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我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

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333 Java Road, North Point, Hong Kong.

7 April 2006

Legal Advisory and Conveyancing Office
Circular Memorandum No. 56

Revised Guidelines for Deeds of Mutual Covenant (“DMCs”)

For the purpose of providing a system of building management in private developments involving developers, owners and property managers, the Legal Advisory and Conveyancing Office (“LACO”) of Lands Department has produced a set of revised Guidelines (“the revised Guidelines”) for the approval of DMCs on behalf of the Director of Lands (“the Director”) where this is required under the conditions of the land grants. The current Guidelines are in LACO Circular Memorandum No. 41 dated 29.6.1999 (as amended by LACO Circular Memoranda Nos. 41A and 41B).

To keep up with changing public expectations and good property management practices, there has been an ongoing review of the current DMC Guidelines within Government. We have also consulted widely within the industry, including The Law Society of Hong Kong, The Real Estate Developers Association of Hong Kong, The Hong Kong Institute of Surveyors and The Hong Kong Association of Property Management Companies Limited.

Following the consultation, the revised Guidelines have now been drawn up and are attached to this Circular Memorandum. The Guidelines attached to LACO CM No. 41 are hereby superseded and LACO CM's Nos. 41, 41A and 41B are hereby cancelled.

The revised Guidelines have incorporated the Government initiative on building safety by introducing measures to promote and encourage regular maintenance of major works and installations of the development. Other new measures include the standardization of the basis of the calculation of undivided shares and management shares on a gross floor area basis and the principles on provision and regulation of telecommunications facilities and services within developments. The Guidelines have generally been updated by the adoption of more simple English language and further refined to be brought in line with the provisions of the Building Management Ordinance and the prevailing practices in modern day building management.

An index page and marginal notes have been provided for easy reading. For quick reference, the Guideline number as appeared in the 1999 Guidelines is inserted at the end of the individual revised Guideline, if applicable.

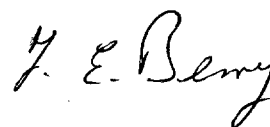
You should note that the guidelines set out in LACO Circular Memorandum No. 34 for DMCs in regard to Government Accommodation in private developments remain unchanged and it is not the intention of this Circular Memorandum to replace or substitute any of those guidelines.

The revised Guidelines will apply to all DMCs and sub-DMCs now being processed by LACO and to all future applications. However, as a transitional arrangement, for current cases which LACO may acknowledge to be very close to approval, LACO may consider fully justified requests for a current case to be approved on the DMC Guidelines in LACO CM No. 41 without submitting a revised draft in terms of this Circular Memorandum for further scrutiny. The general intention is that the majority of DMCs approved from the date of this Circular Memorandum will be subject to the revised Guidelines.

The revised Guidelines are not exhaustive and LACO will continue to adopt the principle that LACO, on behalf the Director, may vary or may permit or require deviations from, the revised Guidelines in an individual case, where it considers it appropriate to do so.

I also attach a revised Checklist for completion by applicants when they submit DMCs for LACO's approval. The Checklist also incorporates an Annex, which should be completed where the proposed DMC sets out in full the provisions of the Seventh and Eighth Schedules to the Building Management Ordinance (Cap. 344). Please note that any application where the Checklist is not fully and adequately completed and signed by the responsible solicitor is liable to be rejected.

Copies of this Circular Memorandum may be downloaded from the Lands Department website at www.info.gov.hk/landsd/.



(T. E. Berry)

Deputy Director/Legal
for Director of Lands

To: All Solicitors

GUIDELINES FOR DEEDS OF MUTUAL COVENANT (“DMCs”)
FOR APPROVAL OF THE
LEGAL ADVISORY & CONVEYANCING OFFICE OF LANDS DEPARTMENT
UNDER CONDITIONS OF LAND GRANTS

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GUIDELINES FOR DEEDS OF MUTUAL COVENANT (“DMCs”)
FOR APPROVAL OF THE
LEGAL ADVISORY & CONVEYANCING OFFICE OF LANDS DEPARTMENT
UNDER CONDITIONS OF LAND GRANTS

For the purpose of providing a system of building management in private developments involving the developers and purchasers as co-owners and property managers, the Legal Advisory and Conveyancing Office ("LACO") has drawn up the following guidelines ("Guidelines") for the approval of DMCs on behalf of the Director of Lands ("the Director") where required under conditions of the land grant: -

Compliance with
BMO and the land
grant

1. (a) No provision will be approved in a DMC which appears to contradict, overrule or fail to comply with the provisions of the Building Management Ordinance, Cap. 344 (“the BMO”) and the Schedules thereto. **[G 1(a)]**
- (b) No provision will be approved in a DMC which conflicts with or is in breach of the conditions of the land grant. **[G 1(b)]**
- (c) All the owners (including the developer) and the manager must covenant with each other to comply with the terms of the conditions of the land grant so long as they remain as owners and manager. **[new]**
- (d) The provisions of the Seventh and Eighth Schedules to the BMO must be incorporated in and form part of the DMC either by reference or by setting them out in full. **[G 2]**

Definitions

2. For the purposes of the Guidelines:
 - (a) "Owner" must be as defined in the BMO. **[G 26]**
 - (b) "Management expenses" means expenses, costs and charges necessarily and reasonably incurred in the management of the development. **[new]**
 - (c) “Unit” has the same definition as “flat” under the BMO. **[G 9(c)]**

- Common areas
3. (a) The DMC must include a definition of the common areas and common facilities ("common areas"). Unless otherwise justified, the common parts specified in the First Schedule to the BMO must form part of the common areas. Undivided shares must be allocated to all the common areas and those shares together with the common areas must be assigned to and vested in the manager free of costs or consideration as trustee for all owners upon execution of the DMC. The manager must assign the undivided shares free of costs or consideration to his successor as manager on termination of his appointment, or to the Owners' Corporation at any time, if so required by it. **[G 3(a)]**
- (b) Plans showing the common areas must be annexed to the DMC and certified as to their accuracy by or on behalf of the Authorized Person. LACO will not check the accuracy of the plans or any calculations in relation to them. A copy of the plans must be kept in the management office for inspection by the owners during normal office hours free of costs and charges. **[G 3(a) and (b)]**
- Parking spaces and related common areas
4. (a) Subject to the conditions of the land grant and sub-paragraphs (b) and (c) below, the whole of the car park areas, except those parking spaces shown and delineated on the car park layout plan approved by the Building Authority ("parking spaces") must form part of the common areas. **[G 3(c)(i)]**
- (b) The following spaces must form part of the common areas:-
- (i) parking spaces in residential developments designated for use by visitors of residents;
 - (ii) loading and unloading spaces provided in accordance with the minimum or fixed rate specified in the conditions of the land grant;
 - (iii) spaces which are intended for the benefit of owners as a whole or otherwise not of any individual owner, e.g. refuse collection vehicle spaces, circulation and manoeuvring spaces;
 - (iv) bicycle parking spaces.
- [new]**

