

23 June 1993

Legal Advisory and Conveyancing Office
Circular Memorandum No. 1

**(i) Revised Form of Agreement for Sale
and Purchase for the Consent Scheme**

(ii) Use of Checklists for Applications

I have recently completed a review together with the Law Society's Property Committee of the form of Agreement for Sale and Purchase (ASP) used under the former Land Office Consent Scheme now administered by the Director of Buildings and Lands. Copies of the new form of ASP are available from the Law Society of Hong Kong.

2. The Real Estate Developers Association, Consumer Council, and the Hong Kong Institute of Surveyors/Royal Institution of Chartered Surveyors (Hong Kong Branch) and the Hong Kong Institute of Architects have also been consulted.

3. All applications for pre-sale consent submitted on or after 1st July 1993, are required to be accompanied by the new form of ASP. For applications still under consideration, the solicitors may, at their own option, submit a new form of ASP to replace the existing form prior to consent being given. In phased developments, where consent has already been given to an earlier phase under the existing form of ASP, applications for consent in subsequent phases lodged after 1st July 1993 will be given using the new form of ASP.

4. Also with effect from 1st July 1993, in addition to all the documents which are required to be submitted, all applications for pre-sale consent approvals of Deed of Mutual Covenant must be accompanied by Checklists A and B (standard forms annexed), as appropriate, duly completed by the solicitors. The purpose of these 2 Checklists is to streamline the processing of such applications and result in earlier issue of consent to pre-sell. Past experience shows that much of the time and effort by this Office in considering consent applications is required in extracting the relevant information from the many documents accompanying the applications. The introduction of these 2 Checklists will enable this Office to respond more quickly to applications. Where solicitors omit to submit completed Checklists A and B with their applications, delay will inevitably result in the issuing of consent.

5. Any new application for pre-sale consent lodged with the Legal Advisory and Conveyancing Office after 1st July 1993 not accompanied by the revised form of ASP will be rejected without assigning any Priority Number to the application.

6. Land Office Circular Memorandum No. 100 issued by the former Registrar General's Department is hereby cancelled.

7. The appropriate provisions to comply with the requirements of the stamp Duty (Amendment) Ordinance 1992 (No. 8 of 1992) should continue to be included so long as that Ordinance is in force in accordance with my letter of 20.10.92 (ref. (8) in LO 68/501/91 III) on behalf of the former Registrar General (Land Office).

(T. E. Berry)
Principal Solicitor
for Director of Lands

Encl.

To : All Solicitors

CHECKLIST A

CHECKLIST FOR PRESALE CONSENT APPLICATIONS

(To be completed by the Applicant's Solicitors)

- Notes : (1) In any case where Items (C) 1-6 (inclusive) & Item (D) 1 are not complied with or are incomplete, the application will be rejected. No priority number will be allocated to the case until the missing items are submitted.
- (2) In any case where all the submitted documents have been checked and the only outstanding matter is the submission of the approvals referred to in Items (C) 7-9, the application will be rejected unless the Applicant's solicitors are able to produce the requisite approvals within 28 days of being so informed by LACO.

		For Official Use only	
		Checked	Remarks
(A) <u>GENERAL INFORMATION</u>			
1.	Lot No. : _____		
2.	Name of Development (in English and Chinese) _____		
3.	Registered Owner : _____		
4.	Applicant's Solicitors : _____		
5.	The exact scope of the subject consent application (e.g. Phase I, Blocks 1-6) : _____ _____ _____		
6.	Proposed location of Sales Office(s) (if appropriate) : _____ _____		6. Has C of P. approved the location?
7.	Premises covered by the subject consent application (e.g. no. of residential units/carparking spaces/shops) : _____ _____ _____		
8.	Consent Fee : _____ (for LACO to complete)		

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		Checked	Remarks
(B) <u>LEASE PARTICULARS</u>			
1.	Held _____ under _____ : _____ Conditions _____ of _____ No. _____/New Grant No. _____/Exclusion Order dated _____		
2.	Land Authority's consent required under SC No. _____/ Para. _____ of the Exclusion Order		
3.	User : (i) SC No.(s) _____ (ii) Brief description of user _____ _____		
4.	(a) Building covenant expiry date : (i) as stated in SC No. _____/ Para. _____ of Exclusion Order _____ 19_____ (ii) If extended, copy of approval of BC extension showing current BC expiry date as _____ 19_____ (b) (i) Any further extension of BC applied for? If yes, please specify the proposed extended BC expiry date : _____ (ii) BC extension premium paid? Yes/No		
5.	(a) Approval to design, disposition and height (DDH) required under SC No. _____ (b) Approval of Master Plans required under SC Nos. _____ _____ (c) Approval of Landscaping Proposals required under SC No. _____		
6.	Any GIC facilities required to be provided within the development? Yes/No		
7.	(a) Approval of DMC & MA required under SC No. _____? Yes/No (b) If yes, draft DMC & MA and Checklist are submitted herewith.		

