

14 February 1995

Legal Advisory and Conveyancing Office
Circular Memorandum No. 12

Land Authority's Consent Scheme:
Streamlining the processing of presale applications
for residential units in PSPS Developments

Similar to other consent applications, presale consents in relation to PSPS developments are issued only after LACO is satisfied that all the usual pre-conditions for Land Authority consent have been met.

2. It has been decided that due to the special features of PSPS developments, the detailed procedures involved in the processing of consent applications, which are mainly designed to give adequate protection to flat purchasers, are not appropriate in the case of residential units in PSPS developments. These special features include:

- a. the developer can only sell the residential units to purchasers nominated by the Hong Kong Housing Authority;
- b. the sale of residential units must be conducted under the Hong Kong Housing Authority's HOS sale programme; and
- c. the progress of the development is closely monitored by the Monitoring Surveyor appointed by the Hong Kong Housing Authority.

3. In view of this, certain improved procedures have been agreed with the Director of Housing (D of H) to streamline the processing of presale consent applications in relation to residential units in PSPS developments.

3.1 LACO and D of H have agreed the adoption of a standardised ASP (Appendix I) specifically tailored for residential units in PSPS developments, which incorporates the variations frequently required by the D of H. In future, all presales of residential units in PSPS developments will use this form of ASP. LACO will check the draft ASP submitted by the developer's solicitors on this basis and henceforth will not need to consult the D of H unless there are very strong reasons to deviate from the specialised standard form. The adoption of this standard ASP can shorten the time required by LACO in approving the draft ASP for residential units in PSPS developments and developer's solicitors are

urged to co-operate by not making stylistic or other amendments in individual cases.

3.2 Adoption of a set of guidelines (Appendix II) specifically tailored for DMCs of PSPS developments have been agreed, which will apply in all future PSPS developments. LACO will check the draft DMC submitted by the developer's solicitors on this basis and will not need to consult the D of H unless there are really very strong reasons to deviate from any of the guidelines. The adoption of a set of guidelines can shorten considerably the time required to approve a DMC for PSPS developments.

3.3 To further cut down the time required to process the consent application, LACO will not check in future PSPS consent applications in relation to residential units the stage the development has reached nor whether all approvals required under the lease conditions have been obtained. In effect this means:

- a. LACO will only approve the form of the ASP, the DMC and the form of the Statutory Declaration (without annexures). It will be the responsibility of the developer's solicitors to ensure that relevant and accurate annexures will be annexed to the S/D when the same is registered in the Land Registry.
- b. LACO will not check nor the developer's solicitors be required to provide any Authorised Person's certificate with their applications.

To enable LACO to know the likely dates of presale of the residential units, the developer's solicitors should be asked to confirm in his application letter to LACO the established date of presales of these units under the HOS sale programme. Such letter should be copied to the D of H who will inform LACO within 7 days if there is any change with the dates.

3.4 By adopting these streamlined measures, presale consents in relation to residential units in PSPS developments can be given more efficiently and speedily.

4. The new procedures set out above will apply to all presale consent applications for residential units in PSPS developments received by LACO on or after the date of this Circular Memorandum. For applications currently being processed, solicitors may request for their applications to be considered under the new procedures, if they so wish.

(T. E. Berry)
Principal Solicitor
LACO(HQ)/Lands Dept.

To : All Solicitors

cc. Director of Housing

This Agreement is made the _____ day of
One thousand nine hundred and _____

Delete if
inapplicable

BETWEEN the Vendor [the Financier] and the Purchaser whose particulars are set out in Schedule 1.

WHEREAS

Recitals

- (1) The Vendor is obliged under the Government Grant to erect and complete upon the land before the [] day of [] 19[] the Development in all respects complying with the General and Special Conditions contained in the Government Grant.
- (2) For the purpose of selling and assigning various parts of the Development certain undivided shares of and in the land have been allocated to such parts, such shares being subject to adjustment by the Vendor under Clause 21.
- (3) The Vendor has obtained the consent of the Director of Lands to enter into (inter alia) this Agreement for the sale of the Property.
- (4) The Purchaser is a home-owner.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

Interpretation

1. (1) In this Agreement including the recitals the following expressions shall have the following meanings except where the context otherwise permits or requires:-

- (a) "Authorised Person" means [], and this expression shall include any other authorised person or persons as defined in Section 2(1) of the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) for the time being appointed by the Vendor in his place.
- (b) ["Building" means the building or buildings comprised in [Phase [] of] the Development of which the Property forms part.]
- (c) ["Building Mortgage" means the [] dated the [] day of [] made between the Vendor of the one part and [] of the other part and registered in the Land Registry/District Land Registry, [] by Memorial No. [].]
- (d) "building plans" means the general building plans and specifications prepared by the Authorized Person and approved by the Building Authority under Reference No. [] and includes any approved amendments thereto.

Applicable only if Director of Lands' consent has been granted for sales in phases, and delete if inapplicable

Delete if inapplicable

(e) "Certificate of Compliance" means the certificate issued or to be issued by the relevant Government authority to the effect that all the positive obligations of the Vendor under the Government Grant in relation to the land have been fulfilled.

(f) "Construction Cost" means:-

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inapplicable

(i) any amount incurred or paid to any contractors or suppliers for work done, or materials or goods supplied, in connection with the construction of the Development and in rendering the Development fit to qualify for the issue of the Occupation Permit [and the Certificate of compliance]; and

Delete if
inapplicable

(ii) any other amounts (including professional fees) which (in the opinion of the Authorised Person) need to be incurred by the Vendor in order to complete the construction of the Development in accordance with the building plans and in rendering the Development fit to qualify for the issue of the Occupation Permit [and the Certificate of Compliance];

(g) "Deed of Mutual Covenant" means the document to be registered in the Land Registry/District Land Registry, [] by which the rights, interests and obligations of all or any of the co-owners of the land and the Development among themselves are defined.

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inapplicable

(h) "Development" means the [insert brief description of the development giving as much information as reasonably practicable so that a purchaser will have a general understanding as to the nature and composition

of the development, the communal and recreational facilities provided therein, other special features (if any), etc.] now being constructed or to be constructed on the land in accordance with the building plans and intended to be known as ["_____"].

