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|  | THIS AGREEMENT is made the [ ] day of [ ] Two thousand and [ ] |
|  | 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 on the land before [*insert**building covenant expiry date*] the Development in all respects complying with the conditions of the Government Grant.  OR  Under the Exclusion Order the Vendor is obliged to erect and complete not later than [*insert building covenant expiry date*] the Development on the land in accordance with the building plans.  OR  Under the Redevelopment Order the Vendor is obliged to erect and complete not later than [*insert building covenant expiry date*] the Development on the land in accordance with the building plans.] |
|  | (2) The land and the Development are notionally divided into undivided shares, such shares being subject to adjustment by the Vendor under clause 22. |
|  | (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. |
|  | NOW IT IS AGREED AS FOLLOWS : |
| Interpretation | 1. (1) In this Agreement including the recitals the following expressions have the following meanings except where the context otherwise permits or requires – |
|  | (a) “Authorized Person” means [*insert name of authorized person*], and this expression includes any other authorized person or persons as defined in section 2(1) of the Buildings Ordinance for the time being appointed by the Vendor in his place; |
|  | \*[(b) “Building Mortgage” means the [*insert description of the instrument*] dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*];] |
|  | (c) “building plans” –  (i) means the plans prepared by the Authorized Person in respect of the γPhase/Development and approved by the Building Authority; and  (ii) includes any approved amendments to the plans mentioned in paragraph (i); |
|  | (d) “business day” means a day –   1. that is not a Saturday, Sunday or public holiday; and 2. on which banks are open for business in the Hong Kong Special Administrative Region; |
|  | (e) “Certificate of Compliance” means the certificate issued or to be issued by or on behalf of the Director of Lands to the effect that all the positive obligations of the Vendor under the Government Grant in relation to the land have been complied with; |
|  | (f) “Construction Costs” means the aggregate of – |
|  | (i) any sum incurred or to be incurred in connection with any works done or to be done, and materials or goods supplied or to be supplied, in connection with the site formation on the land and the substructure and superstructure construction for the γPhase/Development (including the communal \*[and recreational] facilities as set out in Schedule 6), and the making of the γPhase/Development fit to qualify for the issue of an Occupation Permit and to comply with the conditions of the Government Grant Σ[in so far as they relate to the Phase]; |
|  | (ii) any sums needed to be incurred by the Vendor to install the fittings and finishes of the γPhase/Development (including the fittings and finishes as set out in Schedule 5) and in making every unit in the γPhase/Development ready for handover to purchasers on completion of the sale and purchase; and |
|  | (iii) any other sums (excluding the Professional Fees) which in the reasonable opinion of the Authorized Person needed to be incurred to complete the γPhase/Development to qualify for the issue of an Occupation Permit and to comply with the conditions of the Government Grant Σ[in so far as they relate to the Phase ] and this Agreement; |
|  | (g) “Deed of Mutual Covenant” means the document to be registered in the Land Registry which defines the rights, interests and obligations of all or any of the co-owners of the land and the Development among themselves and incorporates a Management Agreement (if any); |
|  | (h) “Development” means [*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 (if any) provided in the development, and other special features (if any), etc*.] now being constructed or to be constructed on the land and intended to be known as “[*insert name of the development*]”; |
|  | \*[(i) “Exclusion Order” –  (i) means the Exclusion Order dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]; and  (ii) includes any order amending that Exclusion Order;] |
|  | (j) “expiry date of the Building Covenant Period” means –  (i) the last day of the period within which the Development is required to be completed under the \*Government Grant/Exclusion Order/Redevelopment Order; or  (ii) if that period has been extended by the Government, the last day of the extended period; |
|  | (k) “Government” means the Government of the Hong Kong Special Administrative Region; |
|  | (l) “Government Grant” means the Government Grant document as set out in Schedule 2; |
