Appendix II

STATUTORY DECLARATION

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| --- | --- |
|  | IN THE MATTER of [*insert lot number of land*] |
|  | and |
|  | IN THE MATTER of the Oaths and Declarations Ordinance |
| I, [*insert name of solicitor*] of [*insert address of solicitor*], solicitor, solemnly and sincerely declare as follows:- | |
| (1) I am \*the sole proprietor/a partner in the firm of [*insert name of solicitors’ firm*], solicitors, which has been instructed by [*insert name of registered owner of land*] (the Vendor) to act in connection with the sale of non-residential units comprising [*insert description of units such as shops, offices, parking spaces etc.*] in the development now being constructed or to be constructed on the above-mentioned land and intended to be known as “[*insert name of development*]” (the Development). | |
| (2) I make this declaration on behalf of my firm in relation to the consent of the Director of Lands (“the Consent”) to the Vendor to enter into agreements for sale and purchase of non-residential units in β[Phase [*insert phase number*] of] the Development β[(“the Phase”)] under the provisions of \*the 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/an Extension Letter/an Exclusion Order/a redevelopment order/an order for sale dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]] (“the Government Grant”) under which the above-mentioned land is held from the Government of the Hong Kong Special Administrative Region. β[The Phase comprises [*insert description of buildings comprising the Phase*].] | |
| (3) In accordance with instructions received from the Vendor, my firm has drawn up the form of Agreement for Sale and Purchase (“ASP”) for the sale of non-residential units in the γPhase/Development. I have PERSONALLY EXAMINED the form of ASP now produced to me marked Exhibit A-1 and exhibited to this declaration. I declare that \*[except insofar as any variations have been approved by the Director of Lands] its contents in all respects accord with the standard form of ASP annexed to Legal Advisory and Conveyancing Office (“LACO”) Circular Memorandum No. [*insert number*]. | |
| ϖ(4) My firm has received instructions from the Vendor to prepare the form of Deed of Mutual Covenant incorporating a Management Agreement (if any) (“DMC”) for the sale of non-residential units in the γPhase/Development. I have PERSONALLY EXAMINED the form of DMC now produced to me marked Exhibit A-2 and exhibited to this declaration. #[I declare that \*[except insofar as any variations have been approved by the Director of Lands] its contents: | |
| (a) in all respects accord with:- | |
| (i) the guidelines set out in LACO Circular Memorandum No. [*insert number*]; and | |
| (ii) all the provisions of the Government Grant; and | |
| (b) are not in any respect contrary to any of the guidelines \*[except as aforesaid] nor to any of the provisions of the Government Grant,  and its form has been approved by the Director of Lands.] | |
| (5) (a) My firm has received confirmation from the Vendor that [*insert name of authorized person*] (“the Authorized Person”) of [*insert name and address of firm/corporation of authorized person*] has been appointed as the co-ordinator of building works for the γPhase/Development.  (b) The Authorized Person has issued his certificate dated [*insert date of certificate*] (“the AP’s Certificate”) in respect of the γPhase/Development which certificate is now produced to me marked Exhibit A-3 and exhibited to this declaration.  (c) The Authorized Person has confirmed in the AP’s Certificate that [*insert name of building contractor as stated in the AP’s Certificate*] (“the Building Contractor”) has been appointed as the building contractor to carry out building works for the γPhase/Development.  ⊄[(d) Pursuant to paragraph (1)(n) of the AP’s Certificate, [*insert name of independent authorized person/quantity surveyor*] has verified and confirmed the respective amounts set out in paragraphs (1)(h), (1)(i), (1)(j) and (1)(k) of the AP’s Certificate in his certificate dated [*insert date of certificate*] which certificate is now produced to me marked Exhibit A-4 and exhibited to this declaration.] | |
| #ϖ[(6) The Authorized Person has issued his certificate dated [*insert date of certificate*] confirming to me the basis for allocation of undivided shares \*[and management shares] under the DMC in respect of the whole of the Development which certificate is now produced to me marked Exhibit A-[*insert exhibit number*] and exhibited to this declaration.] | |
| Δ[(7) (a) To finance the total of the construction costs and the professional fees to complete the γPhase/Development as stated in the AP’s Certificate (collectively “the Total Development Costs”), a \*building mortgage/debenture dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*] (the Building Mortgage) has been entered into between the Vendor and [*insert name of licensed bank or registered deposit-taking company*] (the Mortgagee) ʊ[for facilities up to [*insert the amount of the facilities granted or to be granted by the Mortgagee under the Building Mortgage*] and an undertaking as referred to in paragraph 8 hereof (“the undertaking”) has been procured by the Vendor].  (b) My firm has received confirmation in writing from the Mortgagee as to the amount of the facilities remaining undrawn under the Building Mortgage and that the facilitiesʊ[, together with the amount set out in paragraph 8 hereof, being the amount covered by the undertaking,] are sufficient to finance that part of the Total Development Costs expended but not yet paid and that part of the Total Development Costs remaining to be expended to complete the γPhase/Development as stated in the AP’s Certificate (collectively “the Outstanding Development Costs”). A copy of the confirmation dated [*insert date of confirmation*] is now produced to me marked Exhibit A-[*insert exhibit number*] and exhibited to this declaration. The Mortgagee has undertaken to inform in writing my firm in the event of any of the facilities still remaining undrawn being cancelled for any reason other than drawings pursuant to the Building Mortgage or payment of the Outstanding Development Costs from other sources. | |
