

Before me, ..... , Notary Public in the ..... , duly admitted and sworn, have personally appeared and identified themselves, in accordance to law, by means of the hereunder mentioned official documents:

Deed No:

On first part:

Correctory  
Deed

....., who is appearing on this deed in the name of and in representation ..... of the Government of Malta, according to, hereinafter called 'the Government of Malta'. The related papers are marked.....

and  
Extension of  
Temporary  
Emphyteusis

On the second part:

....., who is appearing herein for and on behalf of M.C.P. Company Limited with company registration number ....., as duly authorized by means of....., hereinafter referred to as the 'emphyteuta'.

Ins:

On:

On the third part:

..... who is/are appearing herein as guarantor/ guarantors in solidum with the emphyteuta.

On the fourth part:

..... commissioner of Inland Revenue duly authorised to appear in the name and in representation of the Government of Malta by virtue of ....., hereinafter referred as the 'Director General Inland Revenue.'

The Government of Malta and the emphyteuta are also at times referred collectively on this deed as "the parties".

The parties hereto were duly identified by me Notary according to law.

**First Part:-**

(1) First of all, the parties to this deed refer to the deed in the acts of Notary Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) entered into between the Government of Malta and Joston Company Limited whereby the Government of Malta granted on temporary emphyteusis to Joston Company Limited for a period of fifty (50) years to be reckoned from the date of the deed, the immovables at Floriana shown on Plan Land Department fifty bar ninety one bar letter A (LD 50/91/A) incorporating site plan marked letter "X" annexed to the deed consisting of:-

(i) the airspace of a plot of land up to the level of Great Siege Road marked in blue on the plan attached to the deed to be excavated and utilized below the above mentioned street level having an area of circa eight thousand seven hundred and twenty (8720) square metres and bounded on the south west by Great Siege Road, on the south by Saint Anne Street and on the east by Nelson Road. The reference to the level of Great Siege Road was to be interpreted as the level obtaining along the whole stretch of the said road.

(ii) the airspace of a plot of land up to the level of four point five metres (4.5m) above the adjacent level of Sarria Street marked in red and indicated with the letter "B" on the plan attached to the deed having an area of circa thirty seven (37) square metres and bounded north with Sarria Street, south and west with the immovable granted in one (i) above and four (iv) below to be utilised exclusively as a control room.

(iii) the airspace of a plot of land from the level of Great Siege Road up to the level of four point five metres (4.5m) above the adjacent level of Great Siege Road marked in red and indicated with the letter "A" on the plan attached to the deed having an area of circa one hundred and twenty three square metres and bounded on the west by Great Siege Road north and east by immovables granted on temporary emphyteusis in one (i) above and four (iv) below to be utilised as a petrol station.

(iv) the airspace of a plot of land above the level of Great Siege Road marked in green on the plan attached to the deed having an area of circa seven thousand four hundred and fifty (7450) square metres and bounded on the west by Sarria Street, east by Nelson Road and south by Saint Anne Street to be utilised exclusively for the parking of motor-vehicles and granted on temporary emphyteusis with the express condition that no buildings or constructions of whatsoever nature can be made on the said land. This prohibition was to be interpreted in the most absolute manner. The reference to the level of Great Siege Road was to be interpreted as the level obtaining along the whole stretch of the said road. The immovables described in (i) and (iv) above are partly overlying and underlying each other.

In the said deed in the records of Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991), the above sites were referred to as the 'emphyteutical land'.

The said grant on temporary emphyteusis was made and accepted, as subject to the terms and conditions stipulated in the said deed and also in consideration of the yearly temporary groundrent of twenty three thousand two hundred and ninety three Euro and seventy three cents (€23,293.73) payable yearly in advance, revisable after the first twenty five years according to the index of inflation published for the purposes of article 10C (ten letter C) of the Housing (Decontrol) Ordinance one thousand nine hundred and fifty nine (1959), or should this law be no longer in force according to the current index of inflation applicable at that time.

(2) The parties to this deed also make reference to the deed in the acts of Notary Pierre Falzon dated twentieth (20<sup>th</sup>) day of November of the year one thousand nine hundred and ninety two (1992) whereby Joston Company Limited sold and transferred the remaining term of the above-mentioned temporary emphyteutical grant to MCP Co Ltd formerly J&K Co Ltd, which was recognised by Government of Malta as the new emphyteuta of the emphyteutical land granted on temporary emphyteusis by virtue of the said act in the records of Notary Doctor Vincent Miceli dated the twenty fifth (25<sup>th</sup>) July of the year one thousand nine hundred and ninety one (1991) referred to above.