Delete if
inapplicable

- (i) "Exclusion Order" means the Exclusion Order dated the [] day of [] and registered in the Land Registry/District Land Registry, [] by Memorial No. [].
- (j) "expiry date of the Building Covenant Period" means the date by which the Development is required to be completed under the Government Grant/Exclusion Order on the land or any extended period granted by the Government.
- (k) "Government Grant" means the Government Grant document specified in Schedule 2.
- (l) "home owner" means a person nominated by the Housing Authority under Special Condition No. _____ of the Government Grant.
- (m) "Housing Authority" means the Hong Kong Housing Authority.
- (n) "land" means all that piece or parcel of land known and registered in the Land Registry/District Land Registry, [] as [Insert lot number].
- (o) "Occupation Permit" means that written permission to be issued by the Building Authority under the Provisions of the Buildings Ordinance for the Building/Development to be occupied and includes a Temporary Occupation Permit.

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inapplicable

- (p) "Office hours" means 10:00 am to 4:30 pm on weekdays and 10:00 am to 12:00 noon on Saturdays.
- (q) ["Phase []" means the Phase of the Development comprising [Blocks].]
- (r) "Property" means the property described in Schedule 3.
- (s) "Temporary Occupation Permit" means the temporary permit to be issued by the Building Authority under the provisions of the Buildings Ordinance for the Building/Development or any part thereof comprising the Property to be occupied.
- (t) "Saleable area" means:-
 - (i) in relation to a unit enclosed by walls, the floor area of such unit (which shall include the floor area of any balconies and verandahs), measured from the exterior of the enclosing walls of such unit except where such enclosing walls separate two adjoining units in which case the measurement shall be taken from the middle of those walls, and shall include the internal partitions and columns within such unit; but shall exclude the common parts outside the enclosing walls of such unit Provided That if any of the enclosing walls abut onto a common area, then the whole thickness of the enclosing walls which so abut shall be included;
 - (ii) in relation to any cockloft, the floor area of such cockloft measured from the interior of the enclosing walls of such cockloft;

- (iii) in relation to any bay window which does not extend to the floor level of a unit, the area of such bay window measured from the exterior of the enclosing walls or glass windows of such bay window and from the point where the bay window meets the wall dropping to the floor level of a unit but excluding the thickness of such wall;
- (iv) in relation to any carparking space, the area of such carparking space (the dimensions of which are more particularly set out in Schedule 3) measured from the interior of its demarcating lines or enclosing walls, as the case may be;
- (v) in relation to any yard, terrace, garden, flat roof or roof, the area of such yard, terrace, garden, flat roof or roof measured from the interior of their boundary lines, and where the boundary consists of a wall, then it shall be measured from the interior of such wall;

Where the Property consists of any of the above-mentioned items, the saleable area of each of such items shall be specified and described separately in Schedule 3.

- (u) "Statutory Declaration" means the Statutory Declaration of the solicitor for the Vendor registered in the Land Registry/[] New Territories Land Registry by Memorial No. [] in support of the application for the consent of the Director of Lands to sell the Property.

(2) In this Agreement, if the context permits or requires, the singular number shall include the plural and the masculine gender shall include the feminine and the neuter.

Sale and
Purchase

2. The Vendor shall sell and the Purchaser shall purchase the Property TOGETHER with the right in common with the Vendor or other person or persons claiming through, under or in trust for the Vendor to use for the purpose of access to and egress from the Property the lifts, entrance hall, staircases and landings in the Development and such of the passages therein intended for common use and serving the Property and the appurtenances thereto and TOGETHER with all rights of way (if any) and other rights and all privileges, easements and appurtenances thereunto belonging or appertaining AND all the estate, right, title, interest, property, claim and demand whatsoever of the Vendor in and to the Property EXCEPTING AND RESERVING unto the Vendor and its successors and assigns other than the Purchaser the right to the exclusive use, occupation and enjoyment of the whole of the Development [including the external walls (if any) of the Property] SAVE AND EXCEPT:-

Delete if
applicable

- (a) the Property; and
- (b) such areas and facilities (if any) as may be designated as common areas or common parts and facilities in the Deed of Mutual Covenant or are intended for common use.

Purchase price

3. (1) The purchase price shall be the sum set out in Part I of Schedule 4 and shall be paid by the Purchaser to the Vendor's solicitors as stakeholders in the manner set out in Schedule 4 and in particular, the Purchaser shall pay to the stakeholders a further instalment of 10% of the purchase price within 14 days of the date of this agreement.

(2) In the event of any money paid hereunder to the stakeholders not being applied in the manner set out in Clause 26, such money shall be deemed to have been paid by the Purchaser to Messrs [] as agents for the Vendor.

(3) In the event of the Purchaser being required pursuant to Schedule 4 to pay the balance of the purchase price at a time when the Certificate of Compliance is issued and the Vendor not being at that time in a position validly to assign the Property to the Purchaser for any other reason, the Purchaser shall be entitled to withhold such payment until the Vendor is in a position validly to assign the Property and has given at least 14 days' notice in writing to that effect to the Purchaser.

(4) In respect of each payment of the purchase price or any part thereof required to be made hereunder, the Purchaser shall deliver to the Vendor's solicitors on the date on which such payment is required to be made hereunder a cashier order issued or a cheque certified good for payment by a licensed bank in Hong Kong in favour of the Vendor's solicitors for the relevant amount.

(5) Subject to sub-clause (3) but without prejudice to any other remedy hereunder, the Vendor shall be entitled to demand and receive payment of interest on the amount of any part of the purchase price not paid on its due date at the rate of 2% per annum above the prime rate specified by the Hongkong and Shanghai Banking Corporation Limited from time to time calculated from the date on which the same ought to have been paid by the Purchaser to the date of actual payment.

Completion
of
Building/Deve
lopment,
extension of
time
rescission,
certificate of
compliance

4. (1) The Vendor shall:-
- (a) continue the construction of the Development with all due expedition;
 - (b) comply with the requirements of the Building Authority and of any other relevant Government authority relating to the Development; and

Insert AP's
estimated date
of compliance

- (c) complete the Development in all respects in compliance with the conditions of the Government Grant and the building plans on or before the _____ day of _____ subject to such extensions of time as may be granted by the Authorised Person in accordance with sub-clause 5(a).

