

## RIŻOLUZZJONI DWAR TRASFERIMENT TA' PROPRJETA

### IL-MINISTRU GHALL-AKKOMODAZZJONI SOĊJALI U AFFORDABBLI JIPPROVONI ILLI L-KAMRA TAD-DEPUTATI TAPPROVA DIN IR-RIŻOLUZZJONI:-

Billi d-domanda għall-akkomodazzjoni affordabbli qiegħda tiżdied u għaldaqstant il-Gvern ta' Malta u l-Arċidjoċesi ta' Malta laħqu ftehim lura fl-2022 sabiex jissiehu flimkien fil-holqien tal-ewwel Fondazzjoni għall-Akkomodazzjoni Affordabbli f'Malta. Billi mill-bidu nett, din il-Fondazzjoni daħlet f'taħditiet mal-Awtorità tad-Djar sabiex tassisti lill-Awtorità tilhaq il-miri nazzjonali rigward il-provvista ta' akkomodazzjoni affordabbli għal dik il-faxx medja ta' persuni li għandhom aktar qligħ u assi minn dak li jippermettu l-parametri t'eligibbiltà tal-akkomodazzjoni soċjali, iżda dak l-istess qligħ ma jippermettilhomx li jakkwistaw dar fis-suq residenzjali lokali, jew isibuha diffiċli ħafna biex ilaħħqu mal-kirjiet medji fil-maġġoranza tal-lokalitajiet f'Malta.

Billi l-Awtorità tad-Djar hija tal-fehma li kollaborazzjoni stretta mal-Fondazzjoni għall-Akkomodazzjoni Affordabbli toffri vantaġġi kbar, u billi hija konsapevoli li din is-shubija tista' twassal sabiex jintlaħqu parzjalment il-miri tal-Gvern ai termini tal-proposta tal-manifest elettorali 625, hija disposta li tassisti billi toffri kull porzjon vijabbli ta' art fil-pussess tagħha li tista' tiġi utillizzata għal skopijiet ta' akkomodazzjoni affordabbli, b'tali mod li l-potenzjal sħiħ tagħha jkun jista' jitgawda mill-benefiċjarji tal-Fondazzjoni.

U billi l-Awtorità tad-Djar għandha fil-pussess tagħha medda ta' art ġewwa Marsaskala li tkejjel madwar tliet mija u seba' u tletin metru kwadrat (337 m<sup>2</sup>) u li tmiss mit-Tramuntana, Punent, u Nofsinhar ma' proprjeta privata ta' terzi li jsorġu fuq Triq Thomas Ashby, Triq is-Sikka, u Triq Philippe de Vendome, u li għandha faċċata għal fuq it-triq mil-Lvant, Tramuntana, u Nofsinhar li ssorġi fuq Triq il-Qaliet, u li qiegħda tiġi mmarkata bil-kulur aħmar fuq il-pjanta tas-sit hawn annessa u mmarkata bhala '**Dok. FAH1**'.

U billi, wara t-tmiem ta' negozjati bejn il-partijiet, l-Awtorità tad-Djar u l-Fondazzjoni għall-Akkomodazzjoni Affordabbli laħqu ftehim li jittrasferixxu l-art deskritta fil-paragrafu preċedenti permezz tal-mudell tal-emfitewsi (ċens) perpetwu a favur il-Fondazzjoni, fejn l-Awtorità tibqa żżomm id-*dominium directum* fuq l-art kif rifless fl-abbozz tal-kuntratt pubbliku maqbul bejn il-partijiet hawn anness u mmarkat bhala '**Dok. FAH2**'. Dan il-mudell jagħti lok li min-naħa tagħha l-Fondazzjoni mhux biss tifdi ċ-ċens, iżda li jkollha l-jedd ukoll li fitrasferixxi d-*dominium utile* tagħha billi toffri trasferiment tas-subemfitewsi (sub-ċens) temporanju lil terzi, għal skopijiet kemm ta' żvilupp tal-meljoramenti tal-art u sussegwentament anke għall-okkupazzjoni residenzjali tal-appartamenti u l-garaxxijiet li jiġu mibnija minn persuni eligibbli. Id-drittijiet ta' konverżjoni tas-sub-emfitewsi temporanju f'wieħed perpetwu, u l-eventwali fidi tas-sub-emfitewsi perpetwu mal-Awtorità tad-Djar (jew mal-Fondazzjoni jekk din tkun laħqet fdiet min-naħa tagħha) jista' jingħata limitatament lil persuni naturali li jkunu: (i) eligibbli għall-assistenza skont il-parametri tal-Fondazzjoni, (ii) li jgħixu fil-fond għal mhux anqas minn għoxrin sena, (iii) li jkunu dejjem ħallsu s-subċens b'mod puntwali, u (iv) li ma jkunux kisru l-ebda kundizzjoni tal-kuntratt pubbliku li bih ikunu akkwistaw il-jeddijiet tagħhom.

Għaldaqstant, wara li ġie meqjus l-interess pubbliku ta' dan it-trasferiment u l-eventwali żvilupp, l-Awtorità tad-Djar ikkunsidrat li huwa ġustifikabbli li jsir trasferiment ta' din l-art a favur tal-Fondazzjoni għall-Akkomodazzjoni bil-kundizzjonijiet deskritti preċedentament.

Illi l-korrispettiv finanzjarju għal dan it-trasferiment ġie maqbul fil-valur ta' tliet t'elef disa' mija u tlettax-il Ewro (€3,913), liema korrispettiv jithallas bhala ċens annwali favur l-Awtorità. Billi l-Awtorità

tifhem li fil-perjodu inizjali ta' kostruzzjoni li m'ghandux ikun itwal minn tliet (3) snin mid-data tal-eżekuzzjoni tal-kuntratt pubbliku l-Fondazzjoni mhux se tkun qiegħda tircievi l-ebda qliegħ mill-proġett ta' akkomodazzjoni affordabbli, hija qiegħda taççetta li toffri *moratorium* li jkopri dan il-perjodu, bil-pagamenti 'sospizi' fiż-żmien tal-*moratorium* li sussegwentament jithallsu b'mod arretrat mill-Fondazzjoni. Illi l-Fondazzjoni, apparti l-hlas tal-korrispettiv deskritt aktar 'il fuq, qiegħda tintrabat fost affarijiet oħra li tieħu fuqha kwalunkwe obbligu ta' manutenzjoni u tiswijiet, kif ukoll li tkopri l-ispejjeż notarili u amministrattivi relatati mat-trasferimenti.

U billi fl-artikolu 31, sub-artikolu (c) ta' Taqsima III tal-Att dwar l-Artijiet tal-Gvern (Kapitolu 573 tal-Liġijiet ta' Malta), huwa maħsub li art li tkun proprjetà tal-Gvern jew amministrata minnu tista' tiġi trasferita skont riżoluzzjoni speċjali tal-Kamra tad-Deputati li tkun fis-seħħ fil-waqt tat-trasferiment.

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

Għalhekk huwa b'dan riżolut illi jsir it-trasferiment lill-Fondazzjoni għall-Akkomodazzjoni Affordabbli ta' porzjon ta' art li tkejjel tliet mija u seba' u tletin metru kwadrat (337 m<sup>2</sup>) ġewwa Marsaskala mmarkata bil-kulur aħmar fuq il-pjanta annessa u mmarkata bħala 'Dok. FAH1' skont il-pattijiet u l-kundizzjonijiet imsemmija fl-abbozz hawnhekk anness u mmarkat bħala 'Dok. FAH2'.

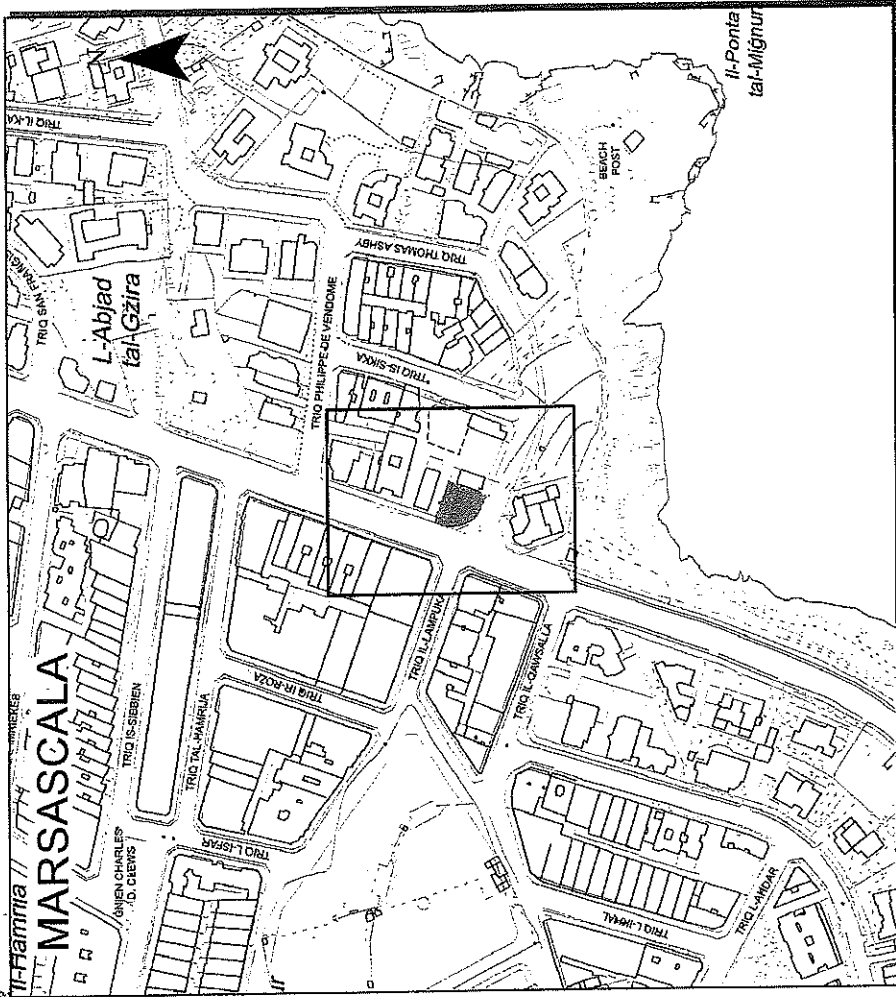
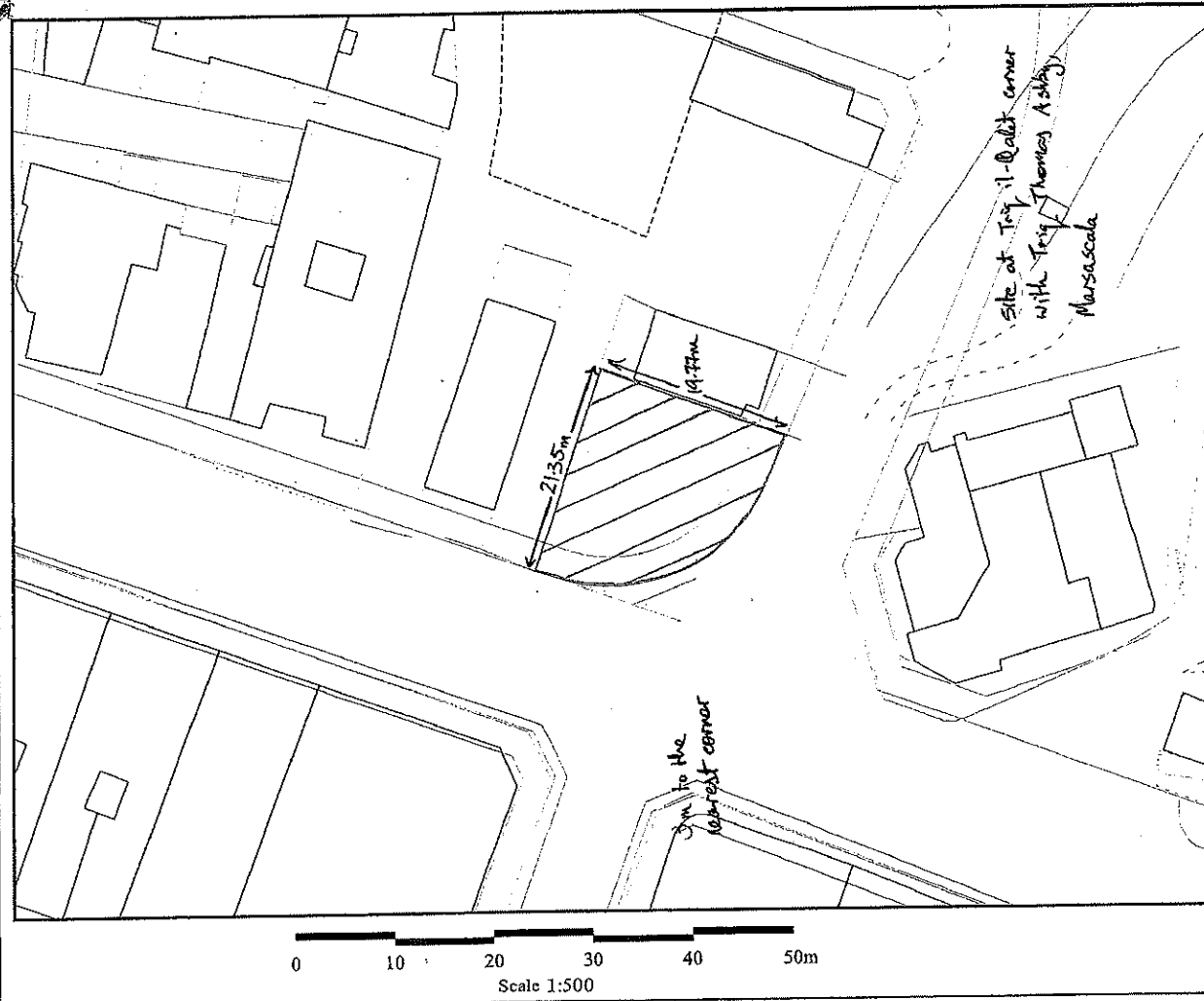


Onorevoli Roderick Galdes

Anness: 'Dok FAH1' – Pjanta tas-sit

'Dok FAH2' – Abbozz tal-att pubbliku tat-trasferiment fl-atti tan-Nutar Marco Burlo

'Dok FAH3' – Valutazzjonijiet



**Agencija għar-Registrazzjoni tal-Artijiet**  
 116, Casa Bolluo, Trig il-Punent, Il-Belt Valletta

**Land Registration Agency**  
 116, Casa Bolluo, Trig il-Punent, Il-Belt Valletta

Nru tal-Mappa: 387075 E	Posizzjoni Centrali: x = 61146 Centre Coordinates: y = 68495	Parti min S.S.: 6068	Data: 20/03/2025
Map Number:		Extracted from S.S:	Date:
Perit: Architect:	Perit: CLIVE BOSSA BOBAC ARCHITECT 60, DAHLIA BLOCK D, 116, SALVATORIC ATTRA, MOB: 9933 715155	Qies (metri kwadrati): Area (square metres):	c. 3146.8 m <sup>2</sup>
Timbru tal-Perit: Architect's Stamp:		Firma tal-'Applikant: Applicant's Signature:	
			LR 399458
			Dritt inahallas Fee Paid

Nr.

