

Today the twenty fifth (25<sup>th</sup>) day of August  
of the year two thousand and fourteen (2014).

Deed Number

7

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Before me Doctor of Laws Keith Francis German a Notary Public in the Government Property Division, duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

Modifications to the  
Emphyteutical Grant  
made by virtue of  
the Deed in the  
Records of Notary  
Vincent Miceli of the  
30/04/2004 – Deed  
61

### **The Parties (and each a "Party")**

Of the first part:

Doctor of Laws Joseph known as Joe Bugeja, Director Land Department and Commissioner of Land, son of the late George Bugeja and of the late Philippa nee' Carabott, born in Attard on the 23rd April 1969 and residing at Tarxien, holder of identity card number 181569M who appears on this deed in his capacity of Commissioner of Land in the name and on behalf of the **Government of Malta**, duly appointed by Legal Notice four hundred and thirty six of the year two thousand and thirteen (L.N.436/2013) issued in the Government Gazette of the sixth day of December of the year two thousand and thirteen (06/12/2013) and by Government Notice number one hundred and one (G.N. 101) issued in the Government Gazette of the twenty eighth day of January of the year two thousand and fourteen (28/01/2014) and in accordance with The Public Administration Act, Chapter four hundred and ninety seven (Chapter 497) of the Laws of Malta (in this deed the Government of Malta is referred to as the "**Government**").

Enrolled in  
the Public  
Registry Malta  
on the:

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Vol. I.

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Of the second part:

Fredrick Azzopardi, Chief Executive Officer, son of Emmanuel Azzopardi and Carmena nee`Agius, born in Attard on the thirty first (31) day of December of the year one thousand nine hundred seventy five (1975), and residing in Rabat Malta holder of identity card number 152076M, who appears on this deed in the name and on behalf of **Enemalta Corporation**, a public corporation established by virtue of the Enemalta Act, Chapter two hundred and seventy two (272) of the Laws of Malta, having its principal business address at Central Administration Building, Church Wharf, Marsa MRS 1000, Malta, in his capacity as Chief Executive Officer duly

vested with legal representation of the Corporation in terms of the above mentioned Enemalta Act, Chapter 272 and as duly authorised by virtue of a resolution of the board of directors of the Corporation a copy of which is annexed to this deed and marked document letter **"A"** – in this deed Enemalta Corporation is referred to as the **'Emphyteuta'** or the **'Corporation'**.

## **Definitions**

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:

**"Emphyteutical Grant"** means the temporary emphyteutical grant of the Property (as this term is defined hereunder) for a period of sixty five (65) years reckoned as from the date of the Deed of Grant made by the Government to the Emphyteuta, in consideration of the temporary yearly ground-rent of six thousand five hundred Malta Liri (Lm6,500) now equivalent to fifteen thousand one hundred and forty euro and ninety three cent (EUR15,140.93) and under the other terms and conditions contained in the Deed of Grant.

**"Deed of Grant"** means the deed of temporary emphyteusis in the Records of Notary Vincent Miceli of the thirtieth day of April of the year two thousand and four (30/04/2004) – Deed number sixty one (61).

**"Modifications"** means the modifications made to the Emphyteutical Grant and to the Deed of Grant by virtue of this deed.

**"Property"** means the plot of land with all its structures built thereon, without a name and unnumbered situated at Kordin limits of Paola accessible from an unnamed Street, which plot of land measures approximately eight thousand five hundred and sixty one square metres and is bounded on the South by the said unnamed Street on the East by an open space and the North and North-West by Government property or more correct boundaries, and shown bordered in Red on a Plan [incorporating in it a Survey Sheet] indicated as Property Drawing number

ninety seven underscore two thousand and four (P.D.97\_2004) marked document "X' attached to the Deed of Grant for registration, with all its rights and appurtenances.

## **Whereas**

(A) By virtue of the Deed of Grant the Government granted to the Emphyteuta, the Property on temporary emphyteusis for a period of sixty five (65) years reckoned as from the date of the Deed of Grant, in consideration of the temporary yearly ground-rent of six thousand five hundred Malta Liri (Lm6,500) now equivalent to fifteen thousand one hundred and forty euro and ninety three cent (EUR15,140.93) and under the other terms and conditions contained in the Deed of Grant.