| (c) In the event of the Mortgagee advising my firm of the cancellation of the facilities for any reason, my firm undertakes to inform in writing LACO and to confirm whether ʊ[the undertaking together with] the funds held by my firm in the stakeholder account as provided in the ASP is sufficient to finance the Outstanding Development Costs. If not, the Consent will be deemed to have been cancelled insofar as the non-residential units unsold at that time are concerned and I have informed the Vendor accordingly.] | |
| %[(8) [*Insert name of licensed bank or registered deposit-taking company*] has undertaken with the Government of the Hong Kong Special Administrative Region and the Director of Lands that if the Vendor shall be unable to finance the \*Total Development Costs/total of the construction costs and the professional fees to complete the γPhase/Development as stated in the AP’s Certificate (collectively “the Total Development Costs”), he will pay to the Vendor or to any other person or persons as the Director of Lands shall direct an amount not exceeding HK$[*insert amount*]. A copy of the undertaking dated [*insert date of undertaking*] is now produced to me marked Exhibit A-[*insert exhibit number*] and exhibited to this declaration.] | |
| +[(9) (a) To finance the Total Development Costs, unsecured loans have been made and will be made to \*[the Vendor/the JV Partner referred to in paragraph (14)(b) below] by [*insert name of Financier*] (the Financier).  (b) My firm has received confirmation in writing from the Financier that the Financier will not call back any loans made or to be made to \*[the Vendor/the JV Partner referred to in paragraph (14)(b) below] until the Development has been completed and that, if necessary, the Financier will provide all further finance to enable the Vendor Ω[and the JV Partner referred to in paragraph (14)(b) below] to complete the Development. | |
| (c) In the event of the Financier advising my firm that the Financier will not, or will not be able to, provide all further finance to complete the Development for any reason, my firm undertakes to inform in writing LACO and recognizes that the Consent will be deemed to have been cancelled insofar as the non-residential units unsold at that time are concerned and I have informed the Vendor accordingly.] | |
| (10) My firm undertakes that all purchase monies paid by purchasers of non-residential units in the γPhase/Development will be held by my firm as stakeholder and will not be released except in accordance with the terms and conditions of the ASP and the conditions of the Consent. | |
| (11) In the event of my firm ceasing to act in respect of the γPhase/Development or any part of the γPhase/Development and the sale of any non-residential units in the γPhase/Development, my firm undertakes to inform in writing LACO and recognizes that the Consent will be deemed to have been cancelled insofar as the non-residential units unsold at that time are concerned and I have informed the Vendor accordingly. | |
| (12) My firm undertakes that we will check the terms and conditions of all signed preliminary agreements for sale and purchase (“PASP”) in respect of the non-residential units which have been sold and for which we are instructed by the purchaser to prepare the ASP and will satisfy ourselves that the terms and conditions of the PASP do not breach any conditions of the Consent. My firm will not act for either party in the sale of any non-residential units in respect of which the terms and conditions of the PASP are in breach of the conditions of the Consent and my firm will immediately notify in writing LACO of any such breach with details of the non-residential units concerned. I acknowledge that any breach of the conditions of the Consent apparent on the face of any PASP will immediately act as a suspension of the Consent for the whole of the γPhase/Development and that my firm will immediately inform the Vendor that no further sale of non-residential units in the γPhase/Development shall take place until the Director of Lands has confirmed in writing that the Consent is reinstated in respect of the unsold non-residential units. | |
| (13) My firm has received confirmation from the Vendor that:  (a) the sales brochure complies with the conditions of the Consent and contains all information as required in the Consent; and  (b) in accordance with and subject to the conditions of the Consent: | |
| (i) the sales brochure and the price list \*have been/will be made available to the general public; and   1. hard copies of the sales brochure \*have been/will be sent to the Consumer Council, the Estate Agents Authority and the Transport and Housing Bureau; and | |