- (c) If the developer retains ownership of the whole car park areas, sub-paragraphs (a) and (b) above will not apply and the developer will be solely responsible for the management and maintenance of the car park. Upon the sale of the car park areas (except as a whole), the developer must designate car park common areas by way of a sub-DMC in compliance with sub-paragraphs (a) and (b) above. **[G 3(c)(ii)]**

No conversion of
common areas

5. (a) No owner (including the developer) may convert any of the common areas to his own use or for his own benefit unless the approval of the Owners' Committee has been obtained. Any payment received for the approval must be credited to the Special Fund. **[G 29(a)]**

No conversion to
common areas

- (b) No owner (including the developer) will have the right to convert or designate any of his own areas as common areas unless the approval by a resolution of owners at an owners' meeting convened under the DMC has been obtained. No owner (including the developer) and no manager will have the right to re-convert or re-designate the common areas to his or its own use or benefit. **[G 29(b)]**

Allocation of
undivided shares and
management shares

6. (a) Subject to sub-paragraphs (c) and (d) below, the allocation of undivided shares and management shares will be calculated by reference to the gross floor area of a unit in proportion to the gross floor area of the development as certified by the Authorized Person. For the purpose of this Guideline, gross floor area includes any gross floor area which has been exempted under the conditions of the land grant or the Buildings Ordinance. If any other basis is proposed for the allocation of undivided shares and management shares, full justification for the proposal must be produced. **[G 24]**
- (b) In the allocation of undivided shares and management shares, LACO will have to be satisfied that the use of any basis other than gross floor area will not result in disproportionate management charges being imposed on or voting rights being granted to e.g. the owners of any specific parts of a development or the prevention or hindrance of incorporation of an Owners' Corporation. **[G 24]**
- (c) The allocation of undivided shares and management shares to parking spaces, gardens, flat roofs, balconies, utility platforms and other similar spaces attached to a unit may be made on a nominal basis/lesser ratio than a strict gross floor area basis, provided that each type of these spaces is calculated on the same basis. **[new]**

- (d) The undivided shares to be allocated to the common areas must be made on a nominal basis. **[new]**
- | | | |
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| Liability and rights in respect of common areas | 7. | The undivided shares allocated to the common areas will not carry any liability to pay charges under the DMC or any voting rights at any meeting whether under the DMC, the BMO or otherwise nor will those undivided shares be taken into account for the purpose of calculating the quorum of any meeting. [G 30] |
| Manager's appointment | 8. | <p>(a) Subject to the provisions of the BMO, the initial period of management by the first manager must not exceed two years from the date of appointment under the DMC. [G 8(a)]</p> <p>(b) Prior to the formation of the Owners' Corporation, the Owners' Committee may at any time terminate the manager's appointment without compensation by a resolution of the owners of not less than 50% of all undivided shares (excluding the undivided shares allocated to the common areas) and by giving the manager 3 months' notice in writing. [G 8(b)]</p> |
| First owners' meetings | 9. | The manager must call the first meeting of owners as soon as possible, but in any event not later than 9 months after the date of the DMC (and to call further and subsequent meetings if required), which meeting must appoint a chairman and committee of owners or must appoint a management committee for the purpose of forming an Owners' Corporation under the BMO. [G 10] |
| Owners' Corporation etc. to replace Owners' Committee and meetings | 10. | During the existence of an Owners' Corporation, the general meeting of the Owners' Corporation convened under the BMO will take the place of the owners' meeting convened under the DMC, and where a management committee of the Owners' Corporation is or has been appointed, the management committee will take the place of the Owners' Committee. [G 11] |
| Manager to represent owners | 11. | Subject to the provisions of the BMO, the manager will have the authority to act for and on behalf of all owners in accordance with the provisions of the DMC. [G 12] |

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| Manager's right to enter unit | 12. | The manager will, on reasonable notice (except in an emergency), be allowed to enter any unit for the purpose of carrying out necessary repairs to the development or to abate any hazard or nuisance which does or may affect the common areas or other owners. The DMC must provide for the manager repairing (at his own costs and expense) any damage so caused and for his liability for the negligent, wilful or criminal acts of the manager, employees, contractors etc. [G 18] |
| Insurance | 13. | The manager (unless otherwise directed by the Owners' Corporation) will be responsible for taking out and updating insurance to the full new reinstatement value in respect of loss or damage by fire and other risks in respect of the common areas and also for insurance covering public liability, occupier's liability and employer's liability. The Director will not object to provisions for the manager procuring block insurance for the entire development including those areas which are not the common areas. [G 19] |
| Procurement of services | 14. | <p>(a) Except with the prior approval by a resolution of owners at an owners' meeting convened under the DMC, the manager will not carry out any improvements to facilities or services which involve expenditure in excess of 10% of the current annual management budget. [G 21]</p> <p>(b) The procurement of supplies, goods, or services by the manager or the Owners' Committee that involves amounts in excess of \$100,000 (or such other sum as the Secretary for Home Affairs may specify by notice in the Gazette) or an average annual expenditure of more than 20% of the annual budget, whichever is the lesser, must be by invitation to tender and the standards and guidelines as may be specified in a Code of Practice referred to in section 20A of the BMO will apply to the manager or the Owners' Committee with any appropriate variations. [new]</p> |
| Employment of agents etc. | 15. | The manager may appoint or employ agents, contractors or sub-managers (including professional property management companies) to carry out various aspects of the management works or management works in respect of certain area(s) of the development but the manager must not transfer or assign his duties or obligations under the DMC to any of those persons and they must remain responsible to the manager. The manager must at all times be responsible for the management and control of the whole development and no provision in the DMC will be approved which takes away or reduces that responsibility. [G 22] |

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| Manager's liability | 16. | The DMC must not exclude the liability of the manager to the owners for any act or omission involving criminal liability, dishonesty or negligence on the part of the manager or his employees, agents or contractors and no owner will be required to indemnify the manager or his employees, agents or contractors from and against any action, claim etc. arising out of any act or omission. [G 23] | | | | | | |
| House rules | 17. | The manager may make house rules before the formation of an Owners' Committee. Amendments to the house rules may be made by the manager with the approval of the Owners' Committee (if any). The house rules and any amendments must not be inconsistent with or contravene the DMC, BMO or the conditions of the land grant. [G 13] | | | | | | |
| Environmental protection measures | 18. | The manager may make house rules to protect the environment of the development and to implement waste reduction and recycling measures with reference to guidelines on property management issued from time to time by the Director of Environmental Protection. [new] | | | | | | |
| Manager's remuneration | 19. (a) (i) | <p>For residential developments, the manager's remuneration must not exceed a percentage of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development. The percentage must be based on the total number of residential units and parking spaces in the development and must not exceed the following : -</p> <table border="0" style="margin-left: 40px;"> <tr> <td>20 residential units and parking spaces or below</td> <td style="text-align: right;">20%</td> </tr> <tr> <td>21 to 100 residential units and parking spaces</td> <td style="text-align: right;">15%</td> </tr> <tr> <td>101 residential units and parking spaces or above</td> <td style="text-align: right;">10%</td> </tr> </table> <p>(ii) For non-residential developments, the manager's remuneration must not exceed 15% of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development.</p> <p>(iii) For composite developments comprising both residential and non-residential units, sub-paragraph (a)(i) above will apply as if each non-residential unit is a residential unit.</p> <p>[G 9(a)]</p> <p>(b) No variation of the percentages in sub-paragraph (a) above may be made except with approval by a resolution of owners at an owners' meeting convened under the DMC. [G 9(b)]</p> | 20 residential units and parking spaces or below | 20% | 21 to 100 residential units and parking spaces | 15% | 101 residential units and parking spaces or above | 10% |
| 20 residential units and parking spaces or below | 20% | | | | | | | |
| 21 to 100 residential units and parking spaces | 15% | | | | | | | |
| 101 residential units and parking spaces or above | 10% | | | | | | | |