|  | (m) “land” means all that piece or parcel of land registered in the Land Registry as [*insert lot number*]; |
|  | (n) “Occupation Permit” means the occupation permit or temporary occupation permit to be issued by the Building Authority under section 21 of the Buildings Ordinance for every building in the γPhase/Development; |
|  | (o) “office hours” means the period beginning at 10 a.m. of a day and ending at 4:30 p.m. of the same day; |
|  | β[(p) “Phase” means Phase [*insert phase number*] of the Development comprising [*insert description of building(s) comprising the Phase*];] |
|  | (q) “Professional Fees” means any sums incurred or to be incurred by the Vendor for the employment of the Authorized Person and other professional persons or consultants in relation to completion of the γPhase/Development; |
|  | (r) “Property” means the property described in Schedule 3; |
|  | \*[(s) “Redevelopment Order” –  (i) means \*a redevelopment order (as defined by the Demolished Buildings (Re-development of Sites) Ordinance/an order for sale (as defined by the Land (Compulsory Sale for Redevelopment) Ordinance), dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]; and  (ii) includes any order amending that \*redevelopment order/order for sale;] |
|  | (t) “Saleable Area” means – |
|  | (i) in relation to a unit enclosed by walls, the floor area of such unit (which includes 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 is taken from the middle of those walls, and includes the internal partitions and columns within such unit; but excludes 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 is 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 parking space, the area of such parking space 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 is measured from the interior of such wall; and |
|  | where the Property consists of any of the above-mentioned items, the Saleable Area of each of such items is set out and described separately in Schedule 3; |
|  | (u) “Statutory Declaration” means the Statutory Declaration of the Vendors’ Solicitor and all other solicitors (if any) acting for the Vendor registered in the Land Registry by Memorial No. [*insert memorial number*] in relation to the consent of the Director of Lands to sell the Property; and |
|  | (v) “Vendor’s Solicitors” means Messrs. [*insert name of solicitors’ firm of the vendor*]. |
|  | (2) In this Agreement, if the context permits or requires, the singular number includes the plural and the masculine gender includes 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 in the Development 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 – |
|  | 1. the Property; and |
|  | (2) such areas and facilities (if any) as may be designated as common areas or common parts and common facilities in the Deed of Mutual Covenant or are intended for common use. |
| Purchase price | 3. (1) The purchase price is the sum as set out in Schedule 4, payable by the Purchaser to the Vendor’s Solicitors as stakeholders in the manner as set out in Schedule 4. |
|  | (2) In the event of any money paid under this Agreement to the stakeholders not being applied in the manner set out in clause 26, such money is deemed to have been paid by the Purchaser to the Vendor’s Solicitors 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 when the Vendor is not at that time in a position validly to assign the Property to the Purchaser for whatever reason, the Purchaser is 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. Where the Purchaser has opted for payment of the full balance of the purchase price within a specified period after the signing of this Agreement as set out in Schedule 4, then this sub-clause (3) shall not apply. |
|  | (4) In respect of each payment of the purchase price or any part of the purchase price required to be made under this Agreement, the Purchaser shall deliver to the Vendor’s Solicitors on the date on which such payment is required to be made a cashier’s order issued or a cheque certified good for payment by a licensed bank in the Hong Kong Special Administrative Region in favour of the Vendor’s Solicitors for the relevant amount. |
|  | (5) Subject to sub-clause (3) but without prejudice to any other remedy under this Agreement, the Vendor is 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. |
| Construction of  Development, extension of time, rescission | 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 |
|  | (c) complete the θPhase/Development in all respects in accordance with the building plans on or before [*insert the estimated completion date as certified by the Authorized Person*] subject to such extensions of time as may be granted by the Authorized Person in accordance with sub-clause (4)(a). |