| (c) a bilingual version of the “Warning to Purchasers” as per the form contained in Practice Direction A12 of Chapter 24 of The Hong Kong Solicitors’ Guide to Professional Conduct (Volume 2) issued by The Law Society of Hong Kong will be incorporated into all PASP. | |
| (14) φ(a) I confirm that: | |
| 1. the Vendor is a corporation and is a \*private/listed company; and 2. the Building Contractor is a corporation and is a \*private/listed company; and 3. the holding company of the Vendor, [*insert name of the holding company of the Vendor*] (“the holding company of the Vendor”), is a \*private/listed company; and | |
| (iv) \*no director/a director/[*insert number*] directors of the Vendor \*is/are my immediate family member\*[s] \*[and \*no director/a director/[*insert number*] directors of the Vendor \*is an immediate family member/are immediate family members of the other partner\*[s] of my firm]; and  (v) the company secretary of the Vendor is \*[not] my immediate family member \*[and the company secretary of the Vendor is \*[not] an immediate family member of the other partner\*[s] of my firm]; and  (vi) \*no director/a director/[*insert number*] directors of the Building Contractor \*is/are my immediate family member\*[s] \*[and \*no director/a director/[*insert number*] directors of the Building Contractor \*is an immediate family member/are immediate family members of the other partner\*[s] of my firm]; and  (vii) the company secretary of the Building Contractor is \*[not] my immediate family member \*[and the company secretary of the Building Contractor is \*[not] an immediate family member of the other partner\*[s] of my firm]; and  (viii) \*no director/a director/[*insert number*] directors of the holding company of the Vendor \*is/are my immediate family member\*[s] \*[and \*no director/a director/[*insert number*] directors of the holding company of the Vendor \*is an immediate family member/are immediate family members of the other partner\*[s] of my firm]; and  (ix) the company secretary of the holding company of the Vendor is \*[not] my immediate family member \*[and the company secretary of the holding company of the Vendor is \*[not] an immediate family member of the other partner\*[s] of my firm]; and  (x) I \*[do not] hold at least [*insert 1% where the Vendor is a listed company* *OR insert 10% where the Vendor is a private company*] of the issued shares in the Vendor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*[each] holds at least [*insert 1% where the Vendor is a listed company* *OR insert 10% where the Vendor is a private company*] of the issued shares in the Vendor]; and  (xi) I \*[do not] hold at least [*insert 1% where the holding company of the Vendor is a listed company* *OR insert 10% where the holding company of the Vendor is a private company*] of the issued shares in the holding company of the Vendor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*[each] holds at least [*insert 1% where the holding company of the Vendor is a listed company* *OR insert 10% where the holding company of the Vendor is a private company*] of the issued shares in the holding company of the Vendor]; and  (xii) I \*[do not] hold at least [*insert 1% where the Building Contractor is a listed company* *OR insert 10% where the Building Contractor is a private company*] of the issued shares in the Building Contractor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*[each] holds at least [*insert 1% where the Building Contractor is a listed company OR insert 10% where the Building Contractor is a private company*] of the issued shares in the Building Contractor]; and  (xiii) I am \*[not] an employee of the Vendor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is an employee/are employees of the Vendor]; and  (xiv) I am \*[not] a director of the Vendor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is a director/are directors of the Vendor]; and  (xv) I am \*[not] the company secretary of the Vendor \*[and \*no/one other partner of my firm is the company secretary of the Vendor]; and  (xvi) I am \*[not] an employee of the Building Contractor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is an employee/are employees of the Building Contractor]; and  (xvii) I am \*[not] a director of the Building Contractor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is a director/are directors of the Building Contractor]; and  (xviii) I am \*[not] the company secretary of the Building Contractor \*[and \*no/one other partner of my firm is the company secretary of the Building Contractor]; and   1. I am \*[not] an employee of the holding company of the Vendor \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is an employee/are employees of the holding company of the Vendor]; and   (xx) I am \*[not] a director of the holding company of the Vendor \*[and no/[*insert number*] other partner\*[s] of my firm \*is a director/are directors of the holding company of the Vendor]; and  (xxi) I am \*[not] the company secretary of the holding company of the Vendor \*[and \*no/one other partner of my firm is the company secretary of the holding company of the Vendor]. | |
