

Annex IX – Draft Contract

DRAFT DEED

Before me, Doctor of Laws xxx, a Notary Public xxx duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

Of the first part:

xxx the Government of Malta xxx

Of the second part:

xxx the Emphyteuta xxx

The Parties

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

WHEREAS:

Following the invitation by the Government of Malta of a Request for Proposals to design, build, operate and maintain a multi-storey underground car park and other facilities in Mosta, published on the xxx (the “**RFP**”), the Emphyteuta submitted its detailed proposal in terms of said RFP;

Following a shortlisting exercise the Emphyteuta was successfully identified as the Preferred Proponent in terms of the RFP and was invited further to enter into negotiations with the Government of Malta;

Following negotiations the Parties have agreed the terms that are to regulate their relationship;

The Parties hereby agree and covenant:

Clause 1 - Definitions

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

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

“Certificate of Completion” means the certificate issued by the Architect in accordance with subclause six of clause xxx of this deed and confirming that the Project is in a Complete State.

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

“Development of the Property” means the performance, execution or supply of anything which shall be required to be performed, done or supplied by the Emphyteuta in order to complete the obligations assumed by it on this deed in respect of the completion of the Property and for all the requirements mentioned in the definition of Complete State to be satisfied in full and includes, but is not limited to, the performance, execution or supply of all labour, materials, constructional plant and equipment, temporary works, remedial works, and architectural and technical services and supervision to construct, develop and complete the Property in all respects in compliance with all laws and regulations in respect of buildings in general including sanitary and environmental matters, possible requirements by the competent authorities, the Building Permits, and the execution of all works necessary to satisfy the Emphyteuta’s obligations arising from this deed, as well as the filing of applications for and the procurement of necessary amendments to the Building Permits and the issuance of any compliance or completion certificates in respect of the Property in terms of the Environment and Planning Act, Chapter five hundred and four (504) of the Laws of Malta and the Environment Protection

Act, Chapter five four nine (549) of the Laws of Malta, and of all other necessary certifications, permits, authorisations and licences required during the Development of the Property, and on its completion and the procurement, installation and commissioning of all utilities required for the Property.

“**Emphyteuta**” means xxx

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

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

“**Full Development Permit/Building Permits**” means the permit for the full Development of the Property and approved plans issued by the PA for the Development of the Property and the construction of the Property, including all approved amendments and modifications made thereto to date and any future amendments or modifications (including additional plans) if approved by the PA.

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

“**Ground-rent**” means the annual temporary ground-rent stated in clause seven (7) of this deed and, when revised upwards in accordance with same clause, the annual temporary ground-rent as so revised.

“**Immovable Things**” means all buildings, structures, developments, infrastructure, facilities, installations, equipment, plant and machinery and other improvements, now existing, or which in the future shall exist, within the boundaries of the Property, whether

installed, constructed or erected on, in or under the Property or which otherwise appertain to the Property but to the extent only that they are considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta and whether such buildings, structures, developments, infrastructure, facilities, installations, equipment, plant and machinery and other improvements are mentioned or otherwise in the description of the Property in these Definitions.

“**PA**” means the Planning Authority established under Chapter 552 of the Laws of Malta.

“**Permitted Uses,**” means the uses of the Property as specified in clause six (6) of this deed.

“**Property**” means such property included in the proposal submitted by the Emphyteuta which shall not extend beyond the sites included in the RFP.

“**Project**” means the design, building, operation and maintenance of a multi-storey underground car park and other facilities in Mosta which should meet the following key objectives:

- Design, develop, operate and maintain an underground car park and other facilities;
- As a minimum the Proposal needs to make use of both Zones A and B for above ground embellishment;
- As a minimum the Proposal needs to make use of Zone B for underground parking facilities;
- Increase the number of parking spaces available and improve access and flow of traffic through the town;
- Provide a minimum of 350 underground car parking spaces to increase the availability of parking in the area, of which 10 spaces shall be reserved to the Local Council and other locally-based GoM service providers;
- Create new spaces for recreational use;
- Create circulation spaces within the development which conform to international design standards to ensure safety, functionality, practicality and convenience for the general public;
- Cooperate with the local community for above ground space use for the duration Concession, for the organisation of local

festivities and activities such as, but not limited to, ground fireworks during the Santa Maria feast;

- Cooperate with the local community at all stages including planning and development to allow the use or find an alternative solution to current installations over Zones A and B such as, but not limited to, access holes used for poles and ground based fireworks during the Santa Maria feast (“Toqob ghall arbli tal-festa”);
- Ensure that the project is designed, built, operated and maintained in full accordance with environmentally friendly and green energy principles;
- Ensure that the proposed facilities abide by acceptable local regulatory and international standards;
- Apply for all the necessary permits including all reports that may be requested by the PA and its consulted bodies for the design and development, finishing and maintenance of all underground facilities;
- Ensure that the project is fully operational within a maximum of 30 months from issue of PA permits;
- Ensure that the Work Method Statement conforms with all the minimum requirements established in this RFP;
- Submit a proposed, practical and effective Traffic Management Plan for the area set out in Annex VI, taking into consideration all other design aspects being submitted in response to this RFP. The Traffic Management Plan will be subject to approval from the competent authorities;
- Contribute towards the pedestrianisation of the area;
- Ensure that proposed car parking fees are reasonable and take into consideration the social aspects of the community;
- Ensure that the project provides a long-term solution for visiting coaches in the vicinity of the Mosta Rotunda;
- Ensure that any existing third party rights within the sites are retained;
- Include in the above ground design for Zone A:
 - Above ground reserved parking spaces as set out below. Proponents may also submit alternative solutions for some or all of these required reserved parking spaces at Site B as long as they will still serve the intended purpose:
 - two (2) for ambulance services;
 - two (2) for police services;
 - two (2) for taxis;
 - three (3) for motorcycles; and
 - two (2) for private vehicles making use of the health centre, in cases of emergency.

