

T 74889 A T 77888 Bay Road Hotel
T.E Encl 45933 Sites 2, 19 A 2B

First (1) day of September one thousand nine hundred ninety two (1992).

Before me Doctor Vincent Miceli Deed No. 227 Notary Public in the Land Department Temp. Emphy. personally came and appeared:-

Adriano Gouder son of the late Ins
Magistrate Giovanni Filiberto and of the Vol I
late Maria Cristina nee' Tufigno born in
Valletta and residing at Saint Julians
whose identity card bears number
886937(M) Commissioner of Land duly
authorised to appear hereon on behalf of
the Government of Malta in virtue of a
minute bearing date the seventh day of
February one thousand nine hundred and
sixty two on papers marked Secretariat
number two hundred and forty one of the
said year 1962 related papers marked
Land thirty five bar ninety two.

Jean Paul Emile Baillet, company
director, son of Emile and Genevieve
nee' Millon born Paris France and resid-
ing also (French Passport) 75-08-91-054
899) who is appearing on behalf of Bay
Point Hotel Limited and as also duly
authorised by the annexed resolution
marked document letter "M", hereinafter
referred to as the Emphyteuta.

I, Notary undersigned have ascer-
tained the identity of the parties
hereto by their official documents.

In virtue of this deed the said
Commissioner of Land nomine hereby
grants on temporary emphyteusis for a
period of seventy five years reckoned
from date of deed to the said Jean Paul
Emile Baillet nomine who accepts and
acquires by same title of temporary
emphyteusis:-

(1) a site situated at Saint
Georges Bay Saint Georges limits of
Saint Julians which site measures
approximately twenty six thousand eight

hundred forty eight square metres and is bounded on the north and north east by Government property described in (ii) below, west by Government property and south and south east by Government property.

This site is bordered in yellow on the attached Land Drawing three hundred eighty nine letter A bar ninety one bar letter A (L.D.389A/91/A) and Plan Land Drawing three hundred eighty nine bar ninety one bar letter A (L.D.389/91/A) (Survey Sheet) marked document letter "B" and "A" and is hereinafter referred to as the "Emphyteutical Land A".

(ii) a site situated at Saint Georges Bay, Saint Georges limits of Saint Julians which site measures approximately eight thousand seven hundred forty eight square metres and is bounded on the north and north east by the foreshore, south and south west by Government property described in (i) above and west by Government property.

This site is bordered in blue on the attached Land Drawing three hundred eighty nine letter A bar ninety one bar letter A (L.D.389A/91/A) and Plan Land Drawing three hundred eighty nine bar ninety one bar letter A (L.D.389/91/A) (Survey Sheet) marked document letter "B" and "A" and is hereinafter referred to as the "Emphyteutical Land B".

These grants on emphyteusis shall be governed by the following conditions and consistently with them by the provisions of the law on emphyteusis :

1. The said grants on emphyteusis are being made and accepted in consideration of the payment of the yearly and temporary groundrent payable in advance.

(i) The annual and temporary groundrent as regards the emphyteutical Land "A" is to be twenty eight thousand Malta Liri (LM28000) to be increased by a revision every five years at five per centum (5%) of the pro tempore groundrent. However the groundrent is to be administratively abated for the first three (3) years to one thousand (LM1000) per annum.

(ii) The annual and temporary groundrent for the emphyteutical Land "B" is to be two thousand nine hundred and ninety Malta Liri to be increased by a revision every five years at five per cent (5%) of the pro tempore groundrent.

2. The emphyteuta shall use the emphyteutical land including any improvements thereon, exclusively for the setting up of a five star hotel with approximately two hundred sixty (260) rooms and all related facilities and shall keep same fully operational for the whole term of the emphyteusis.

3. Permanent improvements costing not less than seven Million Maltese Liri (Lm 7,000,000) shall be erected on the emphyteutical land by the emphyteuta within three years from the date of the contract.

All the works shall be carried out in a substantial and workmanlike manner with the most suitable materials.

4. Immediately upon the signing of this Deed, the emphyteuta will officially apply for all permits and / or licenses for the carrying out of the works. A period equal to the interval that elapses between the date of the first written application and the date of issue of the last permit shall be added to the periods specified in Arti-

cle three (3) above and in Article sixteen letter b (16b) below.

5. 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.

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 its 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.

Towards this end emphyteuta shall insure the property under the best policy coverage available in accordance with Article seven (7) below.