8. Other special requirements for consent under lease conditions, please specify : SC No(s). _____.

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	<u>Encl. No.</u>	<u>Checked</u>	<u>Remarks</u>
(C) <u>DOCUMENTS SUBMITTED</u>			
1. Draft S/D (in Duplicate)	()		
2. Draft ASP (in Duplicate)	()		
3. Form 12 (approval of building plans)	()		
4. Form 14 (approval of commencement of building works)	()		
5. All required AP Certificate(s) dated _____	()		
6. Satisfactory evidence of financial ability to complete the development (e.g. Mortgagee's Certificate)	()		
7. DDH Approval (if required) dated _____	()		
8. Approval of Master Layout Plans/Car Park Layout Plans (if required) dated _____	()		
9. Approval of Landscaping Proposals (if required) dated _____	()		
10. Memorandum of Agreement to Building Contract	()		
11. Approved Building Plans	()		
12. Others (please specify) _____	()		

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		<u>Checked</u>	<u>Remarks</u>
(D) <u>DEVELOPMENT PROGRESS</u>			
1. Foundation works completed? Yes/No			
2. Stage of development : _____			
3. Total building cost : \$ _____			

7. Date of completion inserted in draft ASP (this date not to exceed 12 months from the date in Item (B) 4 nor earlier than the date in Item (D) 6 above) :

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		(Expended construction costs)
100% X	(Land cost) \$	+ \$
	(Land cost) \$	+ (Total construction cost) \$

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Encl. No.	Checked	Remarks
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(a) Approval given on _____

(b) (i) Date of B/M _____

(ii) Registered by M/N _____

(c) Name of Mortgagee : _____

(d) Total secured amount : \$ _____

(e) Partial Re-assignment provided in registered B/M :

(i) Yes, see Clause _____ on P. _____

(g) Amount drawn as certified by Mortgagee :
\$ _____

(h) Undrawn balance as at _____: \$

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(i) (i) Undrawn balance sufficient to cover the outstanding building cost? Yes/No

(ii) If not, then it is proposed to finance the difference by _____ (here specify the means of financing)

(a) (i) Deposit Receipt dated _____ produced.

(ii) Name of Bank :

(b) (i) Deposit of \$

(ii) Deposited amount sufficient to cover the outstanding building cost ? Yes/No

(iii) If not, then it is proposed to finance the difference by _____ (here specify the means of financing)

(a) Form of Bank/DTC Undertaking produced in standard form? Yes/No

(b) Name of Bank/DTC : _____

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(c) Liability : \$ _____

Checked	Remarks
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(d) (i) Is the amount sufficient to cover the outstanding building cost ? Yes/No

(ii) If not, then it is proposed to finance the difference by _____(here specify the means of financing)

4. Unsecured Loan

(a) Amount advanced to finance construction costs : _____

(b) Names of Lenders/Financiers : _____

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(c) Lenders/Financiers agree to join in as parties to the ASPs and confirm that they will not call back any part of the loans until completion of development ? Yes/No

Checked

Remarks

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Use only

Checked

Remarks

(H) OTHER POINTS FOR ATTENTION

CHECKLIST B

CHECKLIST FOR DMC & MA APPROVAL APPLICATIONS

(to be completed by the Applicant's Solicitors)

Note : In any case where Item (C) 1 & 2 are not complied with or are incomplete, the application will be rejected

		For Official Use Only	
		Checked	Remarks
(A)	<u>General Information</u>		
1.	Lot No. : _____		
2.	Name of Development (in English and Chinese) : _____		
3.	Applicant's _____ Solicitors : _____		
4. (a)	The DMC & MA submitted/covers the whole lot/is the Principal DMC & MA/is a Sub DMC & MA.		
(b)	If it is a Sub DMC & MA, then the Principal DMC & MA has been approved on _____.		
5.	Consent Fee : _____ (for LACO to complete)		

		For Official Use Only	
		Checked	Remarks
(B)	<u>Lease Particulars</u>		
1.	Approval of DMC & MA required under S.C. No. of Conditions of _____ No. _____/New Grant No. _____		
2. (a)	GIC facilities required to be provided under S.C. No. () Yes/No		2. GPA's & SS/FSI's comments incorporated?