- The reinstatement, embellishment and landscaping of the area;
- Include in the above ground design for Zone B:
 - The reinstatement and upgrading of the ‘bocci’ club and ‘bocci pitch’;
 - The embellishment and reinstatement of the landscaped areas and playing field;
 - A minimum of 65% of the total landscaping area shall be dedicated to a playing field and open spaces for public enjoyment; and
 - A maximum of 40 square metres of the total landscaping area in Zone B can be dedicated to a roofed over commercial outlet together with an area of 100 square metres ancillary area, subject to approval by the competent authorities. The title for such commercial outlet and ancillary area shall be a 15-year lease, renewable for periods of 15-years, but not extending beyond the Concession Period. The Successful Proponent shall be responsible for the maintenance of the commercial outlet and ancillary area for the duration of the Concession;
- If the Proponent decides to also include Zone C as part of its Proposal, the above ground design for Zone C shall include:
 - The reinstatement of the square and road network including any currently available on-street car parking spaces; and
 - The above ground space currently designated for ‘monti’ hawkers on Mondays shall remain allocated for this purpose;
- If the Proponent decides to also include Zone D as part of its Proposal, the above ground design for Zone D shall include:
 - The reinstatement of the area, road network and any currently available on-street car parking spaces.
- All materials used in the construction of the public landscaped areas are to be of a high standard and to fit the purpose of their use. All materials need to be approved by the GoM;
- All spaces need to allow for Access for All criteria; and
- Optionally provide commercial space at underground level.

“**Term**” means the term of the Emphyteutical Grant as set out in clause five (5) of this deed.

“**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 Sub-Titles IVA and B of Title IX of Part II of Book First of the Criminal Code;
- vii. against the laws or by the courts of another country with respect to the crimes substantially equivalent to those specified in paragraphs i.(roman number one),

iv.(roman number four) and v.(roman number five) above.

(b) is the subject of sanctions or restrictions issued by the United Nations, the European Union or other international governmental body of which Malta is part and which are adopted or applied by the Government in terms of the National Interest (Enabling Powers) Act, Chapter three hundred and sixty five (365) of the Laws of Malta and / or other applicable law, and this for such time as such sanctions remain in force.

(c) is the subject of an international arrest warrant or of a European Arrest Warrant or is otherwise wanted by INTERPOL or other equivalent trans-national police organisation, and this for such time as he so remains.

(d) is insolvent or bankrupt and unable to pay his debts as they fall due.

(e) being a legal entity, the director or other officer or the controlling shareholder of which is:

- i. an Undesirable Person, or
- ii. in case of a director or officer, disqualified to be a director of a company in terms of the Companies Act or of a similar law of a jurisdiction of which the director or officer is a national or resident and this for as long as such person remains so disqualified

Clause 2 - Interpretation

2.1 In this deed, unless otherwise expressly stated or the contrary intention appears:

a) words importing the masculine gender shall include the feminine gender and vice-versa and words importing the neuter gender shall include the masculine and the feminine gender;

b) references to a Recital, Part, heading, section, clause, paragraph, document or schedule is to a Recital, Part, heading, section, clause, paragraph, document or schedule of or annexed to this deed;

c) references to a person include references to any person, whether natural or legal and whether registered or not and whether incorporated or unincorporated, and includes (without limitation) an undertaking and this irrespective of citizenship, place of registration, residence or management;

d) any reference to any law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any subordinate legislation, legal notices, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder;

e) all obligations undertaken by the Parties will be binding on them during the entire Term;

f) where the context permits, the term “**Property**” shall include any part of the Property, together with all the Immovable Things which now, or in the future, shall appertain to them.

g) The headings in this deed are inserted for convenience only and do not affect its construction.

h) The documents annexed to this deed shall be construed to form a substantial and integral part of this deed and any reference to this deed shall include a reference to the said documents.

Clause 3 - Grant of Emphyteusis of the Property

3.1 By virtue of this deed, the Government hereby grants by title of temporary emphyteusis to the Emphyteuta, which on its part accepts and acquires by the same title of temporary emphyteusis, the Property, for the Term and for the consideration and upon the terms and conditions set out and contained in this deed. The Property includes all its rights and appurtenances including its sub soil.

3.2 The Property is being granted and accepted as free and unencumbered, save for all existing servitudes and to all existing leases and/or leaseholders listed in Annex XX to this deed, *tale quale*, and with the exclusion of the warranty of hidden/latent defects.