(3) The parties to this deed also make reference to the deed in the acts of Notary Pierre Falzon dated twenty second (22<sup>nd</sup>) day of February one thousand nine hundred and ninety nine (1999) whereby MCP Company Limited sold, transferred and conveyed to Joston Company Limited for the remaining period from the original concession of fifty (50) years which started on the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) the airspace of a plot of land including the permanent fixtures included thereon, having an area of circa two hundred and seventy five square metres (275 sq. m) as shown on the plan annexed to deed marked document letter 'B' which land is situated in Floriana, and has access and frontage on Great Siege Road, being bounded said land on the West by said street, on the North and East by property of MCP Company Limited as subject to the temporary groundrent of six hundred ninety eight Euro and eighty one cents (€698.81), being otherwise free and unencumbered with all its rights appurtenances, which land comprised the area of one hundred and twenty three square metres (123 sq.m) to be utilized as a petrol station. Included in the sale was also the building of the structure tale quale, which was to house a petrol station in terms of the plans which were annexed thereto and marked document letter 'D'. The said structures were to be made of aluminium/metal and glass, could be extended up to one metre (1 metre) backwards, from point X to point Y as shown on the plan annexed to the said deed marked document 'B' already referred to. The said property is subject to all the terms and conditions of the aforementioned deed in the records of Notary Dr. Pierre Falzon of twenty second (22<sup>nd</sup>) day of February one thousand nine hundred and ninety nine (1999) referred to above.

(4) The parties to this deed also make reference and acknowledge the differences and/or discrepancies which presently exist between the actual physical extent of the emphyteutical land and improvements thereon and the emphyteutical land as described in the deed in the records of Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991), which differences and/or discrepancies were unforeseen at the time of the said deed but resulted as being necessary for the construction and/or completion of the works on the said emphyteutical land.

(5) Since it had been established that the description of the emphyetutical land provided for in the deed of Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) should be:

the immovables at Floriana shown on Plans Property Drawing two thousand and twelve underscore seven hundred and twenty seven (P.D.2012\_727); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter B (P.D.2012\_727B); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter C (P.D.2012\_727C); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter D (P.D.2012\_727D); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter E (P.D.2012\_727E); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter F (P.D.2012\_727F) which plans are marked respectively as documents letters 'L', 'M', 'N', 'O', 'P', 'Q', 'R' consisting of:

(i) the property up to the level not exceeding one point two metres (1.2m) from the highest point of intersection between Great Siege Road and Vjal ir-Re Dwardu VII marked in blue on the attached plans Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter B (P.D.2012\_727B); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter C (P.D.2012\_727C); Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter D (P.D.2012\_727D) referred to above excavated and utilized below the above mentioned street level having an area of circa eight thousand nine hundred and thirty three square metres (8933sq.m) and bounded on the south west by Great Siege Road, on the south and/or South East by Saint Anne Street and on the east by Nelson Road.

(ii) the property up to the level of four metres (4m) above the adjacent level of Vjal ir-Re Dwardu VII marked in red and indicated with the letter "A" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A)

attached to the deed having an area of circa forty two square metres (42sq.m) and bounded north west with Vjal ir-Re Dwardu VII , south and west with the immovable granted in on temporary emphyteusis in articlers one (i) above and sixteen (xvi) below to be utilised exclusively for a pedestrian staircase access. The extent of the overlying canopy may only be extended up to the extent indicated as dashed in red on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A).

(iii) the property up to the level of four point five metres (4.5m) above the adjacent level of Great Siege Road marked in red and indicated with the letter "B" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa two hundred and ninety seven square metres (297sq.m) and bounded on the south west by Great Siege Road, north and east by immovables granted on temporary emphyteusis in one (i) above and sixteen (xvi) below to be utilised as a petrol station.

(iv) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of four metres (4m) marked in red and indicated with the letter "C" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa sixty one square metres (61sq.m) bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a staircase and/or lift shaft/lift and/or ventilation shafts.

(v) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of three metres (3m) marked in red and indicated with the letter "D" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa one hundred and fourteen square metres (114sq.m) bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a staircase and/or lift shaft/lift and/or ventilation shafts.

(vi) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of two metres (2m) marked in red and indicated with the

letter "E" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa sixty five square metres (65sq.m) bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a staircase and/or lift shaft/lift and/or ventilation shafts.

(vii) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of two metres (2m) marked in red and indicated with the letter "F" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa sixty five square metres (65sq.m), bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a staircase and/or lift shaft/lift and/or ventilation shafts.

(viii) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of two metres (2m) marked in red and indicated with the letter "G" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa sixty one square metres (61sq.m) and bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft.

(ix) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of two metres (2m) marked in red and indicated with the letter "H" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa one hundred and forty two square metres (142sq.m) and bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft.

(x) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of two metres (2m) marked in red and indicated with the letter "I" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa fifty three square metres (53sq.m) and bounded from all compass points with the immovables

granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft.

(xi) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of one metre (1m) marked in red and indicated with the letter "J" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa twenty two square metres (22sq.m) and bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft.

(xii) the property from the lowest level of Great Siege Road up to the level of one point five metres (1.5m) marked in red and indicated with the letter "K" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa twenty six square metres (26sq.m) and bounded from the north, north east, north west with the immovables granted on temporary emphyteusis by virtue of this deed and south with Saint Anne Street to be used exclusively as a ventilation shaft.

(xiii) the property from the highest level of Saint Anne Street up to the level of one point five metres (1.5m) marked in red and indicated with the letter "L" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa nineteen square metres (19sq.m) and bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft.