|  | (2) (a) Despite sub-clause (1)(c), the Vendor shall complete the Development by the expiry date of the Building Covenant Period. If at any time it appears likely in the opinion of the Authorized 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 is required and shall pay any premium to the Government for such extension. The Vendor shall notify the Purchaser in writing of such application and the terms of extension granted within 30 days after each event. |
|  | (b) If the Vendor fails to apply for and obtain any necessary extension of time for completing the Development under sub-clause (2)(a) and fails to complete the Development by the expiry date of the Building Covenant Period, the Purchaser is entitled, β[unless the completion of the sale and purchase in this Agreement has taken place], in addition to any other remedy that the Purchaser may have, to give the Vendor notice in writing to rescind this Agreement and upon service of such notice, this Agreement is rescinded, and the Vendor shall, within 7 days after the rescission, repay to the Purchaser all amounts paid by the Purchaser under this Agreement together with interest on those amounts 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 repayment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor under this Agreement. |
|  | (3) (a) Subject to sub-clause (3)(b), if the Vendor fails to complete the θPhase/Development by the date specified in sub-clause (1)(c) as extended by any extensions of time granted by the Authorized Person under sub-clause (4)(a), the Purchaser is at liberty, in addition to any other remedy that the Purchaser may have, by notice in writing to the Vendor to rescind this Agreement and upon service of such notice, this Agreement is rescinded, and the Vendor shall, within 7 days after the rescission, repay to the Purchaser all amounts paid by the Purchaser under this Agreement together with interest on those amounts 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 repayment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor under this Agreement. |
|  | (b) If the Purchaser does not rescind this Agreement under sub-clause (3)(a) within 28 days after the date specified in sub-clause (1)(c) or any extended date under sub-clause (4)(a), the Purchaser is deemed, without prejudice to the Purchaser’s rights under sub-clause (3)(c), to have elected to wait for completion of the θPhase/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 specified in sub-clause (1)(c) or any extended date under sub-clause (4)(a) up to the date of completion of the θPhase/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) Despite sub-clauses (3)(a) and (3)(b), if the θPhase/Development is not completed within a period of 6 months from the date specified in sub-clause (1)(c) or any extended date under sub-clause (4)(a), the Purchaser is at liberty either to rescind this Agreement in which event the provisions of sub-clause (3)(a) relating to repayment and interest apply or to await the completion of the θPhase/Development in which event the provisions of sub-clause (3)(b) relating to the payment of interest apply. |
|  | (4) (a) The Vendor is entitled to such extensions of time for completion of the θPhase/Development beyond the date specified in sub-clause (1)(c) as granted by the Authorized Person and appear to the Authorized Person 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.  For the purpose of this sub-clause (4)(a), “inclement weather” means rainfall in excess of 20 millimetres in a twenty-four hour period (mid-night to mid-night) as recorded at the Hong Kong Observatory, or the issue of a Black Rainstorm Warning Signal, or the hoisting of Typhoon Signal No. 8 or above, at any time between the hours of 8 a.m. and 5 p.m. |
|  | (b) The Vendor shall within 14 days after the issue of any such extensions of time granted by the Authorized Person under sub-clause (4)(a) furnish the Purchaser with a copy of the relevant certificate of extension. |
|  | (5) For the purpose of this clause, the θPhase/Development is deemed to be completed on the date on which the Occupation Permit is issued. |
| Completion of sale and purchase | 1. The sale and purchase shall be completed at the offices of the Vendor’s Solicitors during office hours within 14 days after the Purchaser being notified in writing – |
|  | (1) that the Occupation Permit has been issued and the Vendor is in a position validly to assign the Property to the Purchaser; or  (2) that the Occupation Permit and the Certificate of Compliance have been issued;  whichever first happens. |
| Proper assurance | 6. On completion of the sale and purchase, the Vendor and all other necessary parties (if any) shall execute an Assignment of the Property to the Purchaser or the Purchaser’s nominee or sub-purchaser in accordance with this Agreement but otherwise free from incumbrances. |