(2) The Vendor shall complete the Development in all respects in accordance with the building plans by the expiry date of the Building Covenant Period. If at any time it appears likely in the opinion of the Authorised Person that the Development will not be completed by the expiry date of the Building Covenant Period the Vendor shall promptly apply for and obtain such extension of time for completing the Development as shall be required and shall pay any premium to the Government for such extension. The Vendor shall notify the Purchaser of such application and the terms of extension granted within 30 days of each event.

(3) If the Vendor fails to apply for and obtain any necessary extension of time for completing the Development under sub-clause (2) and fails to complete the Development by the expiry date of the Building Covenant Period, the Purchaser shall be entitled, *[unless the completion of the sale and purchase herein has been taken place], in addition to any other remedy that he may have, to give the Vendor notice in writing in that behalf to rescind this Agreement and upon service of such notice, this Agreement shall be rescinded within 7 days thereafter and the Vendor shall repay to the Purchaser all amounts paid by the Purchaser hereunder together with interest thereon at the rate of 2% per annum above the prime rate specified by the Hong Kong and Shanghai Banking Corporation Limited from time to time from the date or dates on which such amounts were paid to the date of repayment, the repayment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor hereunder.

This phrase is
to be inserted
in phased
development
only

- (4) (a) Subject to sub-clause (4)(b), if the Vendor fails to complete the Building/Development by the date specified in sub-clause (1)(c) as extended by any extensions of time granted by the Authorised Person under sub-clause (5)(a), the Purchaser shall be at liberty by notice in writing to the Vendor to rescind this Agreement and upon service of such notice, this Agreement shall be rescinded within 7 days thereafter and the Vendor shall repay to the Purchaser all amounts paid by the Purchaser hereunder together with interest thereon at the rate of 2% per annum above the prime rate specified by the Hongkong and Shanghai Banking Corporation Limited from time to time from the date or dates on which such amounts were paid up to the date of repayment, the payment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor hereunder.
- (b) If the Purchaser does not rescind this Agreement under sub-clause (4)(a) within 28 days from the date specified in sub-clause (1)(c) or any extended date, he shall be deemed, without prejudice to his rights under sub-clause (4)(c) hereof, to have elected to wait for completion of the Building/Development. In such event the Vendor shall pay to the Purchaser interest at the rate of 2% per annum above the prime rate specified by the Hongkong and Shanghai Banking Corporation Limited from time to time on all amounts paid under this Agreement from the date following the date or extended date specified in sub-clause (1)(c) or any extended date up to the date of completion of the Building/Development. Such interest shall be paid or allowed as a credit to the Purchaser in respect of the purchase price on completion of the sale and purchase.

- (c) If the Building/Development is not completed in accordance with the building plans and the other provisions of this Agreement within a period of 6 months from the date specified in sub-clause (1)(c) or any extended date, the Purchaser shall be at liberty either to rescind this Agreement in which event the provisions of sub-clause (4)(a) relating to repayment and interest shall apply or to await the completion of the Building/Development in which event the provisions of this sub-clause (4)(b) relating to the payment of interest shall apply.
- (5) (a) The Vendor shall be entitled to such extensions of time for completion of the Building/Development beyond the date stated in sub-clause (1)(c) as shall be granted by the Authorised Person and appear to him to be reasonable having regard to delays caused exclusively by any one or more of the following reasons:-
- (i) Strike or lock-out of workmen;
 - (ii) Riots or civil commotion;
 - (iii) Force majeure or Act of God;
 - (iv) Fire or other accident beyond the Vendor's control;
 - (v) War; or
 - (vi) Inclement weather and for the purpose of this Agreement inclement weather means rainfall in excess of 20 millimetres in a twenty-four hour period (midnight to midnight) as recorded at the Royal Observatory, a Rainstorm Black Warning is issued or the hoisting of Typhoon Signal No. 8 or above at any time between the hours of 8:00 am to 5:00 pm

- (b) The Vendor shall notify the Purchaser in writing within 14 days from the issue of any such extensions of time granted by the Authorised Person and furnish the Purchaser with a copy of the relevant certificate of extension.

(6) For the purposes of this Clause, the Building/Development is deemed to be completed upon the date upon which the Vendor is in a position validly to assign the Property to the Purchaser. The Vendor shall be in a position validly to assign the Property to the Purchaser when he has received the consent of the Director of Lands to assign.

Completion

5. (a) The Vendor shall notify the Purchaser in writing that he is in a position validly to assign the Property within one month of the issue of the consent of the Director of Lands to assign.
- (b) The sale and purchase shall be completed at the offices of Messrs._____ during office hours within 14 days of the date of the notification to the Purchaser that the Vendor is in a position validly to assign the Property to the Purchaser.

Possession

6. On completion of the sale and purchase, the Vendor and all other necessary parties (if any) will execute a proper assurance of the Property to the Purchaser only free from incumbrances but subject to the Government Grant. Subject as hereinafter mentioned, the Purchaser shall on completion of the sale and purchase be entitled to vacant possession of the Property, all outgoings including management fees up to and inclusive of the completion date being paid by the Vendor.

Risk

7. The Property shall as between the Vendor and the Purchaser remain at the Vendor's risk until the date fixed for completion of the sale and purchase in Clause 5.

Requisition of title

8. If the Purchaser shall be separately represented pursuant to Clause 11 hereof :-
- (i) The draft assignment shall be delivered to the office of the Vendor's Solicitors within 5 days of the date of the service of a notice by the Vendor that the Vendor is in a position validly to assign the Property to the Purchaser and the engrossment for execution by the Vendor and other necessary parties (if any) shall be left at the said office within 4 days after the draft has been returned to the Purchaser approved on behalf of the Vendor and other necessary parties (if any) and in any event not later than 5 days before the date for completion of this sale and purchase.
 - (ii) Any requisition or objection in respect of the title or otherwise shall be delivered in writing to the Vendor's Solicitors within 5 days of the date of the service of a notice by the Vendor that the Vendor is in a position validly to assign the Property to the Purchaser and in any event not later than 7 days before the date for completion of this sale and purchase otherwise the same shall be considered as waived and if the Purchaser shall make and insist on any objection or requisition in respect of the title or otherwise which the Vendor shall be unable or (or the ground of difficulty delay or expense or on any (that reasonable ground) unwilling to remove or comply with the Vendor shall notwithstanding any previous negotiation or litigation be at liberty on giving to the Purchaser or his Solicitors not less than fourteen days' notice in writing to annul the sale in which case unless the objection or requisition shall have been in the meantime withdrawn the sale shall at the expiration of the notice be annulled the Purchaser being in that event entitled to a return of the deposit and other sums of money already paid but without interest costs or compensation.