(xiv) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of four point eight metres (4.8m) marked in red and indicated with the letter "M" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa twenty two square metres (22sq.m) and bounded from all compass points with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a ventilation shaft and/or lift/lift shaft.

(xv) the property from the highest level of Vjal ir-Re Dwardu VII up to the level of four point eight (4.8 m) marked in red and indicated with the letter "N" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa twenty square metres (20sq.m) and bounded from all compass points with with the immovables granted on temporary emphyteusis by virtue of this deed to be used exclusively as a kiosk.

(xvi) the property above the level of Great Siege Road marked in green on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter A (P.D.2012\_727A) attached to the deed having an area of circa nine thousand three hundred and twenty nine square metres (9329sq.m) and bounded on the north west by Vjal ir-Re Dwardu VII, east by Nelson Road and south east by Saint Anne Street to be utilised exclusively as provided for in article fifteen (15) here-under with the exception of the structures provided for from subarticle (ii) to subarticle fifteen (xv), both subarticles included, of this article (the use of the structures is already indicated in the above-subarticles) and save also for the creation of accesses to and exists from the car park as described in this deed.

The immovables described in subarticles (i) and sixteen (xvi) above are partly overlying and underlying each other.

(xvii) the tunnel which leads from level minus six (-6) of the property here-above described to an unnamed road abutting into Triq it-Telghet il-Kurcifiss, Floriana, marked in magenta Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter F (P.D.2012\_727F), which tunnel has an area of circa one thousand two hundred and thirty square metres (1230sq.m) and is bounded from all compass points with property of the Government of Malta.

and not as described therein, now therefore in virtue of this deed the parties hereto are correcting the said deed in the records Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) in the sense that the description of the emphyteutical land as described in the deed of

Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) should be as provided here-above in this article and as indicated in the plans referred to in this article.

(6) Save for the above correction, the parties to this deed are confirming all the other terms and conditions of the deed in the acts of Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991), which terms and conditions remain valid and unimpaired.

#### Second Part:

(7) Since it is Government's intention to embellish and upgrade the area leading to Valletta; and whereas the Government and the emphyteuta have agreed to embellish and upgrade the emphyteutical land as described in the deed in the records Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) as corrected by the first part of this deed and also to address:-

(i) the re-organisation of pedestrian traffic management;

(ii) the re-organisation of vehicular traffic management;

(iii) to provide a stand for electric cabs for public users in level minus one (-1) of the car park;

(iv) to improve the general operation of the car park in order to enhance and facilitate the vehicles' parking process and the manner to get to Valletta;

(v) to redesign the natural ventilation systems in the car park; and

(vi) to provide and maintain the extensive landscaping as a place of recreation offered to the public in general;

the Government and the emphyteuta have agreed to enter this deed to achieve the afore-mentioned aims.

(8) Now therefore, by virtue of the second part of this deed, the Government of Malta is hereby extending the term of the temporary emphyteusis provided for in the deed in the records of Notary Doctor

Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) in favour of the emphyteuta, who accepts, for a further period of sixty five (65) years to be reckoned from the twenty fourth (24<sup>th</sup>) day of July of the year two thousand and forty one (2041) with respect to the emphyteutical land with all its rights and appurtenances as described in article five (5) in the first part of this deed and as indicated in the plans referred to in the said article.

(9) The extension of the temporary emphyteusis provided for under article eight (8) of this deed is however being granted by the Government of Malta in favour of the emphyteuta, who accepts, under the specific condition that on the (24<sup>th</sup>) day of July of the year two thousand and forty one (2041) the groundrent burdening the emphyteutical land described in article eight (8) of this deed shall be increased to a yearly temporary groundrent of two hundred thousand Euro (€200,000) payable in advance and from then onwards the said *pro-tempore* ground rent shall be increased every ten (10) years, which increase shall be based on the proportionate increase in the index of inflation or ten percent (10%) of the *pro-tempore* ground rent whichever is the higher. In view that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be those for the preceding year, both in respect of the basis year and the year of the revision. However the base index for the first revision shall be that of the year two thousand and eleven (2011).

(10) Save for the afore-mentioned condition, the emphyteutical land referred to in article eight (8) and as described in article five (5) of this deed shall be subject to the conditions provided for in the already referred to deed of temporary emphyteusis in the records of Notary Doctor Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) and to the conditions stipulated here-under in this deed, and consistently with them to the provisions of the law of emphyteusis.

(11) Provided further that if there exists a discrepancy or in case of conflict between the conditions provided for in the deed of temporary emphyteusis in the records of Notary Doctor Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred

and ninety one (1991) and the conditions stipulated here-under in this deed, the conditions stipulated here-under in this deed shall prevail.

(12) Now therefore, as from the day of this deed the emphyteutical land shall be governed in addition to the conditions provided for in the deed in the records of Notary Doctor Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) by the following conditions provided for in this deed from article thirteen (13) onwards and consistently with them by the provisions of the law of emphyteusis as from the day of this deed. The conditions are the following:

(13) The emphyteutical land shall be used as a public car park and for other ancillary uses and for commercial uses as set out in article sixteen (16) hereunder. The emphyteuta binds itself to keep the emphyteutical land used as a fully functional car park for the whole term of emphyteusis.