| Risk | 7. The Property, as between the Vendor and the Purchaser, remains at the Vendor’s risk until the date fixed for completion of the sale and purchase in clause 5. |
| Requisition on title | 8. If the Purchaser makes and insists on any objection or requisition in respect of the title or otherwise which the Vendor is unable or (on the ground of difficulty, delay or expense or on any other reasonable ground) unwilling to remove or comply with, the Vendor is, notwithstanding any previous negotiation or litigation, at liberty to cancel the sale on giving to the Purchaser or his solicitors at least 14 days’ notice in writing to that effect, in which case unless the objection or requisition is in the meantime withdrawn, the sale is cancelled on the expiry of such notice and the Purchaser is entitled to a return of the deposit and other sums of money already paid but without interest, costs or compensation. |
| Government Grant,  mis-description | 9. (1) The Property is sold subject to and with the benefit of the Government Grant, for the term of years created by and with any right of renewal granted by the Government Grant and subject to all easements (if any) subsisting in the Government Grant. |
|  | (2) No error, mis-statement or mis-description shall cancel the sale nor shall any compensation be allowed in respect of such error, mis-statement or mis-description 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. |
| Warranties | 10. (1) The Vendor warrants –  (a) that the fittings and finishes as set out in Schedule 5 shall, on or before completion of the θPhase/Development, be incorporated into the Property Provided Always that if the Vendor is prevented by force majeure or other reason beyond its control from obtaining such fittings and finishes, other fittings and finishes certified by the Authorized Person to be of comparable quality may be substituted;  (b) that subject to clause 21, the Property will, on completion of the θPhase/Development, be as shown on the plan attached to this Agreement and the Saleable Area of the Property will be as set out in Schedule 3; and  (c) that on completion of the Development the Vendor shall provide the communal \*[and recreational] facilities as set out in Schedule 6.  (2) The Vendor further warrants – |
|  | (a) that consent in writing for the Vendor to enter into this Agreement has been obtained under the \*Government Grant/Exclusion Order/Redevelopment Order; |
|  | (b) that at the date hereof –  (i) the building plans have been duly approved;  (ii) the Authorized Person has duly certified that the foundations of the γPhase/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 γPhase/Development; and  (iv) to the best of the Vendor’s knowledge, no impediment exists which would prohibit or impede the completion of the θPhase/Development within the time specified in clause 4(1)(c); |
| Good title | 11. (1) The Vendor shall at its 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 the Purchaser 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. |
|  | (2) The Purchaser shall raise no objection if the Vendor’s interest in the Property is an equitable interest and not a legal estate. |
| Documents of title | 12. Such of the documents of title as relate exclusively to the Property shall be delivered to the Purchaser. All other documents of title in the possession of the Vendor shall be retained by the Vendor who shall, if so required on completion of the sale and purchase, give to the Purchaser a covenant for the safe custody of those documents and for production and delivery of copies of those documents at the expense of the Purchaser, such covenant to be prepared by the Purchaser. |
| Rights of Purchaser | 13. The Purchaser is at any time before completion of the sale and purchase at liberty to – |
|  | (1) sub-sell the Property or transfer the benefit of this Agreement without any interference or charges by the Vendor or anyone claiming under or through the Vendor; |
|  | (2) charge or mortgage the Property Provided Always that notice in writing of any such charge or mortgage is given to the Vendor or the Vendor’s Solicitors; and |
|  | (3) instruct any firm of solicitors of his choice to act for him in this Agreement and the Assignment and in the event that the Purchaser instructs solicitors other than the Vendor’s Solicitors to act for him, each party shall pay its own solicitors’ costs of and incidental to this Agreement and the Assignment (including all legal costs and disbursements of and incidental to the preparation, completion, stamping and registration of this Agreement and the Assignment). |
