-lido l-gdid kif propost. L-istess Fortina Developments Limited huma obbligati għall-manutenzjoni u reparazzjoni ta' l-istess passagg u moll minghajr ma jkunu ntitolati għal ebda kumpens jew fondi pubblici għal dak l-iskop.

Billi r-restaurant ezistenti f'xi postijiet jisporgi l-fuq mill-livell tal-Promenade, dan għandu jizzarma u jerga jinbena iehor gdid taht il-livell ta' l-imsemmi Promenade. B'hekk se jingħata lok biex tigi zviluppata pjazza għal-uzu tal-pubbliku fil-livell ta' l-istess Promenade u li b'konsekwenza tat-tnehhija tar-restaurant mill-wicc tal-Promenade, se jinhloqu veduti hafna isbah u mhux interrotti tal-belt Valletta, Manuel Island u l-bajja ta' Marsamxett.

Illi flimkien ma l-arja tal-bahar u l-art hawn fuq imsemmija mmarkati bl'ittra A, l-arja tal-bahar u qiegħ il-bahar parzjalment adjaċenti għal porzjon A u parzjalment għal porzjon tal-moll tax-xatt ta' Tighe, Sliema, izda mmarkata bl'ittra B fil-pjanta PD 76\_91\_1\_1\_A, b'kejl ta' madwar hmistax il-elf disgha mija u tmenin metru kwadru (15,980 m<sup>2</sup>) huma intizi biex jikkomplimentaw l-izvilupp propost billi jitpoggew mollijiet fuq wiċċ il-bahar, mbragati ma mazzri mqieghda f'qiegħ il-bahar, biex jiffacilita l-imbark u l-isbark minn ingenji tal-bahar. Dawn il-mollijiet irridu jigu nstallati skond il-kundizzjonijiet, l-obbligi u permissi imposti mill awtoritajiet kompetenti.

Billi l-kumpanija Fortina Developments Limited kienu talbu l-kunsens tal-Awtorita' tal-Artijiet tramite applikazzjoni PLA1/2019/1598 datata 5 t'April 2019, u sussegwentement ingħataw il-kunsens sabiex jissottomettu l-applikazzjoni mal-Awtorita' tal-Ippjanar PA4590/19, u billi l-permess eżekuttiv għal din l-applikazzjoni inħareġ bid-data tas-26/06/2020 u jidher li dan ix-xogħol tlesta minn qabel qegħda tingħata din il-konċessjoni, il-kumpanija ser tħallas is-somma ta' €70,229.36 bhala kumpens ta' okkupazzjoni illegali ta' dan is-sit mid-data tas-26/06/2020; u li din is-

somma tirrapprezenta l-valur globali tac-cens dovut ghal kull sena ta' okkupazzjoni illegali kif imnaqqsa bl-Indici ta' l-Inflazzjoni.

Billi huwa mahsub fl-artiklu 31, sub-artiklu (c) ta' Taqsima III tal-Att dwar Artijiet tal-Gvern (Kapitolu 573), li art li tkun proprjeta` tal-Gvern jew amministrata minnu tista' tigi trasferita direttament skond rizzoluzzjoni speċjali tal-Kamra tad-Deputati li tkun fis-seħh fil-waqt tat-trasferiment.

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

Ghalhekk huwa b'dan rizzolut illi l-artijiet tal-kejl ta' madwar 504 m<sup>2</sup> immarkati bl'ittra A u tal-kejl ta' madwar 15,980 m<sup>2</sup> immarkata bl'ittra B illi jidru fil-pjanta PD 76\_91\_1\_1\_A jkunu trasferiti b'titolu ta' enfitewsi temporanju ghal perjodu ta' 65 sena b'cens rivedibbli, u b'cens annwu totali ta' mija w'erbatax il-elf, erba mija w'tmienja w'sittin ewro (€114,468), skond il-pattijiet u l-kundizzjonijiet imsemmija fl' abbozz ta' kuntratt hawn anness.

## IL-MINISTRU GHALL-EKONOMIJA FONDI EWROPEJ U ARTIJIET

Onorevoli Silvio Schembri

Enc. Abbozz ta' kuntratt  
Pjanta PD 76\_91\_1\_1\_A  
Rapport ta' Valutazzjoni ta' sit A  
Rapport ta' Valutazzjoni ta' sit B  
Addendum ghar-Rapport ta' valutazzjoni ta' sit B.

Before me, Notary Doctor Malcolm Mangion, 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:

who is appearing on this deed in the name and on behalf of the **Lands Authority**, as duly authorized by a *Board Minute* of the Board of Governors of the Lands Authority number \_\_\_\_\_ dated \_\_\_\_\_ and thus appearing on behalf of the **Government of Malta**:- hereinafter referred to as the '**Lands Authority**' and/or '**the Government of Malta**' and/or '**the Government**' and/or '**Grantor**'. The related papers are marked as letter 'L' number four six four stroke twenty twenty (L464/2020).

Of the second part:

**Edward Zammit Tabona** nee' Zammit Tabona, Company Director, married son of Julian Zammit Tabona nee' Zammit Tabona and Veronica Zammit Tabona nee' Arrigo, born in Pieta' on the twenty-sixth day of October of the year one thousand nine hundred and eighty-eight (26/10/1988) and residing at Balzan, holder of identity card number 500588M who appears herein for and on behalf of the limited liability company **Fortel Services Limited**, company registration number \_\_\_\_\_, and having its registered address at \_\_\_\_\_ and hereinafter referred to as "**Emphyteuta**" and/or '**Grantee**', as duly authorised to appear hereon

by virtue of the Memorandum and Articles of Association of the said company.

## **The Parties**

The Lands Authority, and the Emphyteuta are in this deed collectively referred to as the “**Parties**” and each one a “**Party**”.

Whereas the Emphyteuta requested the Government to grant it on emphyteusis a portion of land and an adjacent portion of sea in order to increase its hospitality enterprise, and effect a re-embellishment exercise of both its land and the demanded portion of land/sea area.

Whereas the Emphyteuta is asking that such portion of land/sea area to be granted on temporary emphyteusis in order to be able to commence this regeneration exercise on his already owned property and then in a continuing manner proceed to integrate such new portion of land in such regeneration of the promenade fronting the Hotel and has thus asked the Government of Malta to transfer to it , by title of temporary emphyteusis, tracts of land as hereunder defined to enable it to proceed, and such transfer was approved by the House of Representatives during sitting of \_\_\_\_\_ of \_\_\_\_\_ two thousand and twenty two (\_\_\_/\_\_\_/2023)

Now therefore the Parties have convened to execute this deed :

## **Article 1 - Definitions**

1.1 In this deed, unless otherwise expressly stated or the contrary intention appears and in addition to any other definitions contained elsewhere in this deed, the following terms shall have the following meanings respectively assigned to them:

**“Architect”** means the architect and civil engineer appointed by the Emphyteuta for the purpose of certifying completion of the Project.

**“Certificate of Completion”** means the certificate issued by the Architect in accordance with subclause three of clause fifteen (15.3) of this deed and confirming that the Project is in a Complete State.

**“Complete State”** means that the Property is developed and built in accordance with the applicable Full Development Permissions in relation to the same and completed in all respects in full compliance with all laws and regulations in respect of buildings in general, including sanitary and environmental matters, with materials of good quality, and to a good standard of workmanship, in terms of local building custom.

**“Deed”** means this public deed granting a title of temporary emphyteusis over the Property

**“Development of the Property”** means the performance, execution or supply of anything which shall be required to be performed, done or supplied by the Emphyteuta in order to complete the obligations assumed by it on this deed in respect of the completion of the project on the Property and for all the requirements mentioned in the definition of Complete State to be satisfied in full and includes, but is not limited to, the performance, execution or supply of all labour, materials, constructional plant and equipment, temporary works, remedial works, and architectural and technical services and supervision to construct, develop and complete the project on the Property in all respects in compliance with all laws and regulations in respect of buildings in general including sanitary and environmental matters, possible requirements by the competent authorities, the Building Permits, and the execution of all works necessary to satisfy the Emphyteuta’s obligations arising from this deed, as well as the filing of applications for and

the procurement of necessary amendments to the Building Permits and the issuance of any compliance or completion certificates in respect of the Property in terms of the Development Planning Act, Chapter five hundred and fifty-two (552) of the Laws of Malta, and of all other necessary certifications, permits, authorisations and licences required during the Development of the Property, and on its completion and the procurement, installation and commissioning of all utilities required for the Property.