Emphyteutical Grant

Enrolled in the Public Registry Malta on the:

ENR:

Vol. H:

(WPP)

Vol. H

(Privilege)

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

Of the first part:

\_\_\_\_\_ Chairperson of the Housing Authority, \_\_\_\_\_ son \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ at birth \_\_\_\_\_ born in \_\_\_\_\_ on the \_\_\_\_\_ and residing at \_\_\_\_\_ holder of Maltese identity card number \_\_\_\_\_

\_\_\_\_\_ who appears on this deed in the name and on behalf of the **Housing Authority**, a body corporate established in terms of the Housing Authority Act, Chapter two hundred and sixty-one (261) of the laws of Malta (hereinafter referred to as the "**Housing Authority**" or the "**Grantor**"), duly authorised for the purpose in terms article eight (8) of the Housing Authority Act.

Of the second part

\_\_\_\_\_ who appear on this deed in the name and on behalf of the foundation

named "**Foundation for Affordable Housing**", duly registered with the Malta Business Registry (Foundations and Associations Unit) with number \_\_\_\_\_ having its registered address at \_\_\_\_\_ established by a deed in the records of Notary Marco Burlo' of the fourteenth (14<sup>th</sup>) day of January of the year two thousand and twenty-two (2022), as duly authorised by \_\_\_\_\_ virtue of \_\_\_\_\_ (hereinafter referred to as the "**Foundation**" or "**Emphyteuta**").

### **The Parties**

The Housing Authority and the Foundation are in this deed collectively referred to as the "**Parties**" and each one a "**Party**".

### **Definitions**

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

**"Affordable Accommodation"** or **"Affordable Housing"** means and shall be construed as the provision of residential accommodation or housing which conforms with the principle of affordability outlined in General Comment No. Four (4) as published by the United Nation's Committee on Economic, Social and Cultural Rights ("**CESCR**"), and shall generally come to mean housing which is deemed affordable to those persons with a household income at or below double the average wage as resulting from the data published by the National Statistics Office ("**NSO**") in Malta provided that these persons must not be eligible for social housing in Malta according to the parameters established by the Housing Authority from time to time, and as are currently enshrined in the conditions laid out in 'Section six (6) – Eligibility' within the 'Application

for Social Housing' published on the Authority's official website.

**"Development"** means the improvements and Immovable Things to be developed on the Sites or any part thereof.

**"Emphyteuta"** means the *pro tempore* emphyteuta or sub-emphyteuta of the Sites or any part thereof or of the Development or any part thereof and any successor in title to the Foundation and where the context so requires includes the Foundation.

**"Emphyteutical Grant"** means the perpetual emphyteutical grant of the Sites made by the Housing Authority to the Foundation by virtue of this deed.

**"Garage Units"** means the garage units and or car spaces and or domestic stores to be constructed on the Sites or any part thereof and **"Garage Unit"** means any one (1) of the Garage Units.

**"Grantor"** means the Housing Authority and includes the *pro tempore* person or persons holding the perpetual *dominium directum* of the Sites or any part thereof.

**"Ground-rent"** means the annual perpetual ground-rent payable to the Grantor in terms of this Deed.

**"Immovable Things"** means all buildings, structures, developments, infrastructure, facilities, installations, equipment, plant and machinery and other improvements, now existing, or which in the future shall exist, within the boundaries of the Sites, whether installed, constructed or erected on, in or under the relative Sites or which otherwise appertain to the Sites 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 expressly mentioned in this deed or otherwise.

**"Improvements"** means the Residential Units, Garage Units, buildings used to operate Ancillary Services and other Immovable Things existing at any point in time on the Sites or any part thereof.

**"Land Registry"** means the office in Malta constituted by virtue of the Land Registration Act, Chapter two hundred and ninety-six (296) of the Laws of Malta, for the purposes of registration of title to land.

**"Permitted Uses"** means the use of the Sites as specified in clause 9 (*Permitted Uses*) of this deed.

**"Public Registry"** means the office in Malta constituted by virtue of the Public Registry Act Chapter fifty six (56) of the Laws of Malta, for the purposes of registration of causes of preference among creditors, for the enrolment of acts requiring registration in order to have effect in regard to third parties, and for all other registrations required by law.

**"Residential Units"** means the residential units to be constructed on the Sites or any part thereof and **"Residential Unit"** means any one (1) of the Residential Units.

**"Site A"** means the divided portion of land situated in Fgura having a surface area of four thousand two hundred square meters (4,200 m<sup>2</sup>) bounded on the north and the west sides by private third-party properties abutting on Triq id-Dejma, Triq San Xmun and Triq ix-Xemx u l-Qamar, and having street frontage on the west side onto Triq il-Karmnu, on the south side onto Triq id-Dejma and on the north onto Triq ix-Xemx u l-Qamar and, where the context so requires includes any Immovable Things situated thereon or thereunder.

**"Site B"** means the divided portion of land situated in Saint Julians, in the area known as "Ta' Giorni" having a surface area of approximately four thousand eight hundred square meters (4,800m<sup>2</sup>) bounded on the north and on the east sides by private third party properties

abutting onto Triq Charles Sciberras and Triq Andre Maurois and having a street frontage on the south side onto Triq Charles Sciberras and on the east side onto Triq Albert Mayr, where the context so requires includes any Immovable Things situated thereon or thereunder.

“**Site C**” means the divided portion of land situated in Kirkop having a surface area of one thousand nine hundred 1,970 metres squared bounded on the north, west, and south sides by private third party properties abutting onto Triq San Pietru, Triq Valletta, Sqaq San Nikola and Triq Salvu Sacco and having a street frontage on the east and the northern sides onto Triq Salvu Sacco and, where the context so requires includes any Immovable Things situated thereon or thereunder.

“**Site D**” means the divided portion of land situated in Marsascala having a surface area of three hundred and thirty seven square metres (337 m<sup>2</sup>) bounded on the north, west and south sides by private third party properties abutting onto Triq Thomas Ashby, Triq is-Sikka, and Triq Philippe de Vendome, and having a street frontage on the east, north and south sides onto Triq il-Qaliet and, where the context so requires includes any Immovable Things situated thereon or thereunder.

“**Sites**” means Site A, Site B, Site C and Site D referred to collectively and each a “**Site**”.

“**Undesirable Person**” means a person who:

(a) has been convicted of a crime, wherever committed:

- i. against the safety of the Government 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 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 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. a person referred to in (a) to (d) above, or
  - ii. in case of a director or officer, disqualified to be a director of a Emphyteuta 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.

Provided that any person nominated or notified to the Emphyteuta by the *Grantor*, the Government or any Government authority or any body governed by public law or any other legal person owned or controlled by the Government, shall not be deemed to be an Undesirable Person.

### Construction

- I. In this deed, unless otherwise expressly stated or the contrary intention appears:
- (a) words importing the masculine gender shall include the feminine gender 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 are to a Recital, Part, heading, section, clause, paragraph, document or schedule 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) any reference to any right or reservation exercisable by or for the benefit of any party will be deemed to include the exercise of such right or reservation by any person or persons authorised by such party, and further, such right or reservation may be exercised with agents, employees, professional advisers, workmen, contractors and others.
  - (f) where the context permits, the term “Site” shall include all the Immovable Things which now, or in the future shall, appertain to the Site.
  - (g) the terms “including”, “include”, “includes” and other cognate terms shall not be deemed as an exhaustive or restrictive reference and shall be deemed to be followed by the phrase “but without limitation” or “but not limited to”.
- II. The headings in this deed are inserted for convenience only and do not affect its construction.
  - III. 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.

## **Emphyteusis**

### **1. Grant of Emphyteusis**

- 1.1. By virtue of this deed, the Housing Authority hereby grants by title of perpetual emphyteusis to the Foundation, which accepts and acquires by the

same title of perpetual emphyteusis, the Sites for the consideration and upon the terms and conditions set out in this deed.

## 2. The Sites

### 2.1. The Parties agree that:

- (a) The Sites are hereby granted with all their respective rights and appurtenances including the spaces above and the spaces underlying the Sites.
- (b) The Sites include all the Immovable Things, which now or in the future shall appertain to the Sites.
- (c) The Sites are hereby granted as enjoying and subject to the existing easements which arise from their position.
- (d) With regard to Site C (Kirkop) part of Site C is currently occupied by third party or parties; the Housing Authority undertakes in favour of the Foundation which accepts, to file eviction proceeding against such third party or parties in terms of Chapter five hundred and seventy three (573) of the laws of Malta by not later than six (6) months from today and (i) to diligently pursue such proceedings and (ii) to keep the Foundation informed of the such proceedings and of the judgement. If the judgement of the court of first instance shall not uphold the Housing Authority's submissions then the Housing Authority undertakes to appeal the judgement of the court of first instance if grounds of appeal exist. In the case that after

the Housing Authority would have exhausted all legal proceedings, Site C or any part thereof shall not be in the vacant possession of the Foundation, the Foundation will have the right to request either a proportionate (calculated on the surface area) reduction of the Ground-rent or the rescission of this Emphyteutical Grant insofar only as Site C (Kirkop) is concerned. (e) With regard to Site D (Marsascala) the wall shown \_\_\_\_\_ marked \_\_\_\_\_ on the attached \_\_\_\_\_ photograph \_\_\_\_\_ document \_\_\_\_\_ can be demolished without prejudicing third party rights in respect of the boundaries of the third party sites being adjacent to Site D and on its part the Housing Authority warrants in favour of the Foundation which accepts that the aforementioned wall can be so demolished.

- 2.2. Save as otherwise stated on this deed and subject to the terms and conditions of this Emphyteutical Grant, the Sites are hereby granted and acquired as free and unencumbered and as such also as free from any burdens, ground-rents (save for the Ground-rent), other easements, hypothecs, privileges (save for the privilege reserved by the Housing Authority in its favour on this deed) charges, cautions, any third party rights whether real or personal and of whatever type or nature and as free from any litigation, threatened or otherwise and with immediate vacant possession in favour of the Foundation.

### 3. **Terms and Conditions**

- 3.1. 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.

#### **4. Commencement**

- 4.1. This Emphyteutical Grant commences from the date of this deed and, save for the termination of this Emphyteutical Grant of the Sites or any part thereof for reasons contemplated in this deed, is in perpetuity.

#### **5. Consideration**

##### **5.1. Ground-Rent**

- 5.1.1. This Emphyteutical Grant is made and accepted in consideration of the annual perpetual ground-rent of:

- (a) thirty three thousand five hundred and six Euro (€33,506) per annum in respect of Site A provided that the annual perpetual ground-rent for site A shall increase to thirty nine thousand three hundred and fourteen Euro (€39,314) if the Foundation elects to make use of the commercial, and or community portion of the site as shaded in red in site plan annexed and marked as 'Doc. FAH001' ;
- (b) fifty thousand five hundred Euro (€50,500) per annum in respect of Site B;
- (c) thirty-three thousand seven hundred and eighty-eight Euro (€33,788) per annum in respect of Site C;
- (d) three thousand nine hundred and thirteen Euro (€3,913) per annum in respect of Site D;

5.1.2. The Ground-rent is payable to the Grantor yearly in advance as from the date of this deed, provided that by way of a singular exception the Housing Authority is granting a moratorium with regard to the payment of the Ground-rent for a period of three (3) years from the date of this deed that is up to \_\_\_\_\_ such that on the commencement of the fourth year of the Emphyteutical Grant the Emphyteuta shall be bound to pay the Ground-rent in advance for that year together with the arrears representing the Ground-rent due for the first three (3) years of the Emphyteutical Grant. No interests shall be due on the payment of such arrears representing the Ground-rent for the first 3 years of the Emphyteutical Grant.

5.1.3. The Ground-rent shall be revised upwards every five (5) years with effect from the date of this deed by increasing the pro tempore Ground-rent payable during the year immediately preceding the relative revision by ten per cent (10%). The first revision will take place on the sixth (6th) anniversary of this deed that is on the commencement of the sixth 6th year of this Emphyteutical Grant and then and then every five (5) years.

5.1.4. Save for the dispositions of Article 5.1.2 of this deed, 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 and on any other amount due by the Emphyteuta to the Grantor in terms of this Emphyteutical Grant if not paid when due, which interest shall accrue on the daily balance of the

sum due with effect from the due date up to the date of effective payment.

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

5.1.6. In order to secure the payment of the Ground-rent and the proper performance of each and all the obligations arising from this Emphyteutical Grant, Grantor reserves in its favour the special privilege on the Sites accorded to the Grantor by law. Exclusively for the purposes of the registration of this special privilege at the Public Registry and Land Registry, the Parties are stipulating the following amounts:

(a) one million five hundred and fifteen thousand seven hundred and fifty Euro (€1,515,750) in respect of Site A;

(b) two million fifty eight thousand five hundred Euro (€2,058,500) in respect of Site B;

(c) one million five hundred and twenty eight thousand five hundred Euro (€1,528,500) in respect of Site C;

(d) two hundred sixty five thousand seven hundred and fifty Euro (€265,750) in respect of Site D.

5.1.7. Until the Grantor directly acknowledges any Emphyteuta (apart from the Foundation) of the Sites or any part thereof or of a Residential Unit or Garage Unit the Ground-rent shall remain payable to the Grantor by the Foundation even if the Sites or any part thereof are transferred by any title to third parties and for this purpose the Housing

Authority irrevocably authorises the Foundation to receive on behalf of the Grantor the Ground-rent burdening the Sites or part thereof or any Residential Unit or Garage Unit or any other unit offering Ancillary Services to the Residential Units. It is expressly agreed that until such date as the Grantor directly acknowledges any Emphyteuta of the Sites or any part thereof or of a Residential Unit or Garage Unit (with the exception of the Foundation), the Foundation shall remain directly responsible towards the Grantor for the Payment of the Ground-rent and any part thereof even if any Emphyteuta is in default in the payment of the Ground-rent.

## 5.2. Premium

5.2.1. No premium is payable to the Authority on this Emphyteutical Grant provided that on the sale of the dominium utile to a person who will use the Residential Unit and the Garage Unit for the Permitted Use (for this purposes of this clause 5.2.1 and the immediately subsequent clause 5.3.1 the "Transferee"), the Authority, with the acceptance of the Foundation, will be entitled and is hereby reserving in its favour the right to a sum of money (the "Claw-back") calculated in the manner shown on the schedule attached to this deed and marked document 'FAH002'. The Claw-back shall be paid to the Authority on the deed of sale in favour of the Transferee.

## 5.3. Refund on Incurred Costs

5.3.1. With respect to Site A being the Fgura Site the Parties accept and declare that the Authority has incurred costs and expenses relating to the excavation of this Site and the designed of the

Development to be constructed on this Site in the sum of two million six hundred Euro (€ 2,600,000) (the "Fgura Costs"). The Foundation undertakes in favour of the Authority which accepts the Fgura Costs on each and every sale of the sub-utile dominium executed from the commencement of the third year of this Emphyteutical Grant onwards, such refund to be calculated by apportioning the Claw-back Costs on each Residential Unit of Site A on the basis of the gross floor area of that Residential Unit in proportion to the gross floor area of all the Residential Units constructed on Site A.

5.3.2. In warranty of the Foundation's obligation to refund the Fgura Costs as agreed in the preceding clause 5.3.1, the Foundation constitutes in favour of the Authority, which accepts, a first ranking special hypothec in and the Authority undertakes to waive and reduce the special hypothec in proportion to each payment of the Claw-Back Costs in accordance with this Deed and the annexed document 'FAH003'.