6. The emphyteuta shall be bound to carry out any obligations imposed by law on the owners of buildings or lands and Government shall not be bound under any circumstances to contribute to the expense required for the carrying out of any obligation, whatever may be the amount of such expenses and whatever may be the remaining period of the emphyteutis when such obligations fall due to be carried out.

The emphyteuta shall abide by the laws and regulations concerning the erection of buildings in force from time to time and shall not be exempted from the obligations of obtaining any permit and / or licence required hereunder.

7. The emphyteuta shall insure and keep insured throughout the duration of the emphyteutis the property and any improvements thereon for their full

value against loss or damage including malicious damage resulting from fire and / or explosion, including fire and / or explosion that may be attributable to negligence and such other risks as are customarily insured against with respect to property of a similar character in or bordering the Mediterranean. Such insurance shall be effected by the emphyteuta at its own expense and in its own name with an insurance company acceptable to the Commissioner of Land. The interest of the Government is to be duly noted on said Insurance Policy, in order to ensure that the emphyteuta utilizes the monies paid by the Insurance Company to fulfil the obligations undertaken by the emphyteuta under this contract.

The emphyteuta shall also insure against the loss of one year's groundrent, which loss may be attributable to the same causes mentioned above.

8.(a) The emphyteuta shall give immediate notice to the Competent Authority of the discovery of any traces of objects or monuments of local antiquarian or archaeological importance on the sites granted to it on emphyteusis.

(b). Any find of movables (in which expression shall be comprised pottery, coins, bones and other objects of a similar nature as well as remains of such movables) shall immediately become the property of the Government. In the case of finds of immovables (in which expression shall be comprised all immovables such as caves, tombs, walls, stone walls and other objects of a similar nature as well as remains of such immovables) the contract of emphyteusis shall be rescinded at the discretion of the Commissioner of Land in whole or in respect of only that part where the find is located if the Government, within six months from the date of which notice is given of the find shall

have intimated in writing to the emphyteuta its intention of rescinding the deed of emphyteusis in whole or in part saving, in the latter case, the right of the emphyteuta to demand that the rescission be extended to the whole contract if the remaining portion of the building site is not suitable for the purpose for which it was granted on emphyteusis. In case of a rescission in part there shall be a reduction of groundrent proportionate to the area in respect of which the contract shall have been rescinded. In the event of a rescission, the emphyteuta shall be entitled to compensation only for, and to the extent of, the amount reasonably spent in connection with such works as it may have carried out on the site and as may become useless to it as a consequence of the rescission and it shall not be entitled to any other compensation of any sort whatsoever.

(c). The dissolution of the emphyteusis for failure to give the said notice, with all consequence emanating therefrom 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.

9. The emphyteuta shall not make any excavation in search of water on the emphyteutical land without the prior consent given in writing by the Government.

10. The emphyteuta shall allow free access to the tenement at any reasonable time to any Government Official duly authorised to inspect the tenement. If the emphyteuta willfully or through negligence hinders any such Official or person from entering and inspecting the site it shall be liable

to a penalty of ten Malta Liri (LM10) for each and every time such official or person shall not have been able to do so through the fault, negligence or omission of the emphyteuta.

11. The emphyteuta shall not permit oil, grease, trade wastes or other deleterious matter to enter the drains and sewers of the Government and the emphyteuta is obliged 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 Competent Authority from time to time.

12. Government grants these emphyteutical sites with vacant possession. Government shall have the right to create easements which may be necessary for the provision of public services provided that this does not materially adversely affect the business of the emphyteuta, without any obligation on the part of Government to pay any compensation for such easement and access. The emphyteuta shall not subject the emphyteutical sites to any kind of easement.

Government will endeavor to eliminate any easements in favour of third parties burthening the emphyteutical land which easements adversely affect and disrupt the business of the emphyteuta.

13. Emphyteuta accepts that emphyteutical land B is to be retained by emphyteuta on emphyteutis subject to the following restrictions:-

a. No constructions temporary or otherwise are to be permitted over the said area.

b. Emphyteuta shall keep and maintain the said area clean.

14. Government obliges itself to construct and upgrade the present infrastructure of the area up to the level required by five star hotel establishments and this by the end of the year one thousand nine hundred and ninety three.

If the infrastructural works and services (drainage, water, electricity, telephones and roads) are not completed by the said date and the hotel is ready to go into operation except for the absence of the said infrastructural works and services, the emphyteuta will have the right to an administrative rebate on the amount of groundrent payable which will be reduced to one thousand Malta Liri per annum calculated on a proportional day to day basis. The whole groundrent in force at any particular period will be payable in full when the said infrastructural works and services are completed.