**“Emphyteutical Grant”** means the temporary emphyteutical grant of the Property made by the Lands Authority to the Emphyteuta by virtue of this deed.

**“Force Majeure”** means any act, event or circumstance which is beyond the reasonable control of a Party, including but not limited to acts of God, war, civil commotion, fire, flood or other calamity, strike, riot, lock-out or other industrial disturbance, terrestrial or extra-terrestrial interference, blockade, insurrection, action, order, direction judgement, including but not limited any other cause of a similar nature, which makes that party’s performance of its obligations under this contract impossible, or so impractical as to be considered impossible under the circumstances.

**“Full Development Permit”** means the full Development Permission issued by the Planning Authority in a definitive and final manner, not subject to any appeal before a court or tribunal, for the Development of the Project on the Property. It is herein being declared that over the Site there already exists a Permit, whilst on the Sea Area an application still has to be submitted by the Emphyteuta. This term refers to such individual permits relative to the immovable being queried over.

**“Government/Government of Malta”** means the Government of Malta and/or its successors in title and/or the Dominus and/or its successors in title.

**“Government Architect”** or **“Grantor’s Architect”** means the architect or architects or authority whom the Government shall engage for the purposes of any assessment herein required and to the extent required under this Emphyteutical Deed.

**“Ground-rent”** means the annual temporary ground-rent stated in the relevant Article of this deed and, when revised upwards in accordance with same clause, the annual temporary ground-rent as so revised.

**“Immovable Things”** means all buildings, structures, developments, infrastructure, facilities, installations, and other improvements which are not Movable Things in terms of this Agreement, now existing, or which in the future shall exist, within the boundaries of the Property, whether installed, constructed or erected on, in or under the Property or which otherwise appertain to the Property but to the extent only that they are considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta and whether such buildings, structures, developments, infrastructure, facilities, installations, equipment, plant and machinery and other improvements are mentioned or otherwise in the description of the Site and /or Sea Area in these Definitions.

**“Moveable Things”** means all items which can be removed from the Property and which are not included in the definition of “Immovable Things” herein and includes equipment, plant and machinery and other improvements which are not deemed immovable things in terms of this Deed, now existing or which in the future shall exist, within the boundaries of the Site / Sea Area as installed in or appertaining to the site / Sea Area to the extent that they are considered moveable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta as not mentioned in the description of the Site / Sea Area in these Definitions.

**“PA”** means the Planning Authority set up in terms of the Development Planning Act (Chapter 552 of the laws of Malta).



**“Permitted Uses”** means the uses of the Site as specified in Article 6 of this deed.

**“Project”** means the project, used solely and exclusively for the permitted use defined in this deed, which is to be developed on the Property consisting of the dismantling of the existing restaurant, presently located at the promenade level fronting the Hotel, and its relocation below the promenade to make way for a plaza for use by the public, as approved today or as may be amended following Planning Authority consent from time to time, however, always retaining the use herein described, and the development of pontoons in the sea area for the mooring of vessels, to be installed after obtaining all the necessary permits from the competent authorities.

**“Property”** means the Site and the Sea Area as better described below.

**“Retained Passage”** means the divided portion of land today partially constructed but partially being located in the sea, with all its airspace and subterranean levels and intended to be used as a continuation of the public passageway at the immediate foreshore of Triq ix-Xatt ta Tigne in Sliema and which retained passageway is not being transferred unto the Emphyteuta but shall be subjected to such construction and finishing and subsequent maintenance as herein agreed in this concession to allow its continued free use. The said Retained Passage does not have a starting point or an ending point, since as its name suggests it is a continuation of a passage which commences and extends well beyond the limits of the land herein granted and is subject to public right of use, but the part of the same which the Emphyteuta shall be obliged to form and maintain as indicated in this deed is indicated as public passage way, on the plan indicated as Property Drawing number seventy six underscore ninety one underscore one underscore one underscore letter A (P.D. No. 76\_91\_1\_1\_A), which plan is attached to this deed and marked as document “P1”. The said Retained Passage in so far

as marked is irregularly shaped and is bounded on the North partially with property of the Emphyteuta and partially by the Site and partially with the promenade, on the South with the Sea Area and on the West partially with the Sea Area and partially with property of the Emphyteuta and partially with its continuation over Government land (promenade) not subject to the provisions of this deed

**“Sea Area”** shall mean the divided portion of submerged land with its underlying levels which includes the seabed, immediately overlying body of seawater, and airspace thereabove and shown marked in red and marked with letter ‘B’ on the plan bearing letter PD number seventy six underscore ninety one underscore one underscore one underscore letter A (PD 76\_91\_1\_1\_A) hereto attached as document P1 and has a superficial area of circa fifteen thousand nine hundred and eighty square metres (15,980 sqm) and is bounded on the South, West and East with the remainder of the seabed and overlying body of water and on the North with the Retained Passage.

**“Site”** means the divided portion of a site in the Republic of Malta having an irregular shape and measuring not less than five hundred and four square metres (504 sqm) as, and with all its airspace and with all its subterranean levels and bounded on the North and East with property already owned in full ownership by the Emphyteuta and not subject to this concession, on the West and South with the Retained Passage, as better shown marked in red with letter ‘A’ on the plan indicated as Property Drawing number number seventy six underscore ninety one underscore one underscore one underscore letter A (P.D. No. 76\_91\_1\_1\_A), which plan is attached to this deed and marked as document “P1”. The Parties confirm that at this point in time during the signing of this deed the Site is partially submerged land (seabed) and will need to be reclaimed at the Emphyteuta’s sole cost and expense and is subject to issuing of permits by the competent Authorities.

“**Term**” means the term of the Emphyteutical Grant as set out herein.

“**Undesirable Person**” means 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 (9) of the Laws of Malta (in this deed referred to as the “**Criminal Code**”), 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) (both articles included) of the Companies Act, Chapter three hundred and eighty-six (386) of the Laws of Malta (in this deed referred to as the “**Companies Act**”) and in violation of article one hundred and ninety-one (191) of the Criminal Code;
- vi. against Sub-Titles IVA and B of Title IX of Part II of Book First of the Criminal Code;
- vii. against the laws or by the courts of another country with respect to the crimes substantially equivalent to those

specified in paragraphs i.(roman number one), iv.(roman number four) and v.(roman number five) above.

- (b) is the subject of sanctions or restrictions issued by the United Nations, the European Union or other international governmental body of which Malta is part and which are adopted or applied 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 / or other applicable law, and this for such time as such sanctions remain in force.
- (c) is the subject of an international arrest warrant or of a European 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 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.

## **Article 2 - Interpretation**

- 2.1 In this deed, unless otherwise expressly stated or the contrary intention appears:
  - a) words importing the masculine gender shall include the feminine gender and vice-versa and words importing the neuter gender shall include the masculine and the feminine gender;

- b) references to a Recital, Part, heading, section, clause, paragraph, document or schedule is to a Recital, Part, heading, section, clause, paragraph, document or schedule of or annexed to this deed;
- c) references to a person include references to any person, whether natural or legal and whether registered or not and whether incorporated or unincorporated, and includes (without limitation) an undertaking and this irrespective of citizenship, place of registration, residence or management;
- d) any reference to any law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any subordinate legislation, legal notices, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder;
- e) all obligations undertaken by the Parties will be binding on them during the entire Term;
- f) where the context permits, the term "Site" and "Sea Area" shall include any part of the Property, together with all the Immovable Things which now, or in the future, shall appertain to them.
- g) the headings in this deed are inserted for convenience only and do not affect its construction.
- h) the documents annexed to this deed shall be construed to form a substantial and integral part of this deed and any reference to this deed shall include a reference to the said documents.

### **Article 3 - Grant of Emphyteusis of the Property**

- 3.1 By virtue of this deed, the Lands Authority nomine, hereby grants by title of temporary emphyteusis to the Emphyteuta,

which on its part accepts and acquires by the same title of temporary emphyteusis, the Site and Sea Area, for the Term and for the consideration and upon the terms and conditions set out and contained in this deed. The Site and Sea Area include all their rights and appurtenances and are being granted and accepted as free and unencumbered ( save for this temporary concession), with vacant possession and save for all existing physical servitudes, *tale quale*, and with the exclusion of the warranty of hidden/latent defects.