(B) The Parties have agreed to make certain modifications to the provisions of the Emphyteutical Grant.

## **Now therefore by virtue of this deed:**

The Government and the Emphyteuta are modifying the Emphyteutical Grant and for this purpose are amending the Deed of Grant in the manner stated hereunder.

### **1. Use**

1.1 The Government and the Emphyteuta refer to clause 7 (seven) (*USE*) of the Deed of Grant and they hereby substitute it with the following:

#### **"7. USE**

7.1 In compliance with the restrictions arising from paragraph letter (e) of sub-article one (1) of Article three (3) of the Disposal of Government Land Act, Chapter two hundred and sixty eight (268) of the Laws of Malta, the Property granted on temporary emphyteusis in virtue of this deed is to be used exclusively for the purposes of any functions of the Corporation, and where applicable, in accordance with the provisions of the law relating to emphyteusis and arising from the Civil

Code, Chapter sixteen (16) of the Laws of Malta, later on in this deed referred to as '**The Permitted Use**'.

7.2 If necessary building/construction permits are not obtained from the competent authorities within a period of five (5) years from today or such other later period agreed in writing between the Government and the Emphyteuta, the Government has a right to terminate the emphyteutical concession the subject matter of this deed."

1.2 The Government and the Emphyteuta do hereby modify the Emphyteutical Grant in the sense that they hereby agree that notwithstanding anything stated in the Deed of Grant, if the Emphyteuta is in default of the condition contained in clause seven point two (7.2) of the Deed of Grant as amended by virtue of this deed, the Emphyteuta shall be considered to have cured such default if within eighteen (18) months from the date of this deed it reaches an agreement with the Malta Environment and Planning Authority (hereinafter referred to as "MEPA") or any other competent authority constituted to substitute MEPA, for an extension of time to comply with the requirements arising from law in respect of building/construction permits.

## **2. Modifications to Property**

2.1 The Government and the Emphyteuta refer to clause 8 (eight) (*MODIFICATIONS TO PROPERTY*) of the Deed of Grant and they hereby substitute it with the following:

### **"8. MODIFICATIONS TO PROPERTY**

(i) Subject to such permits required by law, the Emphyteuta may carry out on the Property any Permitted Reconstruction or Refurbishment (as this term is hereunder defined) provided that the Emphyteuta shall be obliged to notify the Government with copies of all plans and permits relative to such works prior to commencement of such works.

The term "**Permitted Reconstruction or Refurbishment**" for the purposes of this deed shall mean any work including demolition of buildings and tanks and excavation of land which:

- a. is necessary for or conducive to the carrying on of the activities for which the Property can be used in terms of the Permitted Use as defined in clause seven (7) above; or
- b. is in the ordinary course of its business; or
- c. is required by law; or
- d. may be agreed to in advance by the Government in writing, which consent shall be granted if such works are intended for the Emphyteuta to continue to comply with its obligations in terms of this deed.

(ii) For the avoidance of doubt as to whether any reconstruction or refurbishment works fall within the definition of "Permitted Reconstruction or Refurbishment" the Emphyteuta may at any time apply for confirmation to the Government, and when consent is so granted such reconstruction or refurbishment shall be considered a Permitted Reconstruction or Refurbishment for the purposes of this deed."

### **3. Ancillary Obligations of the Emphyteuta**

3.1 The Government and the Emphyteuta refer to the third paragraph of paragraph Roman numeral three (iii.) of clause 11 (eleven) (*ANCILLARY OBLIGATIONS OF THE EMPHYTEUTA*), namely:

"The emphyteuta shall construct a boundary wall or fence around the immovables granted on emphyteusis, within a period of two (2) years from today."

and they hereby delete it.

3.2 The Government and the Emphyteuta delete paragraph Roman numeral four (iv) of clause 11 (eleven) (*ANCILLARY OBLIGATIONS OF THE EMPHYTEUTA*), and

renumber the subsequent paragraphs in the said clause accordingly.