| Costs and disbursements of Agreement | 14. (1) Subject to clause 13(3), all legal costs and disbursements of and incidental to the preparation, completion, stamping and registration of this Agreement and the Assignment shall be borne and paid by the \*Purchaser/Vendor, and in the event that the Purchaser instructs solicitors other than the Vendor’s Solicitors to act for him – |
|  | (a) if the Purchaser requests 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; and |
|  | (b) if the Purchaser requests the Vendor to assign the Property to his nominee or sub-purchaser the Purchaser shall on completion pay the additional costs charged by the Vendor’s Solicitors for the perusal of any instrument of Nomination or Sub-Sale Agreement. |
| Stamp duty, etc. | (2) All stamp duty and registration fees payable on this Agreement and the Assignment shall be borne and paid by the \*Purchaser/Vendor. |
| Plan(s) | 1. The professional fees for the plan(s) to be annexed to this Agreement and the Assignment shall be borne and paid by the \*Purchaser/Vendor. |
| Time of the essence | 1. Time is in every respect 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 contained in this Agreement or to make the payments in accordance with Schedule 4 or any interest payable under this Agreement within 7 days after 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. If the Purchaser fails within 21 days after 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 and in such event – |
|  | (a) the sum paid by the Purchaser under paragraph (a) of Schedule 4 by way of deposit shall be forfeited to the Vendor; and |
|  | (b) where the Purchaser has entered into possession of the Property, the Vendor is entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser in the Property and to receive from the Purchaser as occupation fee a sum equal to 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 the unpaid balance of the purchase price for the period during which the Purchaser was in occupation. |
|  | (2) Upon determination of this Agreement pursuant to sub-clause (1), the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale belongs to the Vendor. On a resale, any deficiency in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months after the determination of this Agreement. |
| Default of Vendor | 17. In the event of the Vendor failing to complete the sale in accordance with the terms and conditions of this Agreement, 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 | 18. On completion of the sale and purchase, the Purchaser shall EITHER enter into a Deed of Mutual Covenant with the Vendor 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 entered into by the Vendor with another purchaser or purchasers in respect of the land and the Development. Such Deed of Mutual Covenant shall follow closely the draft exhibited to the Statutory Declaration subject however to such modifications as are necessitated by changes in the building plans, adjustment of the undivided shares, 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 Legal Advisory and Conveyancing Office Circular Memoranda Nos. 79 and 79A as amended from time to time unless otherwise permitted by the Director of Lands.] |
| Costs of Deed of Mutual Covenant | 19. The Purchaser shall pay to \*the Vendor’s Solicitors/Messrs. [*insert name of solicitors’ firm to whom the costs of the Deed of Mutual Covenant is to be paid*] 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. |
| Possession, utility deposits, etc. | 20. (1) Subject as mentioned in this Agreement, the Purchaser or the Purchaser’s nominee or sub-purchaser is, on completion of the sale and purchase, entitled to vacant possession of the Property, all outgoings including Government rent, rates and management fees up to and inclusive of the completion date being paid by the Vendor. |
|  | 1. Before the Purchaser is entitled to possession of the Property, the Purchaser shall –    1. 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 areas or common parts of the Development; and |
|  | * 1. pay to the Vendor or the manager of the Development all the deposits and advance payments \*[and a debris removal fee] payable under the Deed of Mutual Covenant. |
| Alteration of building plans | 21. (1) Despite anything contained in this Agreement, the Vendor 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 within 14 days after its having been approved by the Building Authority. If, as a result of such alteration, the Saleable Area of the Property or any part of the Property, according to such amended plans differs from the Saleable Area as set out 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 of the Property, exceeds 5% of the Saleable Area of the Property as set out in Schedule 3, then the Purchaser is at liberty to rescind this Agreement, in which event all moneys paid by the Purchaser under this Agreement shall be returned to the Purchaser with interest on those moneys 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 the right of rescission by notice in writing to the Vendor within 30 days after the Purchaser is notified in writing by the 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 is 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); |