- 3.2 The Parties also declare and agree that the Site and Sea Area include all the Immovable Things, which now or in the future shall appertain to the Site and Sea Area.
- 3.3 The Parties agree that the Site and Sea Area are being granted and accepted as subject to all existing servitudes and easements created by law burdening them respectively.

#### **Article 4 - Terms and Conditions of the Emphyteutical Grant**

- 4.1 This Emphyteutical Grant is governed by the terms and conditions set out in this deed and, except to the extent lawfully excluded or modified hereby, also by the provisions of the Civil Code, Chapter sixteen (16) of the Laws of Malta.

#### **Article 5 - Term**

- 5.1 This temporary emphyteutical grant is being granted by the Lands Authority nomine, and accepted by the Emphyteuta for a period of sixty-five (65) years commencing from the date of publication of this deed.

#### **Article 6 - Permitted Uses**

- 6.1 Without prejudice to the Emphyteuta's obligations and rights of the Lands Authority pursuant to this Deed, the Emphyteuta shall be entitled to enjoy and make full use of the :

- 6.1.1 : **Site** solely for the purpose of extending facilities of the Fortina Hotel by means of a re-design of the current Emphyteuta already owned space **as extending** over the Site in order to provide facilities to cater, solely and exclusively, for the touristic and the hospitality industry for foreigners and locals alike.
- 6.1.2 : **Sea Area** for the purpose of constructing pontoons for the mooring of vessels in a temporary manner and the use thereof for berthing facilities, which facilities may comprise all associated paraphernalia including but not limited to the installation of pontoons, anchors, chains dockage services and offices and all other associated equipment necessary to operate successfully such berthing facilities for long or short term vessel domestic and/or commercial berthing. The pontoons shall be installed in accordance with all necessary permits as shall be imposed and granted by the competent authorities.
- 6.2 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 as prescribed in sub-clause one of this clause six (6.1) and its subclauses.
- 6.3 The Emphyteuta undertakes that it will not abandon the Site for the duration of this concession and shall ensure that the Sea Area is properly maintained.
- 6.4 The *pro tempore* emphyteuta of the Site and the Sea Area undertakes to continue to operate the same Site and Sea Area for the duration of this emphyteutical grant.

## **Article 7 - Ground-rent**

- 7.1 This Emphyteutical Grant is made in consideration of the annual temporary ground-rent of one hundred and fourteen thousand four hundred and sixty eight euros (€114,468) for the Site and the the Sea Area. For administration purposes the Grantor declares that twenty four thousand four hundred and sixty eight euros (€24,468) is the attributable groundrent for

the Site and ninety thousand euros (€90,000) is the attributable groundrent for the Sea Area;

- (i) Provided that the pro tempore ground rent on both the Site and Sea Area shall be increased on the tenth (10<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 ( ) day of \_\_\_\_\_ of the year two thousand and \_\_\_\_\_ (20\_\_\_\_).

7.2 Subject to sub-clause one of this clause seven (7.1) the ground-rent is payable to the Lands Authority annually in advance with effect from today.

7.3 The Ground-rent shall be paid by the Emphyteuta without demand, deduction or set-off unless otherwise agreed to in writing by the Lands Authority.

7.4 Without prejudice to Article thirty-three (33), in order to secure the payment of the Ground-rent and any penalty that may become due by the Emphyteuta on this deed and also to secure the proper performance of each and all of the obligations arising from this Emphyteutical Grant, the Lands Authority nomine reserves in its favour the special privilege on the Site and Sea Area accorded to the dominus by law.

## **Article 8 – Change of Control & Transfer, Assignment and Disposal**

8.1 The Emphyteuta may not transfer or otherwise dispose of the Property 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 the Lands Authority as a representative of the Government of Malta and can be refused without the obligation to give reasons for such refusals.

8.2 For the purpose of seeking the written consent of the Lands Authority as a representative of the Government of Malta, the Emphyteuta shall notify the Government in writing of such proposed transfer together with the relevant details of the prospective transferee.

8.3 Any change in the shareholding structure of the Emphyteuta resulting in a change in majority control of the Emphyteuta shall be deemed an indirect transfer of this Emphyteutical concession and the provisions of the preceding sub-clauses of this clause 8 shall *mutatis mutandis* apply. Provided that for the purposes of this sub-clause three of clause eight (8.3) reference to "majority control" shall mean the direct or indirect ownership or right to exercise (directly or indirectly) the majority of the shareholders' voting rights in the Emphyteuta, the right to exercise (directly or indirectly) a dominant influence over the Emphyteuta through the right to appoint or remove (directly or indirectly) the majority of the members of the board of directors of the Emphyteuta.

Provided that the transfer of such shares and any voting rights made to the descendants and/or spouses of the present shareholders, or of the other shareholders (transfer between the current shareholders) of the Emphyteuta *intervivos* or *causa mortis*, may only be made subject to Government consent, which shall not be unreasonably withheld.

8.4 For the purposes of this definition, the provisions of the Ninth Schedule to the Companies Act (Chapter three hundred and eighty-six [386] of the Laws of Malta) shall apply *mutatis mutandis*.

## **Article 9 – Conditions Applicable to Transfers**

9. 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 Authority. This fee shall be paid upon the relative transfer, on pain of nullity of the transfer if the fee is unpaid within forty (40) days from such transfer; Provided that no recognition fee shall be payable if the transfer or disposal as consented by the Lands Authority as a representative of the Government of Malta is in favour of the Emphyteuta's subsidiaries or associated companies or made to the descendants and/or spouses of the present shareholders, or of the other shareholders ( transfer between the current shareholders);
- (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 Lands Authority as a representative of the Government of Malta;
- (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.

#### **Article 10 – Leases**

Nothing in this deed shall prohibit the Emphyteuta from granting, in whole or in part, the Site and/or the Sea Area 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, terminated or rescinded for any reason in whole and/or in part, the lease or management agreement over such immovable the concession of which is being dissolved/terminated/ rescinded 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 Authority.

And provided further that if the Emphyteuta exercises his rights under this article, a one-time recognition fee equivalent to one (1) year's *pro tempore* groundrent shall be due by the Emphyteuta to the Authority, 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 Site or Sea Area.

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 Site and/or Sea Are shall not be deemed to be a transfer or disposal in terms of Clause eight (8). Nothing in this Clause shall be deemed to exonerate the Emphyteuta from its obligations arising from this deed and the Emphyteuta shall be jointly and severally liable with the lessee or manager.

#### **Article 11 – Obligations and Charges Imposed by Law on Owners**

11.1 The Emphyteuta shall be bound to comply with and to carry out any obligation or duty imposed by law on the owners of

buildings or lands and this according to what is stated in Article one thousand five hundred and seven (1507) of the Civil Code (Chapter sixteen (16) of the Laws of Malta).

11.2 All burdens, taxes, rates, impositions or other charges whatsoever imposed by law on the owners of land over the Site and/or Sea Area shall during the continuance of the Emphyteutical Grant be paid by the Emphyteuta.

## **Article 12 – Compliance with Law and other Obligations**

12.1 The Emphyteuta shall, at its sole cost and expense, comply with all legislation, rules, regulations, and administrative orders applicable to Malta, whether made by the Government of Malta or otherwise, now in force, or which may hereafter be in force, applicable to the Site and/or Sea Area and/or the operation of the Permitted Use, and shall faithfully observe all conditions included in all licences, permits and authorisations issued to the Emphyteuta or for the Site and/or Sea Area in relation to the operation of the Permitted Uses, 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 Site and/or Sea Area in accordance with the Permitted Use.

12.2 The Emphyteuta shall not permit oil, grease, trade wastes or other deleterious matter to enter the public drains and sewers and the sea way in accordance to applicable law, from time to time.

12.3 The Emphyteuta shall not cause damage to existing public services passing through, under or above the Site and when damage is caused or the temporary removal is necessary it shall be bound to re-instate same as soon as possible, at its own and sole expense. For the purposes of this clause, the Government of Malta nonetheless undertakes in favour of the Emphyteuta, which accepts, to assist the Emphyteuta, at the Emphyteuta's own expense, by all lawful means possible as may be necessary for the removal and/or re-instatement

of the said public services if the Emphyteuta itself, in spite of various attempts from its part, of which proof in writing shall be given to the Government of Malta, has failed to remove and/or re-instate the same.