3.3 The Parties also declare and agree that the Property includes all the Immovable Things, which now or in the future shall appertain to the Property.

Clause 4 - Terms and Conditions of the Emphyteutical Grant

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

4.2 The following documents shall be deemed to form and be read and construed as part of this deed, in the following order of precedence:

- i The RFP published by the Government of Malta on the xxxx, attached to this deed and marked Annex XXX.

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It is intended that the reading and construction of the clauses of this deed and the above-referred documents shall be clear and

consistent but in the event of any inconsistency, the clauses of this Deed shall in all circumstances prevail.

Clause 5 - Term

5.1 This temporary emphyteutical grant is being granted by the Government of Malta and accepted by the Emphyteuta for a period of sixty (60) years commencing from the date of publication of this deed.

Clause 6 - Permitted Uses

6.1 Without prejudice to the Emphyteuta's obligations and rights of the Government of Malta pursuant to this Deed, the Emphyteuta shall be entitled to enjoy and make full use of the Property solely for the development and operation of the Project, namely the building, operation and maintenance of a multi-storey underground car park and other facilities in Mosta, in accordance with the terms and conditions of this deed.

6.2 The Emphyteuta shall bear any and all costs and expenses, whether ordinary or extraordinary, that may be necessary or desirable in connection with the permitted use as prescribed in subclause one of this clause six (6.1), and in accordance with the Emphyteuta's rights over the Property the Emphyteuta shall be entitled to retain all revenues generated from the operation of the Property.

6.3 The Emphyteuta undertakes to continue to operate the Property for the duration of this emphyteutical grant.

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

Clause 7 - Ground-rent

7.1 This Emphyteutical Grant is made in consideration of the annual temporary ground-rent of XXX Euro (€ XXX) which shall be

revised upwards on the lapse of XXX reckoned from the date of issuance of the Certificate of Completion by the Architect in respect of the Property or, the XXX, whichever occurs first, according to the official rate of inflation which shall be taken to be the official rate of inflation published in respect of the year immediately preceding the year when the ground rent is to be increased, and thereafter, on the lapse of every subsequent five-year period, by said rate of inflation on the *pro tempore* ground-rent payable annually in terms of this deed in each year in the immediately preceding five-year period.

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

7.3 The Ground-rent due as established in sub-clause one of this clause seven (7.1) reckoned from the date of this deed is being administratively but irrevocably abated by the Government in favour of the Emphyteuta to a nominal amount of XXX Euro (XXX) *per annum*, which abatement shall however remain applicable only until the Certificate of Completion is issued by the Architect in respect of the Property or, the xxx (dd/mm/yyyy), whichever occurs first, and upon either of the aforementioned occurrences the Ground-rent shall revert to its full amount as stipulated in sub-clause one of this clause (7.1).

Provided that any abatement of the ground rent stipulated in this clause shall in any event and notwithstanding any other article of this deed cease on the xxx (dd/mm/yyyy).

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

7.5 Without prejudice to clause twenty nine (29), in order to secure the payment of the Ground-rent and any penalty that may become due by the Emphyteuta on this deed and also to secure the proper performance of each and all of the obligations arising from this Emphyteutical Grant, the Government reserves in its favour the special privilege on the Property accorded to the Dominus by law.

Clause 8 – intentionally deleted

Clause 9 – Letting and other Concessions

9.1 Except as provided in subclause two of this clause nine (9.2), the Emphyteuta may not transfer, dispose of, alienate or otherwise assign the whole or any part of the Property, under any title whatsoever, including but not limited to (i) a transfer of the *utile dominium* of the Property or part thereof or (ii) granting it in whole or in part by way of sub-emphyteusis or assignment, lease, possession, operation agreement or management agreement.

9.2 Notwithstanding the provisions of the subclause immediately preceding this, the Emphyteuta may grant leases, operation agreements, management agreements or other similar rights over any part of the Property and this exclusively for the purposes of the Permitted Uses.

Provided that no such leases, operation agreements, management agreements or other similar rights may be granted to a single third party over the whole Property.

Provided further that no real right under whatever title can be granted over the Property, in whole or in part, to any third party or entity, even if such third party or entity forms part of a group of companies or is any way affiliated to the Emphyteuta, unless otherwise specifically agreed to by the Government of Malta in writing.

Provided further that the Government will not approve any request for the transfer of any real right received within the first five (5) years of the Grant. The Government reserves the right at its sole and absolute discretion to refuse any such requests without having to give reason for its refusal.

Provided further that prior to entering into any such leases, operation agreements, management agreements or other similar rights, the Emphyteuta shall notify the Government of Malta of its intentions.

9.3 Leases, operation agreements, management agreements or other similar rights may only be made subject to the following terms and conditions, namely, they shall:

- i not exceed the term of this emphyteutical grant;
- ii not be made subject to terms which constitute a breach of the terms and conditions agreed to herein;
- iii not be entered into with an Undesirable Person;
- iv not be entered into for any illicit purpose or contrary to public policy.