Government Grant easement mis-description

9. (1) The Property is sold subject to and with the benefit of the Government Grant, for the term of years created thereby and with any right of renewal thereby granted and subject to all easements (if any) subsisting therein.

Delete if inapplicable

[and also to an Agreement made between the Vendor of the one part and _____ of the other part and dated the _____ day of _____ 19 __ relating (inter alia) to the supply of _____ to serve the Building/Development]

(2) No error, mis-statement or mis-description shall cancel the sale nor shall any compensation be allowed in respect thereof save as otherwise provided in this Agreement and except where such error, mis-statement or mis-description relates to a matter materially and adversely affecting the value or user of the Property.

Warrants

10. The Vendor hereby warrants :-

(a) that consent in writing for the Vendor to enter into this Agreement has been obtained under the Government Grant;

(b) that at the date hereof (i) the building plans have been duly approved, (ii) the Authorised Person has duly certified that the foundations of the Building/Development have been completed, (iii) the consent of the Building Authority has been given under the Buildings Ordinance to commence building works on the superstructure of the Building/Development and (iv) to the best of the Vendor's knowledge no impediment exists which would prohibit or impede the completion of construction of Building/Development within the time specified in Clause4(1) (c);

A schedule of fittings and finishes must be included in this Agreement

(c) that the fittings and finishes specified in Schedule 5 shall, on or before completion of the construction of the Building/Development, be incorporated into the Property Provided Always that if the Vendor is prevented by force

majeure or other reason beyond his control from obtaining such fittings and finishes, other fittings and finishes certified by the Authorised Person to be of comparable quality may be substituted;

The schedule shall conform with Land Office Circular Memorandum No. 101

(d) that subject to Clause 20 the Property will on completion of the construction of the Building/Development be as shown on the plan attached hereto and the saleable area will be as specified in Schedule 3;

Delete if inapplicable

(e) that on completion of the Development the Vendor shall provide the communal [and recreational] facilities set out in Schedule 6.

Rights of Purchaser

11. The Purchaser shall at any time before the completion of the sale and purchase be at liberty to

(a) instruct any firm of solicitors of his choice to act for him in this Agreement and/or the subsequent Assignment Provided Always that the Purchaser shall in this event pay to the Vendor's Solicitors on behalf of the Vendor the costs of this Agreement at 60% of the full scale charge and the costs of the subsequent Assignment at half of 60% of the full scale charge in accordance with the provisions of the Solicitors (General Costs Rules (Cap. 159);)

(b) choose his own mortgage or finance company to finance his acquisition of the Property subject to Clause 32 hereof.

Good title

12. The Vendor shall at his own expense show a good title to the Property and produce to the Purchaser for his perusal such certified or other copies of any deeds or documents of title, wills and matters of public record as may be necessary to complete such title. The costs of verifying the title, including search fees, shall be borne by the Purchaser who shall also, if he requires certified copies of any documents in the Vendor's possession relating to other property retained by the Vendor as well as to the Property, pay the cost of such certified copies.

- Documents of title
13. Such of the documents of title as relate exclusively to the Property will be delivered to the Purchaser. All other documents of title in the possession of the Vendor will be retained by him and he will, if required, give to the Purchaser a covenant for the safe custody, production and delivery of copies thereof at the expense of the Purchaser.
- Costs and disbursements of Agreement
*Delete as inappropriate
14. (1) Subject to the provisions of Clause 11(a), all legal costs of and incidental to the preparation, completion, stamping and registration of this Agreement and the subsequent Assignment to the Purchaser shall be borne and paid by the Purchaser, and in the event that the Purchaser instructs solicitors other than the Vendor's solicitors to act for him if the Purchaser shall request the Vendor to execute more than one assignment in respect of the Property the Purchaser shall on completion pay the additional costs charged by the Vendor's solicitors for their approval.
- Stamp duty etc.
- (2) All stamp duty and registration fees payable on this Agreement (if any) and the Assignment shall be borne and paid by the Purchaser.
- (3) The professional fees for the plan to be annexed to the Assignment shall be borne and paid by the Purchaser.
- Time of the essence
15. Time shall in every respect be of the essence of this Agreement.
- Default of Purchaser
16. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions herein contained or to make the payments in accordance with Schedule 4 or any interest payable hereunder within 7 days of the due date, the Vendor may (subject to Clause 3(3)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. In the event of the Purchaser failing within 21 days from the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement.
- (2) Upon the determination of this Agreement pursuant to sub-clause (1) :-

- (a) all sums paid by the Purchaser hereunder shall be forfeited to the Vendor; and
- (b) where the Purchaser has entered into possession of the Property, the Vendor shall become entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser therein and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

Default Vendor of 17. In the event of the Vendor failing to complete the sale in accordance with the terms and conditions hereof, it shall not be necessary for the Purchaser to tender an Assignment to the Vendor for execution before taking proceedings to enforce specific performance of this Agreement.

Deed of Mutual Covenant of 18. On completion of the sale and purchase, the Purchaser shall EITHER enter into a Deed of Mutual Covenant and, if required by the Vendor, a Management Agreement, with the Vendor to define their respective rights and obligations of and in the land and the Development and to make provisions for the management of the Development OR at the Vendor's option accept an Assignment of the Property from the Vendor subject to and with the benefit of the Deed of Mutual Covenant and a Management Agreement (if any) entered into by the Vendor with another purchaser or purchasers in respect of the land and the Development. Such Deed of Mutual Covenant and Management Agreement (if any) shall follow closely the draft of drafts exhibited to the Statutory Declaration subject however to such modifications as are necessitated by changes in the building plans, any adjustment of the undivided shares, a change in the management company and the like. The provisions of the Deed of Mutual Covenant shall not conflict with the Guidelines set out in Land Office Circular Memorandum No. 91 as amended from time to time unless otherwise permitted by the Director of Lands.