The Emphyteuta is also presently and with immediate effect renouncing to any compensation and/or right of compensation for any expenses of whatever nature and/or to any claim and/or any action of whatever nature which it has and/or might have against the Government of Malta in relation to obligation undertaken by the Government by virtue of this clause.

12.4 The Emphyteuta is presently undertaking to erect the necessary foundations and form thereover the public passageway entitled 'Retained Passage', and this at the Emphyteuta's cost and charge. For such purpose the Government is herein granting unto the Emphyteuta temporary possession of the same Retained Passage and this under the following conditions :

12.4.1 Such possession shall commence as from the date of this concession up and until ninety (90) days from when the first of the facilities be it on Site or on the Sea Area become operational, provided that the maximum time frame allowed for the Emphyteuta to keep possession is of two (2) years from today, whereupon the expiration of such the Retained Passage has to be completed and the public in general allowed the pedestrian use thereof.

12.4.2 Such possession for such time period as defined above by the Emphyteuta shall be exclusive to itself and its appointed workers in order to minimize danger to the public due to ongoing construction works. Provided that the Emphyteuta notwithstanding shall still effect such insurance policies as necessary to its benefit and shall list the Government of Malta as an interested party against third party liability for such Retained Passage. Such insurance shall be taken out not later than sixty (60) days from today and shall remain valid up and until the date of opening of the Retained Passage to the Public.

12.4.3 The Retained Passage shall be intended for the pedestrian passage of third parties and given its proximity to the sea shall be tiled/rendered/covered on its top face with adequate non slip material blended with the aesthetic concept renovation of the Site, at the Emphyteuta's discretion as to materials and colours, always however under the requirements set forth by the Planning Authority permit applicable to the Site.

12.5 The Emphyteuta shall after the opening of the Retained Passage to the public and for the duration of this grant be solely responsible for the maintenance and repair, and lighting and cleaning of the same Retained Passage. For this purpose the Government understands that due to periodic high intensity cleaning or maintenance the Emphyteuta may be compelled in the interest of safety to close off or cordon off a part of such Retained Passage until all maintenance and/all remedial works are completed, provided that such cordoning off / closure shall not be excessive in the opinion of the Government Architect, and if it is, the Grantee undertakes to mitigate the inconvenience thereof.

12.6 Given the physical location of the Retained Passage, the Grantee reserves the right to pass from the underlying and/or overlying levels in an aesthetically pleasing manner any pipes and/or cables and/or conduits and/or service culverts it requires between its property, the Site and the Sea Area and all movables located thereon.

12.7 Given the physical location of the Retained Passage and in the interest of security of the Emphyteuta's patrons, the Government gives its consent for the Emphyteuta to install security close circuit television cameras in the Retained Passage and/or overlooking the Retained Passage, provided that all necessary documentation required by law is filed with the Data Protection Commissioner and notices informing the public of the use of such technology are made at the entrance and exit of the area scrutinised.

12.8 All bills and charges relating to the Site and/or Sea Area including deposits, fees and charges for water, electricity, drainage, telephone and any other service or utility used in or upon or furnished to the Site incurred as from the date of this deed shall be paid by the Emphyteuta.

12.9 The Emphyteuta is also presently and with immediate affect renouncing to any compensation and/or right of compensation for any expenses of whatever nature and/or to any claim and/or any action of whatever nature which it has and/or might have against the Government of Malta in relation to obligation undertaken by the Government of Malta by virtue of this entire Article 12.

### **Article 13 – Facilities and Standards**

13.1 The Emphyteuta is bound for the entire duration of this deed to provide adequate facilities and standards for the operation of the Permitted Uses, in accordance with generally accepted standards and relevant legislation, for the efficient operation of the Property.

13.2 Such facilities and standards shall include but not be limited to:

- i undertake all reasonable endeavours to maintain high levels of customer/client satisfaction;
- ii preserve and maintain the Property facilities in a safe, serviceable and efficient condition;
- iii carry out a continuing programme of maintenance and repair activities on the equipment, fixtures and fittings which will

ensure that the Property facilities are at all times in good working order and in a serviceable condition;

- iv ensure that all structures on the Property are inspected frequently for deterioration and, where necessary, carry out repairs or replacements;
- v affect all routine repairs including replacement and enhancement of equipment and systems on the Property necessary for the efficient and adequate operation of the Property and the Permitted Uses;
- vi adopt and periodically update a high standard of environmentally-friendly energy saving solutions and sustainable use of resources;
- vii establish adequate rules covering sanitation, security, accessibility, sustainable energy and resource use and conservation, crowd control and fire protection at the Property;
- viii comply with all safety, sanitary and security standards in accordance with applicable laws;
- ix maintain all facilities at an adequate standard including housekeeping and cleaning, decor and their availability to customers/clients at the Property.

13.3 The emphyteuta shall ensure that all operations and activities carried out on the Property shall comply with any applicable law and regulations, and the emphyteuta of such part of the Property shall be liable for and shall indemnify and hold the Government and its officers, employees, agents and contractors harmless from any expenses, liability, loss, claim or proceedings whatsoever arising from a breach by the emphyteuta of any such law and regulations

#### **Article 14 – Maintenance and Repairs**



14.1 For the duration of the emphyteutical grant, the Emphyteuta shall keep the Site and improvements made by the Emphyteuta or successor in title over the Sea Area and anything related thereto at all times in a good state of repair according to law and to the satisfaction of the Lands Authority (as a representative of the Government of Malta) and at its own risk, cost and expense it shall carry out:

- i. all preventive and remedial maintenance as may be necessary in accordance with applicable law and internationally recognized industry standards; and
- ii. all ordinary and extraordinary repairs;

and on the termination of the emphyteutical grant by lapse of time or on the dissolution of the emphyteutical grant for any other reason, the Emphyteuta shall relinquish and/or return the Property and any permanent improvements thereon without any compensation and/or right of compensation, unless otherwise stated in the deed, in a good state of repair and operation, fair wear and tear excepted. Any damage occurring not only through ordinary causes but also through fortuitous, extraordinary and unforeseen circumstances or by Act of God, or by Force Majeure, shall be made good by the Emphyteuta which shall be bound to reconstruct if necessary any portion of the said tenement, or the whole tenement, at its own expense.

14.2 The Government of Malta may request once every five (5) years from the date of this deed that the Emphyteuta prepares a written condition report in respect of the maintenance of the Property or part thereof and such condition report shall be delivered by the Emphyteuta to the Government within a reasonable date agreed between the Emphyteuta and the Government.

## **Article 15- Development of the Property**

15.1 The Property is being granted to the Emphyteuta to use it exclusively for the Permitted Use provided for in this deed.

The Parties also agree that the Project shall be completed within five (5) years from the issue of a Full Development Permission over the Site or the Sea Area. For the purposes of this deed, the permission shall be considered to be a Full Development Permission if it is definite and final, and it is not subject to any form of appeal in any Court or Tribunal, and that the statutory period for the filing of any appeal has expired. In the case of such an 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.

The Emphyteuta shall be obliged to submit the relative full development application, in its validated form, by no later than six (6) months from the signing of this deed and shall undertake the best of its endeavours to ensure that all planning application requirements are complied with in an expeditious manner for the timely determination of the relative full development application.

15.2 In the event that a Full Development Permission is issued by the Planning Authority (PA), the Emphyteuta shall commence works within six (6) months of the issuance of such Full Development Permission.

15.3 When the Property is in a Complete State the Emphyteuta shall provide the Government with a Certificate of Completion issued by the Architect in charge of the development of the Property.

15.4 In the event that a Full Development Permit over Sea Area is not issued, it shall be in the sole discretion of the Emphyteuta to decide as to whether to continue in the concession of the Sea Area, and in the event that the Emphyteuta decides that it shall not continue, it shall notify the Grantor in writing three (3) months before its intended relinquishment of the Sea Area.

15.5 For purposes of clarity it is herein being declared that in any application for any Full Development Permit, if such application is within the Permitted Use, no or consent from the Grantor is required. Provided that the Grantor may freely enquire with any authority and/or the emphyteuta the scope and extent of the permit applied for on any occasion. Provided that the emphyteuta shall notify the Grantor of any application submitted with any authority.