- (c) For the purpose of calculating the manager's remuneration, the total expenses, costs and charges incurred in the management of the development or any portion of it must exclude (i) the manager's remuneration itself and (ii) any capital expenditure or expenditure drawn out of the Special Fund provided that by a resolution of owners at an owners' meeting convened under the DMC, any capital expenditure or expenditure drawn out of the Special Fund may be included for calculating the manager's remuneration at the rate applicable under sub-paragraph (a) or (b) above or at any lower rate as considered appropriate by the owners. **[G 9(d)]**

Owners'
contribution

20. (a) Except where the developer has made payments in accordance with Guideline 23, provisions may be made in the DMC for the first owner of each unit (i.e. assignee from the developer) to pay to the manager the following amounts:
- (i) a refundable or transferable deposit of not more than 3/12 of the first year's budgeted management expenses;
 - (ii) an advance payment of management fees of not more than 2/12 of the first year's budgeted management expenses; and
 - (iii) a debris removal charge of not more than 1/12 of the first year's budgeted management expenses in the case of a residential unit or 3/12 in the case of a non-residential unit.
- (b) All payments, deposits, charges and contributions payable under the DMC by the first owners which are non-transferable or non-refundable (including contribution to the Special Fund), must not exceed in total 5/12 for residential units or 7/12 for non-residential units of the first year's budgeted management expenses.
- (c) The Director will not object to a provision requiring the owners to further contribute to the deposit referred to in sub-paragraph (a)(i) above so as to make it up to not more than 25% of any subsequent current year's budgeted management expenses per unit.
- (d) Any monies paid as debris removal charge not used to pay for debris collection or removal must be credited to the Special Fund.
- (e) The Director will not raise any question as to the actual amount of the initial deposit of management fee or debris removal charge or the Special Fund.

[G 15 & G 25(d)]

Special Fund for
capital etc.
expenditure

21. (a) The DMC must provide for the establishment and maintenance of a special fund (“the Special Fund”) for the purpose of paragraph 4 of the Seventh Schedule to the BMO.
- (b) The Special Fund will be held by the manager as trustee for all owners, to provide for expenditure of a capital nature or of a kind not expected to be incurred annually, which includes, but is not limited to, expenses for the renovation, improvement and repair of the common areas, the purchase, setting up, replacement, improvement and addition of installations, systems, equipment, tools, plant and machineries for the common areas and the costs of the relevant investigation works and professional services.
- (c) The payments made by the owners towards the Special Fund are neither refundable to any owner by the manager nor transferable to any new owner.
- (d) (i) Except where the developer has made payments in accordance with Guideline 23, as an initial contribution to the Special Fund, the first owner of each unit must, upon the assignment of the unit from the developer, pay to the manager for the Special Fund an amount equivalent to 2/12 of the first year's budgeted management expenses.
- (ii) Each owner must covenant with the other owners to make further periodic contributions to the Special Fund. The amount to be contributed in each financial year and the time when those contributions will be payable will be determined by a resolution of owners at an owners' meeting convened under the DMC.
- (e) All monies received for the Special Fund must be deposited by the manager with a bank within the meaning of section 2 of the Banking Ordinance in an interest-bearing account designated for the purposes of the Special Fund. Except in a situation considered by the manager to be an emergency, money must not be paid out of the Special Fund unless it is for a purpose approved by the Owners' Committee. The manager must not use the Special Fund for the payment of any outstanding management expenses arising from or in connection with the day-to-day management of the development.

[new]

Owners' liability for management expenses	<p>22. (a) No owner may be called upon to pay more than his appropriate share of management expenses, having regard to the number of undivided or management shares, as the case may be, allocated to the unit. [G 25(a)]</p> <p>(b) The developer must make payments and contributions for those expenses which are of a recurrent nature for those units and undivided shares unsold, provided however that a developer will not be obliged to make payments and contributions in respect of units and undivided shares allocated to a separate building or phase, the construction of which has not been completed, except to the extent that the building or phase benefits from provisions in the DMC as to management and maintenance (e.g. as to the costs of managing and maintaining slopes or as to security etc provided by the management of the completed parts) of the development. [G 25(a)]</p> <p>(c) All outgoings including management expenses and any Government rent up to and inclusive of the date of assignment of the unit must be paid by the developer. An owner must not be required to make any payment or reimburse the developer for these outgoings. [G 25(e)]</p>
Developer's contribution to fees and deposit	<p>23. The developer must make the initial contribution to the Special Fund and pay the management fee deposit and debris removal charge if he remains the owner of those undivided shares allocated to units in that part of the development the construction of which has been completed and which remain unsold 3 months after (i) execution of the DMC or (ii) the date on which he is in a position validly to assign those undivided shares (i.e. when the consent to assign or certificate of compliance has been issued), whichever is the later. [G 25(c)]</p>
Management budget and accounts	<p>24. For a development comprising residential units, non-residential units, parking spaces or any combination of them, the manager must keep separate management accounts and budgets for each part. The owners of the residential units, non-residential units and parking spaces will only be liable to contribute to the management and maintenance costs of their respective parts (e.g. owners of residential units will only be responsible for residential common areas). All owners will be liable for development common areas. [G 25(b)]</p>
Audit of accounts	<p>25. The owners at an owners' meeting convened under the DMC must have power to require the annual accounts to be audited by an independent auditor of their choice. [G 14]</p>