Cost of DMC

19. The Purchaser shall pay to Messrs. [] the costs of and incidental to the Deed of Mutual Covenant in accordance with the scale of costs prescribed in the Solicitors (General) Costs Rules which include the costs for the provision of a certified copy of such Deed of Mutual Covenant to the Purchaser.

Alteration of building plans

20. (1) Notwithstanding anything hereinbefore contained, the Vendor hereby reserves the right to alter the building plans whenever the Vendor considers necessary Provided That the Vendor shall notify the Purchaser in writing of such alteration if the same affects in any way the Property as soon as the same has been approved by the Building Authority. If as a result of such alteration, the saleable area of the Property or any part thereof according to such amended plans shall differ from the saleable area specified in Schedule 3, then the purchase price shall be adjusted in proportion to the variation of the saleable area of the parts of the Property affected Provided That if the increase or reduction in the saleable area of the Property or any part thereof shall exceed 5% of the saleable area thereof as specified in Schedule 3, then the Purchaser shall be at liberty to rescind this Agreement in which event all moneys paid by him hereunder shall be returned to him with interest thereon at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time from the date or dates of payment to the date of repayment. The Purchaser shall exercise his right of rescission by notice in writing to the Vendor within 30 days of the Purchaser being notified in writing by Vendor of the approval of such amended plans by the Building Authority, and if no such notice is received by the Vendor within such time, the Purchaser shall be deemed to have accepted such plans.

(2) Any dispute as to -

- (a) the extent of any variation in the saleable area under sub-clause (1), or
- (b) the extent of any adjustment of the purchase price as a result thereof, or

- (c) whether the proviso to Clause 10(c) has been complied with and, if it has not, as to the extent of the damages which should be paid

shall first be referred to the Authorised Person for a decision thereon.

- (3) If either party is dissatisfied with the decision of the Authorised Person, such party shall within 14 days of the decision being communicated to him give to the other party notice of his intention to refer the matter to another authorised person as defined in Section 2(1) of the Buildings Ordinance (Chapter 123 of the Laws of Hong Kong) acting as an expert. Should the parties fail to agree on such other authorised person to be appointed within 30 days after the giving of such notice either party shall be entitled to apply to the President of The Hong Kong Institute of Surveyors for the appointment of a member of the Institute whose decision shall be final and binding on both parties. If neither party refers the decision within the time aforesaid, the decision of the Authorised Person shall be final and binding on the parties hereto. The costs of the Authorised Person shall be paid as directed by him in his award.

Adjustment of undivided shares

21. The Vendor hereby expressly reserves the right to adjust the number of undivided shares into which the land and the Development shall be notionally divided and the fraction which each share bears to the whole Provided That such adjustment shall not -

- (a) alter the total number of undivided shares by more than 3% without the prior consent in writing of the Director of Lands, or
- (b) affect the Purchaser's sole and exclusive right and privilege to hold, use, occupy and enjoy the Property, or

- (c) increase the Purchaser's contribution to the management expenses payable by the Purchaser under the Deed of Mutual Covenant by more than 5%.

Utility deposits

22. Before being entitled to possession of the Property the Purchaser shall :-
- (a) reimburse the Vendor a due proportion of any deposits paid by the Vendor for the supply of water electricity and gas (if any) to the common parts of the Development; and
- (b) pay to the Vendor or the manager of the Development all the deposits and advance payments payable under the Deed of Mutual Covenant and the non-refundable fee for the removal of debris left by the Purchaser his agents or contractors.

Alteration of standard terms

23. The terms of this Agreement shall not in any way be altered or varied without the prior written consent of the Director of Lands.

Insert date Preliminary Agreement

24. This Agreement shall be registered at the Land Registry/[] New Territories Land Registry within 1 month from the [] day of [] 19[] being the date of the agreement preliminary referred to at Schedule 4 item (i) of this Agreement.

No [further] mortgage by Vendor

25. The Vendor shall not after the execution of this Agreement enter into any [further] mortgage or charge of the Property or any other part of the land or the Development without obtaining the prior written consent of the Director of Lands but nothing herein shall prevent the Vendor from charging the unpaid proceeds of sale under this Agreement (subject however to Clause 26) to further finance the Construction Cost so long as notice of any such mortgage or charge is given to the Purchaser.

26. (1) Subject as hereinafter provided, any part of the purchase price paid by the Purchaser to Messrs. [] shall be held by them as stakeholders pending completion of the sale and purchase and shall be applied and released in the following manner only -

- (a) first, towards payment of the Construction Cost to the Vendor from time to time in such amount or amounts as shall be certified by the Authorised Person as having been expended or having become payable on the construction of the Development;
 - (b) second, towards payment of funds drawn under the Building Mortgage (if any) for payment of the Construction Cost and interest thereon;
 - (c) third, in the event of Messrs. [] at any time holding as stakeholders a sufficient sum to cover the entire outstanding balance of Construction Cost as certified by the Authorised Person from time to time and other sums referred to in sub-clause (1)(b), towards payment of any other moneys secured by the Building Mortgage;
- and
- (d) fourth, in the event of Messrs. [] at any time holding as stakeholders a sufficient sum to cover the total of the sums referred to in sub-clause (1)(c), then Messrs. [] may release the excess amount to the Vendor.

Provided Always that :-

- (i) in respect of any payment under sub-clause (1)(a) Messrs. [] shall not at any time release to the Vendor any sum in excess of the amount certified by the Authorised Person as having been paid and/or become payable towards the Construction Cost at that time less the amount which the Vendor has drawn under the Building Mortgage for payment of Construction Cost; and

(ii) the Vendor shall not in any circumstances draw under the Building Mortgage any part of the Construction Cost already paid under sub-clause (1)(a);

(2) All moneys received by Messrs. [] as stakeholders hereunder shall be placed in a client account bearing interest and subject to clearance (if the payment is made by cheque) the Vendor shall be entitled to all interest (if any) earned on such account.