## **6. Warranties of the Grantor**

- 6.1. The Housing Authority warrants in favour of the Foundation which accepts that it has good and valid title to the Sites and it further warrants in favour of the Foundation which accepts the quiet and peaceful possession of the Sites with all their rights and appurtenances according to law.
- 6.2. Save as otherwise agreed in clause 2.1 (d) of this deed, the Housing Authority also warrants and

guarantees in favour of the Foundation, which accepts, that:

- (a) the Sites may legally be transferred to the Foundation in terms of this deed and may be used for the Permitted Uses;
- (b) the Sites are being transferred with immediate vacant possession in favour of the Emphyteuta; and
- (c) there are no proceedings pending or threatened in connection with or relating to the Sites or any part thereof and that there are no circumstances which are likely to give rise to any litigation or arbitration.

## 7. Improvements

7.1. The Foundation shall be bound to erect:

- (a) Improvements consisting in Residential Units and Garage Units for a value exceeding twenty one million four hundred and twenty eight thousand nine hundred and fifty nine Euro (€21,428,959.00) on Site A by not later than the thirty first (31<sup>st</sup>) December of the year two thousand and thirty (2030) provided that the value shall increase to twenty two million six hundred and fourteen thousand, four hundred and fourteen Euro (€22,614,414.00) if the Foundation elects to make use of the commercial, and or community portion of the site as shaded in red in site plan annexed and marked as 'Doc. FAH001';
- (b) Improvements consisting in Residential Units and Garage Units for a value exceeding seventeen million three hundred and sixty thousand forty-four Euro (€17,360,044.00) on Site B by not later than 31<sup>st</sup> December 2030;

(c) Improvements consisting in Residential Units and Garage Units for a value exceeding ten million one hundred and sixty four thousand six hundred and forty three Euro (€10,164,643.00) on Site C by not later than the 31st December 2030;

(d) Improvements consisting in Residential Units and Garage Units for a value exceeding one million eight hundred and forty-five thousand, and four hundred and ninety-four Euro (€1,845,494,00) by not later than the 31st December 2030;

7.2. If the Improvements for the value specified in Article 7.1 above are not constructed with the time-frames specified in Article 7.1 above, the Grantor shall have the right to terminate the Emphyteutical Grant of that Site with regard to which the Foundation has so defaulted after one (1) year from the filing of a judicial letter indicating the default and requesting the Foundation to rectify its position. Such right to demand the partial termination of the Emphyteutical Grant shall not be competent or exercisable by the Grantor if the default or delay is attributable to *force majeure*.

7.3. All Improvements shall be constructed in accordance with valid full, final and executable development permits and in accordance with all development and sanitary laws and regulations including laws and regulations regulating pre-construction obligations and as well as regulating the period of construction.

7.4. All Improvements shall be constructed at the exclusive risk and cost of the Foundation provided that the Foundation may enter into a temporary

subemphyteutical grant and/or contract for works with any contractor or developer for the purposes of constructing the Improvements.

7.5. The Foundation shall give immediate notice to the Grantor and the relevant authority in terms of law of the discovery of any antiquities, objects or monuments of local, antiquarian or archaeological importance on the Sites or any part thereof (including all old remains such as caves, tombs, wells, stonewalls, pottery, coins, bones and other objects of a similar nature) that the Foundation may discover on any part of the Sites. the Grantor shall have the right of access to any part of the Sites to which these finds purport to relate for the purpose of inspecting these finds and on ascertaining the existence thereof, the Grantor shall have the right to rescind this Emphyteutical Grant in respect only of the parts of the Sites where these finds are or may be found. In any such case, the Foundation shall have the right to demand that the rescission of this Emphyteutical Grant be extended to the whole of the specific Site wherein the afore-mentioned finds are situated, if it is shown that the remaining part of the Site, after detaching the said parts where the finds are or may be found, would not be suitable for the purpose for which it was acquired. In the cases mentioned in this Article the Ground-rent shall be revised downwards proportionately taking into account the area of the site impacted by the finds (the "**Impacted Site**") as a proportion of the whole Site.

7.6. Prior to the commencement of any works on a Site or any part thereof, the Foundation shall ensure that any contractors or developers developing any

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Site or part thereof shall take out and maintain for the whole duration of the works and until the Development of that Site is completed a contractor's all risk insurance policy ("**All Risks Insurance**") with a reputable insurance company and to have the Grantor's interest noted on this insurance policy. The All Risks Insurance must include cover for any single occurrence or recurrence of damages sustained by third party property, disability to persons or death because of the works or activity being undertaken on that particular Site provided that the insurance cover shall not be less than the value of the works including all the finishing works for each respective Site and the values attributable to third party property damage and bodily injury or death as established by the Foundation's architect prior to the commencement of the works..

- 7.7. The Foundation shall ensure that any works on any of the Sites shall be executed by skilled workmen and contractors and subcontractors; who must possess the skills and abilities necessary to successfully complete the Improvements and must have the necessary experience in projects of a similar scope, complexity, value, nature and character.
- 7.8. Nothing contained in this deed shall be interpreted to waive or limit the obligation of the Foundation from obtaining any licence, permit or approval from the competent authorities for the execution of the works on any of the Sites or from the observance of applicable legislation or industry standards, and any works shall be

executed by the Foundation at its sole and exclusive cost, risk, legal and financial liability.

- 7.9. The Emphyteuta shall not make any excavation in search of water on any part of the Property Sites.
- 7.10. The Foundation shall indemnify and hold the Grantor harmless against any liability, expense, loss or damage which the Grantor may sustain and which the Foundation may cause or allow to subsist because of works on any one of the Sites or part thereof.

## 8. **Laudemium**

- 8.1. Upon the transfer by the Foundation or by the sub-emphyteuta responsible for the Improvements or by any other sub-emphyteuta of the sub-emphyteutical rights over a Residential Unit and/or a Garage Unit and/or any other unit providing Ancillary Services a recognition fee or laudemium equivalent to one (1) year's Ground-rent shall be due to the Grantor.
- 8.2. The Emphyteuta shall be bound to notify the Grantor by registered letter of the prospective transfer at least thirty (30) calendar days prior to the date of the prospective transfer, including in such notification, the Residential Unit and /or Garage Unit or other Unit to be transferred, the date and the time set for the publication of the deed of transfer.
- 8.3. The Grantor shall have the right, but not the obligation, to appear on the final deed of transfer of a Residential Unit or Garage Unit or other Unit.

8.4. The Emphyteuta or transferee in respect of the subutile dominium of the Sites or any of the Improvements (with the exception of the Foundation) or any part thereof shall be bound to provide the Grantor with two (2) legal copies of the relative deed of transfer within sixty (60) calendar days from the relative date of publication of the final deed of transfer, and in default shall be liable to the payment of a penalty of fifty Euro (€ 50) per day for every day or part thereof which elapsed until the legal copies are provided to the Grantor, which penalty is being established for mere delay and without prejudice to the obligation of the new Emphyteuta to provide the legal copies of the final deed of transfer.

8.5. Nothing in this clause 8 and its subclauses shall be deemed to waive the obligations of any Emphyteuta arising from any other law concerning the transfer or disposal of immovable property in Malta.

8.6. Until such time as the Foundation acquires the dominium directum arising in favour of the Authority by virtue of this deed, the Foundation can transfer any of the Sites or any part thereof only on temporary subemphyteusis.

## 9. **Permitted Use**

9.1. Prior to the construction of the Improvements, the Sites and every part thereof may only be used for the purpose of constructing the Improvements and finishing the Development which are intended to be used for the purposes of providing Affordable Accommodation and the Ancillary Services (as defined hereunder).

- 9.2. Upon completion of the Development, the Development may only be used for the purposes of providing Affordable Accommodation provided that insofar as Site A are concerned, the Foundation shall be allowed to make use of the Sites for commercial purposes ancillary to the Development as well as for community purposes (the commercial purposes ancillary to the Development as well as for community purposes in this deed collectively referred to as the "Ancillary Services") provided that at no time of the Emphyteutical Grant may the Ancillary Services occupy more than twenty five per cent (25%) of the site footprint of the Sites listed in this Clause.
- 9.3. The Emphyteuta with the exception of the Foundation, shall use a Residential Unit exclusively for residential purposes in the case of a Residential Unit and a Garage Unit exclusively for the garaging of private vehicles. Save as otherwise agreed herein with regard to the Ancillary Services, commercial use shall be prohibited, even after the redemption of the Ground-rent or the acquisition of the perpetual directum dominium .
- 9.4. Following the Construction of the Improvements, the Emphyteuta shall not be allowed to perform any structural changes or re-development of any of the individual Residential Units or Garage Units.
10. **Redemption of the Ground-rent**
- 10.1. A Sub-Emphyteuta (with the exception of any Sub-Emphyteuta engaged to execute the Improvements) may redeem the Ground-rent

burdening a Residential Unit under the terms and subject to conditions stipulated hereunder namely:

- (a) Each Sub-Emphyteuta (with the exception of any Sub-Emphyteuta engaged to execute the Improvements) may redeem the Ground-rent burdening his Residential Unit after the lapse of twenty (20) years from the date of this deed;
- (b) Each Sub-Emphyteuta (with the exception of any Sub-Emphyteuta engaged to execute the Improvements) may redeem the Ground-rent burdening his Garage Unit after the lapse of twenty (20) years from the date of this deed provided that such Sub-Emphyteuta also holds the utile dominium of a Residential Unit and provided further that the redemption of the Ground-rent burdening the Garage Unit is executed contemporaneously with the Residential Unit;
- (c) Save for the right of the Foundation to redeem the Ground-rent and to acquire the perpetual directum dominium with all accessory rights attached thereto as hereunder stated before the lapse of twenty (20) years, a redemption of the Ground-rent may only be executed after the lapse of twenty (20) years from the date of this deed by entering into a public deed of redemption upon which the Sub-Emphyteuta shall pay to the Authority the sum equivalent to the amount of the Ground-rent payable immediately before such redemption capitalised at the rate of five per cent (5%): Provided that the Foundation may purchase the perpetual directum dominium with all rights accessory or attached thereto from the Authority before the lapse of twenty years by paying to the Authority the difference between the value of the Site as at the date of this deed and the value of Ground-rent paid in respect to that Site;

- (d) The Sub-Emphyteuta must not be in default of any of his obligations under this deed;
- (e) The Sub-Emphyteuta or his successors in title, must have used the Residential Unit as his sole and ordinary residence for a continuous period from date of of the acquisition of the Residential Unit up to the date of the redemption of the Ground-rent;
- (f) The right to redeem the Ground-rent extends to any common part or area held by the Sub-Emphyteuta;
- (g) Notwithstanding the redemption of the Ground-rent:
  - i. all the conditions of this deed as well as those emanating from the law shall continue to apply and bind the Sub-Emphyteuta and his successors in title, save for the payment of the Ground-rent and the obligations relating to the construction of the Development or any part thereof.

10.2. The provisions of clause 10.1 are without prejudice to the condition imposed on the Foundation in clause 8.6 such that until such time as the Foundation acquires the dominium directum arising in favour of the Authority by virtue of this deed, the Foundation can transfer any of the Sites or any part thereof only on temporary subemphyteusis.

## **11. Maintenance and Repairs**

11.1. For the duration of this Emphyteutical Grant the Emphyteuta shall keep the Residential Unit and any Garage Unit, hereinafter collectively and with all their rights and appurtenances referred to as the "**Property**", at all times in a good state of repair

and maintenance, whether ordinary or extraordinary, at its own risk, cost and expense.

11.2. All maintenance and repair works, whether ordinary or extraordinary nature shall be the sole responsibility and at the sole risk, cost and expense of the Emphyteuta.

11.3. On the dissolution or termination of the Emphyteutical Grant for any reason, the Emphyteuta shall relinquish and return the Property and any permanent improvements thereon to the Grantor, without any right of compensation (for whatever reason) and in a good state of repair and operation, fair wear and tear excepted.

## 12. Access Rights

12.1. When requested by notice in writing to do so by the Grantor and subject to reasonable notice, the Emphyteuta shall give access and all reasonable assistance to enable the Grantor or any person delegated by the Grantor to inspect the Property or any of them at reasonable times to ascertain whether the material conditions of this Deed are being or have been complied with or otherwise to carry out and execute any function competent to them at law.

## 13. Compliance with Law and Other Obligations

13.1. The Emphyteuta shall, at its sole cost and expense, comply with all legislation, rules, regulations, and administrative orders applicable to Malta, now in force, or which may hereafter be in force, applicable to the Property.

13.2. The Emphyteuta shall be bound to carry out all obligations in respect of the Sites and/or the Property, as the case may be, imposed on the owners of immovable property and the Grantor 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.

13.3. The Emphyteuta shall pay all taxes, duties and other payments imposed by the competent authorities on immovable property and/or owners of immovable property.

13.4. All bills and charges relating to the Sites and the Improvements constructed thereon or on any part thereof including deposits, fees and charges for water, electricity, drainage, telephone and any other service or utility used in or upon or furnished to the Improvements in general and to the Property in particular shall be paid by the - Emphyteuta limitedly with regard to the part of the Development held by such Emphyteuta on emphyteusis.

#### 14. **Events of Default**

14.1. In the event that the Emphyteuta is in default of any obligation imposed by the Grantor on this deed and does not rectify its position within a period of sixty (60) days from the date of filing by the Grantor of a judicial letter requesting that the Emphyteuta rectifies its default, the Grantor shall have the right to terminate this Emphyteutical Grant by filing a judicial letter, which termination

shall be without prejudice to all the other rights of the Grantor at law.

- 14.2. If the Emphyteutical Grant is terminated in pursuance of article 14.1 of this deed, the Emphyteuta shall be bound to appear on the notarial public deed of termination on being given a notice of seven (7) days of the date and place of publication and in default the Emphyteuta shall incur and become liable to the payment of a penalty one fifty Euro (€ 50) for each day or part thereof of delay which penalty is being stipulated for mere delay and shall not be subject to review by a court of law or tribunal.
- 14.3. If the default is specific to one Residential Unit or Garage Unit, or of any building used for the Ancillary Services the dissolution of the Emphyteutical Grant will be limited to the relevant Residential Unit or Garage Unit or building used for the Ancillary Services.

## 15. Force Majeure

- 15.1. Neither Party shall be liable for the delay in or failure to perform its obligations if the delay or failure results from Force Majeure (as the term is hereunder defined). 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.
- 15.2. "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.

## **16. Transfer of the Rights of the Grantor**

16.1. The Grantor is entitled to sell, assign or transfer in any manner whatsoever the perpetual *dominium directum* of the Sites or any part thereof or of the Development or any part thereof and / or the right to receive the payment of the Ground-rent (as a separate receivable).

## **17. General Provisions**

### **17.1. Severability**

17.1.1. If any part, article, clause or provision of this deed shall be held to be invalid or unenforceable for any reason, the remaining parts, articles, clauses or 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.

### **17.2. Waivers**

17.2.1. No waiver by any party (the "**Non-Defaulting Party**") of any provision of this deed or of any

right under this deed shall be deemed a waiver of any other provision or right 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 the Ground-rent or of any other dues under this deed by the Grantor shall not constitute a waiver of any preceding breach by the Emphyteuta of any provision hereof regardless of the knowledge of the Grantor of such preceding breach at the time of acceptance of the Ground-rent or other dues.

17.2.2. Unless otherwise provided in this deed, no remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies available at law.

17.2.3. Any waiver by a Party of any provision hereof shall be valid and enforceable between the relevant Parties if made in writing without the need of any other formality or registration.

### 17.3. Delayed Payments

17.3.1. Except as expressly provided herein, any amounts not paid by the Emphyteuta when due to the Grantor shall bear interest at the highest rate allowed by law from the date due up to the date of payment.