(14) For all intents and purposes and for clarity's sake, the emphyteuta declares that parts of the emphyteutical land described in this deed are presently being used as a multi storey car park which accommodates at least one thousand (1000) cars.

(15) The emphyteuta shall roof over the present open areas of the existing car park as approved by Malta Environment and Planning Authority (MEPA) or any authority replacing it and shall landscape and embellish the surface (roof) in accordance with the Environmental Landscape Consortium's reasonable standards and guidance.

(16) The emphyteuta shall situate the cash office and all utility shops/outlets/areas at level minus one (-1) of the car park, as marked in orange and indicated with the letter "O" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter B having an area of circa nine hundred and seven square metres (907sq.m). The utility shops/outlets/areas shall only be used for sports and leisure facilities, and for car valeting services and similar motor vehicle related activity. Nonetheless, spray-painting, panel beating and mechanical servicing are expressly prohibited.

(17) The administration office shall be situated adjacent to the entrance of the car park at level minus one (-1) as marked in orange

and indicated with the letter "P" on the plan Property Drawing two thousand and twelve underscore seven hundred and twenty seven letter B having an area of *circa* ninety two square metres (92sq.m)

(18) The emphyteuta binds itself to develop an additional four hundred and two (402) new parking spaces, thereby providing a total of one thousand five hundred and fifty one (1,551) parking spaces within six (6) floors.

(19) The emphyteuta binds itself to situate a station for electric cabs at level minus one (-1) of the car park.

(20) The emphyteuta shall keep the improvements at all times in a good state of repair according to law and to the satisfaction of the Commissioner of Land, and on the expiration or rescission of the emphyteusis, he shall relinquish the property and any permanent improvements thereon in a good state of repair. Any damage occurring not only through ordinary causes but also through fortuitous, extraordinary and unforeseen circumstances or by Act of God, shall be made good by the emphyteuta or his successors in title who shall be bound to reconstruct if necessary any portion of the said tenement, or the whole tenement, at its own expense.

(21) The emphyteuta shall be obliged to provide and/or make available in favour of the Government of Malta which accepts facilities for the parking of one hundred cars [one hundred (100) car spaces], subject to car park rules, for the whole duration of the period of the temporary emphyteutical grant against the payment by the Government of Malta for such provision of a sum of three million and two hundred and forty four thousand and sixty three Euro (€3,244,063). Together with the said sum, the Government of Malta shall pay the emphyteuta interest at six percent (6%) per annum over the balance that may still be due. The said sum together with relative interest shall be payable in equal quarterly installments over a period of ten (10) years from this deed.

(22) The emphyteutical land is being granted by the Government of Malta and accepted by the emphyteuta without vacant possession and with all its rights and appurtenances, *tale quale* and with the exclusion of the warranty against hidden/latent defects. The whole emphyteutical land is being accepted by the emphyteuta as subject to all existing servitudes.

(23) Any areas which in a future development permit are defined or destined as an open public space or open to the public shall be so maintained at the expense of the emphyteuta. The emphyteuta shall be responsible for all embellishment, landscaping and maintenance of such areas for the whole duration of the concession in accordance with the Environmental Landscape Consortium's reasonable standards and these have to be always subject to the supervision and satisfaction of Government. Should the emphyteuta default in its obligations under this article, the emphyteuta shall if he fails to remedy such default within a reasonable time after being called to do so in writing, be liable to pay a penalty of three hundred Euro (€300) per day until such time as the emphyteuta continues to perpetrate in such default and the emphyteuta shall also remain liable to perform such obligation in accordance with this article. This obligation shall subsist in respect of any pro tempore development permit.

(24) The emphyteuta shall not transfer or otherwise dispose of the emphyteutical land or grant on lease the emphyteutical land or improvements thereon either in whole or in part except for the cash office and the utility shops/outlets/areas mentioned in article sixteen (16), without first obtaining the written consent of the Commissioner of Land, which consent shall not be unreasonably withheld or delayed. The transfer in one or more transactions which together are in excess of twenty-five per centum of the shares of the company from the share holders existing on the date of the emphyteutical grant or successors in title, to persons who are not descendants of these shareholders will be considered as a transfer of the emphyteutical concession.

(25) Should the emphyteuta be allowed to dispose of his interest as provided under the preceding article, he shall not impose in his favour any additional groundrent or yearly burden and a fine "laudemium" equivalent to one year's groundrent shall be due to Government. In case of a share transfer as contemplated above, the laudemium due shall be in proportion to the share transfer effected.

(26) The transferee shall within thirty (30) days of transfer/s as provided here-above, inform the Commissioner of Land on behalf of the Government of Malta of such transfer by registered letter and cause a copy of the relative deed to be forwarded to the Commissioner of Land free of charge. Should the transferee fail to give a copy of the deed of

transfer to the Commissioner of Land and/or fail to pay the said "laudemium" within thirty (30) days of the relative deed of transfer he shall be liable to a fine of five hundred Euro (€500) in each eventuality over and above the payment of the said "laudemium" and besides the actual performance of the obligation.