#### **Article 16- Permits, Licences and Authorisations**

16.1 The Government of Malta undertakes to use its good offices to ensure the expeditious processing, within any applicable legal time-frames, of applications for permits, licences or other authorisations that may be necessary.

16.2 For the avoidance of doubt, it is hereby declared and acknowledged that the undertakings of the Government of Malta in terms of this Clause are subject to the Emphyteuta:

- i having made and duly filed all applications for the aforesaid permits, licences or authorisations which it is obliged to file, which applications must be accompanied with all information, documents and details as are normally required by the appropriate authority; and
- ii having satisfied and/or complied with all requisites for the grant of such permits, licences or authorisations or any conditions which are imposed on it, such requisites and/or conditions being such as are within its reasonable power and control to satisfy and/or comply with.

#### **Article 17 – Financing**

17.1 The Emphyteuta may not grant or create or suffer to subsist any security interests, whether by way of privilege, hypothec

(whether general or special) or other real right, over the Site or any part thereof except:

- (i) for the purpose of obtaining financing through banking institutions and/or other entities which will lend, or through which finance will be made available to the Emphyteuta solely for the purpose of developing/ effecting a refurbishment / eventual refurbishment / maintenance to the Site and/or Sea Area as set out in this Deed;
- (ii) provided for in subclause four of clause seven (7.4) of this Deed;
- (iii) by operation of law, including in the granting of any warranty for peaceful possession of any transfer made by the Transferee in terms of this deed;
- (iv) on such parts or the whole of the Site, for such purposes as the Lands Authority may otherwise consent, which consent must be in writing and may be given or withheld without any justification and at its sole discretion.

17.2 Save as permitted by subclause one of this clause seventeen (17.1) no security interest shall be created over the Site by way of suretyship or for the purpose of guaranteeing any third-party obligation, liabilities or financing irrespective of the extent, nature or place of the activities carried out.

## **Article 18 – Antiquities**

18.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological, archaeological or cultural interest found on the Site /Sea Area shall be placed under the care and authority of the Government of Malta.

18.2 Subject to the provisions of the law, the Government of Malta reserves the ownership of any such findings. For the avoidance

of doubt, the Emphyteuta shall have no right, whether personal or real, over any such findings.

18.3 The Emphyteuta shall take reasonable precautions to prevent the removal of, or damage to, any of these findings.

18.4 The Emphyteuta shall, upon discovery of any such finding, promptly give notice to the Lands Authority, who shall issue instructions for dealing with it.

18.5 On obtaining information of each such discovery the Lands Authority shall have the right to access any part of the Site / Sea Area 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 Lands Authority shall have the right to:

(a) keep the emphyteutical grant in force on a *tale quale* basis, and the Emphyteuta shall not be entitled to any compensation of any sort.

Provided that should action by the Government of Malta, including the Superintendent of Cultural Heritage or any public department or agency relative to any such discovery, cause any hindrance or delay in the progress of the works, the Lands Authority shall retain discretion to grant an extension of the duration of the emphyteutical grant;

Provided that if such finds results in the emphyteuta being unable to use a particular cordoned off area of the Site and/or Sea Bed for a period in excess of one (1) year, the emphyteuta shall have the right to terminate the concession over such cordoned off area in a similar manner as indicated in Article 15.4 hereabove.

(b) rescind the emphyteutical grant, on giving notice thereof to the Emphyteuta. In such event, the Emphyteuta shall be entitled to compensation only for the permit/s expenses 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

Independent Architect, and it shall not be entitled to any other compensation of any sort;

18.6 The dissolution of the emphyteusis for failure to give the said notice as provided for in this deed, shall not in any way diminish the liability of the Emphyteuta from any penal or other consequence deriving from the provisions of the Cultural Heritage Act (Chapter 445 of the Laws of Malta), as amended from time to time, and in terms of any subsidiary legislation promulgated under it.

#### **Article 19 – Access Rights**

19.1 The Emphyteuta shall permit the Lands Authority or its representative/s at all reasonable times to have access to the Site and/or Sea Area and to the improvements thereon and when requested to do so the Emphyteuta shall give all possible facilities and aid to enable the Lands Authority or its representative/s to verify whether the conditions of the emphyteutical grant are being or have been complied with.

#### **Article 20 – Interest**

20.1 Any sum due by virtue of any provisions of this Deed shall, if not paid within thirty (30) days of the date due, be due with interests at the rate of eight per cent (8%) per annum to run from the date due and until it is so paid.

#### **Article 21– Events of Default**

21.1 The occurrence of one or more of the following events (in this deed collectively referred to as the “**Events of Default**” and each one an “**Event of Default**”) shall constitute a default and breach of this Emphyteutical Grant by the Emphyteuta and their occurrence shall entitle the Government of Malta to dissolve the Emphyteutical Grant:

(a) if the Emphyteuta fails to pay the Ground-rent for two (2) years or if although it has made part payments in each year, a

sum equal in amount to two (2) years' ground-rent is still owed to the Government of Malta whether by way of ground-rent or interest thereon; or

(b) if the Emphyteuta, for whatever reason, has not applied for a Full Development Permit (unless it is already issued) over either the Site and/or the Sea Area within six (6) months from the date of this deed;

(c) subject to the provisions of clause fifteen point one (15.1) and to the other provisions in this deed extending the time limit for the completion of the development, restoration and embellishment of the Property, if the Emphyteuta fails, to complete the Development of the Property as provided for in this deed and commence the operation of the Permitted Uses in accordance with this deed and within the parameters of and in accordance with the Full Development Permit/Building Permits by not later than three (3) years from the issue of the Full Development Permit.

(d) if once commenced, the work in relation to the Property is interrupted for an aggregate period of six (6) months, saving the provisions of Article eighteen (18) above; or

(e) if the Property is used for any purpose other than the Permitted Uses provided for in this deed, save for any exception/s provided for in this deed;

(f) if the Emphyteuta fails to obtain and keep in full effect the insurance policy/ies it is required to keep in accordance with the terms of this deed; or

(g) if the Emphyteuta becomes an Undesirable Person or 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 becomes an Undesirable Person; or

(h) if the Emphyteuta is in breach of any of the material conditions of this deed or any one of the conditions of this deed is not complied with; or

i) if the Emphyteuta encroaches on land outside the Property granted on temporary emphyteusis by virtue of this deed; or

(j) if the Emphyteuta becomes insolvent; or

(k) if a winding up order against the Emphyteuta is made by the Court or the appointment of a liquidator or provisional administrator; or

(l) the passing of a resolution for the voluntary winding up of the Emphyteuta; or

(m) the application for, or sanctioning by the Court of, a compromise or arrangement involving the Emphyteuta in terms of article three hundred and twenty-seven (327) of the Companies Act, Chapter three hundred and eighty six (386) of the Laws of Malta; or

Provided that in the event of (a) above, if there is any dispute about the amount due, the Emphyteuta shall effect payment of the amount not in dispute and the balance in dispute shall be payable together with interest thereon from the date when the balance was originally due up to the date of effective payment, if such dispute is resolved in favour of the Government of Malta;

21.2 The Government of Malta shall, prior to requesting the dissolution of the temporary emphyteusis on the basis of subclause one of this clause twenty-one (21.1), notify the Emphyteuta and any creditor/s and/or bank/s and/or financial institution/s which had granted any credit facilities to the Emphyteuta and the Emphyteuta duly informed the Government of Malta thereof, of the Government's intention to dissolve the temporary emphyteusis, by means of a judicial letter. Nonetheless, the Government of Malta shall grant the Emphyteuta a period of three (3) months to remedy and/or rectify any such breach.



21.3 Without prejudice to any rights of the Government of Malta under this deed or at law, the Government of Malta shall be entitled to recover from the Emphyteuta all loses, damages, injuries, costs, expenses and liabilities of any kind (including legal fees and expenses) by the Government of Malta by reason of the Emphyteuta's default.

#### **Article 22 – Third Party Rights**

22.1 Without prejudice to the provisions of Article 10 of this deed, the dissolution or termination of this emphyteutical grant or any part thereof, whether at the instance of the Lands Authority or the Emphyteuta, shall be without prejudice to and shall not affect any rights, whether real or personal, in respect of the Property or any part thereof already then acquired by any third party acknowledged or entitled to be acknowledged by any lessee, operator, manager or concessionaire. Following such dissolution, any rents, or other fees falling due after dissolution payable by such third parties to the Emphyteuta shall be payable to the Lands Authority.