Clause 10 – Facilities and Standards

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

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

- i undertake all reasonable endeavours to maintain high levels of customer satisfaction;
- ii preserve and maintain the Property facilities in a safe, serviceable and efficient condition;
- iii carry out a continuing programme of maintenance and repair activities on the equipment, fixtures and fittings which will ensure that the Property facilities are at all times in good working order and in a serviceable condition;
- iv ensure that all structures on the Property are inspected frequently for deterioration and, where necessary, carry out repairs or replacements;
- v affect all routine repairs including replacement and enhancement of equipment and systems on the Property

necessary for the efficient and adequate operation of the Property and the Permitted Uses;

- vi adopt and periodically update a high standard of environmentally-friendly energy saving solutions and sustainable use of resources;
- vii ensure throughout the entire term, full and unhindered accessibility to the Property at a minimum level established by law;
- viii establish adequate rules covering sanitation, security, accessibility, sustainable energy and resource use and conservation, crowd control and fire protection at the Property;
- ix comply with all safety, sanitary and security standards in accordance with applicable laws;
- x maintain all facilities at an adequate standard including housekeeping and cleaning, decor and their availability to customers at the Property.

Clause 11 – Maintenance and Repairs

11.1 For the duration of the Emphyteutical Grant, the Emphyteuta shall keep the Property and anything related to the Property at all times in a good state of repair according to law and to the satisfaction of the Commissioner of Land as a representative of the Government of Malta, at its own risk, cost and expense and it shall carry out:

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

and on the termination of the Emphyteutical Grant by lapse of time or on the dissolution of the Emphyteutical Grant for any other reason, the Emphyteuta shall relinquish and/or return the Property and any permanent improvements thereon without any

compensation and/or right of compensation, unless otherwise stated in the deed, in a good state of repair and operation, fair wear and tear excepted. Any damage occurring not only through ordinary causes but also through fortuitous, extraordinary and unforeseen circumstances or by Act of God, or by Force Majeure, shall be made good by the Emphyteuta which shall be bound to reconstruct if necessary any portion of the said tenement, or the whole tenement, at its own expense.

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

Clause 12 – Development of the Property

12.1 The Property is being granted to the Emphyteuta to use it exclusively for the Permitted Uses provided for in this deed, including for the development, restoration and embellishment of the Property. Accordingly, the Emphyteuta shall by not later than XXX from the date of publication of this deed obtain from PA the permit/s for the full development, restoration and embellishment of the Property.

If for any reason not attributable to the Emphyteuta or to the doing by the Emphyteuta of anything which obstructs or delays the issue of the Full Development Permit, the Full Development Permit is not issued within said period of XXX from the date of the date of publication of this deed in terms of the immediately preceding paragraph of this clause 12.1, the Emphyteuta shall notify the Government of such fact and upon such notification, the time limits imposed on the Emphyteuta in terms of this deed to complete the development of the Property and to commence the operation thereof shall be extended by the number of days equivalent to the number of days which would pass between the lapse of the aforementioned XXX period up until the date on which the Full Development Permit is duly issued.

In addition, in any such case that the Full Development Permit is not issued within the said XXX time period for reasons not

attributable to the Emphyteuta, the Emphyteuta shall not be subject to the penalty as set out in clause 22.1(d).

If for any reason whatsoever, the Emphyteuta is not in possession of the said Full Development Permit/Building Permits within XXX from the date of this deed, the Government of Malta shall have the right to rescind this deed. In case of rescission, the Emphyteuta shall have no right to claim compensation from or against the Government of Malta for any expenses and/or damages incurred either directly or indirectly in relation to the Property.

Provided that if the said Full Development Permit/Building Permits is/are issued by the PA, the Emphyteuta shall give a copy of the said permit/s free of charge to the Commissioner of Land on behalf of the Government of Malta within fifteen (15) days from the date of its issue.

12.2 In the event that a Full Development Permit/Building Permits is/are issued by the PA, the Emphyteuta shall commence works within XXX of the issuance of such Full Development Permit/Building Permits.

12.3 The Emphyteuta shall, upon obtaining the Full Development Permit complete the development, restoration and embellishment of the Property as provided for in this deed and shall commence the operation of the permitted uses in accordance with this deed and within the parameters of and in accordance with the Full Development Permit/Building Permits and any other permit or authorisation required by law by not later than XXX. In the event that the Full Development Permit is not obtained within the XXX period stipulated in clause 12.1 for reasons not attributable to the Emphyteuta as set out in the same clause, the XXX shall be postponed by the equivalent number of days which would pass between the lapse of the aforementioned XXX period up until the date on which the Full Development Permit is duly issued

Provided that the postponement of the completion date provided for in this deed shall not apply in respect of the obligation of the emphyteuta to pay the full ground rent as established in clause 7.1 in full as from the XXX.

12.4 The development shall be overseen by the Architect indicated

by the Emphyteuta in his proposal, which Architect shall be engaged by and at the cost of the Emphyteuta.

Provided that any change of Architect shall be notified to the Government of Malta which shall in writing within ten (10) running days, approve or otherwise refuse the proposed substitution thereof.

12.5 The Emphyteuta shall invest a minimum sum of xxx on permanent improvements and shall complete the whole development to the full satisfaction of the Government of Malta within the time period stipulated in clause 12.3, save for any extension/s of the time limits stipulated in clause 12.1 as may become necessary, subject to any penalties which may be imposed in terms of this deed if so applicable.