15 (a). The emphyteuta shall not transfer or otherwise dispose of the emphyteutic land or grant on lease the emphyteutic land or improvements thereon without first obtaining the written consent of the Government which consent may not be unreasonable withheld. However this provision is not to be interpreted as impeding any transfer subsequent to a judicial sale.

(b). Should the emphyteuta be allowed to dispose of its interest as provided under the preceding clause, it shall not impose in its favour any additional groundrent or yearly burden, and a fine "laudemium" equivalent to one year's groundrent shall be due to Government. Should the transferee fail to pay the said "laudemium" within forty (40) days of the relevant deed of trans-

fer he shall be liable to a fine of fifty Malta Liri.

(c). The transferee shall within forty (40) days of the transfer of the site, inform the Commissioner of Land of such transfer by registered letter and cause a copy of the relative deed to be forwarded to the Commissioner of Land. Should he fail to do so he shall incur a penalty of fifty (LM50) Malta Liri.

Any transfer of the emphyteutical sites granted in virtue of this deed shall be of the whole unit as a hotel complex and not of parts thereof.

16. Save for reasons of force majeure, Government shall have the right to dissolve the emphyteusis for any of the following reasons :

- a) if any of the foregoing conditions are not complied with following a period of three months after notification by registered letter of the breach complained of.
- b) if the construction and equipment of the hotel is not completed within a period of three (3) years.
- c) if the emphyteuta fails to pay the groundrent for two years, or if, although it may have made part payments, in each year, it still owes by way of groundrent a sum equal in amount to two (2) yearly payments.

17. Saving the application of Article eight (8) in case of the termination or dissolution of the emphyteusis for any reason whatsoever, any works and improvements on the emphyteutical site shall revert to Government with the site and the emphyteuta shall have no right to compensation whatever the value of such works or improvements may be.

18. For the purposes of this Contract, Force Majeur shall mean circumstances beyond the control of emphyteuta and shall include but shall not be limited to Acts of God, fire, flood, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of Government, labour disputes which could not have been reasonably avoided by the emphyteuta as well as the failure of the relevant Government to grant, on proper application, the requisite licenses and permits required by law in connection with the construction of the hotel.

19. On termination or dissolution of the emphyteusis for any reason whatsoever, the emphyteuta shall hand over to Government the site together with any improvements the emphyteuta may have carried out, in a good state of repair according to law and to the satisfaction of the Commissioner of Land, without the emphyteuta having any right to claim compensation for such improvements.

20. The emphyteuta shall abide by all the conditions stipulated by the Hotels Catering Establishments Board regarding Five Star Hotel Establishments.

The Government warrants the peaceful possession of the emphyteutical land hereby granted.

Emphyteuta will have the right to use the area bordered in green measuring approximately six hundred ninety six square metres and bounded on the north by Government property on the east by the foreshore and on the south by Government property on Land Drawing three hundred eighty nine letter A bar ninety one bar letter A (L.D.389A/91/A) and on plan Land Drawing three hundred eighty

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nine bar ninety one bar letter A (L.D.389/91/A) (Survey Sheet) on annexed plans marked document B and A on a precarious title (encroachment basis) as a beach club. The said area shall not have any permanent constructions built upon it except for land bridges, swimming pools and artificial ponds which however are not to exceed the height of one metre from ground level.

Government has the right to take back the land in question by giving three months notice in writing .

The annual consideration for the use of the area marked in Green shall be ten Malta Liri (LM 10) per annum.

In order to secure payment of the said groundrents and the proper performance of all the obligations hereby undertaken, the emphyteuta in addition to the privilege established by law in respect of the said emphyteutical lands, hypothecates in favour of the Government of Malta on whose behalf the said Commissioner of Land accepts all the property in general present and future of the said emphyteuta.

All legal and Notarial expenses, including stamp duty connected with this deed shall be borne by the emphyteuta.

For the purposes of the Duty on Documents Act of the year one thousand nine hundred and eighty one it is hereby declared that duty on this deed amounts to fifteen thousand and five hundred Malta Liri.

A Permit issued by the Ministry of Finance under the Acquisition of Immovable Property by Non Residents Act is being here annexed marked document "0".