| ∞[(b)My firm has received confirmation from the Vendor that the Vendor has engaged [*insert name of corporation engaged*] (“the JV Partner”) to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the γPhase/Development. I confirm that:  (i) the JV Partner is a corporation and is a \*private/listed company; and   1. the holding company of the JV Partner, [*insert name of the holding company of the JV Partner*] (“the holding company of the JV Partner”), is a \*private/listed company; and   (iii) \*no director/a director/[*insert number*] directors of the JV Partner \*is/are my immediate family member\*[s] \*[and \*no director/a director/[*insert number*] directors of the JV Partner \*is an immediate family member/are immediate family members of the other partner\*[s] of my firm]; and  (iv) the company secretary of the JV Partner is \*[not] my immediate family member \*[and the company secretary of the JV Partner is \*[not] an immediate family member of the other partner\*[s] of my firm]; and  (v) \*no director/a director/[*insert number*] directors of the holding company of the JV Partner \*is/are my immediate family member\*[s] \*[and \*no director/a director/[*insert number*] directors of the holding company of the JV Partner \*is an immediate family member/are immediate family members of the other partner\*[s] of my firm]; and  (vi) the company secretary of the holding company of the JV Partner is \*[not] my immediate family member \*[and the company secretary of the holding company of the JV Partner is \*[not] an immediate family member of the other partner\*[s] of my firm]; and  (vii) I \*[do not] hold at least [*insert 1% where the JV Partner is a listed company OR insert 10% where the JV Partner is a private company*] of the issued shares in the JV Partner \*[and \*no/[*insert number*] other partner\*[s] of my firm \*[each] holds at least [*insert 1% where the JV Partner is a listed company OR insert 10% where the JV Partner is a private company*] of the issued shares in the JV Partner]; and  (viii) I \*[do not] hold at least [*insert 1% where the holding company of the* JV Partner *is a listed company* *OR insert 10% where the holding company of the JV Partner is a private company*] of the issued shares in the holding company of the JV Partner \*[and \*no/[*insert number*] other partner\*[s] of my firm \*[each] holds at least [*insert 1% where the holding company of the JV Partner is a listed company* *OR insert 10% where the holding company of the JV Partner is a private company*] of the issued shares in the holding company of the JV Partner]; and  (ix) I am \*[not] an employee of the JV Partner \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is an employee/are employees of the JV Partner]; and  (x) I am \*[not] a director of the JV Partner \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is a director/are directors of the JV Partner]; and  (xi) I am \*[not] the company secretary of the JV Partner \*[and \*no/one other partner of my firm is the company secretary of the JV Partner]; and  (xii) I am \*[not] an employee of the holding company of the JV Partner \*[and \*no/[*insert number*] other partner\*[s] of my firm \*is an employee/are employees of the holding company of the JV Partner]; and  (xiii) I am \*[not] a director of the holding company of the JV Partner \*[and no/[*insert number*] other partner\*[s] of my firm \*is a director/are directors of the holding company of the JV Partner]; and  (xiv) I am \*[not] the company secretary of the holding company of the JV Partner \*[and \*no/one other partner of my firm is the company secretary of the holding company of the JV Partner].]  ∂(c) In this paragraph,   1. “company secretary” and “director” have the respective meanings given by the Companies Ordinance; 2. “corporation” means a company as defined by section 2(1) of the Companies Ordinance or a company incorporated outside Hong Kong; 3. “holding company” means a holding company within the meaning of the Companies Ordinance; 4. “immediate family member”, in relation to an individual, means a spouse, parent, child, sibling, grandparent or grandchild of the individual; 5. “listed company” has the meaning given by section 2(1) of the Companies Ordinance; and 6. “private company” has the meaning given by section 11 of the Companies Ordinance. | |
| (d) My firm undertakes to inform LACO in writing immediately if there is:   1. a change of the information contained in paragraphs (5)(a) and (5)(c) of this declaration; and   φ(ii) a change in the holding company of the Vendor ∞[and the JV Partner]; and  (iii) a change to φ[(a)(i) to (a)(xxi)] ∞[and (b)(i) to (b)(xiv)] of this paragraph. | |
| (15) My firm undertakes to provide to the Vendor and copy to LACO \*[and the Mortgagee] on a calendar monthly basis reports as per the form prescribed under the conditions of the Consent. The reports will be forwarded to the parties on or before the 15th day of each succeeding calendar month: | |
| (a) until the issue by the Director of Lands of the consent to assign in respect of the γPhase/Development; or | |
| (b) if no consent to assign has been issued, until the issue by the Director of Lands of a certificate of compliance in respect of the Development and the issue of a certificate by the Authorized Person to the Director of Lands confirming that the fittings and finishes of those non-residential units in the γPhase/Development which have been sold under the Consent will be incorporated in accordance with the terms and conditions of the ASP,  at which time a final report covering the period from the end of the last calendar month to either (a) or (b) of this paragraph will be submitted within 15 days of either (a) or (b) of this paragraph. | |