Notices

27. Any notice required to be given hereunder shall be deemed to have been validly given if addressed to the party to whom the notice is given and sent by ordinary prepaid post to the address of such party herein stated or to his last known address if a notification of change of address has previously been given to the other party or his solicitors and shall be deemed to have been served on the second business day after the date of posting.

Defects

28. (1) The Vendor shall at its own cost and as soon as reasonably practicable after receipt of a written notice served by the Purchaser within 6 months of the date of completion of the sale and purchase under Clause 5 remedy any defects to the Property, or the fittings or finishes specified in Schedule 5, caused otherwise than by the act or neglect of the Purchaser. The provisions of this sub-clause are without prejudice to any other rights or remedies the Purchaser may have at common law or otherwise.

(2) The Vendor undertakes with the Purchaser to use his best endeavors to enforce all defects and maintenance obligations under all contracts relating to the construction of the Development in so far as such defects relate to or affect the Property or the common parts and facilities of the Development.

(3) In the event of the winding-up (whether voluntary or otherwise) or dissolution of the Vendor the benefit and rights of and in all warranties and guarantees under all contracts relating to the construction of the Development shall be assigned by the Vendor to the Owners Incorporation incorporated under the Building Management Ordinance (Cap. 344) or if no such corporation exists to the manager of the Development for the time being to be held in trust for the Purchaser and all other Purchasers of units in the Development.

29. The provisions of Clauses 10,13 and 28 shall survive completion of the sale and purchase by the Assignment.

30. If the day on which completion of the sale and purchase is to take place as herein before provided shall fall on a public holiday or on a day on which Typhoon Signal No. 8 or above is hoisted or Rainstorm Black Warning is issued at any time between the hours of 9:00 am and 5:00 pm, completion of the sale and purchase shall be automatically postponed to the immediately following day which is not a public holiday and on which no Typhoon Signal No. 8 or above is hoisted or Rainstorm Black Warning is issued at any time between the hours of 9:00 am and 5:00 pm.

31. Notwithstanding anything to the contrary hereinbefore contained, it is hereby expressly agreed and declared that -

- (i) the Vendor shall, if called upon so to do by the Director of Housing, be entitled to rescind this Agreement with the Purchaser if, in the opinion of the Director of Housing, the Purchaser has made any misrepresentation or false statement with a view to obtaining nomination as a home-owner, and the Government shall incur no liability to the Vendor as a result of such rescission;
- (ii) any information, statement or declaration, whether required by statute or otherwise, made by the Purchaser with a view to obtaining nomination by the Housing Authority shall be deemed

to be representations made to induce the Vendor to enter into this Agreement with him and any misrepresentation, false statement or declaration made by the Purchaser for such purpose shall entitle the Vendor either at its own instance or when called upon so to do by the Director of Housing to rescind this Agreement with the Purchaser and to recover from the Purchaser all expenses incurred in relative thereto. Provided Always that the Vendor shall incur no liability to the Purchaser as a result of such rescission.

32. Notwithstanding anything to the contrary hereinbefore contained, it is hereby expressly agreed and declared that the Assignment in respect of the Property shall contain a statement to the effect that it is subject to the terms covenants and conditions mentioned in the Schedule to the Housing Ordinance (Cap. 283) and any amendments thereto.

33. In the event that the Purchaser shall be desirous of selling or otherwise assigning the Property and the Housing Authority shall be desirous of purchasing the Property in accordance with the terms, covenants and conditions mentioned in the Schedule to the Housing Ordinance (Cap. 283) and any amendments thereto, the Housing Authority shall, within 28 days of receiving the Purchaser's notice of intended sale, serve upon the Purchaser at the address of the Property or at the address specified for the purpose in such notice of sale a notice in writing to that effect whereupon the Purchaser shall within such time as shall be specified by the Housing Authority in writing thereafter enter into an Assignment of the Property to the Housing Authority in a form prepared by the Director of Lands and deliver vacant possession of the Property to the Housing Authority.

34. It is hereby agreed and declared by the parties hereto that the full market value of the Property as at the date of sale is specified in Part II of the Schedule 4 hereto.

35. The Purchaser shall use the Property for private residential purposes only and shall ensure that the Property shall be occupied by himself and all the members of his family included in his application for units sold under the Private Sector Participation Scheme.

Delete
inapplicable

if

[36. The Financier hereby covenants with the Purchaser that the Financier will not call back the whole or any part of the loan which has been advanced or will be advanced to the Vendor until the Development has been completed and that the Financier will, if necessary, provide all further finance to enable the Vendor to complete construction of the Development.]

37. This Agreement is exempted from the provisions of Part III A of the First Schedule to the Stamp Duty Ordinance by virtue of Section 2911(1) of the said Ordinance.

38. The marginal notes to this Agreement shall not be deemed to be part hereof and shall not affect the interpretation or constriction of this Agreement.

SCHEDULE 1

(a) Vendor :

(b) Financier :

(c) Purchaser :

SCHEDULE 2

- (a) Government Lease/Conditions of Sale No. /New Grant No. .
- (b) Parties :
- (c) Date :
- (d) Term : years from expiring on
- (e) User :
- (f) Lot Number :

SCHEDULE 3

Property

SCHEDULE 4

Part I

The purchase price mentioned in Clause 3(1) shall be HK\$ _____ and shall be paid by the Purchaser to Messrs. [_____] as follows :-

Part II

The full market value of the Property as at the date of sale shall be \$_____.

SCHEDULE 5

Fittings and Finishes

SCHEDULE 6

Communal (and Recreational) Facilities

AS WITNESS the hands of the said parties hereto the day and year first above written.

SIGNED by)
)
)
)
 on behalf of the Vendor)
)
 whose signature is verified)
)
 by)

Solicitor, Hong Kong.

[SEALED with the Common Seal)
 of the Financier and SIGNED)
)
 by)
)
)
 whose signatures are)
)
 verified by :-)]

SIGNED by the Purchaser in)
)
 the presence of :-)

Solicitor, Hong Kong.