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Checked	Remarks

(b) If yes, please identify the facilities :

3. Any other special requirements for DMC & MA under S.C. No. (), please identify requirements :

4. All requirements of LOCM No. 91 and Guidelines complied with in DMC & MA? (please complete Appendix) Yes/No

(C) Documents submitted (for LACO only)

1. Draft DMC & MA/(in duplicate)/(8 copies where there are GIC facilities) at Encl. ()

2. Approvals under DDH clause and Building Plans at Encl. ()

Appendix

No.	Guidelines	Relevant Clauses	Remarks
1.	a. First Manager - initial term not to exceed 2 years.		
	b. Manager resigns at 3-months' notice to Owners' Committee ("OC"), or OC to terminate its service at 3-months notice upon a majority resolution of the owners.		
	c. No. Notice of resignation/termination until expiry of initial period.		
2.	a. Independent audit of management accounts on resignation or termination of service of manager (OC shall have the right to choose auditor).		
	b. Out-going Manager to hand-over to OC all relevant documents records, plans and accounts.		
3.	No provision shall prejudice the operation of Cap. 344.		
4.	a. Manager's remuneration at a percentage of the total expenditure necessarily and reasonably incurred in good and efficient management, and shall not exceed the relevant percentage points : 20 units 20% 21-100 units 15% 101-over 10%		
	b. The percentage can be increased by resolution at meetings of owners or management committee.		
5.	Allocation of shares to units depends on factors such as net saleable area, location and proximity to amenities etc. Basic principle is that :		
	a. no owner may be called upon to pay more than his fair share;		
	b. no developer may evade his responsibility to pay all management expenses for shares unsold.		
6.	Provisions for the calling and holding of Owners' meetings :		
	a. Manager to call the first meeting to be held not later than 9 months of date of DMC to appoint a chairman and OC.		

No.	Guidelines	Relevant Clauses	Remarks
	b. Meeting other than AGM may be convened by the Manager, OC or owners of 20% of undivided shares.		
	c. Resolutions shall be passed by a majority of those present or by proxy and voting in proportion to the number of undivided shares held at such meetings.		
	d. Quorum for meeting of owners - owners present personally or by proxy holding 10% of the total number of undivided shares.		
	e. During existence of Owners Incorporation ("OI") under Cap. 344, the rights, duties etc. conferred by the DMC on the management company shall be vested in the O.I. and the general meeting of the OI shall take the place of the meeting of owners and the management committee of the OI shall take the place of the owners as OC under the DMC.		
7.	Manager shall be appointed as attorney for all owners in respect of any matters concerning the common parts duly authorised in accordance with the provisions of DMC.		
8.	House rules and any amendments which must not be inconsistent with the DMC may be made by the Manager with approval of OC once in being.		
9.	a. Manager must prepare annual budgets of all estimated expenditure on management and owners' contributions will be based on this budget.		
	b. Budgets, except the first, to be prepared in consultation with the OC.		
10.	a. Manager must prepare annual accounts (the first one shall commence on date of O.P.).		
	b. Accounting year may be changed once every 5 years except with prior approval of OC.		
	c. Owners at AGM shall have power to require the annual accounts to be audited by an independent auditor of their choice.		

No.	Guidelines	Relevant Clauses	Remarks
11.	a. Manager shall be deemed to be a trustee for all owners in respect of all monies and deposits received.		
	b. Unless authorised by OC the Manager must pay these monies (other than a reasonable sum to cover day-to-day expenditure) into a specially designated interest bearing account in respect of the estate at a Licensed Bank.		
12.	a. Provision for the keeping of proper records of accounts.		
	b. Provisions 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.	Manager to prepare a quarterly summary of income and expenditure and posting the same in a prominent place in the estate for a reasonable time.		
14.	Each owner to provide a deposit of not more than 25% of the first year budgeted management expenses.		
15.	a. A special fund for major works of a capital nature.		
	b. Such fund to be a trust fund managed by the Manger but all sums in such fund belongs to the Owners.		
	c. Such fund should be interest-bearing and must be specifically referred to in the annual accounts and an estimate should be given as to the time of any likely need to draw on the fund.		
	d. The AGM to decide the amount of contribution to such fund for the ensuing year.		
16.	a. Reasonable interest and collection charge may be imposed for default in payment of any sum payable under the DMC within 30 days of demand.		
	b. Such amount and any legal costs involved in recovering them may be the subject of an equitable charge on the owner's undivided share.		
	c. Any interest received shall be credited to the management account.		