|  |  |
| --- | --- |
| AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance. | |
| DECLARED by )  )  )  ) | |
|  | |
|  | Before me, |

IN THE MATTER of [*insert lot number of land*]

and

IN THE MATTER of the Oaths and Declarations Ordinance

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

S T A T U T O R Y

D E C L A R A T I O N

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# REGISTERED in the Land Registry by

Memorial No. [ ]

on [ ]

for Land Registrar

\* Delete as appropriate.

β For phased development only. Delete as appropriate.

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

ϖ Amend as appropriate where Sub-DMC is involved.

# Applicable where DMC approval is required. Delete as appropriate.

⊄ Applicable where an Independent Authorized Person’s Certificate/Quantity Surveyor’s Certificate is required. Delete as appropriate.

Δ Applicable where the Vendor has entered into a building mortgage/debenture. Delete as appropriate.

ʊ Applicable where the Vendor has entered into a building mortgage/debenture and procured a finance undertaking. Delete as appropriate.

% Applicable where a licensed bank/registered deposit-taking company has undertaken to provide finance by way of a finance undertaking. Delete as appropriate.

+ Applicable where unsecured loans have been or will be made. Delete as appropriate.

Ω Applicable where unsecured loans have been or will be made to the JV Partner. Delete as appropriate

φ Amend as appropriate where the Vendor or the Building Contractor is an individual or a partnership or where the Vendor is a corporation, there is no or there are more than one holding company of the Vendor.

∞ Applicable where there is a person engaged to co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing and marketing the Development or the Phase (as the case may be). If applicable, amend as appropriate where the person so engaged is an individual or a partnership or where the person so engaged is a corporation, there is no or there are more than one holding company of the corporation so engaged.

∂ Delete definition(s) as appropriate.