Manager's consent	26.	Where the manager's consent is required under the DMC, the DMC must provide that it must not be unreasonably withheld and that the manager must not charge any fee other than a reasonable administrative fee for issuing the consent. The fee must be credited to the Special Fund. [G 17]
Interest and collection charge	27.	Interest at a rate not exceeding 2% per annum above the prime rate from time to time specified by the Hong Kong and Shanghai Banking Corporation Limited and a collection charge not exceeding 10% of the amount due may be imposed on any owner failing to pay sums due under the DMC within 30 days of demand and the amounts of such interest and collection charge plus any legal costs (on a solicitor and own client basis) involved in recovering them may be the subject of a charge on the owner's undivided shares. All interest and collection charges received must be credited to the Special Fund. [G 16]
Utilities and management services	28. (a)	There must be no provision in the DMC for interrupting the supply of electricity, water, gas, telecommunications or other utilities to any unit or to prevent access to the unit by reason of the owner of that unit failing to pay any fees or to comply with any other provisions under the DMC. [G 20(a)]
	(b)	The manager may discontinue providing management services to owners who fail to pay fees or to comply with any other provisions under the DMC and the manager may, if the DMC provides for it, register and enforce a charge against the interest of an owner who fails to pay any sum which is payable to the manager under the DMC. [G 20(b)]
Sub-DMC	29.	The developer may reserve rights to execute sub-DMCs in respect of separate towers, phases etc. All sub-DMCs (as well as the principal DMC) require the approval of the Director but where the Director is satisfied, upon submission of the draft sub-DMC to the Director, that the sub-DMC relates only to the internal sub-division of an existing unit and by the sub-DMC there will be no alteration to common areas or liability for management or other charges under the principal DMC, the Director may, in his absolute discretion, waive the requirement of approval of the sub-DMC. [G 4]

Reservation of rights	<p>30. (a) The developer/manager is permitted to reserve rights for himself, his licensees or other third parties to install or affix chimneys, flues, pipes or any other structures or facilities on or within the common areas provided that the written approval by a resolution of owners at an owners' meeting convened under the DMC has been obtained before the exercise of the rights. Any payment received for the approval must be credited to the Special Fund. [G 5]</p> <p>(b) LACO will decide on a case by case basis whether or not any other rights may be reserved to the developer and whether or not the exercise of these rights should only be permitted subject to the approval of the Owners' Committee or of owners at an owners' meeting, if at all. [G 7]</p>
Retained Areas	<p>31. Subject to the conditions of the land grant and the DMC, the developer may reserve rights to retain for his own use any unsold part or parts of the lot not being common areas ("the Retained Areas") provided that: -</p> <p>(a) the Retained Areas and their proposed use must be clearly defined and identified in the DMC and the sales brochure; and</p> <p>(b) the Retained Areas must be allocated a number of undivided shares and management shares on the same basis as set out in Guideline 6, and the developer must remain liable to contribute to the management and other charges and payments for them so long as it retains them. [G 6]</p>
No structural alterations	<p>32. An owner must not make any structural alteration which will interfere with or affect the rights of other owners. No provision will be approved in the DMC which prevents an owner from taking legal action against another owner in this respect. [G 27]</p>
Reinstatement	<p>33. The DMC must provide that, if the whole or any part of the development has been damaged by fire, typhoon, earthquake, subsidence or other causes rendering it substantially unfit for use or habitation or occupation, the owners of not less than 75% of the undivided shares allocated to that damaged part(s) of the development (excluding the undivided shares allocated to the common areas) may convene a meeting and decide by a resolution of not less than 75% of those present at the meeting whether or not to rebuild or reinstate the damaged part(s) of the development. The resolution is to be binding upon all the owners of the damaged part(s). [G 31]</p>

Green and innovative features

34. Where a development comprises green and innovative features which are exempted from the calculation of gross floor area or site coverage or both by the Building Authority and the Director, the DMC will include provisions to the following effect :
- (a)
 - (i) private balconies and utility platforms must not be enclosed in whole or in part other than as under the approved building plans;
 - (ii) communal sky gardens, communal podium gardens and mail delivery rooms with mail boxes must be designated as common areas.
 - (b) Except with the prior consent of the Building Authority, communal sky gardens must not be used for any purposes or by any persons other than for the following purposes and by the following persons :
 - (i) communal sky gardens must have natural ventilation, greenery and recreational garden space for communal use;
 - (ii) communal sky gardens in residential developments must be for the common use and benefit of the residents, tenants and their visitors only;
 - (iii) communal sky gardens in non-residential developments must be for the common use and benefit of the owners, occupiers, tenants and their visitors only.
 - (c) Except with the prior consent of the Building Authority, communal podium gardens in non-residential developments must not be used for any purposes or by any persons other than for the following purposes and by the following persons:
 - (i) communal podium gardens must not be used for any purpose other than as a sitting-out area;
 - (ii) communal podium gardens must be for the common use and benefit of the owners, occupiers, tenants and their visitors only.
 - (d) There must be conditions in the DMC for the control, operation, financial support and maintenance of the green and innovative features.

- (e) The location of the green and innovative features should be clearly identified. If the location is identified by plans, the accuracy of the plans must be certified by or on behalf of the Authorized Person.

[new]

- Slope maintenance
- 35. (a) The owners must at their own expense maintain and carry out all works in respect of any and all slopes, slope treatment works, retaining walls and other structures (collectively “slope structures”) within or outside the lot as required by the conditions of the land grant and in accordance with “Geoguide 5 - Guide to Slope Maintenance” issued by the Geotechnical Engineering Office (as amended or substituted from time to time) and the maintenance manual for the slope structures ("slope maintenance manual") prepared in accordance with Geoguide 5.
 - (b) If there is one or more slope structures, a plan of a scale of not less than 1:500 showing (for identification purposes only) all the slope structures existing at the date of the DMC, certified by the Authorized Person that it includes all the slope structures must be annexed to the DMC or the sub-DMC, as appropriate.
 - (c) The manager (which for this purpose must include the Owners’ Corporation) must be given full authority by the owners to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of, the slope structures in compliance with the conditions of the land grant and in accordance with the slope maintenance manual and all guidelines issued from time to time by the appropriate Government departments regarding the maintenance of the slope structures.
 - (d) The DMC must have adequate provisions for the payment to the manager by all owners of all costs lawfully incurred or to be incurred by the manager in carrying out maintenance, repair and any other works in respect of the slope structures.
 - (e) The manager must not be made personally liable for carrying out these requirements of the conditions of the land grant, which must remain the responsibility of the owners if, having used all reasonable endeavours, the manager has not been able to collect the costs of the required works from all owners.

- (f) The DMC must provide for the developer to deposit a full copy of the slope maintenance manual in the management office within one month of the date of the DMC for inspection by all owners free of charge and taking copies upon payment of a reasonable charge. All charges received must be credited to the Special Fund.