### 17.4. Entire Agreement

17.4.1. Each Party hereto acknowledges that (i) this deed contains the entire agreement between them with respect to any matter mentioned herein and that no other prior agreement, understanding or document, pertaining to any such matter is effective or binding and (ii) it has not relied upon any oral or written representation made to it by the other Party or by the latter's employees, servants or agents, save as otherwise specifically stated in this deed.

#### **17.5. Applicable Law**

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

#### **17.6. Resolution of Disputes and Jurisdiction**

17.6.1. Any dispute, controversy or claim arising out of or relating to this deed or the breach, or invalidity of any condition of this deed between the Grantor and the Emphyteuta shall be referred to the Courts of Justice of the Republic of Malta and the proceedings therein shall be regulated by the applicable sections of the laws of Malta.

#### **17.7. Notices**

17.7.1. Unless otherwise expressly provided in this deed, any notice, notification or other communication under or in connection with this deed shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant Party at the relevant address for service set out below or to such other address in Malta as each Party may specify by notice in writing to the other party to the deed:

Name:	
Address:	
Attention:	
Name:	
Address:	
Attention:	

17.7.2. Any such notice or other communication shall be deemed to have been served on the Party to whom it is addressed as follows:

- (i) If sent by hand or recorded delivery when so delivered;
- (ii) If sent by pre-paid first-class post from and to any place within Malta, three (3) days after posting, unless otherwise proven.

17.7.3. For the avoidance of doubt, it is agreed that the provisions of this clause do not apply to judicial acts filed in the Courts of Malta which will be served in accordance with applicable Court

procedures and service of such judicial acts shall be deemed to have been made in terms of law.

**17.8. Costs**

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

17.8.2. Duty on documents and transfers shall be paid by the Emphyteuta.

17.8.3. Each Party shall be responsible for the payment of the fees of its own advisors.

**18. Audit Rights**

18.1. The Grantor shall have the right to periodically audit those accounts of the Emphyteuta relating directly to the financial activities of the cells of the Foundation holding the real rights being transferred by virtue of this Deed for the purposes of verifying the Emphyteuta's compliance with the relevant provisions in this Deed.

18.2. For the purposes of verifying the Emphyteuta's compliance with the provisions of Clause 5 of this Deed, the Grantor shall have the right to request a copy of the annual financial statements of the Emphyteuta which shall include, *inter alia*, a declaration by the Auditors of the Emphyteuta confirming or otherwise that the Emphyteuta has not acted in breach of its obligations in terms of Clause 5.2.1 of this Deed: provided that the Grantor shall have the right to verify the veracity of these declarations through an independent

audit at its own expense which may be requested by the Grantor at its discretion at any time.

18.3. The declarations submitted by the Auditors in accordance with the previous clause 20.3, shall contain a breakdown of the transactions relating to each Site individually and shall reflect the Claw-Back mechanism contained in Doc. 'FAH002' as annexed to this Deed. 2

### 19. Statutory Declarations

19.1. 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 virtue of a \_\_\_\_\_ dated the \_\_\_\_\_.

19.2. 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 the Emphyteuta declares that the Emphyteuta qualifies to acquire the perpetual *dominium utile* of the Sites acquired on this deed without the necessity of obtaining a permit under the AIP Act for the reason that (i) it is constituted under the laws of Malta; (ii) it has its registered address, principal place of residence and of business in Malta; (iii) not less than seventy five per cent (75%) of its Founders and not less than seventy five per cent (75%) of the controlling powers of the Foundation belong to European Union citizens who have resided continuously in Malta for at least five (5) years; (iv) it is not in any manner and

whether directly or indirectly controlled by one or more non-resident persons; and (v) that the Sites are required by the Foundation for the purpose of carrying out the activity for which the Emphyteuta has been set up which purpose is also represented in the Memorandum and Articles of Association of the Emphyteuta; and that they are making this declaration after I the undersigned Notary warned them of the importance of the truthfulness and of the consequence in the case of false or erroneous declarations.

19.3. For the purposes of the Duty on Documents and Transfers Act, Chapter three hundred and sixty-four (364) of the Laws of Malta:

- (i) The Grantor acquired the Sites by virtue of \_\_\_\_\_
- (ii) the ad valorem duty on documents and transfers due by the Emphyteuta on this deed amounts to \_\_\_\_\_.

19.4. 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 Housing Authority and the Foundation 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 perpetual *utile* of the Sites transferred by virtue of this deed, if this value is higher than the consideration for the transfer. The Housing Authority and the Foundation make such declaration after I the undersigned Notary warned them about the importance of the truthfulness of this declaration of theirs.

## 20. List of Documents

20.1. Since the documents annexed to this deed are more than five (5), a list of the annexed documents is also annexed to this deed as a document marked with the letter "X" for the signature of the parties in lieu of the documents themselves as allowed by law.

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

Legend

External paved areas - yards, terraces and balconies. Maximum small box paving area shall be 1500mm x 1500mm. All paving shall be made to outside shall not be more than 15mm.

Entrance to apartment

Finished Floor Level

Road Level

Main doors to apartments have a ramp with gradient not greater than 1:16 for the whole width of the footpath (circa 1.10m) so that building is accessible to disabled persons using wheelchairs or other equipment.

All entrances have an 8 passenger lift which connects to all levels. The ramping of all lifts shall be accessible to all. Clear width of lift door is 900mm.

The elevator A/D/C measurements for a turning circle is met.

This ensures that the bathroom can be accessed by all persons as per A/D/C requirements.

Artificial turf

Planter with Vegetation

Ventilation Cells

Microclimate Hedges

Canisals

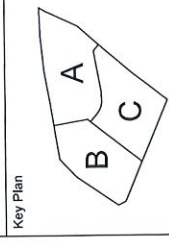
Vehicular traffic direction

Glass floor over exposed archaeological features

Decking over exposed archaeological features

Archaeological features covered with sub-base material and floor finished with concrete tiles

Archaeological features exposed



SOCIAL PROJECTS MANAGEMENT LTD  
 465, Bughra Institute, St. Joseph High Road, St. Venera SVR 1012  
 email: info@spmg.com.mt tel: 22261033

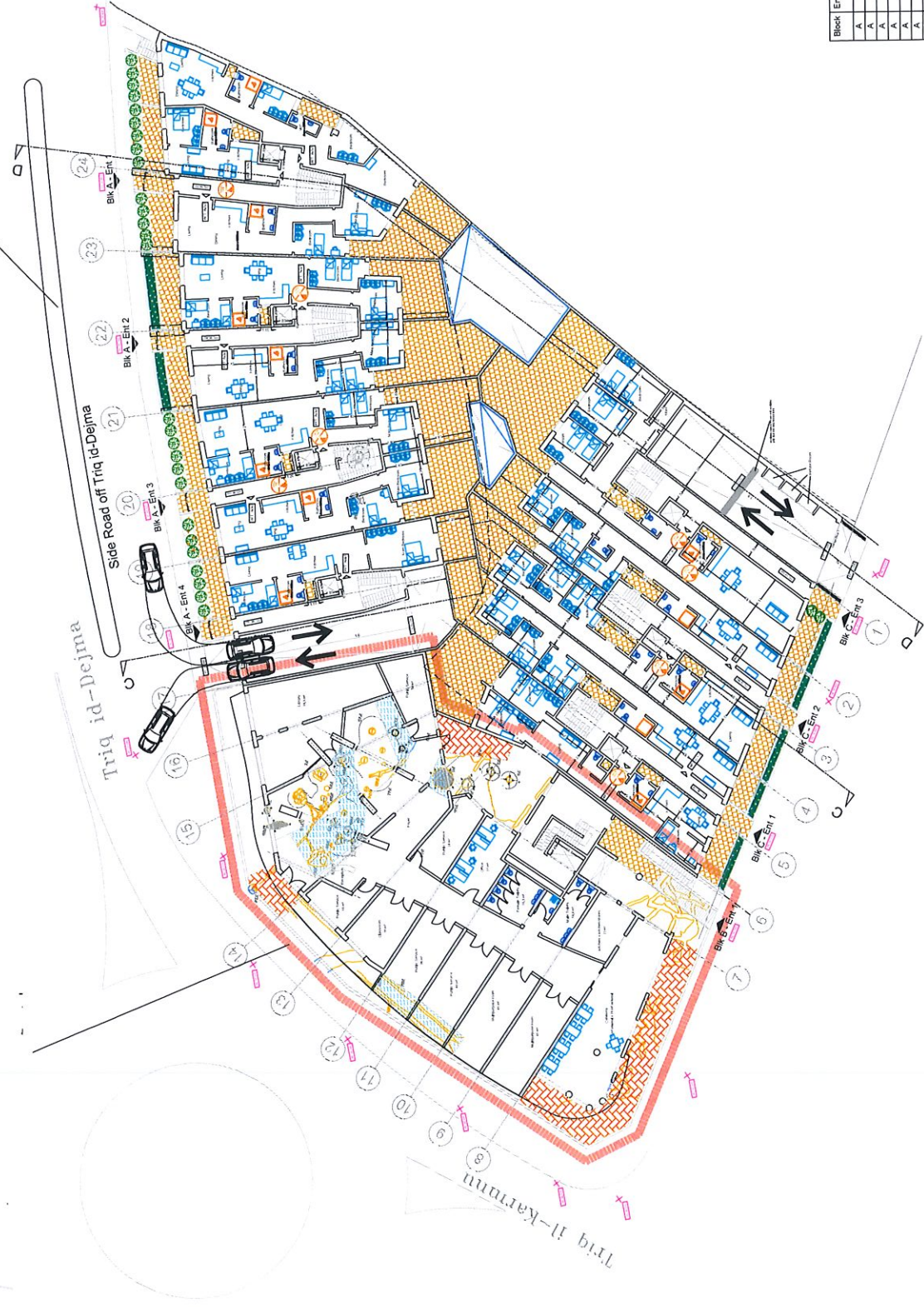
Project Location  
 Fgura, Toroq Tax-Xemx u-I-Qamar, Il-Karmu

Date  
 19-02-24

Drawing No.  
 FGR-A-P-037

Block	Entrance	Apartment	Bedrooms	Gross Area (m <sup>2</sup> )
A	1	1	3	120
A	1	2	3	120
A	1	3	2	54
A	2	1	3	102
A	2	2	2	109
A	3	1	3	119
A	3	2	2	102
A	4	1	3	135
A	4	2	3	112
C	1	2	3	128
C	2	2	3	114
C	3	1	3	200

Central Strip - Kerb



Ground Floor Level Plan

Port  
 Stephen Buhagiar

Drawing  
 Proposed Ground Floor Level Plan

**'Doc. FAH002'**

**Schedule 1 - Claw-Back Mechanism for Excessive Profits generated by the Project**

*Rationale*

By virtue of Clause 20 of the Emphyteutical Grant between the Housing Authority and the Foundation for Affordable Housing (the "Main Agreement"), the Housing Authority has been vested the right to audit the financial activities of the Foundation to verify whether the Foundation has registered any excessive profits in relation to the development and sale of the units with respect to the four (4) sites being transferred by means of the Main Agreement.

Given that the income generated by the project shall vary from financial year to financial year, the Parties have agreed that the auditors of the Foundation shall analyse the Foundation's compliance with Clause 5 of the Main Agreement, and the provisions of this Schedule to determine whether any excessive profits have been generated. Further to this analysis, a declaration by the Auditors in the annual financial statements of the Foundation shall be included, and the Housing Authority shall retain the right to verify the declaration through an independent audit at its own expense.

*Milestones*

For the sake of the claw-back mechanism in this Schedule, the project's generated income shall be divided into three distinct milestones:

1. Milestone 1

In the first phase of the project, the Foundation's main source of income may be divided into two revenue streams:

- i. The administration fee, as a fixed percentage over the whole price of the transfer value, charged by the Foundation to the third-party developer upon the sale of the developer's title of temporary sub-emphyteusis over the developed unit or garage to the end-beneficiary; and
- ii. The land fee, as a fixed value over the whole price of the transfer value, charged by the Foundation to the third-party developer upon the sale of the developer's title of temporary sub-emphyteusis over the developed unit or garage to the end-beneficiary.

2. Milestone 2

In the second phase of the project, the Foundation's main source of income shall derive from one revenue stream, being the conversion premium charged by the Foundation to the end-beneficiary when he or she elects to convert the temporary sub-emphyteusis into a perpetual sub-emphyteusis.

3. Milestone 3

In the third phase of the project, the Foundation shall not be receiving any monies for the redemption of the perpetual sub-emphyteusis given that these monies shall be due to the Housing Authority in its capacity as dominus directus over the sites provided that the Foundation may redeem the units or garages itself in accordance with Clause 10 of the Main Agreement.

In the event that the Foundation does exercise its right to redeem the emphyteusis, the Foundation may thereafter receive monies in relation to the redemption of the sub-ground rent from the end-beneficiary.

*Claw-Back Mechanism*

As described above, the maximum ceiling or threshold for income generated by the Foundatio for Affordable Housing in relation to the sites, shall vary according to the milestone having been reached by the project. The auditors of the Foundations must analyse whether in that financial year, the Foundation has exceeded the maximum ceiling allowed according to the relative milestone, source, and any other additional factors.

Milestone	FAH Income-Source	Collected from	Maximum Ceiling	Purpose	Comment
1	Administration fee	Developer	12% of value of the transfer of the developer's title (temporary emphyteusis) over each and every unit and/or garage sold.	Collected to cover expenses related to legal services, financial services, project management (construction phase), communications, evaluation of tenders, project administration (post-construction phase), stamp duty, property transfer tax, income tax	
1	Land fee	Developer	1% over and above the Housing Authority's ground-rent over the 20-year period as per the provisions of Clause 5 of the Main Agreement, reflecting the valuation by	Collected to repay HA the annual ground rent	

			DHI periti and apportioned according to size of property being sold.		
2.	Emphyteusis Conversion Premium	User	15% of the market value of the apartment or garage at the time of the conversion.	Collected to cover administration of ground rent collection, and allow marginal profit to be reinvested in other affordable housing projects	Parties shall agree to carry out a valuation of the property at this time at their joint expense.
3.	Redemption fee (if Foundation for Affordable Housing becomes dominus directum prior to the date of redemption)	User	15% over the corresponding redemption fee paid by the Foundation to the Housing Authority over the same portion of the site.	Injection of income for the Foundation for Affordable Housing to be able to reinvest in other affordable housing projects.	

If and when the auditors of the Foundation discover that the income generated from the activities directly linked to the project have cumulatively exceeded the maximum threshold contemplated according to the relative milestone and the corresponding income-zone, then the auditors shall calculate the amount of excessive profit and the Foundation shall be liable to repay 50% of the excessive profit by not later than three (3) calendar months from the date of the auditor's declaration.

**'Doc. FAH003'**

**Schedule 2 – Claw-Back Mechanism for the refund of the expenses incurred by the Housing Authority**

*Rationale*

In terms of Clause 5.3 of the Emphyteutical Grant between the Housing Authority and the Foundation of Affordable Housing, the Foundation has agreed and undertaken to refund the sum of EUR 2,600,000 – representing the expenses incurred by the Housing Authority over works carried out by it in relation to the Fgura site. From the third-year of the grant onwards, the Foundation shall be refunding the Fgura expenses by apportioning part of the revenue generated by the sale of the developer's title (temporary sub-emphyteusis) to the end-beneficiary (user) over the relevant unit and, or, garage. Once all the units and garages developed in Fgura are transferred to the end-beneficiaries at the affordable prices set by the Foundation, then the costs incurred by the Housing Authority in Fgura shall be fully covered.