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

12.7 The investment mentioned in subclause five of this clause twelve (12.5) shall be valued and certified by the Architect appointed in terms of subclause four of this clause twelve (12.4) and confirmed by the Commissioner of Land or his representative/s as a representative of the Government of Malta.

Provided that in case of disagreement between the Architect and the Commissioner of Lands or his representative/s mentioned in this subclause an independent Architect appointed by mutual consent and agreement of the Parties shall value the investments referred to in this subclause, whose valuation shall be final and binding on the Parties.

Clause 13 – Further Obligations of the Emphyteuta

13.1 The Emphyteuta shall further be responsible:

- i. to fully operate the Property for the permitted uses throughout the duration of the entire term of this emphyteutical grant;

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Clause 14 - Obligations and Charges Imposed by Law on Owners

14.1 The Emphyteuta shall be bound to comply with and to carry out any obligation or duty imposed by law on the owners of buildings or lands and this according to what is stated in Article one thousand five hundred and seven (1507) of the Civil Code (Chapter sixteen (16) of the Laws of Malta).

14.2 All burdens, taxes, rates, impositions or other charges whatsoever imposed by law on the owners of land shall during the continuance of the emphyteutical concession be paid by the Emphyteuta.

Clause 15 – Compliance with Law and Other Obligations

15.1 The Emphyteuta shall, at its sole cost and expense, comply with all legislation, rules, regulations, and administrative orders applicable to Malta, whether made by the Government or otherwise, now in force, or which may hereafter be in force, applicable to the Property and/or the operation of the Permitted Uses, and shall faithfully observe all conditions included in all licences, permits and authorisations issued to the Emphyteuta or for the Property in relation to the operation of the Permitted Uses, now in force or which may hereafter be in force. In particular but without prejudice to the generality of the foregoing, the Emphyteuta shall obtain and comply with all licenses and permits necessary for the use of the Property in accordance with the Permitted Use.

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

15.3 The Emphyteuta shall not cause damage to existing public services passing through, under or above the Property and when damage is caused or the temporary removal is necessary it shall be bound to re-instate same as soon as possible, at its own and sole expense. For the purposes of this clause, the Government nonetheless undertakes in favour of the Emphyteuta, which

accepts, to assist the Emphyteuta, at the Emphyteuta's own expense, by all lawful means possible as may be necessary for the removal and/or re-instatement of the said public services if the Emphyteuta itself, in spite of various attempts from its part, of which proof in writing shall be given to the Government, has failed to remove and/or re-instate the same. In such case the time limits imposed on the Emphyteuta in terms of this deed to complete the development of the Property and to commence the operation of the Project shall be extended by a time equivalent to the time that may be required for the removal and/or re-instatement of the said public services by the Government. The Emphyteuta is also presently and with immediate affect renouncing to any compensation and/or right of compensation for any expenses of whatever nature and/or to any claim and/or any action of whatever nature which it has and/or might have against the Government of Malta in relation to obligation undertaken by the Government by virtue of this clause.

15.4 All bills and charges relating to the Property including deposits, fees and charges for water, electricity, drainage, telephone and any other service or utility used in or upon or furnished to the Property incurred as from the date of this deed shall be paid by the Emphyteuta. The Parties confirm that they have together been on the Property to establish the reading of the water and electricity metres and of any other utilities as at the date of this deed and agree that the expense for the consumption of water, electricity and any other utility beyond the said reading shall, as from the date of this deed, be paid by the Emphyteuta.

Clause 16 - Permits, Licences and Authorisations

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

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

- i having made and duly filed all applications for the aforesaid permits, licences or authorisations which it is obliged to file,

which applications must be accompanied with all information, documents and details as are normally required by the appropriate authority; and

- ii having satisfied and/or complied with all requisites for the grant of such permits, licences or authorisations or any conditions which are imposed on it, such requisites and/or conditions being such as are within its reasonable power and control to satisfy and/or comply with.

Clause 17 – Financing

17.1 The Emphyteuta may not grant or create or suffer to subsist any security interests, whether by way of privilege, hypothec (whether general or special) or other real right, over the Property or any part thereof except:

- i for the purpose of obtaining financing through banking institutions and/or other entities which will lend, or through which finance will be made available to the Emphyteuta solely for the purpose of developing the Property as set out in this Deed;
- ii provided for in subclause five of clause seven (7.5);
- iii by operation of law;
- iv on such parts or the whole of the Property, for such purposes as the Government of Malta may otherwise consent, which consent must be in writing and may be given or withheld unreasonably and at its sole discretion.

17.2 For the avoidance of doubt, nothing in this deed shall be construed as prohibiting the Emphyteuta from granting or creating any security interest in any form whatsoever (including by way of privilege or hypothec) over any other assets of things of the Emphyteuta of whatever nature or kind other than over the Property.

17.3 Save as permitted by subclause one of this clause seventeen (17.1) no security interest shall be created over the Property by way of suretyship or for the purpose of guaranteeing any third

party obligation, liabilities or financing irrespective of the extent, nature or place of the activities carried out.