#### **Article 23 – Indemnity**

23.1 The Emphyteuta shall indemnify and/or keep the Government of Malta fully indemnified against all actions, proceedings, claims and demands brought or made against it, and against all losses, damages, costs, expenses (including legal fees and expenses) and liabilities incurred, suffered or arising directly or indirectly in respect of or otherwise in connection with anything relating to the temporary emphyteutical grant.

#### **Article 24 – No Right of Compensation/Reimbursement**

24.1 The Emphyteuta shall not be entitled for any reimbursement of any expenses incurred in the carrying out of any obligations undertaken to be performed and/or performed by virtue and/or with deed. This clause shall apply both on the expiry of the temporary emphyteutical grant and also in case of dissolution or rescission or an early termination of the temporary

emphyteutical grant for any reason whatsoever, save as otherwise provided for in this deed.

#### **Article 25 – Force Majeure**

25.1 Neither Party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from Force Majeure. Such delay and/or failure resulting from Force Majeure shall not constitute a breach of this deed and the time for performance of the concerned obligation shall be extended by a period equivalent to that during which performance has been prevented by Force Majeure.

#### **Article 26 – Freedom of Information Act and other Transparency Obligations**

26.1 **Freedom of Information.** The Emphyteuta acknowledges Lands Authority are subject to the requirements of the Freedom of Information Act (Chapter 496 of the Laws of Malta), as may be amended or replaced from time to time, (the “FOIA”) and may be obliged under the FOIA to disclose information without consulting or obtaining the consent of the Emphyteuta.

26.2 **Other Transparency Requirements.** The Emphyteuta acknowledges that Lands Authority retains absolute discretion whether it discloses any information referred to in Clause 26.1, to the House of Representatives (and any of its parliamentary committees), the Auditor General, the Accountant General, the Parliamentary Ombudsman and any other Competent Authority, without any need of consulting or obtaining the consent of the Emphyteuta for this disclosure.

#### **Article 27- Miscellaneous**

27.1 **Public Powers.** The Emphyteuta agrees that, save as expressly provided herein, none of the provisions of this Deed shall be deemed to or shall purport to limit, restrict or prejudice in any way whatsoever any of the statutory functions, rights powers and discretions of the Lands Authority and or the Government

of Malta, and, or any of its entities acting in any other capacity than as party to this Deed.

- 27.2 **Entire Agreement.** Each Party hereto acknowledges that this emphyteutical deed of concession, including any attachments, shall contain the entire agreement between them relating to the subject matter hereto, and that it has not relied upon any oral or written representation made to it by the other Party or by the latter's officers, employees or agents, and has made its own independent investigations into all matters relevant to it.
- 27.3 **Exclusion of Implied Warranties.** This Deed expressly excludes any implied warranty, condition or undertaking unless contained in a binding legal agreement between the Parties.
- 27.4 **Rights Cumulative.** All rights granted to either of the Parties under this Deed shall be cumulative and no exercise by either of the Parties of any right under this Deed shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to it.
- 27.5 **Waiver.** No waiver or inaction by either Party of any provision hereof shall be deemed a waiver of any other provision hereof or of any rights of any such Party, 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 or any consent or approval of any subsequent act by the other Party.
- 27.6 **Severance.** 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.

27.7 **No Partnership.** Neither this Deed nor the performance by the Parties of their respective obligations under this Deed shall constitute a partnership or joint venture between the Parties; no Party shall have any authority (unless expressly conferred to it in writing by virtue of this Deed or otherwise and is not revoked) to bind the other Party as its agent or otherwise.

27.8 **Set-off.** The Emphyteuta shall not be entitled to retain or set off any amount due to the Government of Malta by it, even where permitted by law, but the Lands Authority may retain or set off any amount owed to it by the Emphyteuta under this Deed which is due to Lands Authority against any amount due to the Emphyteuta under this Deed .

27.9 **Notices.** Any notice to be given by either Party in terms of this Deed shall be sent by registered post or electronic mail transmission to the address stated below or to any other address as may be notified in writing to the other Party from time to time; and shall be deemed to have been received by the addressee within forty-eight hours (48) hours of posting or twenty four (24) hours if sent by electronic mail to the correct electronic mail of the addressee

**Emphyteuta**

Address:

\_\_\_\_\_

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Email:

\_\_\_\_\_

—

**Lands Authority**

Address:

\_\_\_\_\_

—

Email:

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\_\_\_\_\_

## **Article 28 – Applicable Law and Arbitration**

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

28.2 All disputes arising out of or in connection with this Deed shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall be Malta. The language of the arbitration proceedings shall be English. No award or procedural order made in the arbitration shall be published. The Expedited Procedure Provisions shall not apply.

## **Article 29 – Insurance**

29.1 The Emphyteuta shall within one (1) month from the issuance of a Completion Certificate, insure and keep insured during the whole term of this emphyteutical grant at its own expense the Property as well as all Immovable Things and movable effects existing and/or erected on the Property to their full current replacement value, together with an amount equivalent to a year's ground rent, for damages resulting from fire, lightning, tornado, storm, tempest, floods and explosions, bursting or overflowing of water tanks, apparatus or pipes, earthquakes and volcanic eruptions, subterranean fire, aircraft, impact, riots, strikes, malicious damage and other insurable perils and casualties as are commonly insured against, with respect to properties/premises of a similar character.

29.2 The contract of insurance shall include the clauses known as: Reinstatement, Public Authorities, Architects' and Surveyors' Fees, Debris clearance, Lease, Extensions, Designation of Property, Impact by Own Vehicle, Grantee's Improvements and Alterations.

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

29.4 The Emphyteuta shall ensure that the Government of Malta is named as beneficiary in the insurance policy and that any sums recoverable there under shall first be applied to make good any losses suffered by the Government of Malta.

29.5 The Emphyteuta shall within a reasonable time supply the Government of Malta with certified true copies of the insurance policies with any amendments and relevant renewal receipts of the premiums paid in respect thereof, on commencement and on each renewal.

29.6 If the Emphyteuta fails to insure as so bound by this deed, the Emphyteuta shall be responsible for any damages arising.

Provided that if the Emphyteuta fails to obtain, maintain or renew the insurance policy/ies or any of them, the Government of Malta at its sole discretion may affect any missing insurance policy/ies and charge the relative expenses to the Emphyteuta.

### **Article 30 – Surrender of the Property**

30.1 On the termination of the Emphyteutical Grant by lapse of term, or on the dissolution or determination or rescission or earlier termination of the Emphyteutical Grant for any reason whatsoever and by whoever, the Emphyteuta shall surrender to the Government of Malta, the Property or part thereof together with all Immovable Things appertaining thereto whatsoever their value, with vacant possession save for any lawful recognised lessees, operators, managers or concessionaries, free and unencumbered, fully operational in a 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 the termination or dissolution or

determination or rescission or earlier termination of the Emphyteutical Grant, unless otherwise provided for in this Deed.

### **Article 31 – Third Party Rights**

31.1 The dissolution or termination of the Emphyteutical Grant or any part thereof, whether at the instance of the Government or the Emphyteuta, shall be without prejudice to and shall not affect any rights, whether real or personal, in respect of the Property or any part thereof already then acquired by any third party acknowledged or entitled to be acknowledged by any lessee, operator, manager or concessionaire. Following such dissolution, any rents, or other fees falling due after dissolution payable by such third parties to the Emphyteuta shall be payable to the Government.

### **Article 32 – Consents, Approvals or Directions required by the Emphyteuta**

32.1 The Government and the Emphyteuta agree that all consents, approvals or directions which the Emphyteuta is required to obtain from the Government in terms of this Emphyteutical Grant shall be adequately obtained, if obtained in writing from the Lands Authority.