[G 28]

Maintenance of
Works and
Installations

36. (a) There must be incorporated in the DMC a schedule of all major works and installations ("the Works and Installations") in the development, which will require regular maintenance on a recurrent basis. The schedule must include the following items :
- (i) structural elements;
 - (ii) external wall finishes and roofing materials;
 - (iii) fire safety elements;
 - (iv) the slope structures (if applicable);
 - (v) plumbing system;
 - (vi) drainage system;
 - (vii) fire services installations and equipment;
 - (viii) electrical wiring system;
 - (ix) lift installations (if applicable);
 - (x) gas supply system;
 - (xi) window installations; and
 - (xii) other major items (e.g. central air-conditioning and ventilation system, escalators etc.)
- (b) The developer must compile for the reference of the owners and the manager a maintenance manual for the Works and Installations ("maintenance manual for the Works and Installations") setting out the following details :
- (i) As-built record plans of the building and services installations together with the necessary technical information (such as specifications of materials and design standard) for maintenance of all facilities and equipment;
 - (ii) All warranties and guarantees provided by contractors (together with the names of the companies providing the warranty and the contact telephone numbers) in respect of all facilities and equipment;
 - (iii) Recommended maintenance strategy and procedures;
 - (iv) A list of items of the Works and Installations requiring routine maintenance;

- (v) Recommended frequency of routine maintenance inspection;
 - (vi) Checklist and typical inspection record sheets for routine maintenance inspection; and
 - (vii) Recommended maintenance cycle of the Works and Installations.
- (c) The developer must deposit a full copy of the maintenance manual for the Works and Installations in the management office within one month of the date of the DMC for inspection by all owners free of charge and taking copies at their own expense and on payment of a reasonable charge. All charges received must be credited to the Special Fund.
- (d) The owners must at their own expense inspect, maintain and carry out all necessary works for the maintenance of the development and their own units including the Works and Installations.
- (e) All costs incidental to the preparation of the schedule and the maintenance manual for the Works and Installations will be borne by the developer.
- (f) (i) Provisions must be made in the DMC to provide for future revisions to the schedule and the maintenance manual for the Works and Installations as may be necessary (e.g. the addition of works and installations in the development, the updating of maintenance strategies in step with changing requirements etc.).
- (ii) The owners may, by a resolution of owners at an owners' meeting convened under the DMC, decide on revisions to be made to the schedule and the maintenance manual for the Works and Installations, in which event the manager must procure from a qualified professional or consultant the revised schedule and the revised maintenance manual for the Works and Installations within such time as may be prescribed by the owners in an owners' meeting convened under the DMC.
- (iii) All costs incidental to the preparation of the revised schedule and the revised maintenance manual for the Works and Installations will be paid out of the Special Fund.

- (iv) The manager must deposit the revised maintenance manual for the Works and Installations in the management office within one month from the date of its preparation for inspection by all owners free of charge and taking copies at their own expense and on payment of a reasonable charge. All charges received must be credited to the Special Fund.

[new]

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| Telecommunications network areas | 37. | <ul style="list-style-type: none"> (a) Areas for the installation or use of aerial broadcast distribution or telecommunications network facilities must form part of the common areas. (b) The DMC must provide that contracts for the installation or use of aerial broadcast distribution or telecommunications network facilities and contracts for the provision of broadcast distribution network or telecommunications network services to be entered into by the manager must be subject to the following conditions: <ul style="list-style-type: none"> (i) the term of the contract will not exceed 3 years; (ii) the right to be granted under the contract must be non-exclusive and must provide for sharing the use of the facilities and network with other service providers; and (iii) no owner is required to make any payment in any form attributable to the installation or provision of the facilities or services, unless he is a subscriber to the relevant service. |
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[new]

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| Address for service of notice | 38. | <p>All owners of undivided shares who do not occupy the units to which those shares relate must provide the manager with an address in Hong Kong for service of notices under the DMC.</p> <p>[G 32]</p> |
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| Chinese translation of DMC | 39. | <p>The developer must at his own cost provide a direct translation in Chinese of the DMC. The developer must deposit a copy of the DMC and the Chinese translation in the management office within one month of the date of the DMC for inspection by all owners free of costs and for taking copies at their own expense and upon payment of a reasonable charge. All charges received must be credited to the Special Fund. The DMC must specify that the version of the DMC approved by the Director will prevail in the event of a dispute as to the effect of the Chinese translation and the English language document. [G 33]</p> |
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Pets	40.	The Director will not be concerned whether or not pets are permitted or subject to any controls. [G 34]
External design	41.	The Director will not be concerned as to any arrangements or restrictions on the design, decoration or colour schemes of any parts of the development. [G 35]

Notes to Guidelines

- (1) The Guidelines apply to all developments regardless of user and size. LACO reserves the right to approve or reject any request for deviation from the Guidelines or to impose any other requirements as may be appropriate to the circumstances of any particular case. A request for deviation from the Guidelines must be fully justified.
- (2) These Guidelines are not intended to be incorporated into DMCs verbatim, but to indicate a broad framework of what is required in a straightforward case for the approval of the Director under the conditions of the land grant. The wording used should be suitably adapted for particular cases. As far as the DMC complies with the Guidelines, and unless a provision in the DMC appears, on the face of it, to be contrary to the spirit of the Guidelines, LACO will not be concerned with the detailed drafting of the DMC.
- (3) The checklist in support of the application for the approval of DMC or sub-DMC must be signed personally by the solicitor responsible for the application.
- (4) The AP Certificate must set out clearly the basis of allocation of undivided shares and management shares. The schedules of undivided shares and management shares to the DMC must tally with the allocation set out in the AP Certificate and should be carefully checked for accuracy, as LACO cannot guarantee the calculations and takes no responsibility for them.
- (5) Where a development comprises green and innovative features which are exempted from the calculation of gross floor area or site coverage, a certified copy of the undertaking as required under paragraph 2(b) of Appendix A to the Joint Practice Note No. 1 of the Building, Lands & Planning Departments must be submitted to LACO.
- (6) It is not necessary for the developer to submit the certified common areas plans to LACO at the time of application if they are not yet available. However, the plans must be produced before approval to the DMC can be given.
- (7) It is not necessary for the developer to submit the slope plans, the slope maintenance manual and the maintenance manual for the Works and Installations to LACO. It is not necessary to annex a copy of the slope maintenance manual or the maintenance manual for the Works and Installations to the DMC.

- (8) The guideline number as appeared in the 1999 Guidelines attached to LACO CM No. 41 is inserted at the end of the individual revised Guideline, if applicable.

Legal Advisory and Conveyancing Office
Lands Department
7 April 2006

**CHECKLIST FOR APPROVAL OF DEEDS OF
MUTUAL COVENANT AND MANAGEMENT AGREEMENT ("DMC")
UNDER LACO CM NO. 56**

(to be completed and signed personally by the solicitor responsible for the application)

(A) Documents Submitted

		For Official Use Only	
		<u>Checked</u>	<u>Remarks</u>
<ul style="list-style-type: none"> ● The application will not be entertained if this Checklist and the documents in items 1, 2 and 3 of this Part (A) are not submitted at the time of application. (No submission of documents in items 1 and 2 is required if one set of the land grant conditions together with the up-to-date printout of records of owners has already been enclosed with the application for consent to sell submitted at the same time). ● <input checked="" type="checkbox"/> Please tick if submitted 			
<input type="checkbox"/> 1.	One full set of land grant conditions certified by the Land Registrar or a solicitor		
<input type="checkbox"/> 2.	Up-to-date printout of records of owners certified by the Land Registrar or a solicitor		
<input type="checkbox"/> 3.	Draft DMC (in duplicate)		
<input type="checkbox"/> 4.	Plans showing the common areas certified by the Authorized Person (Guideline No. 3 refers)		
<input type="checkbox"/> 5.	Authorized Person's Certificate dated _____ (Guideline No. 6 refers)		
<input type="checkbox"/> 6.	Undertaking as required under paragraph 2(b) of Appendix A to the Joint Practice Note No. 1 of the Buildings, Lands and Planning Department certified by the Land Registrar or a solicitor (if applicable) (Guideline No. 34 refers.)		
<input type="checkbox"/> 7.	Others (Please specify)		