3.3 The Government and the Emphyteuta refer to paragraph Roman numeral seven (vii) of clause 11 (eleven) (*ANCILLARY OBLIGATIONS OF THE EMPHYTEUTA*) – which paragraph has by virtue of this deed been renumbered vi. and add the following words at the end of the paragraph:

“The Emphyteuta shall not have the right to claim any compensation for the reason that any existing public services are passing in, under or upon any of the Property”

3.4 The Government and the Emphyteuta delete paragraph Roman numeral eight (viii) of clause 11 (eleven) (*ANCILLARY OBLIGATIONS OF THE EMPHYTEUTA*) – which paragraph has by virtue of this deed been renumbered vii. and substitute it with the following:

“vii. If the Emphyteuta shall subject the Property to any kind of easement without the prior written consent of the Government, it shall ensure that such easement shall automatically terminate without any right to compensation on the termination of this emphyteutical grant for any reason.”

#### **4. Prohibition against Encroachment on Adjacent Land**

4.1 The Government and the Emphyteuta refer to the clause 12 (twelve) (*PROHIBITION AGAINST ENCROACHMENT ON ADJACENT LAND*), and they hereby delete the word “prior” found after the words “without the” and before “written consent”.

#### **5. Insurance**

5.1 The Government and the Emphyteuta refer to the clause 13 (thirteen) (*Insurance*), and they hereby add the following proviso which shall be inserted after the words “by the emphyteuta at his own expense.” and before the words “The Corporation shall”:

**"Provided that** in the event that such insurance cover is not ordinarily available or commercially feasible whether on the national or international market, the Government and the Emphyteuta shall meet to discuss and within the period of six (6) months thereof decide how best to protect their interests, in default of such a decision the obligation to obtain an insurance cover shall apply. The lack of insurance cover during such period shall not be deemed to be a breach of the conditions of this deed on the part of the Emphyteuta."

## **6. Rights of Entities established by Law**

6.1 The Government and the Emphyteuta refer to the clause 17 (seventeen) (*RIGHTS OF ENTITIES ESTABLISHED BY LAW*), and they hereby delete the words "free of charge" found after the words "be entitled to occupy" and before the words "that part of the Emphyteutical Site" and substitute them with the following: " subject to any compensation payable to the emphyteuta under any applicable law".

## **7. Public Utilities**

7.1 The Government and the Emphyteuta refer to the clause 19 (nineteen) (*PUBLIC UTILITIES*), and they hereby delete the words "operators, whether owned by the Government or otherwise" found after the words "The Government or other public utility" and before the words "shall have the right to create" and substitute them with the following: "operators owned by the Government".

## **8. Transfers**

8.1 The Government and the Emphyteuta delete paragraph Roman numeral one (i), of clause 20 (twenty) (*TRANSFERS*), and they hereby substitute them with the following:

"(i) Subject to the restrictions arising from paragraph letter (e) of sub-article one (1) of Article three (3) of the Disposal of Government Land Act, Chapter two hundred and sixty eight (268) of the Laws of Malta as applicable from time to time to the Emphyteuta, the Emphyteuta may transfer or otherwise dispose, in whole or in part after first

obtaining the written consent of the Commissioner of Land, which consent shall not be unreasonably withheld, the Emphyteutical Grant or the Property or improvements thereon (hereinafter referred to as a "**transfer**" or "**disposal**") to any person not being an Undesirable Person (as this term is defined below)."

## **9. Conditions applicable to Transfers**

9.1 The Government and the Emphyteuta delete clause 23 (twenty three) (*CONDITIONS APPLICABLE TO TRANSFERS*) of the Deed of Grant in its entirety and they hereby substitute it with the following:

### "23. CONDITIONS APPLICABLE TO TRANSFERS

Should the Emphyteuta transfer or dispose, in whole or in part, the Emphyteutical Grant or the Property or the permanent improvements made thereon or any rights granted in relation thereto by virtue of this deed, as provided under the preceding Clauses the following conditions shall apply:

i. A recognition fee (laudemium) equivalent to one (1) year's groundrent shall be due to Government and should the transferee fail to pay the said 'laudemium' within forty (40) days of the relative deed of transfer the Emphyteuta and the transferee shall be jointly liable to pay a penalty of one thousand one hundred and sixty four Euro and sixty nine cents (€1164.69), over and above the said recognition fee, per day of default for mere delay; **Provided that** a transfer or disposal of the Property, in part or in whole, by the Corporation shall be exempt from the payment of 'laudemium' and the payment of 'laudemium' shall be due on each and every subsequent transfer.