This deed has been done, read and

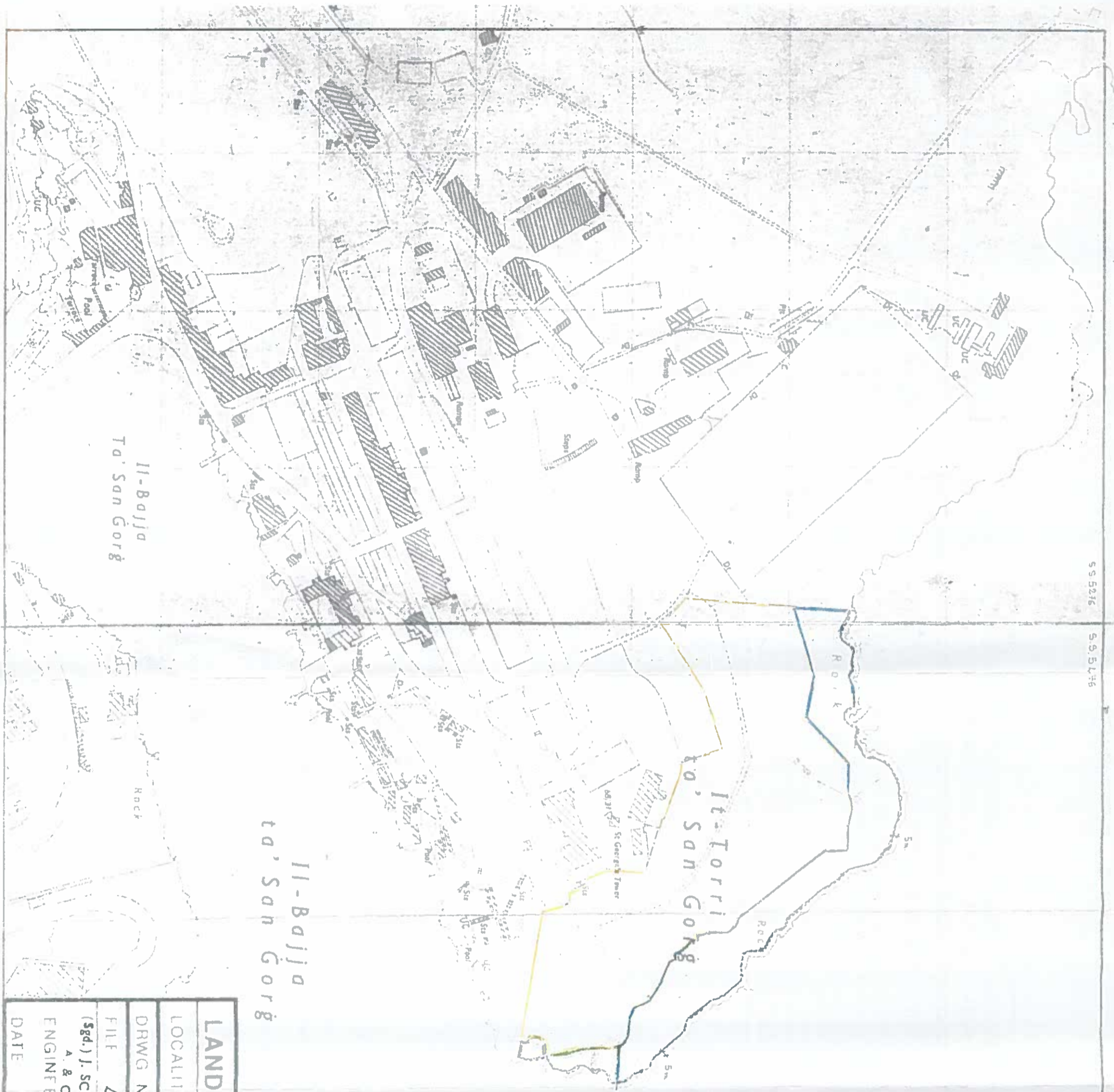
published after I the undersigned Notary explained the contents hereof to the parties hereto according to law at Valletta Malta, Saint Sebastian Street in the offices of the Land Department without number.

Sgd:- Jean Pierre Emile Baillet

Adriano Gouder

Vincent Miceli - Notary

Public in Malta at the Land Department.



Il-Bajja
ta' San Gorg

It-Torri
ta' San Gorg



ZONE 17

LAND DEPARTMENT - VALLETTA

LOCALITY **ST. JULLIANS** SCALE 1:2500

DRWG NO LD. 389/91/A DRAWN BY *P.B.*

FILE LAND 35/92 CHECKED *MA*

(Sgd.) J. SCIBERRAS
A. & C.E.
ENGINEER

SGD. A. CUJDER
COMMISSIONER

DATE 12 MAY 1992

DATE 12 MAY 1992