### **Article 33 – Performance Guarantee**

33.1 The Emphyteuta is presently providing a bank guarantee in favour of the Government of Malta of two hundred and fifty thousand euros (€250,000)... which guarantee shall be renewable yearly for the entire term of the Emphyteutical Grant. The Government shall be entitled to withdraw, the said bank guarantee for any of the following reasons and in the below stated amounts:

(i) An amount of two hundred and fifty Euro (€250) *per diem*, as liquidated damages for mere delay, if the Emphyteuta has not for reasons attributable to it failed to apply for the Full Development Permit/Building Permits within the time period above stipulated in Clause twenty one (21) ( a period of six month from today over such

part of the Property not covered with any Full Development Permit which will be executed) , until such day the Emphyteuta applies for such Full Development Permit/Building Permits;

(ii) An amount of two hundred and fifty Euro (€250) *per diem*, as liquidated damages for mere delay, if development has not been completed within a period of three (3) years from the date of issue of the Full Development permit/Building Permits, until such day that the Emphyteuta effectively completes such development;

(iii) An amount of two hundred and fifty Euro (€250) *per diem* as liquidated damages for mere delay, if the Development is interrupted for a period exceeding six (6) months, until such day that the interruption ceases, saving cases of *force majeure* and any antiquities find as stipulated hereabove

(iv) An additional amount of five hundred Euro (€500) *per diem*, as liquidated damages for mere delay, if the Development is interrupted for an aggregate period of more than eight (8) weeks, running from the eighth (8<sup>th</sup>) week of such interruption until such day that the interruption ceases.

(vi) An amount of two hundred and fifty Euro (€250) *per diem* as liquidated damages if the Emphyteuta is in manifest breach of any of its contractual obligations, following thirty (30) running days after having been notified by the Grantor, and until such day as the manifest breach is effectively remedied. Should the emphyteuta disagree with the existing of such alleged breach by the Grantor and such followed by a lawsuit to ascertain if such breach exists or otherwise, then such penalty herein due to accrue shall be suspended from accruing until such lawsuit is determined. Provided that if the lawsuit is determined and the result of which is that the breach was present, then the suspension of penalty shall not be deemed to have occurred. If the lawsuit is determined in such a manner that the alleged breach of obligations is shown to be incorrect, then all penalties paid in such respect shall be refunded to the Grantee.



33.2 In the event that the Government shall make a withdrawal of any amount under the bank guarantee, the Government of Malta shall forthwith communicate such fact to the Emphyteuta, which shall in turn procure that, by not later than fifteen (15) days from the aforesaid communication, the bank guarantee shall be amended by the bank that issued the said guarantee, so that the amount thereof is increased by the amount so withdrawn as if no such withdrawal has been made.

33.3 The bank guarantee shall be cancelled upon the termination for whatever reason of this Emphyteutical Grant.

#### **Article 34 – Waivers**

34.1 No waiver by any party (the “Non-Defaulting Party”) of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party (the “Defaulting Party”) of the same or any other breach. The Non-Defaulting Party’s consent to or approval of any act shall not be deemed to render unnecessary the obtaining of the Non-Defaulting Party’s consent to or approval of any subsequent act by the Defaulting Party. The acceptance of ground rent or of any other dues under this Deed by the Government of Malta shall not be a waiver of any preceding breach by the Emphyteuta of any provision hereof other than the failure of the Emphyteuta to pay the particular ground rent or dues so accepted, regardless of the knowledge of the Government of Malta of such preceding breach at the time of acceptance of such ground rent or other dues.

#### **Article 35 - Costs**

Notarial fees and expenses payable upon publication of this deed shall be paid by the Emphyteuta.

### **Article 36 - Compensation for illegal occupation**

The emphyteuta is hereby paying to the Government of Malta the sum of seventy thousand two hundred and twenty nine Euro and thirty six cents (€70,229.36) as compensation for illegal occupation of the site marked in red with letter 'A' on the plan indicated as Property Drawing number number seventy six underscore ninety one underscore one underscore one underscore letter A (P.D. No. 76\_91\_1\_1\_A), which plan is attached to this deed and marked as document "P1", and the Government tenders due receipt in full and final acquittance of the compensation for illegal occupation.

### **Statutory Declarations**

(A) For the purposes of the Government Lands Act, Chapter 573 (five hundred and seventy-three) 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 \_\_\_\_\_.

(B) 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 representative on this deed of the Emphyteuta declares that all the Ultimate Beneficial Owners and all Directors are Maltese citizens and European Union Citizens who have resided in Malta for a continuous period during their lifetime of five years prior to today and that he is making this declaration after I the undersigned Notary warned him of the importance of the truthfulness and of the consequence in the case of false or erroneous declarations.

(C) For the purposes of the Duty on Documents and Transfers Act, Chapter three hundred and sixty-four (364) of the Laws of Malta, the ad valorem duty due by the Emphyteuta on this deed amounts to

(D) For the purposes of the Income Tax Management Act, Chapter three hundred and seventy-two (372) of the Laws of Malta and the Income Tax Act, Chapter one hundred and twenty three (123) of the Laws of Malta:

i. The Government and the Emphyteuta declare that for the purposes of sub-article twelve (12) of article five capital A (5A) of the Income Tax Act, they have declared to the undersigned Notary all the facts that determine if the transfers made by virtue of this deed is one to which the aforesaid article 5A applies or otherwise 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 temporary *dominium utile* of the Site transferred by virtue of this deed, if this value is higher than the consideration for the transfer. The Government and the Emphyteuta make such declaration after I the undersigned Notary warned them about the importance of the truthfulness of this declaration of theirs.

ii. I the undersigned Notary declare that the Government is not subjected to the payment of any income tax or capital gains tax.