INTERPRETED to the Purchaser in the [] dialect of the Chinese language
by :-

Clerk to Messrs. []
Solicitors & C., Hong Kong

RECEIVED the day and year first above written)
of and from the Purchaser the above mentioned)
deposit of DOLLARS)\$
)

Messrs. [] as stakeholders

Dated

19

A G R E E M E N T

for Sale and Purchaser of

REGISTERED at the Land Registry/

District Land Registry, []

by Memorial No.

on

for Land Registrar

SOLICITORS, & C.,

HONG KONG

Land Authority Consent Scheme
Guidelines for DMCs in PSPS developments
in respect of residential units

1. (a) The initial period of management by the first manager shall be ten years. Thereafter the appointment of manager shall be for successive periods of 5 years.

(b) Provision must also be made in the Deed for either the Manager to resign by giving the owners' committee not less than 3 months' notice in writing or for the owners' committee, upon a simple majority resolution of the owners of not less than 50% of the shares being passed, giving the Manager not less than 3 months' notice in writing to terminate its service.

(c) The Manager's appointment may be determined at any time upon written notice of such determination by the Director of Housing in his absolute discretion, if the Director determines that the performance of the Manager in the management of the development is unsatisfactory. In that event, the owners shall within 14 days of the said notice appoint a new manager, failing which the owners committee shall be empowered to immediately appoint a new manager.
2. On resignation or termination of the service of the Manager, provision should be made :
 - (a) for the independent audit of the management accounts prepared by the outgoing manger and the owners' committee shall have the right to choose such independent auditor;
 - (b) for the Manager to hand over to the owners' committee all documents, records, plans and accounts relating to the management of the estate within 2 months from the date of the Manager's appointment ending.
3. No provision in a DMC shall prejudice the operation of the Building Management Ordinance (Cap. 344) (formerly known as the Multi-Storey Buildings (Owners Incorporation) Ordinance).

4. The first manager's remuneration is to be a percentage not exceeding 10% of the total expenditure (excluding any capital expenditure, provision for reserve, contingency/sinking fund and the Manager's remuneration) necessarily and reasonably incurred in the good and efficient management of the development. Provision can be made for the increase of such percentage by resolution at meetings of the owners or management committees. The Manager's remuneration shall be payable to the Manager from the date of the DMC and monthly in arrears on the last day of each calendar month.
5. Calculation of management fees payable shall be based on the number of undivided shares in the land, allocated to all units. The allocation of such shares to units will depend on factors such as net saleable area and user restriction. The ratio of undivided shares to saleable area for commercial units should normally be greater than that for residential units (say 2:1). The ratio for kindergarten units should be lower than that for residential units (say 0.5:1). Both ratios shall be subject to the approval of the Director of Housing. The underlying principle should be that no owner may be called upon to pay more than his fair share, and no developer may evade his responsibility to pay the full management expenses for those shares unsold.
6. Provisions must be included for the calling and holding of meetings of Owners of undivided shares and in particular:-
 - (a) The Manager will call the first meeting, as soon as possible but not later than 4 months from the date of consent to assign or if consent to assign is not required, from the signing of the DMC, to appoint a chairman and committee of the Owners.
 - (b) Thereafter a meeting other than the AGM may be convened by the Manager, the committee of Owners or Owners of not less than 5% of the undivided shares.
 - (c) Resolutions at meetings of Owners shall be passed by a simple majority of those present or by proxy and voting in proportion to the number of undivided shares held at such meetings, except that a resolution to change the name of the Owners Corporation shall be passed by a majority of not less than 75% of those present or by proxy and voting in proportion to the number of undivided shares held at such meeting.

- (d) A quorum for the meeting of the Owners shall be that number of Owners present personally or by proxy holding 10% of the total undivided shares in the whole of the estate, except that in the case of a meeting at which a resolution for the dissolution of the management committee is proposed, the quorum shall be that number of owners present personally or by proxy holding 20% of the total undivided shares in the whole of the estate.
 - (e) During the existence of an Owners Corporation under the Building Management Ordinance, the rights, duties, powers and obligations for the control, management and the administration of the estate conferred by the DMC on the management company shall be vested in the Owners Corporation, and the general meeting of the Owners Corporation shall take the place of the meeting of Owners under the DMC, and the management committee of the Owners Corporation shall take the place of the Owners as owners' committee under the DMC.
7. The Manager shall be appointed to act as agent for and on behalf of all Owners in respect of any matter concerning the management of the common parts duly authorised in accordance with the provisions of the DMC.
 8. House rules and any amendments thereto may be made by the Manager with the approval of the owners committee once in being, but these must not be inconsistent with the DMC.
 9. The Manager must prepare an annual budget of all estimated expenditure on management of the estate and the owners contributions will be based on this budget. Such budgets except the first are to be prepared in consultation with the owners committee.
 10. The Manager must prepare annual accounts for the management of the estate from the date of the O.P. The financial year may be changed but only once in every five years except with the prior approval of the owners committee. At the AGM the Owners shall have power to require the annual accounts to be audited by an independent auditor of their choice.
 11. The Manager shall be deemed to be a trustee for and on behalf of the Owners in respect of all monies and deposits received on their behalf and unless otherwise

authorised by the Owners' Committee must pay these monies into a specially designated interest bearing account in respect of the estate at a Licensed Bank. The Manager may retain a reasonable amount to cover day-to-day expenditure; such amount to be approved from time to time by the owners' committee.

12. Provision shall be made for the keeping of proper records of accounts. Provision must also be made for the inspection of the accounts by Owners and the taking copies on payment of reasonable copying charges upon reasonable notice to the Manager.
13. (a) The Manager shall prepare a summary of income and expenditure at least every three months and publish the same within 1 month from the expiry date of the reporting period in a prominent place in the estate for a reasonable time.

(b) Within 2 months after the end of each financial year, the Manager shall prepare an income and expenditure account and a balance sheet for that financial year.
14. (a) Provisions are to be made for each owner to provide a deposit of not more than 25% of the 1st year budgeted management expenses and not more than 3 months' management fee in advance. No adjustment shall be made in case of subsequent increase in management fee. The deposit may be transferred to the new owner at the option of the outgoing owner. The 1st month's management fee shall be payable from the date of execution of the assignment and will cover the period to the end of the calendar month following the date of such assignment, and thereafter in advance on the 1st day of each month.