Clause 18 - Antiquities

18.1 The Emphyteuta shall give immediate notice to the competent authority of the discovery of any trace of objects or monuments of local antiquarian or archaeological importance (including but not limited to all old remains such as caves, tombs, wells, stonewalls, pottery, coins, bones and other objects of a similar nature) on the Property. Any find of such movables shall "ipso facto" become the property of the Government.

18.2 On obtaining information of each such discovery the Government shall have the right to access any part of the Property to which the finds purport to relate, for the purposes of causing the latter to be inspected by any person delegated for the purpose and on ascertaining the existence of such finds, the Government shall have the right to rescind the emphyteutical grant, on giving notice thereof to the Emphyteuta. In such event, the Emphyteuta shall be entitled to compensation only for the permit/s expenses and to the extent of the actual value of such works as it may have carried out on the site and at a valuation of the same to be made by the Commissioner of Land or his representative/s as a representative of the Government of Malta jointly with the Architect appointed by the Emphyteuta in terms of subclause four of clause twelve (12.4) of this deed, and it shall not be entitled to any other compensation of any sort;

Provided that in case of disagreement between the Architect and the Commissioner of Lands or his representative/s mentioned in this subclause an independent Architect appointed by mutual consent and agreement of the Parties shall value the investments referred to in this subclause, whose valuation shall be final and binding on the Parties.

Provided further that:

- (i) the Emphyteuta may nonetheless opt either to retain that part of the Property not affected by such finds with a

relative diminution of ground rent or where this is possible integrate such finds within the Property; and

- (ii) should action by any Government Agency or Department relative to any such discovery, cause any hindrance or delay in the progress of the works, a pro-rata reduction of ground-rent for the duration of such hindrance and delay and an extension of all applicable and relative time limits will become effective.

18.3 The dissolution of the emphyteusis for failure to give the said notice as provided for in this deed, shall not in any way diminish the liability of the Emphyteuta from any penal or other consequence deriving from the provisions of the Antiquities (Protection) Act.

18.4 The Emphyteuta shall nonetheless have itself the right to demand the rescission of the emphyteutical grant if it proves in writing that the retention by itself of that part of the Property not affected by the finds with a relative diminution of ground rent or the integration of such finds within the Property would render the development of the Property and/or the operation of the Permitted Uses not viable and/or unfeasible. In such event, the Emphyteuta shall be entitled to compensation only for the permit/s expenses and to the extent of the actual value of such works as it may have carried out on the site and at a valuation of the same to be made by the Commissioner of Land or his representative/s as a representative of the Government of Malta jointly with the Architect appointed by the Emphyteuta in terms of subclause four of clause twelve (12.4) of this deed, and it shall not be entitled to any other compensation of any sort;

Provided that in case of disagreement between the Architect and the Commissioner of Lands or his representative/s mentioned in this subclause an independent Architect appointed by mutual consent and agreement of the Parties shall value the investments referred to in this subclause, whose valuation shall be final and binding on the Parties.

Clause 19 – Access Rights

19.1 The Emphyteuta shall permit the Government of Malta or its representative/s at all reasonable times to have access to the Property and to the improvements thereon and when requested to do so the Emphyteuta shall give all possible facilities and aid to enable the Government of Malta or its representative/s to verify whether the conditions of the emphyteutical grant are being or have been complied with. In the event that the Emphyteuta defaults in its obligations under this clause, the Emphyteuta will incur a penalty of two hundred Euro (€200) for each and every occurrence.

Clause 20 – Insurance

20.1 The Emphyteuta shall within one (1) month from the issuance of a Completion Certificate, procure and keep in effect, at its expense, for the duration of the Emphyteutical Grant:

- A) a full insurance policy covering all Immovable Things at their full current replacement value, together with an amount equivalent to a year's ground rent, against loss or damage resulting from fire, lightning, tornado, storm, tempest, floods and explosions, bursting or overflowing of water tanks, apparatus or pipes, earthquakes and volcanic eruptions, subterranean fire, aircraft, impact, riots, strikes, malicious damage and other insurable perils and casualties as are commonly insured against, with respect to properties/premises of a similar character;
- B) a full public liability insurance which shall cover a minimum sum of XXX Euro (€XXX) relating to death of a person, or injury (including sickness), or loss or damage to third party property (including the Emphyteuta's employees), for every time that any of such events occurs, having a minimum aggregate limit in each insured period of XXX Euro (€ XXX);
- C) an employers' liability insurance which shall cover a minimum sum of XXX Euro (€XXX) in the event of death, injury, sickness, hsara fis-sahha jew kull indeboliment fis-

sahha fizika jew mentali jew marda hafifa of the Emphyteuta's employee/s, for every time that any of such events occurs having a minimum aggregate limit in each insured period of XXX Euro (€ XXX);

D) a 3rd party liability and professional indemnity insurance which is to cover any claims made by any other third party against the Emphyteuta.