(B) General Information

1.	Lot No. (in English and Chinese)	
2.	Conditions No./New Grant No. (with date)	
3.	Lease term	
4.	User of lot	S.C. No(s)
5.	No. of units in the development (e.g. XX residential units and YY parking spaces)	
6.	Name of development (in English and Chinese)	
7.	Address of development (in English and Chinese)	
8.	Name of developer (in English and Chinese)	
9.	Name of parent company (in English and Chinese)	
10.	Are Government Accommodation required to be provided?	No/Yes - If yes, please also complete Checklist attached to LACO CM 34
11.	Restriction on alienation Clause	S.C. No(s).
12.	DMC Clause : Approval of DMC required under	S.C. No(s).
13.	Other special requirement(s) for DMC under	S.C. No(s).
14.	Draft DMC submitted is a Principal DMC/Sub-DMC (if Sub-DMC, please indicate the date of approval of the Principal DMC)	
15.	Any proposed deviations from DMC Guidelines?	No/Yes - If yes, please quote Guideline Nos. and provide justification. Separate loose sheets may be added if necessary.

(C) DMC Guidelines**I – Compliance with BMO and conditions of the land grant**

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
1. (a)	No provision will be approved in a DMC which appears to contradict, overrule or fail to comply with the provisions of the Building Management Ordinance, Cap. 344 (“the BMO”) and the Schedules thereto. [G 1(a)]		
(b)	No provision will be approved in a DMC which conflicts with or is in breach of the conditions of the land grant. [G 1(b)]		
(c)	All the owners (including the developer) and the manager must covenant with each other to comply with the terms of the conditions of the land grant so long as they remain as owners and manager. [new]		
(d)	The provisions of the Seventh and Eighth Schedules to the BMO must be incorporated in and form part of the DMC either by reference or by setting them out in full. [G 2]		

II – Definitions

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
2.	For the purposes of the Guidelines:		
(a)	"Owner" must be as defined in the BMO. [G 26]		
(b)	"Management expenses" means expenses, costs and charges necessarily and reasonably incurred in the management of the development. [new]		
(c)	“Unit” has the same definition as “flat” under the BMO. [G 9(c)]		

III - Common Areas

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
3. (a)	The DMC must include a definition of the common areas and common facilities ("common areas"). Unless otherwise justified, the common parts specified in the First Schedule to the BMO must form part of the common areas. Undivided shares must be allocated to all the common areas and those shares together with the common areas must be assigned to and vested in the manager free of costs or consideration as trustee for all owners upon execution of the DMC. The manager must assign the undivided shares free of costs or consideration to his successor as manager on termination of his appointment, or to the Owners' Corporation at any time, if so required by it. [G 3(a)]		
(b)	Plans showing the common areas must be annexed to the DMC and certified as to their accuracy by or on behalf of the Authorized Person. LACO will not check the accuracy of the plans or any calculations in relation to them. A copy of the plans must be kept in the management office for inspection by the owners during normal office hours free of costs and charges. [G 3(a) and (b)] (For the purpose of this Guideline, it is not necessary at the time of application to submit the plans if they are not yet available. However, the plans must be produced to LACO before approval to the DMC can be given.)		
4. (a)	Subject to the conditions of the land grant and sub-paragraphs (b) and (c) below, the whole of the car park areas, except those parking spaces shown and delineated on the car park layout plan approved by the Building Authority ("parking spaces") must form part of the common areas. [G 3(c)(i)]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	<p>The following spaces must form part of the common areas:-</p> <ul style="list-style-type: none"> (i) parking spaces in residential developments designated for use by visitors of residents; (ii) loading and unloading spaces provided in accordance with the minimum or fixed rate specified in the conditions of the land grant; (iii) spaces which are intended for the benefit of owners as a whole or otherwise not of any individual owner, e.g. refuse collection vehicle spaces, circulation and manoeuvring spaces; and (iv) bicycle parking spaces. <p>[new]</p>		
(c)	<p>If the developer retains ownership of the whole car park areas, sub-paragraphs (a) and (b) above will not apply and the developer will be solely responsible for the management and maintenance of the car park. Upon the sale of the car park areas (except as a whole), the developer must designate car park common areas by way of a sub-DMC in compliance with sub-paragraphs (a) and (b) above. [G 3(c)(ii)]</p>		
5. (a)	<p>No owner (including the developer) may convert any of the common areas to his own use or for his own benefit unless the approval of the Owners' Committee has been obtained. Any payment received for the approval must be credited to the Special Fund. [G 29(a)]</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	No owner (including the developer) will have the right to convert or designate any of his own areas as common areas unless the approval by a resolution of owners at an owners' meeting convened under the DMC has been obtained. No owner (including the developer) and no manager will have the right to re-convert or re-designate the common areas to his or its own use or benefit. [G 29(b)]		

IV - Allocation of Undivided Shares and Management Shares

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
6. (a)	<p>Subject to sub-paragraphs (c) and (d) below, the allocation of undivided shares and management shares will be calculated by reference to the gross floor area of a unit in proportion to the gross floor area of the development as certified by the Authorized Person. For the purpose of this Guideline, gross floor area includes any gross floor area which has been exempted under the conditions of the land grant or the Buildings Ordinance. If any other basis is proposed for the allocation of undivided shares and management shares, full justification for the proposal must be produced. [G 24]</p> <p>(The AP Certificate must set out clearly the basis of allocation of undivided shares and management shares. The schedules of undivided shares and management shares to the DMC must tally with the allocation set out in the AP Certificate and should be carefully checked for accuracy, as LACO cannot guarantee the calculations and takes no responsibility for them.)</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	In the allocation of undivided shares and management shares, LACO will have to be satisfied that the use of any basis other than gross floor area will not result in disproportionate management charges being imposed on or voting rights being granted to e.g. the owners of any specific parts of a development or the prevention or hindrance of incorporation of an Owners' Corporation. [G 24]		
(c)	The allocation of undivided shares and management shares to parking spaces, gardens, flat roofs, balconies, utility platforms and other similar spaces attached to a unit may be made on a nominal basis/lesser ratio than a strict gross floor area basis, provided that each type of these spaces is calculated on the same basis. [new]		
(d)	The undivided shares to be allocated to the common areas must be made on a nominal basis. [new]		
7.	The undivided shares allocated to the common areas will not carry any liability to pay charges under the DMC or any voting rights at any meeting whether under the DMC, the BMO or otherwise nor will those undivided shares be taken into account for the purpose of calculating the quorum of any meeting. [G 30]		