(27) If the emphyteuta, being a company or its successor/s in title if it be a Company, transfers an excess of twenty five percent (25%) of its ordinary shares during the first four (4) years from the date of this deed, then a premium shall be paid to Government on the value of the shares transferred. The premium to be paid shall be a sum equivalent to ten percent (10%) of the value of the said share transfer.

(28) Save as provided elsewhere in this deed, the emphyteuta shall not be entitled for any reimbursement of any expenses incurred in the carrying out of any obligations undertaken to be performed by virtue of this deed. This provision shall apply both on the expiry of the temporary emphyteutical grant and also in case of an early termination of the temporary emphyteutical grant. On the expiry, termination or determination or dissolution of this emphyteutical concession for any reason whatsoever, the emphyteuta shall hand to the Government the emphyteutical land with all improvements and works which the emphyteuta may have carried out, in good state of repair according to law and to the satisfaction of the Commissioner of Land without the emphyteuta having any right to claim any compensation for such improvements.

(29) The emphyteuta shall insure and keep insured during the emphyteutical grant, at its own expense, the immovable existing and/or erected on the emphyteutical land to their full current replacement value, together with an amount equivalent to a year's ground rent, for damages resulting from fire, lightning, tornado, storm, tempest, floods and explosions, bursting or overflowing of water tanks, apparatus or pipes, earthquakes and volcanic eruptions, subterranean fire, aircraft, impact, riots, strikes, malicious damage and other insurable perils and casualties as are commonly insured against, with respect to premises of a similar character.

(30) 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. The emphyteuta shall ensure that the sums to be insured and the indemnity limits are adequate throughout the period of the emphyteutical grant.

(31) The Government of Malta may at all times request the emphyteuta to produce proof that such insurance has been validly effected. The emphyteuta shall ensure that the any creditor/s and/or bank/s and/or financial institution/s which had granted any credit facilities and the Government of Malta are named as beneficiaries in the insurance policy and that any sums recoverable there under shall first be applied to make good any losses suffered by such creditor/s and/or bank/s and/or financial institution/s which had granted any credit facilities in favour of the emphyteuta and then be applied to make good any losses suffered, by the Government of Malta.

(32) If the emphyteuta fails to insure as so bound by this deed, it shall be responsible for any damages arising.

(33) The emphyteuta shall be entitled to make excavation works on the emphyteutical land.

(34) 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 on the emphyteutical land. Any find of such movables shall "*ipso facto*" become the property of the Government of Malta.

(35) On obtaining information of each such discovery the Government of Malta shall have the right to access any part of the land 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 of Malta shall have the right to rescind the temporary emphyteutical grant, on giving notice thereof to the emphyteuta. In any such event, the emphyteuta shall be entitled to compensation only for and to the extent of the actual value of such works as it may have carried out on the whole emphyteutical land and at a valuation of the same to be made by the Government of Malta, and it shall not be entitled to any other compensation of any sort, provided that the emphyteuta may opt either to retain that part

of the emphyteutical land subject matter of the temporary emphyteutical grant that is not affected by such finds with a relative diminution of ground rent or where it is possible integrate such finds within the project. Provided further that 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.

(36) The emphyteuta binds itself to take all necessary precautions to safeguard the structure and stability of the Air Force War Memorial abutting the whole emphyteutical land.

(37) The dissolution of the emphyteusis for failure to give the said notice as provided for in this contract, 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.

(38) The emphyteuta shall permit the Commissioner of Land or his representative at all reasonable times to have access to the emphyteutical land and to the improvements thereon and when requested to do so the emphyteuta shall give all possible facilities and aid to enable him to verify whether the conditions of the temporary emphyteutical grant are being or have been complied with. If the emphyteuta wilfully or through negligence hinders the Commissioner of Land or his representative from entering and inspecting the emphyteutical land the emphyteuta shall be liable to a penalty of two hundred Euro (€200) for each and every time such Commissioner of Land or his representative shall not have been able so to do through the fault, negligence or omission of the emphyteuta.

(39) 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 including the obligation to carry out the necessary repairs and maintenance of the buildings and structures. 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 or its successor/s in title.

(40) Any improvements, alterations or introduction of new services that may be necessary shall be at the sole responsibility and shall be carried out at the expense of the emphyteuta, and save as provided elsewhere in this deed without any right of compensation from the Government. This does not exempt the emphyteuta from obtaining all necessary permits and abiding by all local building rules and regulations that may be in force from time to time. The emphyteuta shall be bound to abide by the laws and regulations concerning the erection of buildings in force from time to time, and shall not be exempted from the obligation of obtaining any permit and/or licence required thereunder.

(41) The emphyteuta shall not subject the whole emphyteutical site to any kind of easement.

(42) The emphyteuta shall keep in good repair and condition all roads now or hereafter set apart for the exclusive use of the emphyteuta.