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

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

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

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

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

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

Clause 21 – Interest

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

Clause 22 – Events of Default

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

- (a) if the Emphyteuta fails to pay the Ground-rent for three (3) years or if although it has made part payments in each year, a sum equal in amount to three (3) years’ ground-rent is still owed to the Government of Malta whether by way of ground-rent or interest thereon; or
- (b) if the Emphyteuta, for whatever reason, is not in possession within xxx from the date of this deed of the Full Development Permit and/or Building Permit/s for the Development of the Property and/or Completion of the Project as provided for in this deed;
- (c) if the Emphyteuta fails to obtain the necessary development and/or building permit/s with the PA within xxx from the date of this deed for reasons attributable to it.
- (d) subject to the provisions of clause 12.1 and to the other provisions in this deed extending the time limit for the completion of the development, restoration and embellishment of the Property, if the Emphyteuta fails, to complete the Development of the Property as provided for in this deed and commence the operation of the Permitted Uses in accordance with this deed and within the parameters of and in accordance with the Full

Development Permit/Building Permits by not later than xxx; or

- (e) if once commenced, the work in relation to the Property is interrupted for an aggregate period of xxx; or
- (f) if the Property is used for any purpose other than the Permitted Uses provided for in this deed, save for any exception/s provided for in this deed;
- (g) if the Emphyteuta fails to obtain and keep in full effect the insurance policy/ies it is required to keep in accordance with the terms of this deed; or
- (h) if the Emphyteuta becomes an Undesirable Person or if, either because of supervening circumstances or if because there is a change in either management or control of the Emphyteuta or in the beneficial ownership of an entity which determines management and control of the Emphyteuta becomes an Undesirable Person; or
- (i) if the Emphyteuta is in breach of any of the material conditions of this deed or any one of the conditions of this deed is not complied with; or
- (j) if the Emphyteuta encroaches on land outside the Property granted on temporary emphyteusis by virtue of this deed; or
- (k) if the Emphyteuta becomes insolvent; or
- (l) if a winding up order against the Emphyteuta is made by the Court or the appointment of a liquidator or provisional administrator; or
- (m) the passing of a resolution for the voluntary winding up of the Emphyteuta; or
- (n) the application for, or sanctioning by the Court of, a compromise or arrangement involving the Emphyteuta in terms of article three hundred and twenty-seven (327) of

the Companies Act, Chapter three hundred and eighty six (386) of the Laws of Malta; or

(o) if the Emphyteuta's implementation of the Project does not meet the contracted standards; or

(p) if the Emphyteuta fails to invest a minimum sum on permanent improvements to the Property as set out in clause twelve (12) of this deed.

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

22.2 The Government of Malta shall, prior to requesting the dissolution of the temporary emphyteusis on the basis of subclause one of this subclause twenty two (22.1), notify the Emphyteuta and any creditor/s and/or bank/s and/or financial institution/s which had granted any credit facilities to the Emphyteuta and the Emphyteuta duly informed the Government of Malta thereof, of the Government's intention to dissolve the temporary emphyteusis, by means of a judicial letter. Nonetheless, the Government of Malta shall grant the Emphyteuta a period of three (3) months to remedy and/or rectify any such breach.

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

Clause 23 – Surrender of the Property

23.1 On the termination of the Emphyteutical Grant by lapse of term, or on the dissolution or determination or rescission or earlier termination of the Emphyteutical Grant for any reason whatsoever and by whoever, the Emphyteuta shall surrender to the Government of Malta, the Property together with all

Immovable Things appertaining thereto whatsoever their value, with vacant possession save for any lawful recognised lessees, operators, managers or concessionaries, free and unencumbered, fully operational in a good state of repair, fair wear and tear excepted, according to law. The Emphyteuta shall have no right to compensation whatever may be the cause of the termination or dissolution or determination or rescission or earlier termination of the Emphyteutical Grant, unless otherwise provided for in this Deed.

Clause 24 – Third Party Rights

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

Clause 25 – Consents, Approvals or Directions required by the Emphyteuta

25.1 The Government and the Emphyteuta agree that all consents, approvals or directions which the Emphyteuta is required to obtain from the Government in terms of this Emphyteutical Grant shall be adequately obtained, if obtained in writing from the Commissioner of Land or any person or authority substituting the office of Commissioner of Land or otherwise nominated by the Government for this purpose.

Clause 26 – Performance Guarantee

26.1 The Emphyteuta is presently providing a bank guarantee in favour of the Government of Malta of XXX which guarantee shall be renewable yearly for the entire term of the Emphyteutical Grant. The Government shall be entitled to withdraw, the said

bank guarantee for any of the following reasons and in the below stated amounts:

(i) An amount of XXX Euro (€XXX) *per diem*, as liquidated damages for mere delay, if the Emphyteuta has not for reasons attributable to it failed to obtain the Full Development Permit/Building Permits within a period of XXX from the date of signing of this deed, until such day the Emphyteuta obtains such Full Development Permit/Building Permits;

(ii) An amount of XXX Euro (€XXX) *per diem*, as liquidated damages for mere delay, if development has not commenced within a period of XXX from the date of issue of the Full Development permit/Building Permits, until such day that the Emphyteuta effectively commences such development;

(iii) An amount of XXX Euro (€XXX) *per diem* as liquidated damages for mere delay, if the Development is interrupted for a period exceeding XXX (XXX), until such day that the interruption ceases.