V - Manager's Appointment

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
8. (a)	Subject to the provisions of the BMO, the initial period of management by the first manager must not exceed two years from the date of appointment under the DMC. [G 8(a)]		
(b)	Prior to the formation of the Owners' Corporation, the Owners' Committee may at any time terminate the manager's appointment without compensation by a resolution of the owners of not less than 50% of all undivided shares (excluding the undivided shares allocated to the common areas) and by giving the manager 3 months' notice in writing. [G 8(b)]		
9.	The manager must call the first meeting of owners as soon as possible, but in any event not later than 9 months after the date of the DMC (and to call further and subsequent meetings if required), which meeting must appoint a chairman and committee of owners or must appoint a management committee for the purpose of forming an Owners' Corporation under the BMO. [G 10]		
10.	During the existence of an Owners' Corporation, the general meeting of the Owners' Corporation convened under the BMO will take the place of the owners' meeting convened under the DMC, and where a management committee of the Owners' Corporation is or has been appointed, the management committee will take the place of the Owners' Committee. [G 11]		

VI - Powers and Functions of Manager

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
11.	Subject to the provisions of the BMO, the manager will have the authority to act for and on behalf of all owners in accordance with the provisions of the DMC. [G 12]		
12.	The manager will, on reasonable notice (except in an emergency), be allowed to enter any unit for the purpose of carrying out necessary repairs to the development or to abate any hazard or nuisance which does or may affect the common areas or other owners. The DMC must provide for the manager repairing (at his own costs and expense) any damage so caused and for his liability for the negligent, wilful or criminal acts of the manager, employees, contractors etc. [G 18]		
13.	The manager (unless otherwise directed by the Owners' Corporation) will be responsible for taking out and updating insurance to the full new reinstatement value in respect of loss or damage by fire and other risks in respect of the common areas and also for insurance covering public liability, occupier's liability and employer's liability. The Director will not object to provisions for the manager procuring block insurance for the entire development including those areas which are not the common areas. [G 19]		
14. (a)	Except with the prior approval by a resolution of owners at an owners' meeting convened under the DMC, the manager will not carry out any improvements to facilities or services which involve expenditure in excess of 10% of the current annual management budget. [G 21]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	The procurement of supplies, goods, or services by the manager or the Owners' Committee that involves amounts in excess of \$100,000 (or such other sum as the Secretary for Home Affairs may specify by notice in the Gazette) or an average annual expenditure of more than 20% of the annual budget, whichever is the lesser, must be by invitation to tender and the standards and guidelines as may be specified in a Code of Practice referred to in section 20A of the BMO will apply to the manager or the Owners' Committee with any appropriate variations. [new]		
15.	The manager may appoint or employ agents, contractors or sub-managers (including professional property management companies) to carry out various aspects of the management works or management works in respect of certain area(s) of the development but the manager must not transfer or assign his duties or obligations under the DMC to any of those persons and they must remain responsible to the manager. The manager must at all times be responsible for the management and control of the whole development and no provision in the DMC will be approved which takes away or reduces that responsibility. [G 22]		
16.	The DMC must not exclude the liability of the manager to the owners for any act or omission involving criminal liability, dishonesty or negligence on the part of the manager or his employees, agents or contractors and no owner will be required to indemnify the manager or his employees, agents or contractors from and against any action, claim etc. arising out of any act or omission. [G 23]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
17.	The manager may make house rules before the formation of an Owners' Committee. Amendments to the house rules may be made by the manager with the approval of the Owners' Committee (if any). The house rules and any amendments must not be inconsistent with or contravene the DMC, BMO or the conditions of the land grant. [G 13]		
18.	The manager may make house rules to protect the environment of the development and to implement waste reduction and recycling measures with reference to guidelines on property management issued from time to time by the Director of Environmental Protection. [new]		

VII - Management Expenses

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks						
19. (a)	<p>(i) For residential developments, the manager’s remuneration must not exceed a percentage of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development. The percentage must be based on the total number of residential units and parking spaces in the development and must not exceed the following : -</p> <table><tr><td>20 residential units and parking spaces or below</td><td>20%</td></tr><tr><td>21 to 100 residential units and parking spaces</td><td>15%</td></tr><tr><td>101 residential units and parking spaces or above</td><td>10%</td></tr></table>	20 residential units and parking spaces or below	20%	21 to 100 residential units and parking spaces	15%	101 residential units and parking spaces or above	10%		
20 residential units and parking spaces or below	20%								
21 to 100 residential units and parking spaces	15%								
101 residential units and parking spaces or above	10%								