(43) The emphyteuta shall not permit oil, grease, trade wastes or other deleterious matter to enter the drains and sewers of the Government and to employ such plant for treating any deleterious affluent before permitting the same to enter such drains and sewers as may be reasonably required by the Commissioner of Land from time to time.

(44) The Government of Malta is entitled to dissolve this deed in the following cases:

(i) if the emphyteuta makes a different use of the whole emphyteutical land from that mentioned in this deed or if the car park is closed and no longer in operation, provided however that closure of the car park for a time considered to be reasonable for the purposes of refurbishment and maintenance works or closure due to *force majeure* shall not constitute an infringement as provided for above.

(ii) if the emphyteuta does not pay the ground rent for two (2) two consecutive years or is in arrears in the payments for a sum equivalent to two (2) years groundrent;

(iii) if the emphyteuta is in breach of any of the material conditions of this deed or any conditions of this deed is not complied with;

(iv) if the emphyteuta encroaches on land outside the area granted on temporary emphyteusis by virtue of this deed.

(45) In case of an early termination of the emphyteusis with the consent of both parties to this deed or due to no fault of the Emphyteuta , provided the emphyteuta is to the satisfaction of the Government of Malta not in breach of any conditions provided for in this deed and in the deed in the acts of Notary Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup> ) day of July of the year one thousand nine hundred and ninety seven (1991), the said termination shall not prejudice the emphyteuta's right to claim compensation for any improvements erected on the emphyteutical land by the emphyteuta himself. The termination provided for in this article shall nonetheless be subject to the written consent of any creditor/s and/or bank/s and/or financial institution/s which had granted credit facilities and have secured guarantees burdening the emphyteutical land.

(46) The Government of Malta shall, prior to requesting the dissolution of the temporary emphyteusis on the basis of article forty four (44), 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 had 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.

(47) The Government of Malta shall also give the said creditor/s and/or bank/s and/or financial institution/s a sixty (60) day written pre-advice by means of a registered letter of its intention to dissolve the temporary emphyteusis on the basis of article forty four (44) of this deed. Provided however that the Government of Malta shall not have the right to dissolve the temporary emphyteusis if judicial proceedings shall have been instituted by any such creditor and/or bank and/or financial institution against the emphyteuta before the expiration of the said sixty (60) day period, if the latter is in breach of its obligations in favour of such creditor and/or bank and/or financial institution. The said creditor and/or bank and/or financial institution shall not be prohibited from proceeding to the judicial sale by court auction of the emphyteutical land or other enforcement of security rights. The

consents required by the Government of Malta under clause twenty four (24) and the laudemium payable as specified in clause twenty five (25) would not be applicable in this case.

(48) Besides the dissolution of the emphyteusis for any of the reasons stated under article forty four (44), the Government shall have the right to enforce and exact any penalties established under the foregoing conditions and incurred by the emphyteuta up to the date of dissolution and to claim damages arising both from non-compliance to any condition and from the dissolution of the emphyteusis.

(49) 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 and liabilities incurred, suffered or arising directly or indirectly in respect of or otherwise in connection with anything relating to the temporary emphyteutical grant.

(50) The emphyteuta shall not cause any damage to existing public services passing through, under or above the emphyteutical land and when damage is caused or the temporary removal is necessary it shall be bound to reinstate same as soon as possible at its sole expense. The emphyteuta shall be allowed to dig further downwards and/or adjacently at its own expense to the emphyteutical land, provided that the land which is situated downwards and/or adjacent to the emphyteutical land is Government property. Such digging shall nonetheless be subject to Government's approval and/or any other competent authority, which approval shall not be unreasonably withheld. Such digging shall also be subject to government supervision.

(51) The Government of Malta binds itself in favour of the emphyteuta who accepts not to make available land and/or build up property and/or finances either directly or indirectly any projects for the building of new car parks in the Valletta or Floriana area during the first ten (10) year period from this deed following the completion of the works of the car park as provided for in this deed. This clause does not apply for land and/or build up property which is already in the process of obtaining a permit from the Malta Environment and Planning Authority (MEPA) for the construction of a car park or for which a

Malta Environment and Planning Authority's (MEPA's) permit had already been issued for the construction of a car park and also with respect to any underground parking in the Saint Elmo area and it also does not apply to properties/developments which incorporate a car park within them.

(52) In order to secure the payment of the said groundrent and the proper performance of all the obligations undertaken by the emphyteuta, the emphyteuta is hypothecating in favour of the Government all its property in general present and future and this besides a special legal hypothec on the temporary utile dominium of the emphyteutical land and on the improvements which may be constructed thereon.