|  | (b) the extent of any adjustment of the purchase price as a result of the variation; or |
|  | (c) whether the proviso in clause 10(1)(a) 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 Authorized Person for a decision thereon. |
|  | (3) If either party is dissatisfied with the decision of the Authorized Person made pursuant to sub-clause (2), such party shall within 14 days after the decision is communicated to him give to the other party notice in writing of his intention to refer the decision to another authorized person as defined in section 2(1) of the Buildings Ordinance acting as an expert, otherwise the decision of the Authorized Person shall be final and binding on the parties. Should the parties fail to agree on such other authorized person to be appointed within 30 days after the giving of such notice, either party is entitled to apply within 7 days thereafter 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 a party, after giving to the other party notice in writing of his intention to refer the decision of the Authorized Person to another authorized person as aforesaid, fails to refer the decision to another authorized person within 44 days after the giving of such notice, then the decision of the Authorized Person shall be final and binding on the parties. The costs of the Authorized Person shall be paid as directed by the Authorized Person in his award. |
| Adjustment of undivided shares | 22. The Vendor reserves the right to adjust the number of undivided shares into which the land and the Development are notionally divided and the fraction which each share bears to the whole Provided That such adjustment shall not – |
|  | (1) alter the total number of undivided shares by more than 3% without the prior written consent of the Director of Lands; or |
|  | (2) affect the Purchaser’s exclusive right and privilege to hold, use, occupy and enjoy the Property. |
| Alteration of standard terms | 23. None of the terms and conditions of this Agreement shall in any way be altered or varied nor shall any arrangement or agreement (whether written or otherwise) whatsoever be entered into which has the effect of altering or varying the terms and conditions of this Agreement without the prior written approval of the Director of Lands. |
| Registration | 24. This Agreement shall be registered in the Land Registry within one month after [*insert date of preliminary agreement for sale and purchase*] being the date of the preliminary agreement referred to in paragraph (g) of Schedule 7. |
| 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 in this Agreement shall prevent the Vendor from charging the unpaid proceeds of sale under this Agreement (subject however to clause 26) to further finance the Construction Costs and the Professional Fees so long as notice of any such mortgage or charge is given to the Purchaser. |
| Release of purchase price | 26. (1) Subject as provided in this clause, any part of the purchase price paid by the Purchaser to the Vendor’s Solicitors 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 Costs and the Professional Fees to the Vendor from time to time in such amount or amounts as certified by the Authorized Person as having been expended or having become payable on the construction of the γPhase/Development; |
|  | (b) second, towards repayment of funds drawn under the Building Mortgage (if any) for payment of the Construction Costs and the Professional Fees and interest on the Construction Costs or the Professional Fees; |
|  | (c) third, in the event of the Vendor’s Solicitors and all other solicitors (if any) acting for the Vendor in the sale of the units in the γPhase/Development at any time holding as stakeholders a sufficient sum to cover the entire outstanding balance of the Construction Costs and the Professional Fees as certified by the Authorized 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 (if any); and |
|  | (d) fourth, in the event of the Vendor’s Solicitors and all other solicitors (if any) acting for the Vendor in the sale of the units in the γPhase/Development at any time holding as stakeholders a sufficient sum to cover the total of the sums referred to in sub-clause (1)(c), then the Vendor’s Solicitors may release the excess amount to the Vendor. |
|  | Provided Always that – |