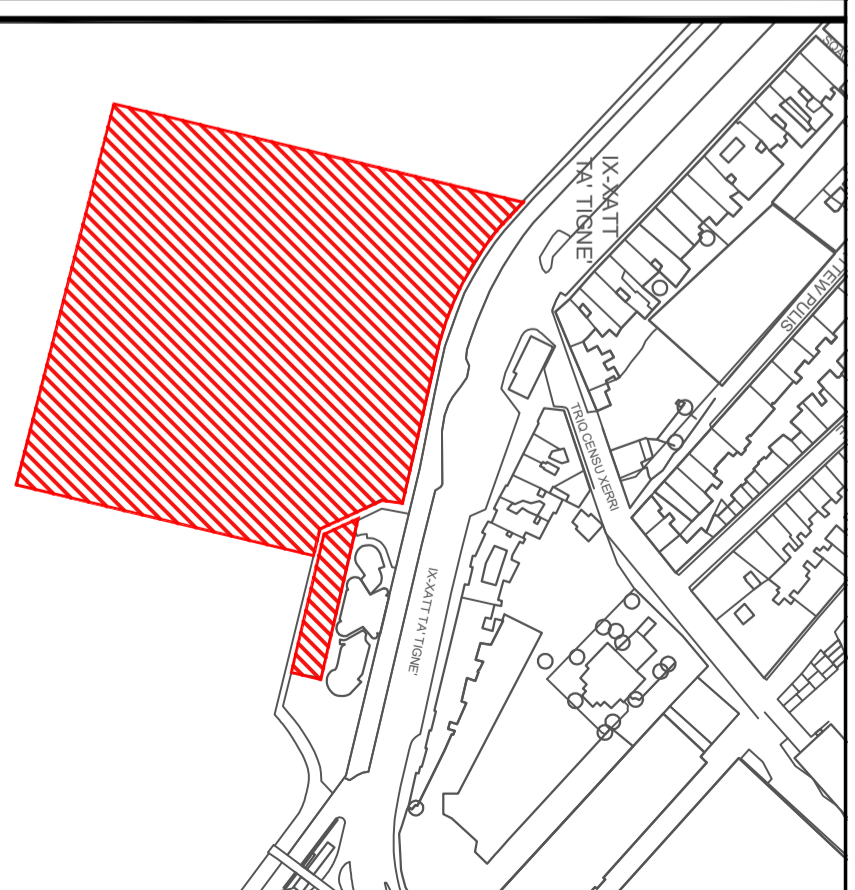
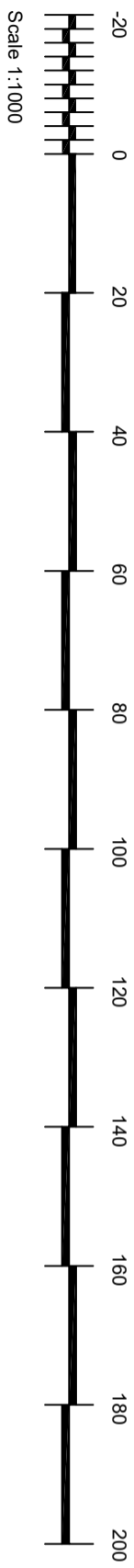
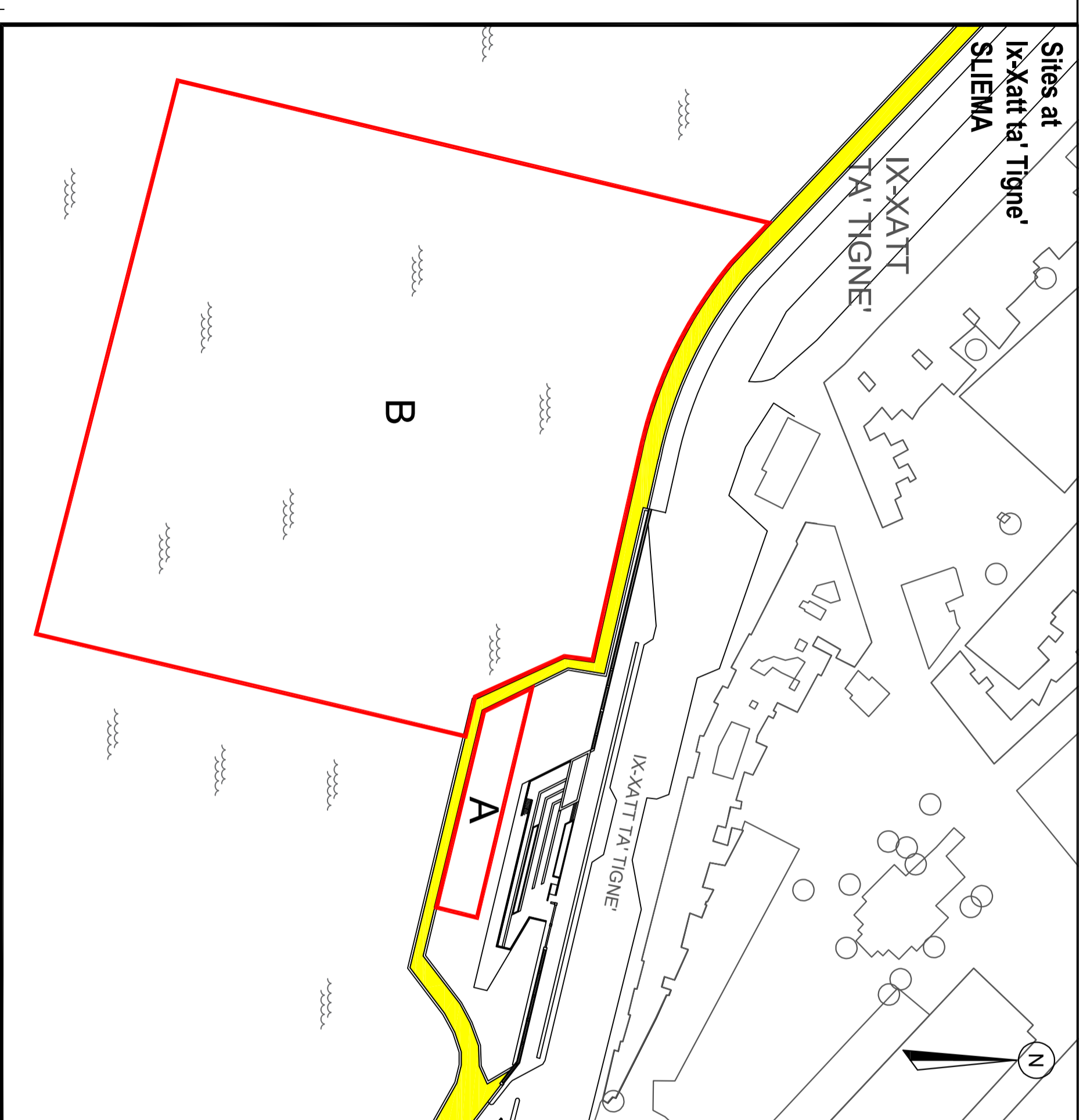
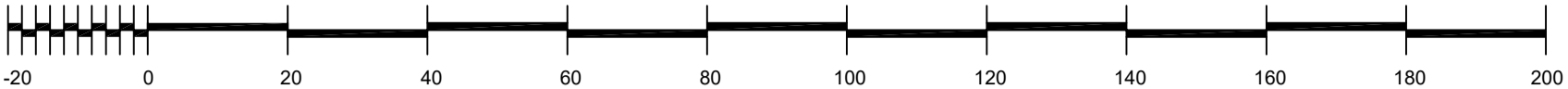
(E) For the purposes of the Land Registration Act, Chapter two hundred and ninety six (296) of the Laws of Malta, I the undersigned Notary declare that

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 jure*' 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 has been done, read and published by me the undersigned Notary after I explained the contents hereof to the Parties hereto according to the law in Malta,

Scale 1:1000



Site Plan  
S.S. 5573

Scale 1:2500  
Map Ref.: 55789  
73879

Property No.: **E270511**

- A Area : **504.00m<sup>2</sup>**
- B Area: **15,980m<sup>2</sup>**
- Public Passageway



**Estate Management & Business Development**

Locality: **SLEIMA**

P.D.No.:	<b>76_91_1_1_A</b>	Scale :	<b>1 : 1000</b>
File No.:	<b>L 464/2020</b>	Drawn by :	<b>demir001</b>

**A&CE**  
sgd (J.Schembri)  
Date : **21th June 2023**

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

## Brincat Anna at Parlament-MT

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**From:** Simon Grech [MODEL] <simon@model.com.mt>  
**Sent:** Wednesday, 21 June 2023 14:01  
**To:** samuel Formosa; Agius Josef at Lands Authority  
**Cc:** david@sasmalta.com  
**Subject:** RE: Site at ix-Xatt ta' Tigne, Sliema - L464/2020

**CAUTION:** This email originated from OUTSIDE the Government Email Infrastructure. DO NOT CLICK LINKS or OPEN attachments unless you recognise the sender and know the content is safe.

Dear Mr. Josef Agius,

We concur and are in agreement with the statement provided by Perit Samuel Formosa as which reads states the following;

“Further to the our previous valuation dated November 1, 2022, this is to confirm that the relocation of the site from the previous property drawing PD No: 76\_91\_1\_1 would not have any bearing on the annual ground rent which had been fixed at €90,000 per annum since the area has remained unchanged as can be verified from the revised property drawing PD No: 76\_91\_1\_1\_A.”

Kind regards,  
Simon

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**From:** samuel Formosa <samuel.formosa68@gmail.com>  
**Sent:** Wednesday, June 21, 2023 1:53 PM  
**To:** Agius Josef at Lands Authority <josef.agius@landsauthority.org.mt>  
**Cc:** david@sasmalta.com; Simon Grech [MODEL] <simon@model.com.mt>  
**Subject:** Re: Site at ix-Xatt ta' Tigne, Sliema - L464/2020

Dear Mr Josef Aguis

Further to the our previous valuation dated November 1, 2022, this is to confirm that the relocation of the site from the previous property drawing PD No: 76\_91\_1\_1 would not have any bearing on the annual ground rent which had been fixed at €90,000 per annum since the area has remained unchanged as can be verified from the revised property drawing PD No: 76\_91\_1\_1\_A.

regards

Samuel Formosa

On Wed, Jun 21, 2023 at 1:13 PM Agius Josef at Lands Authority <[josef.agius@landsauthority.org.mt](mailto:josef.agius@landsauthority.org.mt)> wrote:

Dear Periti,

Trust this email finds you well.

Reference is being made to your valuation dated November 1, 2022, copy of which may be found attached above for ease of reference. The Authority has just been informed that the the site proposed for the placement of the pontoons has been relocated to the west of its original location. The area remained unchanged as can be seen from the revised property drawing PD No: 76\_91\_1\_1\_A.

The Authority would like to enquire whether or not the relocation of the site would have any bearing on the annual goundrent which had been fixed at €90,000 per annum.

Thank you.



**Josef Agius**  
Senior Manager – Valuations and Projects

[josef.agius@landsauthority.org.mt](mailto:josef.agius@landsauthority.org.mt)  
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