(b) Any debris clearance fee (non-refundable and building decoration deposit refundable) to be paid by the owners prior to taking possession of the units shall be subject to the approval of the Director of Housing.
15. There shall be provision for major works of a capital or non-recurring nature or both and a special fund set up for this purpose; such fund will be a trust fund managed by the Manager, but all sums in such fund would be the property of the Owners; such fund shall be accumulated gradually by monthly instalments to be paid by the Owners and not paid in a lump sum prior to taking possession

of the unit; such fund should be interest bearing and special reference should be made to this fund in the annual accounts, and an estimate should be given as to the time of any likely need to draw on the fund. The AGM shall decide the amount contributed to such fund for the following year. Except in a situation considered by the Manager to be an emergency, no money shall be paid out of the special fund unless it is for a purpose approved by a resolution of the owners' committee.

16. Reasonable interest and the cost of collection may be imposed on any owner failing to pay sums due under the provisions of the deed within 30 days of demand and such amounts and any legal costs involved in recovering them may be the subject of an equitable charge on the owner's undivided share(s). The cost of collection recoverable shall not exceed \$1000. Any interest received shall be credited to the management account. The \$1000 mentioned in this paragraph may be adjusted each year to take into account the inflation rate during that year.
17. Where any consent is required from a Manager by an owner of a unit in an estate any sum imposed by the Manager as a consideration for the granting of such consent shall be held by the Manager for the benefit of the Owners and paid into the management account. The Manager shall be entitled to charge and retain a reasonable fee for processing such consent.
18. The Manager will on reasonable notice be allowed to enter owners' units for the purpose of effecting necessary repairs to the structure and common parts. In emergencies he may enter without giving such notice. Provisions will also be required for the remedying of damage and liability for negligent or wilful acts.
19. The Manager will be responsible for effecting and updating insurance to the full new reinstatement value in respect of loss or damage by fire and other perils in respect of the whole development.
20. The DMC should include a suitable definition of the common parts. Unless shown on the plans annexed to the DMC, plans showing the common parts shall be prepared by the developer and kept at the Manager's office, and be available for inspection by the Owners without charge. Undivided shares are to be allocated to the common parts and such shares, together with the common parts are to be held by the Manager, as trustee for all the Owners.

21. Tenders - All major contracts involving sums in excess of \$100,000.00 (or such other sum in substitution therefor as the Secretary for Home Affairs may specify by notice in the Gazette) or 20% of the annual budget, whichever is the lesser, are to be let in accordance with the Code of Practice referred to in section 20A(3) of the Building Management Ordinance for periods not exceeding 3 years and shall be re-tendered at intervals of not more than 3 years. All relevant documents shall be kept for not less than 6 years.
22. Owners of non-residential units - All non-residential Owners of undivided or other shares must provide the Manager with an address within the jurisdiction for service of notices under the terms of the DMC.
23. No Structural Alterations - No owner should without the consent in writing of the Manager be allowed to make any structural alterations which may interfere with or affect the rights of other Owners. No provisions shall be made preventing an owner from taking legal action against another owner in this respect. The Manager may not make any structural alterations which may interfere with or affect the rights of any owners.
24. Requirement to comply with the terms of the Crown Grant/ Conditions of Grant/ Government Lease - All Owners are required to covenant to comply with the terms of the Crown Grant/ Conditions of Grant/ Government Lease so long as they are Owners.
25. The definition of the "owner" should be the same as in section 2 of the Building Management Ordinance.
26. The DMC will provide for the Manager at the expense of the Developer to make a translation in Chinese of the DMC within 2 months of the signing thereof, and ensure it is available for inspection and the taking of copies by Owners at the management office at their expense. In the event of a dispute as to the effect of the Chinese translation and the English documents, the English version will prevail.
27. The number of Owners of residential premises and that of commercial premises in the Owners' committee shall bear the same proportion as the number of undivided shares in the lot allocated respectively to residential premises and

commercial premises. The number of owners in the Owners' Committee shall reasonably reflect the number of residential blocks, units in the commercial area and carparking spaces and should, so far as possible, be an odd number so as to avoid the need for a casting vote on decisions.

28. The Manager shall covenant to give a written notice to the Owners 3 months prior to the expiry of each of the defects liability periods specified in the assignment and the Government Grant and to remind the Owners of residential units to report any defects to the Manager in time. The Manager shall through the Monitoring Surveyor furnish the Director of Housing with a consolidated list of outstanding defects upon the expiry of each of the defects liability period.
29. (a) An Emergency Repairs Fund shall be set up by the developer who shall pay a sum equivalent to that specified in the Government Grant for each residential unit built on lot. The developer shall cause the Manager to deposit the Emergency Repairs Fund into a separate interest-bearing account for the payment only of the costs of the works or repairs etc. as may be required in writing by the Monitoring Surveyor during the respective defects liability periods specified in the assignment and the Government Grant (save and except the scheduled defects liability period).

(b) Upon the expiry of the relevant defects liability period specified in the assignment and the Government Grant (save and except the scheduled defects liability period) or upon the completion of all the said works or repairs etc. outstanding at the end of the relevant defects liability period (whichever is the later) the balance (if any) standing to the credit of the Emergency Repairs Fund shall be paid into the Management Fund and form part thereof.
30. The Manager shall provide all residential owners with Defects List Forms and such forms should be returned to the Manager within 72 hours from the taking over of the premises. Copies of such completed forms should be made available to all the owners concerned, Monitoring Surveyor, Authorized Person, Director of Housing and the developer for record purposes.
31. There should be a "live-in" clause such that each residential owner should not part with possession of his residential unit nor use his residential unit or allow or suffer his residential unit to be used for any purpose other than private

residential purposes for himself and any of those members of his family included in his application to the Director of Housing for nomination as a home-owner under the Housing Ordinance (Cap. 283) for such period as specified in the Schedule to the Housing Ordinance (Cap.283).

32. If the Government Lease requires the owners to maintain at the owners' expenses any slopes within and/ or outside the lot, a note informing prospective purchasers of such requirement and that under the Deed of Mutual Covenant the Manager is to be given full authority by all the owners to carry out the necessary slope maintenance works in accordance with all guidelines issued from time to time by the appropriate government department and each owner will be obliged to make contributions towards the costs of such works. A plan showing the slopes and any retaining walls or other related structures already constructed or to be constructed within and/ or outside the lot should be included in the sales brochures.