No.	Guidelines	Relevant Clauses	Remarks
17.	a. If consent of the Manager is required by an owner, the Manager may charge a sum for the granting of such consent. Such sum shall be paid into the management account.		
	b. Manager is entitled to charge and retain a reasonable fee for processing such consent.		
18.	a. Manager to have power, subject to reasonable notice except in emergency, to enter into units for the purpose of effecting necessary repairs to the structure and common parts.		
	b. Provision for the remedy of damage and liability for negligent or wilful acts.		
19.	Manager to effect and update insurance to the full new reinstatement value in respect of loss or damage by fire and other perils in respect of the common parts together with public liability insurance.		
20	a. A definition of the common parts.		
	b. Unless common parts shown on plan annexed to DMC, plan must be prepared by the developer and kept at the Manager's office, available for inspection by the owners.		
	c. If shares are allocated to common parts and such shares are to be held by the Manager, the Manager will hold the same as trustee for all owners.		
21.	All major contracts involving sums in excess of 20% of the annual budget are to be let in accordance with fair tendering practice at intervals of not more than 3 years.		
22.	All non-residential owners of shares must provide the Manager with an address within the jurisdiction for service of notices under the terms of the DMC.		
23.	a. No one should be allowed to make any structural alterations which will interfere with or affect the rights of other owners.		
	b. No provision shall be made preventing an owner from taking legal action against another owner in this respect.		
24.	All owners covenant to comply with the lease term so long as they are owners.		

No.	Guidelines	Relevant Clauses	Remarks
25.	An owner shall be defined as the owner of an undivided share and registered as such under the Land Registration Ordinance and his mortgagee/chargee in possession or one who has foreclosed.		
26.	a. Manager to arrange the translation of the DMC within 2 months of the date of the DMC.		
	b. The Chinese version must be available for inspection at the Manager's office and for the taking of copies by the owners at their expense.		
	c. In the event of a dispute, the English version shall prevail.		

One thousand nine hundred and

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

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.

(1) Under the Exclusion Order the Vendor is obliged to erect and complete not later than the [] day of [] 19[] the Development on the land in accordance with the building plans.

(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 Buildings and Lands to enter into (inter alia) this Agreement for the sale of the Property.

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) "Authorized Person" means [], and this expression shall include any other authorized 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.

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

(b) *["Building" means the building or buildings comprised in [Phase [] of] the Development of which the Property forms part.]

Delete if inapplicable

(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.
- (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 : -
 - (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
 - (ii) any other amounts (including professional fees) which (in the opinion of the Authorized 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];

Delete if
inapplicable

Delete if
inapplicable

- (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.
- (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 ["
"]].
- (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.

Delete if
inapplicable

- (k) "Government Grant" means the Government Grant document specified in Schedule 2.
- (l) "land" means all that piece or parcel of land known and registered in the Land Registry/District Land Registry, [] as [insert lot number].
- (m) "Occupation Permit" means the 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.
- (n) "Office hours" means 10:00 a.m. to 4:30 p.m. on weekdays and 10:00 a.m. to 12:00 noon on Saturdays.
- (o) ["Phase []" means the Phase of the Development comprising [Blocks].]
- (p) "Property" means the property described in Schedule 3.
- (q) "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.

Delete if
inapplicable

(r) "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.

- (s) "Statutory Declaration" means the Statutory Declaration of the solicitor for the Vendor registered in the Land Registry/District Land Registry, [] by Memorial No. [] in support of the application for the consent of the Director of Buildings and 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
inapplicable

(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 Schedule 4 and shall be paid by the Purchaser to the Vendor's solicitors as stakeholders in the manner set out in Schedule 4.