|  | (i) in respect of any payment under sub-clause (1)(a) the Vendor’s Solicitors shall not at any time release to the Vendor any sum in excess of the amount certified by the Authorized Person as having been paid and/or become payable towards the Construction Costs and the Professional Fees at that time less the amount which the Vendor has drawn under the Building Mortgage (if any) for payment of the Construction Costs and the Professional Fees; and |
|  | (ii) the Vendor shall not in any circumstances draw under the Building Mortgage (if any) any part of the Construction Costs and the Professional Fees already paid under sub-clause (1)(a). |
|  | (2) All moneys received by the Vendor’s Solicitors as stakeholders under this Agreement shall be placed in a client account bearing interest and subject to clearance (if the payment is made by cheque) the Vendor is entitled to all interest (if any) earned on such account. |
| Defects | 27. (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 after the date of completion of the sale and purchase under clause 5, remedy any defects to the Property, or the fittings and finishes as set out in Schedule 5, caused otherwise than by the act or neglect of the Purchaser. The provisions of this sub-clause (1) are without prejudice to any other rights or remedies that the Purchaser may have at common law or otherwise. |
|  | (2) The Vendor undertakes with the Purchaser to use its best endeavours 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 areas or common parts and common 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’ Corporation incorporated under the Building Management Ordinance 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. |
| Provisions to survive Assignment | 28. Clauses 10, 12 and 27 will survive completion of the sale and purchase by the Assignment. |
| Notices | 29. Any notice required to be given under this Agreement –  (1) is deemed to have been validly given to a party if –  (a) the notice is addressed to the party; and  (b) the notice is sent by ordinary prepaid post to –  (i) the party’s address stated in this Agreement; or  (ii) the party’s last known address (where a notification of change of address has previously been given to the other party or the other party’s solicitors); and   1. is deemed to have been served on the second business day after the date of posting. |
| Non-business day, etc. | 30. If any date stipulated for payment in this Agreement or the day on which completion of the sale and purchase is to take place as provided in this Agreement falls on a day that is not a business day or on a day on which Typhoon Signal No. 8 or above is hoisted or Black Rainstorm Warning Signal is issued at any time between the hours of 9 a.m. and 5 p.m., such date for payment or completion of the sale and purchase is automatically postponed to the immediately following day that is a business day and on which no Typhoon Signal No. 8 or above is hoisted or Black Rainstorm Warning Signal is issued at any time between the hours of 9 a.m. and 5 p.m. |
| \*[Financier] | \*[31. The Financier 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/[*insert the name of the JV Partner*], the person engaged by the Vendor to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the Development,] until the Development has been completed and that the Financier will, if necessary, provide all further finance to enable the VendorΩ[and [*insert the name of the JV Partner*]]to complete the Development.] |
| Marginal notes | 32. The marginal notes to this Agreement shall not be deemed to be part of this Agreement and do not affect the interpretation or construction of this Agreement. |
| ε[Certificate of value] | ε[33. It is certified that the transaction effected by this Agreement does not form part of a larger transaction or a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds HK$[*insert amount*].] |
| Stamp Duty Ordinance | 34. For the purpose of sections 29B(1) and 29B(5) of the Stamp Duty Ordinance, the matters required to be specified are as set out in Schedule 7. |
| Contracts (Rights of Third Parties) Ordinance | 35. This Agreement may be rescinded by agreement of the parties hereto without the consent of any person who is not a party to this Agreement and section 6(1) of the Contracts (Rights of Third Parties) Ordinance (Cap. 623) shall not apply to this Agreement. For the purpose of section 6(4) of that Ordinance, the Vendor agrees to give as soon as practicable notice of this clause –  (1) to the Owners’ Corporation incorporated under the Building Management Ordinance (Cap. 344);  (2) if no Owners’ Corporation exists, to the manager of the Development; and  (3) if no manager has been appointed, to the manager as and when it is appointed and also to the Owners’ Corporation as and when it is incorporated. |
|  |  |