ii. The Emphyteuta shall within forty (40) days of any such transfer or disposal inform the Commissioner of Land of such transfer or disposal by registered letter and cause a copy of the relative deed to be forwarded to the Commissioner of Land. Should it fail to do so, it shall be liable to pay a penalty of one thousand one hundred and sixty four



Euro and sixty nine cents (€1164.69) per day of default for mere delay.

iii. The Emphyteuta shall include in the deed of transfer or disposal all the obligations of the Emphyteuta arising from this deed, it being understood that the aforesaid obligations may be included by reference to this deed."

## **10. Leases and Management Agreements**

10.1 The Government and the Emphyteuta delete clause 24 (twenty four) (*LEASES AND MANAGEMENT AGREEMENTS*) of the Deed of Grant and substitute with the following:

### **"24. LEASES AND MANAGEMENT AGREEMENTS**

(i) Nothing in this deed shall prohibit the Emphyteuta from granting, in whole or in part, the Property or the permanent improvements made thereon or any rights granted in relation thereto by virtue of this deed, on lease or under management agreement or by way of concession or from otherwise granting the possession thereof for the Permitted Use, to a person who is not an Undesirable Person, provided that such lease or management agreement or concession or possession is:

a. granted by the Emphyteuta for the Permitted Use

b. subject to the condition that if this Emphyteutical Grant be dissolved for any reason, the lease or management agreement or concession or grant of use will terminate automatically and simultaneously; and

c. subject to the further condition that if the lessee or manager or concessionaire or user is or at any time becomes an Undesirable Person the said lease or management agreement or concession or grant of possession may be terminated on simple notice by the Emphyteuta to the lessee or the manager or concessionaire or user, and that in such circumstances the Emphyteuta shall give such

notice when so requested by the Government of Malta.

It is agreed that for the purposes of this Clause "lease" and "management agreement" and "concession" shall include any form of arrangement under whatever name which has the same effects.

It is being specifically agreed that a "lease" and "management agreement" and "concession" and "grant of possession" of the Property shall not be deemed to be a transfer or disposal in terms of Clause twenty three (23).

(ii) Nothing in this Clause shall be deemed to exonerate the Emphyteuta from its obligations arising from this deed or applicable law and the Emphyteuta shall be jointly and severally liable with the lessee and or manager and or concessionaire and or user."

## **11. Dissolution**

11.1 The Government and the Emphyteuta delete paragraph Roman numeral iii. (three) of clause 25 (twenty five) (DISSOLUTION) of the Deed of Grant and substitute it with the following:

"iii. if the Emphyteuta extends without the written consent of the Government of Malta in any manner any building or structure constructed on the Property onto land adjacent to the Property, whether such land is also owned by the Emphyteuta or otherwise;".

11.2 The Government and the Emphyteuta delete paragraph Roman numeral vi. (six) of clause 26 (twenty six) (DISSOLUTION) of the Deed of Grant and renumber the subsequent paragraph to read "vi.".

## **12. General**

12.1 Save for the Modifications made by virtue of this deed, and subject to such Modifications, the Government and the Emphyteuta hereby ratify and confirm the Deed of Grant and its provisions.

12.2 The Government and the Emphyteuta hereby declare and agree that the Modifications are being made for no payment in cash or in kind and that the consideration (*causa*) for the Modification is the mutual wish of the Parties: to align certain provisions of the Deed of Grant with certain amendments made to the Enemalta Act by virtue of *Act XVII of 2007* and other amendments made to the Enemalta Act pursuant to the publication of the Deed of Grant and to modify certain provisions which required updating.

This deed has been done, read and published by me the undersigned Notary after I the undersigned Notary explained the contents hereof to the appearers hereto according to law at the Office of the Land Department, without number in Saint Sebastian Street, Valletta Malta.

SIGNED:-

Dr. Joseph Bugeja  
Fredrick Azzopardi

Dr. Keith Francis German  
Notary Public, Government Property Division