(iv) An additional amount of XXX Euro (€XXX) *per diem*, as liquidated damages for mere delay, if the Development is interrupted for an aggregate period of more than XXX, running from the XXX week of such interruption until such day that the interruption ceases.

(v) An amount of up to XXX Euro (€XXX) *per diem* as liquidated damages for mere delay, if the Property is not in a Complete State by the XXX, or any extension thereof, until such day that the Property is in a Complete State.

(vi) An amount of XXX Euro (€XXX) *per diem* as liquidated damages if the Emphyteuta is in manifest breach of any of its contractual obligations, until such day as the manifest breach is effectively remedied.

(vii) An amount of XXX Euro (€XXX) as liquidated damages if the Emphyteuta abandons the Emphyteutical Grant or the operation of the Permitted Uses for any reason whatsoever.

(viii) Each time the Emphyteuta's resource levels are below what was agreed a penalty of €250 (two hundred and fifty) per incident is applied.

(ix) Failure to immediately effect replacement of personnel – €250 (two hundred and fifty) per incident.

(x) Failure to attend, investigate and effectively remedy any complaint made against the Emphyteuta's personnel within a maximum of one working day (eight hours) from issue of such complaint – €250 (two hundred and fifty) per incident.

(xi) Failure to comply with agreed upon policies and directives including but not restricted to those relating to parking, security, cleaning, safety, fire prevention and control, and environmental protection – €250 (two hundred and fifty) per incident.

(xii) Failure to provide Road Signs and/or Road Markings within 31 days from the day that such signage or road markings were requested in writing by Transport Malta or other relevant authorities – €250 (two hundred and fifty) per incident.

(xiii) Failure to tow a car within 45 minutes from the moment a violation of traffic policies has been observed – €250 (two hundred and fifty) per incident.

(xiv) If the number of unresolved incidents of damages to and thefts from cars in parking areas managed by the Concessionaire is greater than one unresolved incident per quarter (three months) – €250 for each incident above this number.

(xv) For each time any barrier is out of order for more than eight (8) hours a penalty of €200 (two hundred euro) is applied.

(xvi) For each time any Pay on Foot machine is out of order for more than eight (8) hours a penalty of €200 (two hundred euro) is applied.

(xvii) For each time any CCTV camera is out of order for more than eight (8) hours a penalty of €200 (two hundred euro) is applied.

(xviii) For each time any Pay on Foot machine is not programmed to accept new money (cash or coins) within 30 days of the issue in circulation of the new money, penalty of €100 (one hundred euro) is applied.

(xix) For each time cleanliness in any area of the facilities is not up to an acceptable standard, penalty of €200 (two hundred euro) is applied.

(xx) For each time a passenger lift is out of order for more than eight (8) hours, a penalty of €200 (two hundred euro) is applied.

(xxi) For each time burn-out light bulbs or equivalent are not replace within (4) hours a penalty of €200 (two hundred euro) is applied.

(xxii) Failure to properly maintain the facilities up to an acceptable standard – €200 (two hundred euro) per week until the situation is rectified.

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

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

Clause 27 – Indemnity

27.1 The Emphyteuta shall indemnify and/or keep the Government of Malta fully indemnified against all actions, proceedings, claims and demands brought or made against it, and against all losses, damages, costs, expenses (including legal fees and expenses) and liabilities incurred, suffered or arising directly

or indirectly in respect of or otherwise in connection with anything relating to the temporary emphyteutical grant.

Clause 28 – No Right of Compensation/Reimbursement

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

Clause 29 – Force Majeure

29.1 Without prejudice to subclause one of clause eleven (11.1), neither Party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from Force Majeure. Such delay and/or failure resulting from Force Majeure shall not constitute a breach of this deed and the time for performance of the concerned obligation shall be extended by a period equivalent to that during which performance has been prevented by Force Majeure.

Clause 30 – Severability

30.1 If any part, clause or provision, or any part thereof, of this deed shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If 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.

Clause 31 – Waivers

31.1 No waiver by any party (the “Non-Defaulting Party”) of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party (the “Defaulting Party”) of the same or any other breach. The Non-

Defaulting Party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of the Non-Defaulting Party's consent to or approval of any subsequent act by the Defaulting Party. The acceptance of ground rent or of any other dues under this Deed by the Government of Malta shall not be a waiver of any preceding breach by the Emphyteuta of any provision hereof other than the failure of the Emphyteuta to pay the particular ground rent or dues so accepted, regardless of the knowledge of the Government of Malta of such preceding breach at the time of acceptance of such ground rent or other dues.

Clause 32 – Applicable Law and Jurisdiction

32.1 This deed shall be read, governed by and construed according to the Laws of Malta and the parties hereby submit themselves to the exclusive jurisdiction of the Maltese Courts.

Clause 33 – Notices

33.1 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: **Government of Malta**
Address: Land Department,
Auberge de Bavière,
Saint Sebastian Street,
Valletta, Malta.
Attention: Commissioner of Land

Name:
Address:
Attention:

33.2 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 days after posting, unless otherwise proven.

33.3. For the avoidance of doubt, it is agreed that sub clause one of this clause thirty three (33.1) and subclause two of this clause thirty three (33.2) 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.

Clause 34 – Costs

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

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

Statutory Declarations

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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