*Formula*

$$P = \frac{FA}{TFA} \times CC$$

Where: P is the payment to be effected by the developer upon sale of an apartment/garage  
FA is the floor area of the apartment/garage  
TFA is the total floor area, i.e. the sum of the floor area of all apartment and garages developed on the site (excluding common areas)  
CC is cost of construction already incurred by the Housing Authority

Based on the above, HA would be fully compensated for construction costs already incurred once all apartments and garages are sold.

Date: 05/12/2024

**Client: HOUSING AUTHORITY**

**RE: VALUATION REPORT FOR AFFORDABLE HOUSING LAND**

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**PLOTS 4&5, TAL-GEBEL L-ABJAD, TRIQ IL-QALIET CW TRIQ THOMAS ASHBY, MARSASKALA**

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**MAIN REPORT**

Introduction	Page 3
PA Considerations	Page 3
Overall potential of site	Page 4
Valuation Methodology	Page 6
Conclusions & Recommendations	Page 11

<b>Appendix A – Street Plan</b>	Pages X 2 – X 3
<b>Appendix B – Local Plan</b>	Pages X 4 – X 8
<b>Appendix C – Applications</b>	Pages X 9– X 10
<b>Appendix D – Photographs</b>	Pages X 11– X 12
<b>Appendix E – H A Drawings</b>	Page X 13
<b>Appendix F – HA Layout Proposals</b>	Pages X 14– X 17
<b>Appendix G – Potential Section</b>	Pages X 18

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**PLOTS 4&5, TAL-GEBEL L-ABJAD, TRIQ IL-QALIET CW TRIQ THOMAS ASHBY, MARSASKALA**

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Date : 5<sup>th</sup> December 2024

This commission was undertaken on the instructions of the Housing Authority, Malta for a valuation report to ascertain the market value of developable land to be adopted solely for affordable housing, to be transferred by the Housing Authority (HA) to the Foundation for Affordable Housing (FAH). This is undertaken according to the *Kamra Tal-Periti Valuation Standards* as issued in 2012 for valuation of premises, with draws heavily on TEGOVA's European Valuation Standards (EVS) 2009, together with the RICS 2016 Guidance Note, Valuation of land for Affordable Housing.

The undersigned confirms that no conflict of interest arises in advising you of the opinion of the value of the property, since the undersigned or his associates will not benefit from the valuation instruction, other than the valuation fee.

I have been instructed to assume for the purpose of this valuation that no contaminants exist. I have not been made aware of any survey or report indicating the presence of contaminants or hazardous materials. No responsibility is thus assumed for the existence of any contaminant. Any subsequent identification of such substances may reduce the reported value and would be updated accordingly in an addendum report.

Title documentation and leases where not provided although being assumed as freehold. We shall take this in regards to the matters therein but recommend that reliance should not be placed on our interpretation thereof without prior verification by your legal advisors. Unless notified to the contrary, we assume that each property has a good and marketable title and is free from any pending litigation. We further assume that all documentation is satisfactorily drawn and that unless disclosed to us, there are no unusual or onerous restrictions, easements, covenants or other outgoing, which would adversely affect the value of the relevant interest(s).

A measured site survey was not undertaken, but areas are calculated by reference to identified boundaries of the property and the appropriate as-built drawings as supplied by Housing Authority. All airspace measurements as supplied by the Housing Authority drawings Approved by the Planning Authority under PA/01485/08 - Plots 4&5, Tal-Gebel L-Abjad, Triq Il-Qaliet Cw Triq Thomas Ashby, Marsaskala - Plans for affordable housing.

These are carried out in accordance with the code of measuring practice as issued in the *Kamra tal-Periti Valuation Standards 2012*. The proposed building heights were identified, as per Housing Authority cad drawings and calculating the number of floors possible within the parameters in place in DC15 (17.50m) and LN227.16 were by section 15 para 1a states "*a habitable space shall not be less than two metres and sixty centimetres*"

The report will be of use to the Housing Authority and its professional advisers and is for the sole purpose stated above. Liability cannot be accepted if it is relied upon by anyone else, whether for the stated purpose or any other.

## INTRODUCTION

### GENERAL DESCRIPTION & CONDITIONS OF PROPOSED AFFORDABLE LAND

Property in question is a vacant corner portion of land situated in the Marsaskala residential area off San Tumas bay, with a combined 32.75m street frontage on Triq Il-Qaliet & Triq Thomas Ashby, for an average depth of 21.78m, giving a total area of circa 337m<sup>2</sup>. As can be noted in attached photos in appendix D, property is currently a walled off unutilized site, and is bounded by a third party plot on along triq il-Qaliet and a residential property along Triq Thomas Ashby.

The HA proposal is for the land to be transferred solely for the use of affordable housing. This is presently to be undertaken on a Perpetual emphyteusis between HA and FAH. This ground rent will be revisable every 5 years. Possibility exists to suspend payment of ground rent for the first 3 years (but these will then be due as from the 4<sup>th</sup> year together with the annual groundrent, i.e. paid in arrears).

FAH sub-emphyteusis with developer/beneficiaries – end beneficiary to enjoy a perpetual sub-emphyteusis or can redeem after 20 years. This is to be used solely for affordable housing as an ordinary residence. It cannot be utilised commercially even after redemption.

FAH can also redeem after 20 years, but Companies, entities established by law and any sub-emphyteuta who has rented out the dwelling to third parties/in any manner violated the conditions cannot redeem (only end beneficiary who used the property as ordinary residence can redeem).

The emphyteuta (FAH) shall be bound to carry out any obligation imposed by law on the owners of buildings or lands, as stipulated in article 1507, Cap. 16, however, for all intents and purposes the parties are acknowledging that if the property, or any part of it, is transferred in virtue of a valid title to a third party (be it a sub-emphyteuta or lessor), they assume onto themselves the duties of extraordinary and ordinary maintenance of the property.

No type of re-development or structural changes by sub-emphyteuta will be allowed which will divide the unit into more than one residential unit.

The valuation undertaken is to appraise the value of land for a 100% affordable housing scheme. Affordable housing is meet the needs of eligible households, including availability at low enough cost for them to afford, determined with regard to local incomes and local house prices. Eligibility is determined with regard to local incomes and local house prices. For the Kirkop site the affordable market rate is being taken at 70% of the market value<sup>1</sup> of the apartment in this locality. This notes RICS note para 3.8, as applying a 20% discount to market rates.

### PA CONSIDERATIONS

The Housing Authority land is located within the Marsaskala Residential Area, following and classified as a residential area as per a **different policy SMHO 02**. This includes for most uses on a local scale as small shops provided that: This includes for most uses on a local scale as shop/offices are not to exceed 75m<sup>2</sup> in size, although Supermarkets may be accepted if complying with SMCM07.

Acceptable light industrial use of floor area less than 50m<sup>2</sup> are to be of low impact not requiring 3-phase electrical supply, such as electronic repair servicing and maintenance.

Residential Areas are the predominant land use on the urban areas, especially on the levels above ground floor, with the range of non-resident activities, especially at ground floor tending to be a mix of uses on a local scale with tailors, cobbler, lace-making encouraged with unacceptable uses including carpenter, panel beating, mechanic, mechanical plant servicing, spray painting & bakers.

However, depending on the range & scale of mix, garage businesses, schools, showrooms, bars etc may also be found in some residential areas.

The height limitation for the Housing Authority site will be three floors + semi basement (17.5m DC2015 5 floors total);

The Planning history of this property is noted between the years 2008 and 2014 and reads as follows:

Planning Application Case Details PA/01485/08 Full development permission "Erection of dwelling units & overlying garages." This application has been approved by Planning Board / Commission on 01 July 2008

Planning Application Case Details PA/00983/14 Amended development permission "Renewal of PA 01485/08 - erection of dwelling units and overlying garages and minor alterations." This application has been approved by Planning Board / Commission on 31 October 2007 with Initial Setting-Out Concluded on 29 August 2014.

Considering DC2015 issued later than PA/00983/14, another application would have to be undertaken to place proposed garages at basement level, not as at presently at semi-basement level, whereby another floor of apartments is possible. This includes for the following additional units:

- 1- 3 bedroom apartment
- 1- 2 bedroom apartment

Refer to **Appendix G** for section overlay.

#### **OVERALL POTENTIAL OF SITE.**

As noted, total land area is of c. 337m<sup>2</sup>, as relating to the Housing Authority portion of land noted in HA land registry form in appendix E, together with Appendix A, which includes for a location plan, together with 2023 Google Earth shot.

The 2 street frontages face South & West onto triq il-Qaliet respectively. Both elevations take in the afternoon sun, uncomfortable in summer due to the heat buildup, but comfortable in winter. A heat reducing façade treatment for this block is imperative.

Cad drawings provided as attached in appendix E indicate provisions for 4 lock-up garages of various sizes as follows: 1 in No small 1 car, 1 in No large 1 car, 1 in No small 2 car and a 3 car.

Ground floor includes for the underlying garage access 1 block of apartments with the possibility of 5 floors inclusive of an adequately set back floor giving the possibility of a total of 9 in number residential apartments, as noted in table No. 1 below.

Of these apartments spread over 4 floors:

4 in number are 3-bed/r with an average floor area of 111.72m<sup>2</sup>.

3 in number are 2-bed/r with an average floor area of 89.25m<sup>2</sup>.

1 in number are 1-bed/r with an average floor area of 80.20m<sup>2</sup>.

Penthouse at roof level works out at:

1 in number is 2-bed/r with an average floor area of 101.24m<sup>2</sup> + 77.50m<sup>2</sup> front open terrace taking in bay view.

Table 1 gives a comprehensive breakdown of the units per floor.

<b>TABLE 1: MARSASCALA RESIDENTIAL DEVELOPMENT FLOOR AREAS</b>					
LEVEL	USE	NUMBER	AREAS IN m <sup>2</sup>		
			GROSS	NET	EXTERNAL
-1	COMMON ACCESS	1			
	REGULAR 1 CAR INTERNAL LOCKUP GARAGE	1		17.98	
	LARGE 1 CAR INTERNAL LOCKUP GARAGE	1	337.00	24.67	
	SMALL 2 CAR INTERNAL LOCKUP GARAGE	1		28.42	
	3 CAR INTERNAL LOCKUP GARAGE	1		65.08	
0	COMMON AREA	1		33.55	36.75
	1 BEDROOM APARTMENT	1	339.78	80.20	8.14
	3 BEDROOM APARTMENT	1		103.31	77.82
1	COMMON AREA	1		20.07	
	2 BEDROOM APARTMENT	1	253.70	89.25	4.53
	3 BEDROOM APARTMENT	1		114.53	25.32
2	COMMON AREA	1		20.07	
	2 BEDROOM APARTMENT	1	253.70	89.25	4.53
	3 BEDROOM APARTMENT	1		114.53	25.32
3	COMMON AREA	1		20.07	
	2 BEDROOM APARTMENT	1	253.70	89.25	4.53
	3 BEDROOM APARTMENT	1		114.53	25.32
4	COMMON AREA	1		12.11	
	2 BEDROOM PENTHOUSE	1	227.42	101.24	77.50
	COMMON DRYING AREA	1		13.26	23.31
5	SERVICE AREA	1			126.40
<b>TOTAL OWNED LAND = 337m<sup>2</sup></b>		<b>TOTAL</b>	<b>1,665.31</b>	<b>1,151.39</b>	<b>439.47</b>

Given the location of the site, the consideration of sea views is being taken into account. For the purpose of this development the following are being taken into account with respect to factors which will be applied for each rate of the unit:

- Ground Floor : No sea views (No Factor)
- First Floor : No sea views (No Factor)
- 2/3/4 Floor : 1 unit with street view (No Factor) & 1-2-bed/r unit with partial sea view (factor of 1.15)
- Penthouse : Full sea view(Factor of 1.5)

Table 2 provides the affordable residential values for the various units as listed, according to their average floor areas. It is further noted that this affordable value is taken at 70% of the present 2024 Marsascala market value.

2024	Affordable
Household median wage	35291
1 bed/r - 80.2sqm	138681
2 bed/r - 89.25sqm	147057
2 bed/r PSV - 89.25sqm	154322
3 bed/r GF - 103.31sqm	190295
3 bed/r OF - 114.53sqm	181622
2bed/PH - 141.21sqm	265500

Table 2 : Affordable residential units value

### VALUATION METHODOLOGY

This is undertaken according to the *Kamra Tal-Periti Valuation Standards* as issued in 2012 for valuation of premises based on a comparative & residual analysis for affordable residential premises. RICS note para 3.9 then note: there are two approaches to the valuation of development land for affordable housing:

- 1/- comparison with the sale price of land for comparable
- 2/- the residual method includes for the development or assessment of the value of the completed scheme and deduction of the costs of development (**including developer's profit**) to arrive at the underlying land value.

Although the comparative method is the more robust valuation when sufficient transactions exist, in truth this is not the case for affordable land, as due to the affordable housing scenarios that do exist, it is nigh impossible to arrive at a comparable figure. Although RICS note para 13.22, 13.25 & 13.6 quoted below are elusive on whether a profit element should be entertained, a profit element of 17.5% has been introduced on the basis of para 3.9. This to safeguard for any eventual risks that may be introduced over the development period that as per para 3.10 includes for the certainty about the costs and factors that relate to affordable housing, and the complexity of the issues involved.

Noting this the residual valuation method is being outlined below in table 3. The rate for the units in the residual valuation table 3 is presented as worked out in table 2 for affordable completed residential units.

Two scenarios are being worked out for the plot due to the desirable location factor of the penthouse level. The potential penthouse would enjoy a large terrace with direct sea views, thus the reasonable commercial value of the unit is to be taken into account. Table 3 works out the value of the site with the penthouse under the affordability factor of **0.7** whilst table 4 works out the value of the site with the penthouse at full commercial value.

TABLE 3: RESIDUAL METHOD TO OBTAIN FULL INVESTMENT POTENTIAL VALUE PROPOSED DEVELOPMENT TO BE CARRIED OUT AT MARSASCALA - Full Affordability Factor				
Description	Unit	Qty	Rate €	Estimated value in €
1 3 Bedroom Apartment at Ground Floor	Qty.	1.00	190,724.36	190,724.36
2 3 Bedroom Apartment - Typical floor	Qty.	3.00	182,769.86	548,310
3 1 Bedroom Apartment	Qty.	1.00	104,868.00	104,868
4 2 Bedroom Apartment	Qty.	1.00	147,389.13	147,389
5 2 Bedroom Apartment - Partial Sea View	Qty.	2.00	169,497.50	338,995
5 2 Bedroom Apartment - Partial Sea View	Qty.	1.00	296,207.94	296,208
6 1 Car Lock-Up Garage	Qty.	1.00	35,000.00	35,000
7 2 Car Lock-Up Garage	Qty.	2.00	52,000.00	104,000
8 3 Car Lock-up Garage	Qty.	1.00	80,000.00	80,000
				<b>1,845,494.02</b>

Development Costs	Unit	Qty	Rate €	€	€
11 Construction costs estimate + contingency	sq.m.	1,412.00	650.00	917,800.00	
				<b>917,800.00</b>	
12 Professional fees @ 10%				91,780.00	
				<b>1,009,580.00</b>	
13 VAT @ 18%				181,724.40	
14 MEPA Levy	sqm	1,412.00	5.66	22,414	
				<b>1,213,718.32</b>	
				-	
				<b>1,213,718.32</b>	
15 Interest costs @5.5% for Dev Costs for ½ the dev period taken at 2 years 9 months				91,787.45	
16 Estate Agent fees taken @ 1% of Market Value				18,454.94	
17 Developers' profit taken at 17.5% of Market value				313,733.98	
<b>TOTAL DEVELOPMENT COSTS</b>					<b>1,637,694.69</b>
18 Residual value for land value considered in 3 yrs time					207,799.33
19 Vacant Land Value today considering PV of the 3yrs selling period @ 5.5%					<b>176,964.75</b>

TOTAL LAND VALUE

177,000.00

Table 3- residual method to obtain full investment potential value of site ( affordability factor applied to the penthouse)

It is to be noted that the construction & finishings costs in table 3 area worked at 650€/m<sup>2</sup>. This rate was provided by the Housing Authority based on current ongoing projects, mainly the large Fgura tal-Patri ongoing site, updated accordingly.