(53) In case that the emphyteuta is a company, at least one of the directors or such person/s (not being a company) as may be acceptable to Government of Malta shall constitute himself/herself as a guarantor/s, in favour of the Government of Malta, for the payment of the groundrent; damages; expenses; any other payment/s and for any obligation/s which might be incurred by the Government either directly or indirectly in relation to the emphyteutical grant and also for the observance of the terms and conditions of this deed and this only for the first five (5) years from this deed or until the works set out in article sixteen (16), article seventeen (17), article eighteen (18) and article nineteen (19) are completed whichever is the earlier. The guarantor/s mentioned may be substituted provided that such substitution is to the satisfaction of the Government of Malta. For the purposes of this article the "guarantor and/or guarantors insolidum" is/are constituting himself/themselves as "guarantor and/or guarantors insolidum" with the emphyteuta for all the obligations emanating from this deed and for this purpose the "guarantor and/or guarantors insolidum" hypothecate/s all their property present and future in favour of the Government of Malta, which accepts.

(54) The Commissioner of Inland Revenue shall allow the emphyteuta to claim a deduction for the wear and tear of the car park applicable to plant and machinery in terms of Article fourteen (14) subarticle one (1) letter (f) of the *Income Tax Act* at the prescribed rate of ten per cent (10%) per annum both for the car park as existing in its current state

and also subsequent to the projected development thereof and undertakes to grant such deductions in terms of the *Income tax Act*.

(55) Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with Part four (IV) (Domestic Arbitration) of the Malta Arbitration Act and the arbitration rules of the Malta Arbitration Centre as at present in force. For the purpose of this article, in case of dispute, conflict or claim:-

(i) the number of arbitrators shall be three;

(ii) the appointing authority shall be the Malta Arbitration Centre;

(iii) the place of arbitration shall be Malta and the proceedings shall be in the Maltese language;

(iv) the applicable substantive law shall be the Maltese Law.

(56) For all intents and purposes and for clearance sake, it is hereby declared by the parties on this deed that up till the twenty fourth (24<sup>th</sup>) day of July of the year two thousand and forty one (2041), the emphyetutical land shall remain subject to the terms and conditions stipulated in the deed by Notary Pierre Falzon dated twenty second (22<sup>nd</sup>) day of February one thousand nine hundred and ninety nine (1999), referred to in the first part of this deed and a copy of which is here being annexed as document 'S', for ease of reference.

(57) For all intents and purposes and for clarity's sake, it is hereby declared by the parties on this deed that article ten (10) of the deed in the records of Notary Doctor Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) referred to above in this deed is hereby being removed.

(58) For all intents and purposes and for clarity's sake, it is hereby declared by the parties on this deed that any limitation with respect to roofing provided for in the records of Notary Doctor Vincent Miceli of the twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) referred to above in this deed is hereby being removed.

### Third Part:

(59) The emphyteuta may dig and construct a tunnel for pedestrian access EITHER under Sarria Street leading from the car park to Vjal Re Dwardu and from Vjal Re Dwardu to the car park OR from/to any vantage points in the Floriana area, which obligation however shall only come into force if a relative permit is issued in this regard by the Malta Environment and Planning Authority (MEPA) in favour of the emphyteuta, following the filing of application by the same for the issue of such permit.

(60) If the said permit is issued by the Malta Environment and Planning Authority (MEPA), the emphyteuta shall give a copy of the said permit 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 and shall start the relative works within six (6) months from the date of its issue.

(61) The emphyteuta shall apply for the Malta Environment and Planning Authority's (MEPA's) permit in accordance with Malta Environment and Planning Authority's policies within twelve (12) months from the date of this deed. The application must be in accordance to Malta Environment and Planning Authority's (MEPA's) policies and regulations. Proof of such application must be given by the emphyteuta to the Government of Malta within forty (40) days on demand thereof by the Government of Malta.

(62) On completion of the said works the emphyteuta shall supply the Government of Malta with a "completion certificate" issued by the architect in charge of the project.

(63) Upon completion of works for the construction of the tunnel referred to under article fifty nine (59), the Government of Malta undertakes and binds itself to enter into a deed of temporary emphyteusis whereby the said tunnel shall be granted by the Government of Malta on temporary emphyteusis in favour of the emphyteuta which in turn undertakes and binds itself to acquire the said tunnel by same title of temporary emphyteusis, for a period up to the twenty fourth (24<sup>th</sup>) day of July of the year two thousand one hundred and six (2106) to be reckoned from the day of the deed. The Government of Malta and the Director General Inland Revenue

declare that this promise of transfer and acquisition is exempt from registration under the terms of Chapter three hundred and sixty four (364) of the Laws of Malta and the relevant regulations.

(64) By virtue of the said deed to be entered into by the Government of Malta and the emphyteuta, the tunnel referred to under article fifty nine (59) of this deed shall become part of the emphyteutical land as referred to in the second part of this deed and shall also be governed by the terms and conditions of the deed in the records of Noatry Doctor Vincent Miceli dated twenty fifth (25<sup>th</sup>) day of July of the year one thousand nine hundred and ninety one (1991) referred to above in this deed and to the terms and conditions of this deed.