(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 Occupation Permit is issued and the Vendor not being at that time in a position validly to assign the Property to the Purchaser because the Certificate of Compliance has not been issued or 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/ Development, 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
 - (c) complete the Building/Development in all respects in accordance with the building plans on or before the [] day of [] subject to such extensions of time as may be granted by the Authorized Person in accordance with sub-clause (5)(a).

The date should be a date no later than 1 year beyond the expiry date of the building covenant period

(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 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 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.

*This phrase is
to be inserted in
phased
developments
only

(3) If the Vendor fails to apply for and obtain any 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 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 Hongkong 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 payment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor hereunder.

(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 Authorized 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 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 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 extension of time for completion of the Building/Development beyond the date stated in sub-clause (1)(c) as shall be granted by the Authorized 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 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 Authorized Person and furnish the Purchaser with a copy of the relevant certificate of extension.

(6) For the purpose of this Clause, the Building/Development is deemed to be completed on the date on which the Occupation Permit is issued.

Completion

5. The sale and purchase shall be completed at the office of Messrs. [] during office hours within 14 days of the Purchaser being notified in writing : -

(a) that the Occupation Permit has been issued and the Vendor is in a position validly to assign the Property to the Purchaser;
or

- (b) that the Occupation Permit and the Certificate of Compliance have been issued;

whichever shall first happen.

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 or the Purchaser's nominee or sub-purchaser free from incumbrances but subject to the Government Grant. Subject as hereinafter mentioned, the Purchaser or the Purchaser's nominee or sub-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 make and insist on any objection or requisition in respect of the title or otherwise which the Vendor shall be unable or (on the ground of difficulty, delay or expense or on any other reasonable ground) unwilling to remove or comply with, the Vendor shall, notwithstanding any previous negotiation or litigation, be 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 shall have been in the meantime withdrawn, the

sale shall on the expiry of the notice be cancelled and the Purchaser shall be entitled to a return of the deposit and other sums of money already paid but without interest, costs or compensation.

Government
Grant,
easements,
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.

(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.

Warranties

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 Authorized 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 the Building/Development within the time specified in Clause 4(1)(c);

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

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

(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 Authorized Person to be of comparable quality may be substituted;

(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 completion of the sale and purchase be at liberty to : -

(a) sub-sell the Property without any interference or charges by the Vendor or anyone claiming under or through the Vendor;

(b) charge, mortgage or assign the benefit of this Agreement Provided Always that notice in writing of any such charge, mortgage or assignment is given to the Vendor or his Solicitors;

* This is at the Vendor's option

(c) instruct any firm of solicitors of his choice to act for him in this Agreement and/or subsequent Assignment *[Provided Always that the Purchaser shall in this event bear and pay to the Vendor's Solicitors on behalf of the Vendor the costs of this Agreement at the full scale charge and the costs of the subsequent Assignment at half scale charge;]

* Delete as inappropriate

or

*[in which event, each party shall pay its own solicitors' costs of and incidental to this Agreement and/or the subsequent Assignment.]

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

14. (1) Subject to the provisions of Clause 11(c), all legal costs of and incidental to the preparation, completion, stamping and registration of this Agreement and the subsequent assignment shall be borne and paid by the

* Delete as inappropriate

*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 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, and

(b) if the Purchaser shall request 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 (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 Clauses 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% per annum 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.

(3) Upon determination of this Agreement, 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 shall belong 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 of 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 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

18. One 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 or 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 Buildings and Lands.]

Delete in case
of sale of
industrial units

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 provisions 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 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 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(b) 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, 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 authorized 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 authorized 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 Authorized Person shall be final and binding on the parties hereto. The costs of the Authorized 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 Buildings and Lands,
or
- (b) affect the Purchaser's sole and exclusive right and privilege to hold, use, occupy and enjoy the Property.

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 deposit 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 Buildings and Lands.

Registration

24. This Agreement shall be registered at the Land Registry/District Land Registry, [] within 1 month from the date hereof.

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 Buildings and 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 Authorized 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 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;
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 Authorized 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 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 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 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 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 at any time between the hours of 9:00 am and 5:00 pm.

Delete if
inapplicable

[31. 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.]

32. The marginal notes to this Agreement shall not be deemed to be part hereof and shall not affect the interpretation or construction 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

SCHEUDLE 4

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

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 Purchase of

REGISTERED at the Land Registry /

District Land Registry, []

by Memorial No.

on

p. Land Registrar

SOLICITORS, &C.

HONG KONG