It is to be further noted that this is based on a development period of 3 years, at reduced estate agency fees of 1% from an accepted average of 3.5%, whilst developers' profit is taken at the normal rate of 17.5%.

Further, to be noted on the profit element to be undertaken RICS note para 13.22 notes *on an appraisal of land for a 100% affordable housing scheme, it is assumed that no profit is sought to be made.* But then para 13.25 notes that *the uncertainty of achieving anticipated sale prices introduces a risk element, which is included in the normal developer's profit requirement.* Further para 13.6 notes that the

appraisal for affordable housing should include a contractor's return undertaking the development design & build costs to reflect the risk to the developer on the sale of the land.

Land rate thus works out at:

$$€177,000 / 337\text{sq.m.} = €525/\text{m}^2.$$

The land rate is worked out as required for affordable residences. To achieve an affordable land rate, the residual method outlined in table 3, notes an affordable apartment market rate of €1,554/m<sup>2</sup>, equating to 70% of the current Marsascala apartment market rate standing at €2,220/m<sup>2</sup>.

As explained previously, table 4 provides the land value of the site provided the penthouse is taken at full market value.

TABLE 4: RESIDUAL METHOD TO OBTAIN FULL INVESTMENT POTENTIAL VALUE PROPOSED DEVELOPMENT TO BE CARRIED OUT AT MARSASCALA (unfactored penthouse)				
Description	Unit	Qty	Rate €	Estimated value In €
1 3 Bedroom Apartment at Ground Floor	Qty.	1.00	190,724.36	190,724.36
2 3 Bedroom Apartment - Typical floor	Qty.	3.00	182,769.86	548,310
3 1 Bedroom Apartment	Qty.	1.00	104,868.00	104,868
4 2 Bedroom Apartment	Qty.	1.00	147,389.13	147,389
5 2 Bedroom Apartment - Partial Sea View	Qty.	2.00	169,497.50	338,995
5 2 Bedroom Penthouse	Qty.	1.00	423,154.20	423,154
6 1 Car Lock-Up Garage	Qty.	1.00	35,000.00	35,000
7 2 Car Lock-Up Garage	Qty.	2.00	52,000.00	104,000
8 3 Car Lock-up Garage	Qty.	1.00	80,000.00	80,000
				<b>1,972,440.28</b>

Development Costs	Unit	Qty	Rate €	€	€
11 Construction costs estimate + contingency	sq.m.	1,412.00	650.00	917,800.00	
				917,800.00	
12 Professional fees @ 10%				91,780.00	
				<b>1,009,580.00</b>	
13 VAT @ 18%				181,724.40	
14 MEPA Levy	sqm	1,412.00	5.66	22,414	
				1,213,718.32	
				-	
				<b>1,213,718.32</b>	
15 Interest costs @5.5% for Dev Costs for ½ the dev period taken at 2 years 9 months				91,787.45	
16 Estate Agent fees taken @ 1% of Market Value				19,724.40	
17 Developers' profit taken at 17.5% of Market value				335,314.85	
<b>TOTAL DEVELOPMENT COSTS</b>					<b>1,660,545.02</b>
18 Residual value for land value considered in 3 yrs time					<b>311,895.26</b>
19 Vacant Land Value today considering PV of the 3yrs selling period @ 5.5%					<b>265,614.27</b>

TOTAL LAND VALUE

265,750.00

Land rate thus works out at:

$$€265,750 / 337\text{sq.m.} = \mathbf{€788/m^2}.$$

## CALCULATION OF THE GROUND RENT

### *Scenario A – Affordability Factor applied to the penthouse*

The present affordable land discount rate noting a risk free rate of 2.25%, property lumpiness at 1% & tenant risk of 0.75%, is given at:

$$2.25\% + 1\% + 0.75\% = 4\%.$$

This affordable land emphyteutical grant for 99 years, revisble every 5 years at 10%, or as per the increase in the inflation rate over the same period, whichever is the higher is calculated at:

$$1.05 \times €177,000 \times (4\% - 10\%/5) / 0.95 = \mathbf{€3,913pa (€11.60/m^2)}$$

This calculation notes purchase expenses to have been taken at 5%, as these affordable properties will be purchased by 1<sup>st</sup> time charged 1% stamp duty not 5%, whilst a 5% deduction has been undertaken for management & maintenance charges.

The purchaser's ground rent would then depend on the proportion of the 337m<sup>2</sup> total land area attributed to his unit. Noting as an example from table No. 3 that the total estimated present market value for the whole site is estimated at €1,972,440 with €548,310 dedicated for 3 3-bed/r apartments, the ground rent for 1-3bed/r apartment at the upper floors is estimated at:

$$€3,913pa \times €548,310 / €1,845,494 / 3 = \mathbf{€387.55/ an average 3-bed/r apartment}$$

Capitalizing this perpetual ground rent at 5%, yield an amount of:

$$€387.55pa \times 20YP = \mathbf{€7,751}.$$

Noting as another example from table No. 3 that the total estimated present market value for the whole site is estimated at €1,972,494 with €338,995 dedicated for 2 2-bed/r apartments with partial sea view, the ground rent for 1-2bed/r apartment is estimated at:

$$€3,913pa \times €338,995 / €1,845,494 / 2 = \mathbf{€359.40pa/ an average 2-bed/r apartment with partial sea-view.}$$

Capitalizing this perpetual ground rent at 5%, yield an amount of:

$$€359.40pa \times 20YP = \mathbf{€7,188}.$$

### **Scenario B – Penthouse at market rate**

The same considerations in scenario A are being taken for Scenario B. Thus the land emphyteutical grant under the same conditions explained in scenario A works out at :

$$1.05 \times \text{€}265,750 \times (4\% - 10\%/5)/0.95 = \text{€}5,874\text{pa} (\text{€}17.40/\text{m}^2)$$

The purchaser's ground rent is re-worked as per Table 4 values. Noting the same example from scenario A but considering values from table No. 4 that the total estimated present market value for the whole site is estimated at €1,972,440 with €548,310 dedicated for 3 3-bed/r apartments, the ground rent for 1-3bed/r apartment is estimated at:

$$\text{€}5,874\text{pa} \times \text{€}548,310/\text{€}1,972,440/3 = \text{€}544/\text{an average 3-bed/r apartment}$$

Capitalizing this perpetual ground rent at 5%, yield an amount of:

$$\text{€}544\text{pa} \times 20\text{YP} = \text{€}10,880.$$

Noting as another example from table No. 4 that the total estimated present market value for the whole site is estimated at €1,972,440 with €338,995 dedicated for 2 2-bed/r apartments with partial sea view, the ground rent for 1-2bed/r apartment is estimated at:

$$\text{€}5,874\text{pa} \times \text{€}338,995 / \text{€}1,972,440 / 2 = \text{€}504.75\text{pa}/\text{an average 2-bed/r apartment with partial sea-view.}$$

Capitalizing this perpetual ground rent at 5%, yield an amount of:

$$\text{€}504.75\text{pa} \times 20\text{YP} = \text{€}10,095.$$

## CONCLUSIONS & RECOMMENDATIONS

Considering the above, the land value is estimated under two scenarios at an affordable market land value at:

Scenario A : Affordability Factor applied to penthouse : **€177,000** grd rent of YP20 €3,913pa (€11.60/ m<sup>2</sup>)

Scenario B : Full market value penthouse : **€265,750** grd rent of YP20 €5,874pa (€17.40/ m<sup>2</sup>)

To be noted that the affordable land value has been established by pegging the land value an affordable apartment market rate, as standing at 70% (except for the penthouse in Scenario B) of the current market apartment rate. This together with reduced agency fees of 1% & a 17.5% profit margin to cater for risks arising during the undertaking of this development.

Scenario B has been undertaken for the land rate (€788/ m<sup>2</sup>) to be similar to Kirkop site (€775/ m<sup>2</sup>), as opposed to the Scenario A land rate at (€525/ m<sup>2</sup>).

**dhi** PERITI,

**D.H. Camilleri** – Eur. Ing, A & CE  
B.Sc. (Eng), B.A. (Arch.), C.Eng., A.C.I.Arb., F.I.Struct.E., F.I.C.E.  
*Founding Partner*

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**dhi** PERITI

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## **APPENDICES**

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# APPENDIX A

# STREET PLAN



Location Plan: Site marked in Red

## APPENDIX A

## AERIAL PHOTOS

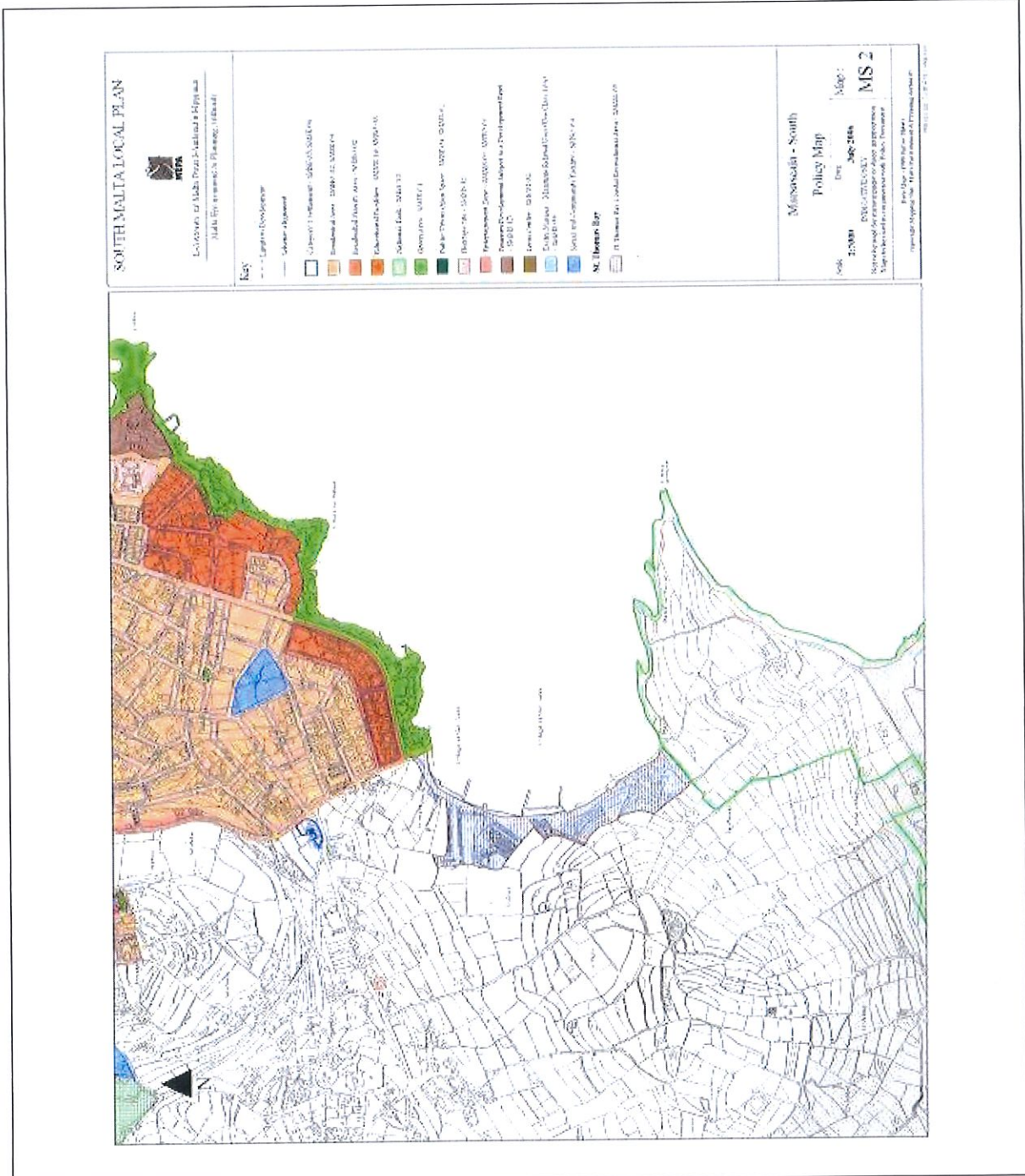


**Location Plan:** Site marked in Red – overview of the site in question. (Google Earth 2023)

**APPENDIX B**

**LOCAL PLANS**

**SMHO 02 Residential Areas and Residential Priority Areas**



Map MS2

## **APPENDIX B**

## **LOCAL PLAN**

### **SMHO 02 Residential Areas and Residential Priority Areas**

The Local Plan designates Residential Areas (RAs) and/or Residential Priority Areas (RPAs) as shown on the relevant Policy Maps. The following is a list of acceptable land-uses (new uses, extensions to existing uses, and change of uses) within all frontages located within the RAs.