(65) The annual temporary groundrent burdening the said tunnel referred to under article fifty nine (59) of this deed shall be six hundred and thirty Euro (€630), payable yearly in advance and which groundrent shall be increased in the following manner:

(66) On the twenty fifth (25<sup>th</sup>) day of July of the year two thousand and sixteen (2016), the groundrent shall be revised and the said revision shall be based on the proportionate increase in the index of inflation or (10) ten percent of the pro-tempore ground rent whichever is the higher. In view that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be those for the preceding year, both in respect of the basis year and the year of the revision. However the base index for the first revision shall be that of the year two thousand and eleven (2011); and

(67) On the twenty fourth (24<sup>th</sup>) day of July of the year two thousand and forty one (2041), the temporary groundrent burdening the emphyteutical land as referred to in this deed, shall be increased to an annual temporary groundrent of two hundred thousand Euro (€200,000) payable in advance and from then onwards the said pro-tempore ground rent shall be increased every ten (10) years, which increase shall be based on the proportionate increase in the index of inflation or (10) ten percent of the pro-tempore ground rent whichever is the higher. In view that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be those for the preceding year, both in respect of the

basis year and the year of the revision. However the base index for the first revision shall be that of the year two thousand and eleven (2011).

(68) For all intents and purposes and for clarity's sake, it is hereby declared by the parties on this deed that on the on the twenty fourth (24<sup>th</sup>) day of July of the year two thousand and forty one (2041), the groundrent burdening the whole emphyteutical land shall be increased to two hundred thousand Euro (€200,000), and this irrespective of whether or not the tunnel referred to in article fifty nine (59) of this deed shall have become part of emphyteutical land in the manner provided for above. From the twenty fourth (24<sup>th</sup>) day of July of the year two thousand and forty one (2041) the said pro-tempore ground rent shall be increased every ten (10) years, which increase shall be based on the proportionate increase in the index of inflation or ten percent (10%) of the pro-tempore ground rent whichever is the higher. In view that the Index of Inflation for a particular year is officially published the following year, the Index to be used for this purpose shall be those for the preceding year, both in respect of the basis year and the year of the revision. However the base index for the first revision shall be that of the year two thousand and eleven (2011).

(69) Should the Malta Environment and Planning Authority (MEPA) refuse to issue the necessary development permit for the tunnel referred to under article fifty nine (59) of this deed, the emphyteuta shall not be bound to dig and construct a tunnel. The subsequent articles that is from article fifty four (54) up to article sixty two (62) relating to the tunnel, shall also become inapplicable.

General Clause:

(70) The emphyteuta shall spend a minimum sum of five million Euro (€5,000,000) on permanent improvements on the whole project referred to in this deed in relation to the emphyteutical land and shall be bound to complete the whole project to the full satisfaction of the Government within four (4) years from the date of the issue of the full development permit by the Malta Environment and Planning Authority (MEPA).

## Statutory Declarations

For the purposes of the Duty on Documents and Transfers Act, Chapter three hundred and sixty four (364) of the Laws of Malta, it is hereby declared that duty due by the emphyteuta on this deed amounts to...

For the purposes of the Income Tax Act, Chapter one hundred and twenty three (123) of the Laws of Malta and for the purposes of the Income Tax Management Act, Chapter three hundred and seventy two (372) of the Laws of Malta, it is hereby declared that no capital gains tax is due since the Government of Malta is exempt from the payment of tax.

For the purposes of subarticle twelve (12) of article five capital A (5A) of the Income Tax Act, the parties declare that they have declared to the undersigned notary all the facts that determine if the transfer is one to which article 5A applies and that are relevant for ascertaining the proper amount of tax chargeable or any exemption, including the value which, in their opinion, reasonably reflects the market value of the said property, if this value is higher than the consideration for the transfer. The parties make such declaration after the undersigned notary warned them about the importance of the truthfulness of this declaration of theirs.

I, the undersigned Notary declare to have explained to the parties the importance of the veracity of their declarations in respect of the value of the whole emphyteutical land. It is hereby declared that the value given to the whole emphyteutical land in virtue of this temporary emphyteutical grant is fair and just after I explained to the contracting parties about the importance of this declaration.

For the purposes of Land Registration Act, Chapter two hundred and ninety six (296) of the Laws of Malta, it is hereby declared that the whole emphyteutical land is .....

For the purposes of the Immovable Property (Acquisition by Non-Residents) Act, Chapter two hundred and forty six (246) of the Laws of Malta (the "AIP Act"), the emphyteuta declares that it qualifies to acquire the property above being transferred without the necessity of a permit for the acquisition of immovable property by non-residents in

view of the fact that: Not less than seventy five per cent (75%) of the share holding in the said Company and not less than seventy five per cent (75%) of the controlling shares of the said Company belong to European Union Citizens who have resided continuously in Malta for at least five years during their lifetime and that all directors are also European Union Citizens who have resided continuously in Malta for at least five years during their lifetime. This declaration is being made after due explanation of its importance according to Law was made by the undersigned Notary.

Since the number of documents annexed to this deed exceed five (5) in number, it is hereby being annexed a list of documents marked as document 'Z'.

This transfer has been approved by Parliament on the ..... at Parliamentary sitting number ..... of the year .....

This deed was done read and published after due explanation by me to the parties hereto in .....