Schedule 1

###### Parties

(a) Vendor :

(b) Purchaser :

\*(c) Financier :

Schedule 2

###### Government Grant

\*Government Lease dated [*insert date*]/Conditions of Sale/Conditions of Grant/Conditions of Exchange/New Grant No. [*insert number*] \*[as varied or modified by a Modification Letter dated [*insert date of the instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]], the particulars of which are as follows –

(a) Parties :

(b) Date :

(c) Term : years from expiring on

(d) User :

(e) Lot Number :

Schedule 3

Property

[*Insert description and Saleable Area of the Property*]

Schedule 4

###### Purchase Price

The purchase price is HK$[*insert amount*], payable by the Purchaser to the Vendor’s Solicitors as stakeholders as follows –

(a) the amount of [*insert amount*] has been paid as deposit on the signing of the agreement preliminary to this Agreement;

(b) [*insert payment terms in such a way that the operation of clause 5 will not be affected*].

Schedule 5

Fittings and Finishes

[*Insert fittings and finishes*]

Schedule 6

Communal \*[and Recreational] Facilities

[*Insert communal and recreational facilities*]

Schedule 7

Matters Required to be Specified under Section 29B(5) of the Stamp Duty Ordinance

(a) (1) Name of the Vendor –

[*insert name*]

Address/Registered Office of the Vendor –

[*insert address/registered office*]

(2) Name of the Purchaser –

[*insert name*]

Address/Registered Office of the Purchaser –

[*insert address/registered office*]

(b) (1) Identification Number of the Vendor –

[*insert description and number of identification document*]

(2) Identification Number of the Purchaser –

[*insert description and number of identification document*]

(c) (1) Business Registration Number of the Vendor –

[*insert business registration number*]

(2) Business Registration Number of the Purchaser –

[*insert business registration number*]

(d) Description and location of the Property –

[*insert description and location*]

(e) The Property is a non-residential property within the meaning of section 29A(1) of the Stamp Duty Ordinance.

(f) Date of this Agreement –

[*insert date*]

(g) This Agreement was preceded by [*insert description of the instrument, e.g. preliminary agreement for sale and purchase*] on the same terms made between [*insert names of the parties*] on [*insert date of the instrument*].

(h) [*Insert a statement as to whether or not a date has been agreed for the Conveyance on Sale or Assignment of the Property and, if so, that date*]

(i) There is an agreed consideration for the Conveyance on Sale or Assignment that is to, or may, take place pursuant to this Agreement and the amount of the consideration is HK$[*insert amount*].

(j) [*Insert a statement as to the amount or value of any other consideration which the parties signing this Agreement knows has been paid or given, or has been agreed to be paid or given, to any person for or in connection with this Agreement or any Conveyance on Sale or Assignment of the Property pursuant to this Agreement (excluding legal expenses), together with the name, address, and the identification number or business registration number of each person receiving or to receive such consideration, and a description of the benefit to which the consideration relates*]

AS WITNESS the hands of the parties to this Agreement the day and year first above written.

SIGNED by [*insert name(s) and* )

*description of office(s) of* )

*authorized signatory(ies*)] )

for and on behalf of the Vendor whose )

signature(s) is/are verified by : – )

Solicitor, Hong Kong SAR

\*[∅[EXECUTED and DELIVERED )

as a deed and the Common Seal )

of the Financier affixed in the presence of )

[*insert name(s) and description of* )

*office(s) of authorized signatory(ies)*] )

whose signature(s) is/are verified by : – )

Solicitor, Hong Kong SAR]

**OR**

©[EXECUTED and DELIVERED )

as a deed by the Financier )

acting through [*insert name(s) and* )

*description of office(s) of* )

*authorized signatory(ies)*] whose )

signature(s) is/are verified by : – )

Solicitor, Hong Kong SAR]]

SIGNED by \*the Purchaser in the )

presence of/[*insert name(s) and* )

*description of office(s) of*  )

*authorized signatory(ies)*] for )

and on behalf of the Purchaser whose )

signature(s) is/are verified by : – )

Solicitor, Hong Kong SAR

\*[INTERPRETED to the Purchaser in the [*insert dialect*] of the Chinese language by : –

]

RECEIVED on or before the day and year first above written )

)

of and from the Purchaser the sum of HONG KONG )

)

DOLLARS [*insert amount*] ) HK$

Messrs. [*insert name of the Vendor’s Solicitors*] as stakeholders

Dated 20

A G R E E M E N T

for Sale and Purchase of

[ ]

REGISTERED in the Land Registry

by Memorial No.[ ]

on [ ]

for Land Registrar

\* Delete as appropriate.

γ Delete “Development” for phased development. Otherwise delete “Phase”.

Σ Applicable for phased development except the final phase of a phased development. Delete as appropriate.

β For phased development only. Delete as appropriate.

θ Delete “Development” for phased development except the final phase of a phased development. Otherwise delete “Phase”.

ε For transaction of the value not exceeding the amount specified in Head 1(1A) of the First Schedule to the Stamp Duty Ordinance. Delete as appropriate.

Ω For cases where the Financier has provided or will provide unsecured loan(s) to the JV Partner; i.e. person engaged by the Vendor to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the Development or the phase of the Development. Delete as appropriate.

∅ For execution by the Financier under its common seal in accordance with the provisions of its articles.

© For execution by the Financier in accordance with section 127(3) of the Companies Ordinance.