- i. A mix of Class 1 (Use Classes Order, 1994) terraced residential development as detailed in the DC 2005, Part 3, and in accordance with the specific zoning conditions indicated in the same guidance, unless otherwise stated by a policy in this Local Plan;
- ii. Class 2 (Use Classes Order, 1994) residential institutions, provided that:
  - they are of a small scale and do not create adverse impacts on the residential amenity of the area;
  - Class 2 (a) institutions are located in close proximity to a town or local centre; and,
  - Class 2 (b) nursing homes and clinics are easily accessible from the arterial and distributor road network.
- iii. Class 3 (Use Classes Order, 1994) hostels provided that these uses are in accordance with all other relevant Local Plan policies.
- iv. Class 4 (Use Classes Order, 1994) small shops provided that:
  - the small shops (of any nature) are not to exceed a total floor area of 50 m<sup>2</sup> each, and convenience shops are not to exceed a total floor area of 75 m<sup>2</sup> each;
  - they comply with all the provisions of paras. 1.4.16 to 1.4.18 of the Interim Retail Planning Guidelines (2003); and
  - they comply with any relevant section of the DC2005 (design, access, amenity, etc.).
- v. Supermarkets provided that they comply with all the provisions of Policy SMCM 07.
- vi. Class 5 (Use Classes Order, 1994) offices provided that:
  - the floorspace does not exceed 75 m<sup>2</sup>;
  - they do not unacceptably exacerbate parking problems in a residential street that already has an acute under provision of parking spaces for residents; and,
  - they comply with any relevant section of the DC 2005 (design, access, amenity, etc.).
- vii. Classes 7 and 9 (Use Classes Order, 1994) non-residential institutions, swimming bath or pool, skating rink, health club, sauna, sports hall, other indoor or outdoor land based sports or recreation uses not involving motorised vehicles or firearms, and interpretation centres, provided the facility:
  - is of a small scale and does not create adverse impacts on the residential amenity of the area;
  - is located on land already occupied by buildings and will replace these buildings provided they are not worthy of retention due to their historic/architectural merit and/or their contribution to the character of the area, unless land is specifically allocated for the facility by this Local Plan; and,
  - the immediate surroundings of the site are already of a mixed use character.
- viii. Class 8 (Use Classes Order, 1994) educational facilities, provided that access and the character of the area are taken into account and are deemed adequate by MEPA to allow the safe and neighbour compatible use of such facilities.

ix. Class 11 (Use Classes Order, 1994) business and light industry provided that:

- The gross floor area of the premises does not exceed 50 m<sup>2</sup> (including storage of materials and/or finished products);
- The activity conducted within the premises does not use heavy duty and/or noisy electrical/mechanical (including pneumatic) equipment, and equipment which requires a 3 phase electricity supply;
- The activity conducted within the premises does not entail extensive and/or prolonged use of percussion hand tools (eg. Hammers, mallets etc);
- The activity employs less than 5 people; and
- The activity conducted within the premises does not inherently entail the generation of combustion, chemical or particulate by products. Examples of acceptable uses considered by MEPA include tailor, cobbler, lace making and computer and electronic repair. Moreover, examples of unacceptable uses include carpentry, panel beating, mechanic, mechanical plant servicing, spray painting and bakery. Proposals to convert from existing Class 12 (Use Classes Order, 1994) general industry to Class 11 (Use Classes Order, 1994) business and light industry within designated Residential Areas shall only be considered acceptable by MEPA if all the conditions listed above are adhered to, and provided that it can be proven that the Class 12 Use (general industry) operation is a permitted one and the Class 11 Use (business and light industry) operation is actually more neighbourhood compatible than the Class 12 Use operation it intends to replace.

x. Taxi Business or for the hire of motor vehicles as per para. 6.15 of DC 2005. Land-uses falling outside those mentioned above will not be considered favourably within the designated RAs, unless there are overriding reasons to locate such uses within these areas.

The acceptable land-uses (new uses, extensions to existing uses and change of uses) within all frontages located within the RPAs are:

i. A mix of Class 1 (Use Classes Order, 1994) terrace houses, maisonettes and flats on sites zoned in the relative Area Policy Maps for these specific forms of residential development. This development is to be in accordance with the relevant conditions as detailed in the DC2005, Part 3, unless otherwise stated by a policy in this Local Plan.

ii. A mix of Class 1 (Use Classes Order, 1994) detached and semi-detached dwellings on sites zoned in the relative Area Policy Maps for these specific forms of residential development. This development is to be in accordance with the relevant conditions as detailed in the DC 2005, Part 3, unless otherwise stated by a policy in this Local Plan.

iii. Class 5 (Use Classes Order, 1994) offices provided that all the provisions in point vi above with regard to Residential Areas are adhered to.

In the Residential Areas of Kirkop, including Residential Priority Areas and Xghajra no dwelling unit will be permitted having a net floor area less than 120 m<sup>2</sup>. However, where proposals will result in the creation of more than two units on the same footprint, smaller units may be permitted provided that the difference between the built footprint and the 120 m<sup>2</sup> is left as open space in addition to the statutory side cartilage or back/front garden as the case may be. The additional open space shall be secured by a planning obligation.

#### 4.4.2

This policy seeks to safeguard the residential amenity within the localities in the plan area, whilst offering an opportunity for specific developments which would enhance and complement the residential use without creating adverse impacts. The range of activities at ground floor level tends to be a mix of uses and includes shops and offices, mostly of a local scale and serving local needs. The policy specifically excludes land-uses that are deemed to be incompatible with Residential Areas due to their nature and scale of activity, such as bad neighbour industrial uses. In this regard, acceptable light industrial uses in residential areas shall only include very low impact industrial activities such as electronic repair, servicing and maintenance as well as handcrafts that do not inherently require the use of electrical machinery, especially those related to textiles. Activities which require the extensive use of manual percussive tools (eg. Hammers, mallets etc) are not deemed compatible with residential areas.

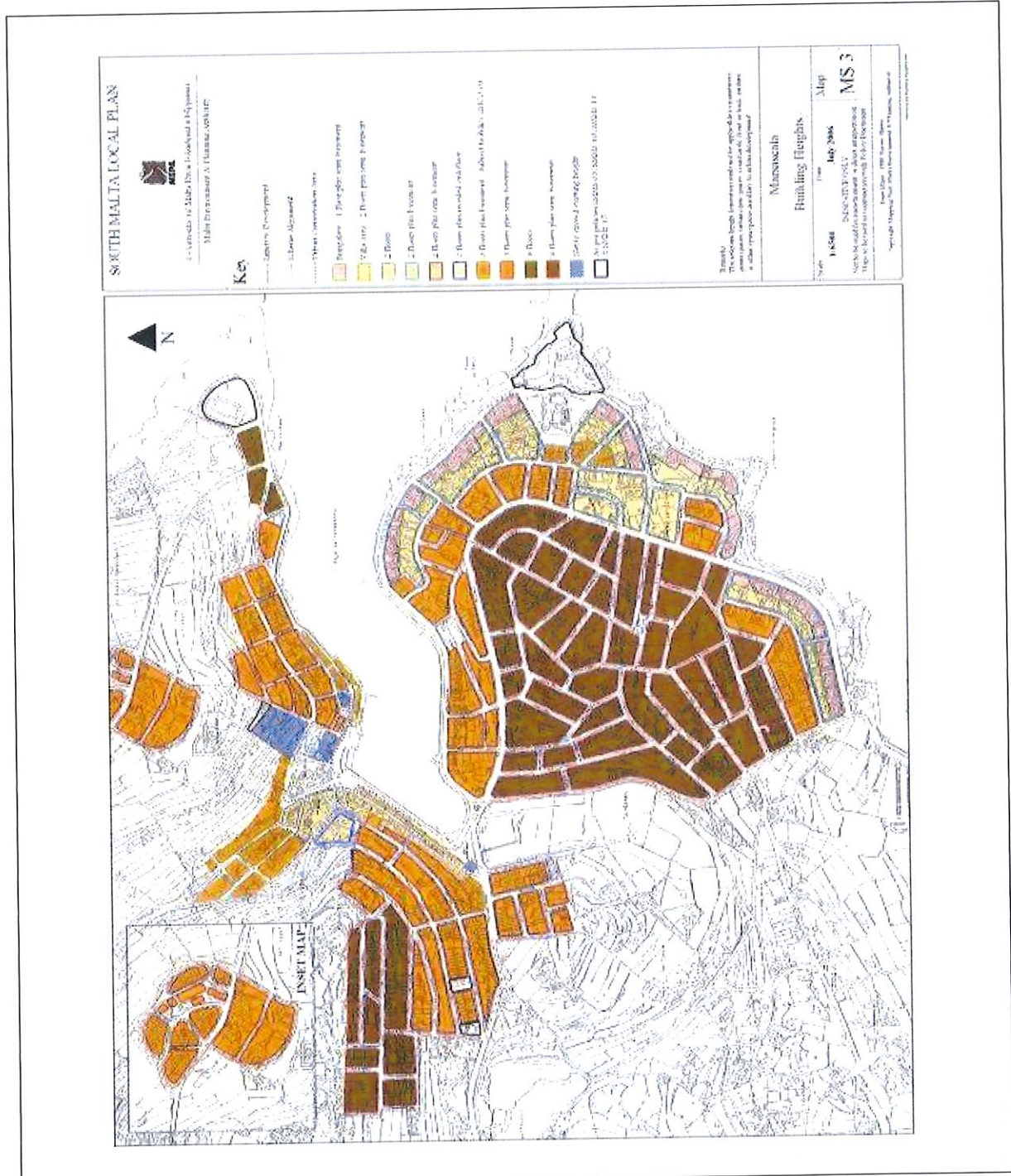
#### 4.4.3

Residential Priority Areas (RPAs) refer to specific residential areas which are characterised by distinct building types (e.g. villa and bungalow development) or a quality urban area which is distinct from the rest of the urban area within the locality particularly with respect to building design (semi-detached/detached dwellings), lower densities (villa areas) or clusters of buildings exhibiting special characteristics. These specific characteristics enhance the residential function of these areas and this policy seeks to protect this quality aspect by not permitting uses which may significantly affect the residential nature of such areas.

**APPENDIX B**

**LOCAL PLANS**

**Three floors + semi basement (17.5m DC2015 5 floors total)**



Map MS2

## APPENDIX C

## PLANNING APPLICATIONS

### Planning Application Case Details PA/01485/08

Result output on 10 January 2024

#### Application Status

Case Status

This application has been approved by Planning Board / Commission.

#### Application Details

Location of development:

Plots 4 & 5, Triq Thomas Ashby, Marsascula

Description of works:

Erection of dwelling units & overlying garages.

Current Applicant:

Ms Marisa Micallef

Current Architect:

Perit Alison Zammit

Reception date:

24 March 2008

#### Initial Processing

Validation Date:

07 April 2008

Target Date:

21 August 2008

Application Type:

Full development permission

Case Category:

Within Development Zone

#### Publication

Publication Date:

19 April 2008

Representation Expiry Date:

04 May 2008

#### Recommendation

Recommended Decision:

Grant Permission

Report Last Updated:

19 June 2008

#### Decision

Decision:

Grant Permission

Decision Date:

01 July 2008

Decision posted date:

10 December 2008

## APPENDIX C

## PLANNING APPLICATIONS

### Planning Application Case Details PA/00983/14

Result output on 10 January 2024

#### Application Status

Case Status This application has been approved by Planning Board / Commission.

#### Application Details

Location of development: Plots 4 & 5, Triq Thomas Ashby c/w, Triq il-Qaliet, Marsascula, Malta  
Description of works: Renewal of PA 01485/08 - erection of dwelling units and overlying garages and minor alterations.  
Current Applicant: Mr Stephen Mc Carthy CEO  
Current Architect: Perit Alison Zammit  
Reception date: 17 February 2014

#### Initial Processing

Validation Date: 26 March 2014  
Target Date: 16 July 2014  
Application Type: Amended development permission  
Case Category: Within Development Zone

#### Publication

Publication Date: 05 July 2014  
Representation Expiry Date: 25 July 2014

#### Recommendation

Recommended Decision: Grant Permission  
Report Last Updated: 28 July 2014

#### Decision

Decision: Grant Permission  
Decision Date: 29 August 2014  
Decision Press date: 01 October 2014  
Decision posted date: 24 September 2014  
Permit Expiry Date: 01 October 2019

**APPENDIX D**

**PHOTOGRAPHS**



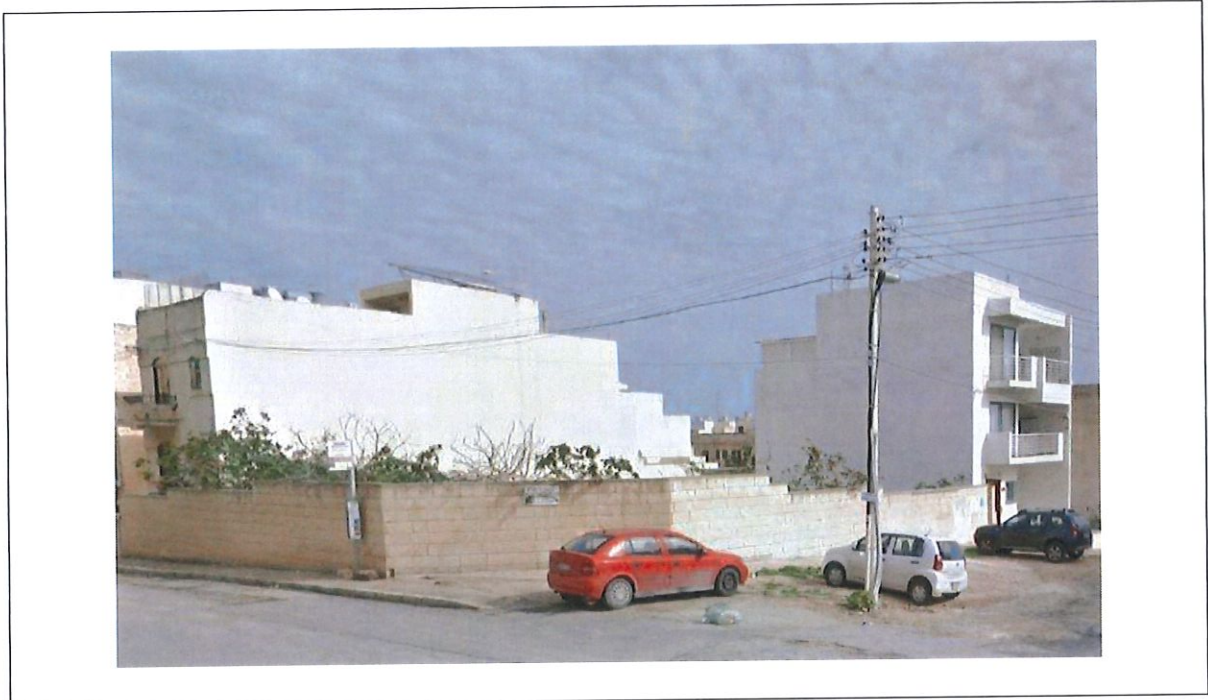
Photo 1:



Photo 2:

**APPENDIX D**

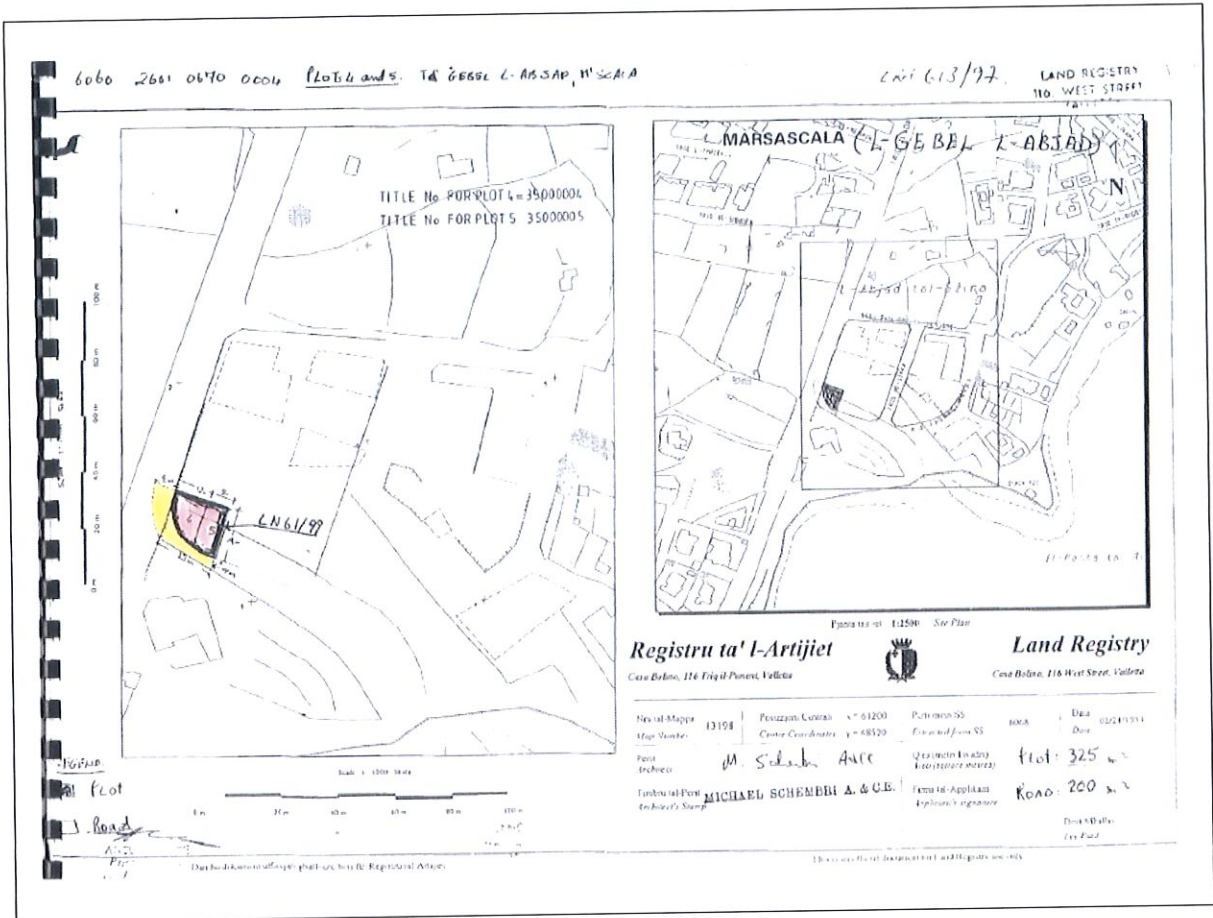
**PHOTOGRAPHS**



**Photo 3:**

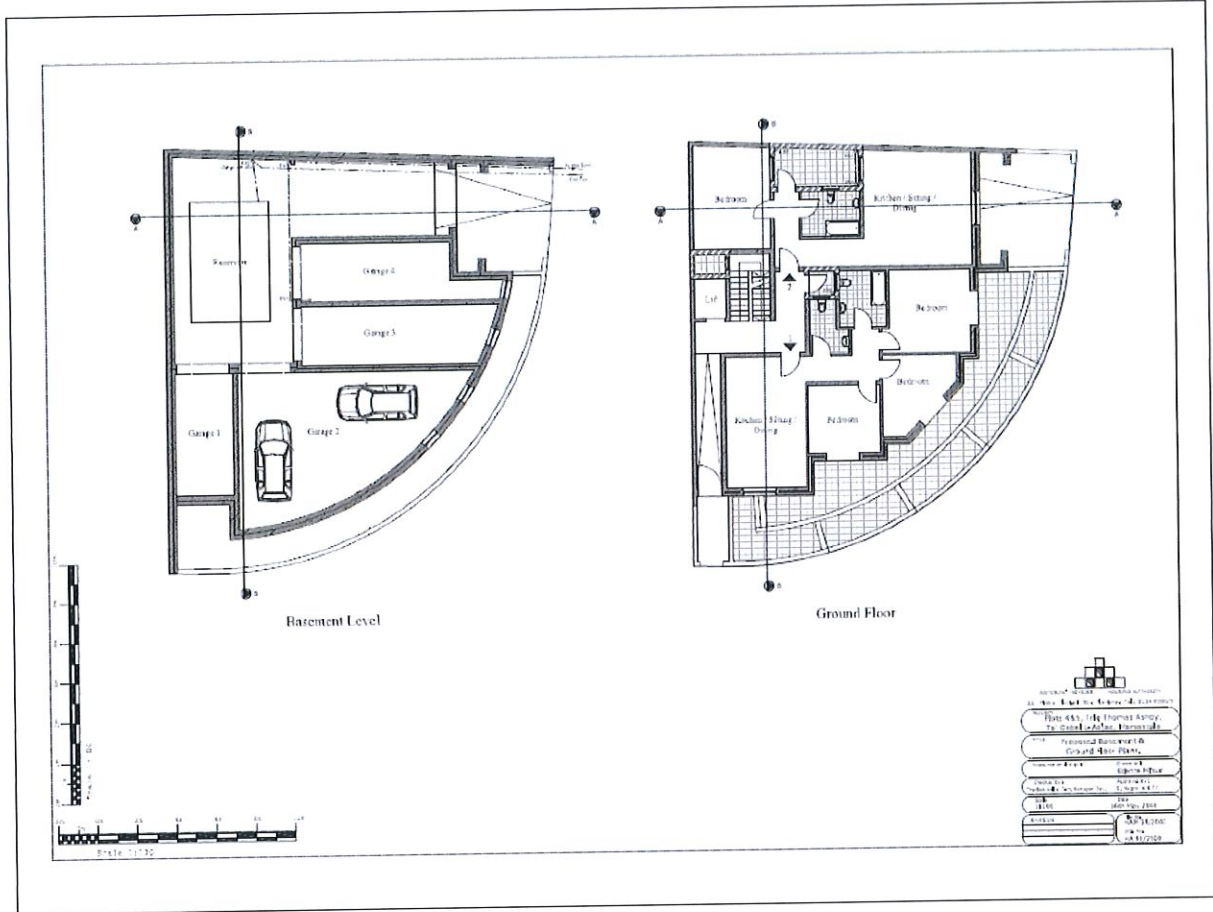
**APPENDIX E**

**H A DRAWINGS**



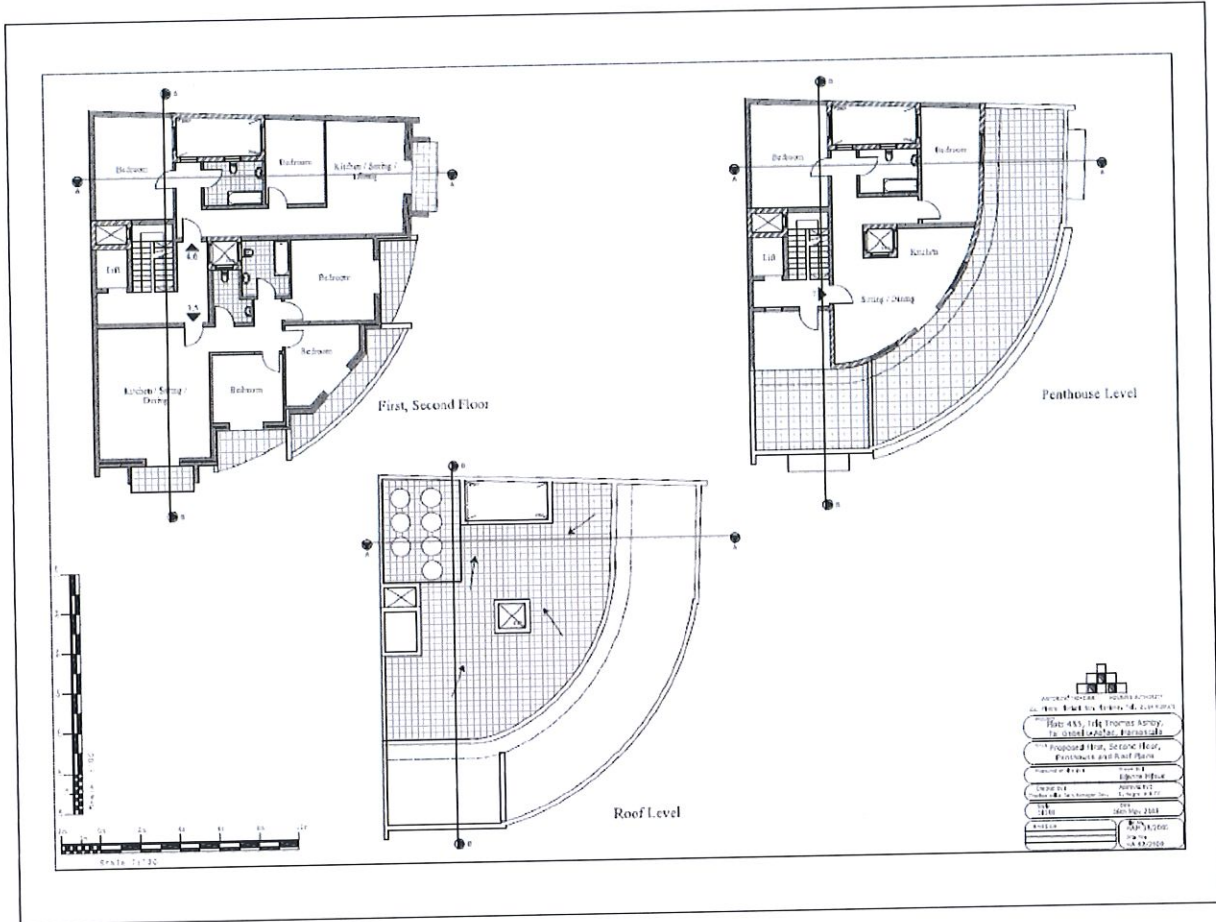
**APPENDIX F**

**H A LAYOUT PROPOSALS**



# APPENDIX F

# H A LAYOUT PROPOSALS



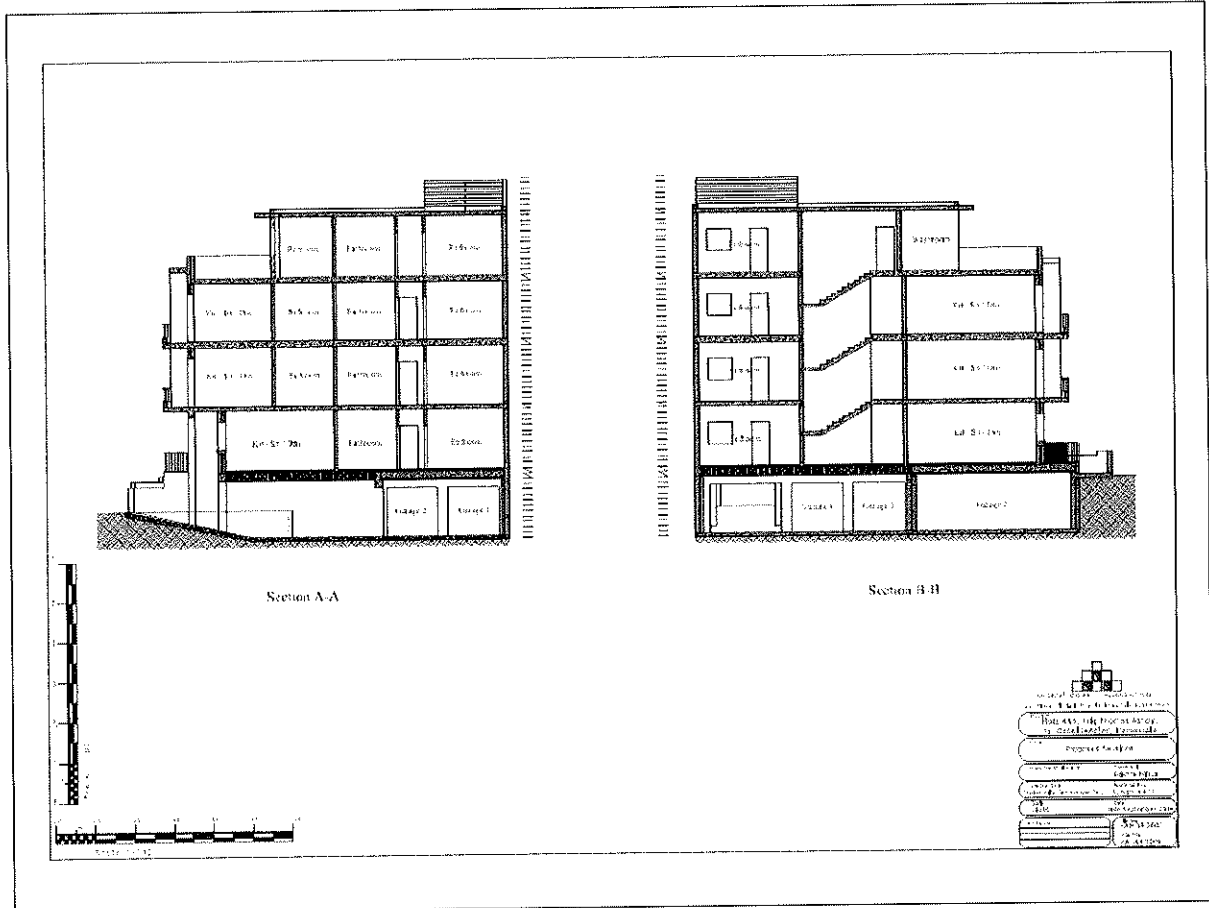
**APPENDIX F**

**H A LAYOUT PROPOSALS**



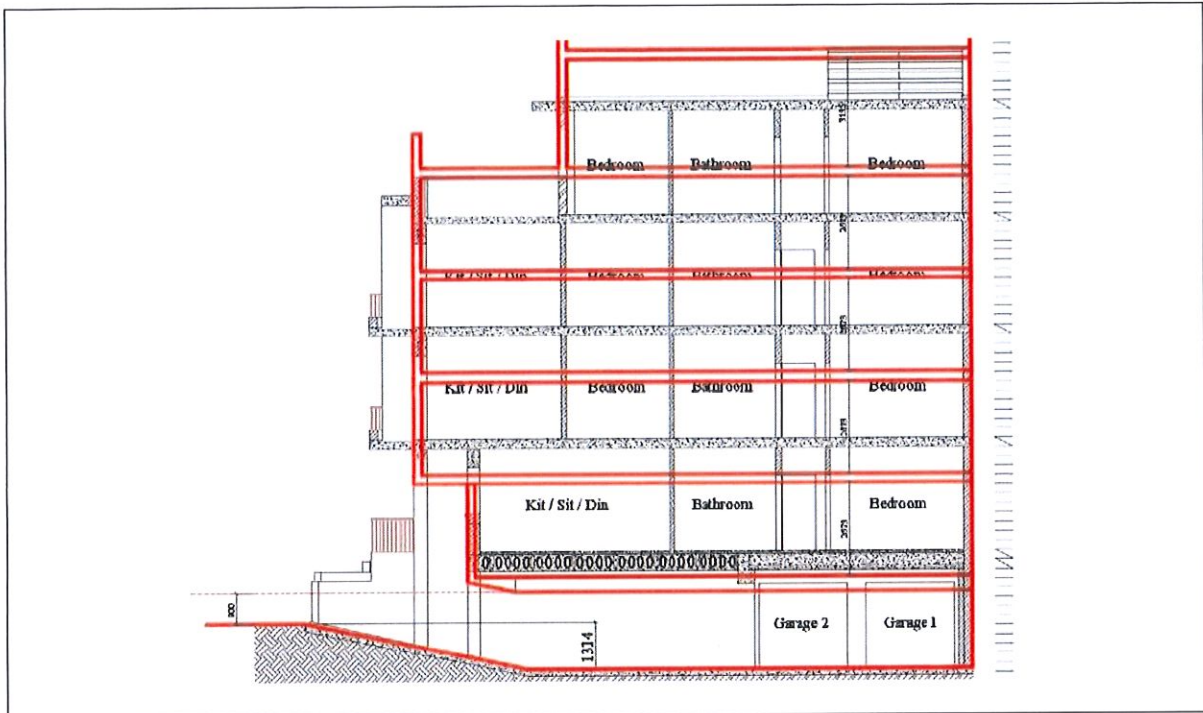
# APPENDIX F

# H A LAYOUT PROPOSALS



## APPENDIX G

## POTENTIAL SECTION



*Note the potential section to obtain an additional floor as per active DC2015 Policy and guidelines*