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
	<p>(ii) For non-residential developments, the manager's remuneration must not exceed 15% of the total expenses, costs and charges necessarily and reasonably incurred in the management of the development.</p> <p>(iii) For composite developments comprising both residential and non-residential units, sub-paragraph (a)(i) above will apply as if each non-residential unit is a residential unit. [G 9(a)]</p>		
(b)	No variation of the percentages in sub-paragraph (a) above may be made except with approval by a resolution of owners at an owners' meeting convened under the DMC. [G 9(b)]		
(c)	For the purpose of calculating the manager's remuneration, the total expenses, costs and charges incurred in the management of the development or any portion of it must exclude (i) the manager's remuneration itself and (ii) any capital expenditure or expenditure drawn out of the Special Fund provided that by a resolution of owners at an owners' meeting convened under the DMC, any capital expenditure or expenditure drawn out of the Special Fund may be included for calculating the manager's remuneration at the rate applicable under sub-paragraph (a) or (b) above or at any lower rate as considered appropriate by the owners. [G 9(d)]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
20. (a)	<p>Except where the developer has made payments in accordance with Guideline 23, provisions may be made in the DMC for the first owner of each unit (i.e. assignee from the developer) to pay to the manager the following amounts:</p> <p>(i) a refundable or transferable deposit of not more than 3/12 of the first year's budgeted management expenses;</p> <p>(ii) an advance payment of management fees of not more than 2/12 of the first year's budgeted management expenses; and</p> <p>(iii) a debris removal charge of not more than 1/12 of the first year's budgeted management expenses in the case of a residential unit or 3/12 in the case of a non-residential unit.</p>		
(b)	All payments, deposits, charges and contributions payable under the DMC by the first owners which are non-transferable or non-refundable (including contribution to the Special Fund), must not exceed in total 5/12 for residential units or 7/12 for non-residential units of the first year's budgeted management expenses.		
(c)	The Director will not object to a provision requiring the owners to further contribute to the deposit referred to in sub-paragraph (a)(i) above so as to make it up to not more than 25% of any subsequent current year's budgeted management expenses per unit.		
(d)	Any monies paid as debris removal charge not used to pay for debris collection or removal must be credited to the Special Fund.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(e)	The Director will not raise any question as to the actual amount of the initial deposit of management fee or debris removal charge or the Special Fund. [G 15 & G 25(d)]		
21. (a)	The DMC must provide for the establishment and maintenance of a special fund (“the Special Fund”) for the purpose of paragraph 4 of the Seventh Schedule to the BMO.		
(b)	The Special Fund will be held by the manager as trustee for all owners, to provide for expenditure of a capital nature or of a kind not expected to be incurred annually, which includes, but is not limited to, expenses for the renovation, improvement and repair of the common areas, the purchase, setting up, replacement, improvement and addition of installations, systems, equipment, tools, plant and machineries for the common areas and the costs of the relevant investigation works and professional services.		
(c)	The payments made by the owners towards the Special Fund are neither refundable to any owner by the manager nor transferable to any new owner.		
(d)	<p>(i) Except where the developer has made payments in accordance with Guideline 23, as an initial contribution to the Special Fund, the first owner of each unit must, upon the assignment of the unit from the developer, pay to the manager for the Special Fund an amount equivalent to 2/12 of the first year's budgeted management expenses.</p> <p>(ii) Each owner must covenant with the other owners to make further periodic contributions to the Special Fund. The amount to be contributed in each financial year and the time when those contributions will be payable will be determined by a resolution of owners at an owners’ meeting convened under the DMC.</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(e)	All monies received for the Special Fund must be deposited by the manager with a bank within the meaning of section 2 of the Banking Ordinance in an interest-bearing account designated for the purposes of the Special Fund. Except in a situation considered by the manager to be an emergency, money must not be paid out of the Special Fund unless it is for a purpose approved by the Owners' Committee. The manager must not use the Special Fund for the payment of any outstanding management expenses arising from or in connection with the day-to-day management of the development. [new]		
22. (a)	No owner may be called upon to pay more than his appropriate share of management expenses, having regard to the number of undivided or management shares, as the case may be, allocated to the unit. [G 25(a)]		
(b)	The developer must make payments and contributions for those expenses which are of a recurrent nature for those units and undivided shares unsold, provided however that a developer will not be obliged to make payments and contributions in respect of units and undivided shares allocated to a separate building or phase, the construction of which has not been completed, except to the extent that the building or phase benefits from provisions in the DMC as to management and maintenance (e.g. as to the costs of managing and maintaining slopes or as to security etc provided by the management of the completed parts) of the development. [G 25(a)]		
(c)	All outgoings including management expenses and any Government rent up to and inclusive of the date of assignment of the unit must be paid by the developer. An owner must not be required to make any payment or reimburse the developer for these outgoings. [G 25(e)]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
23.	The developer must make the initial contribution to the Special Fund and pay the management fee deposit and debris removal charge if he remains the owner of those undivided shares allocated to units in that part of the development the construction of which has been completed and which remain unsold 3 months after (i) execution of the DMC or (ii) the date on which he is in a position validly to assign those undivided shares (i.e. when the consent to assign or certificate of compliance has been issued), whichever is the later. [G 25(c)]		
24.	For a development comprising residential units, non-residential units, parking spaces or any combination of them, the manager must keep separate management accounts and budgets for each part. The owners of the residential units, non-residential units and parking spaces will only be liable to contribute to the management and maintenance costs of their respective parts (e.g. owners of residential units will only be responsible for residential common areas). All owners will be liable for development common areas. [G 25(b)]		
25.	The owners at an owners' meeting convened under the DMC must have power to require the annual accounts to be audited by an independent auditor of their choice. [G 14]		
26.	Where the manager's consent is required under the DMC, the DMC must provide that it must not be unreasonably withheld and that the manager must not charge any fee other than a reasonable administrative fee for issuing the consent. The fee must be credited to the Special Fund. [G 17]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
27.	Interest at a rate not exceeding 2% per annum above the prime rate from time to time specified by the Hong Kong and Shanghai Banking Corporation Limited and a collection charge not exceeding 10% of the amount due may be imposed on any owner failing to pay sums due under the DMC within 30 days of demand and the amounts of such interest and collection charge plus any legal costs (on a solicitor and own client basis) involved in recovering them may be the subject of a charge on the owner's undivided shares. All interest and collection charges received must be credited to the Special Fund. [G 16]		
28. (a)	There must be no provision in the DMC for interrupting the supply of electricity, water, gas, telecommunications or other utilities to any unit or to prevent access to the unit by reason of the owner of that unit failing to pay any fees or to comply with any other provisions under the DMC. [G 20(a)]		
(b)	The manager may discontinue providing management services to owners who fail to pay fees or to comply with any other provisions under the DMC and the manager may, if the DMC provides for it, register and enforce a charge against the interest of an owner who fails to pay any sum which is payable to the manager under the DMC. [G 20(b)]		

VIII - Reservation of Rights to Developer/Manager

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
29.	The developer may reserve rights to execute sub-DMCs in respect of separate towers, phases etc. All sub-DMCs (as well as the principal DMC) require the approval of the Director but where the Director is satisfied, upon submission of the draft sub-DMC to the Director, that the sub-DMC relates only to the internal sub-division of an existing unit and by the sub-DMC there will be no alteration to common areas or liability for management or other charges under the principal DMC, the Director may, in his absolute discretion, waive the requirement of approval of the sub-DMC. [G 4]		
30. (a)	The developer/manager is permitted to reserve rights for himself, his licensees or other third parties to install or affix chimneys, flues, pipes or any other structures or facilities on or within the common areas provided that the written approval by a resolution of owners at an owners' meeting convened under the DMC has been obtained before the exercise of the rights. Any payment received for the approval must be credited to the Special Fund. [G 5]		
(b)	LACO will decide on a case by case basis whether or not any other rights may be reserved to the developer and whether or not the exercise of these rights should only be permitted subject to the approval of the Owners' Committee or of owners at an owners' meeting, if at all. [G 7]		
31.	Subject to the conditions of the land grant and the DMC, the developer may reserve rights to retain for his own use any unsold part or parts of the lot not being common areas ("the Retained Areas") provided that: -		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(a)	the Retained Areas and their proposed use must be clearly defined and identified in the DMC and the sales brochure; and		
(b)	the Retained Areas must be allocated a number of undivided shares and management shares on the same basis as set out in Guideline 6, and the developer must remain liable to contribute to the management and other charges and payments for them so long as it retains them. [G 6]		

IX - Owners' Covenants

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
32.	An owner must not make any structural alteration which will interfere with or affect the rights of other owners. No provision will be approved in the DMC which prevents an owner from taking legal action against another owner in this respect. [G 27]		

X- Owners' Meetings

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
33.	The DMC must provide that, if the whole or any part of the development has been damaged by fire, typhoon, earthquake, subsidence or other causes rendering it substantially unfit for use or habitation or occupation, the owners of not less than 75% of the undivided shares allocated to that damaged part(s) of the development (excluding the undivided shares allocated to the common areas) may convene a meeting and decide by a resolution of not less than 75% of those present at the meeting whether or not to rebuild or reinstate the damaged part(s) of the development. The resolution is to be binding upon all the owners of the damaged part(s). [G 31]		

XI – Green and Innovative Features and Slope Maintenance etc.

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
34.	Where a development comprises green and innovative features which are exempted from the calculation of gross floor area or site coverage or both by the Building Authority and the Director, the DMC will include provisions to the following effect :		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(a)	<p>(i) private balconies and utility platforms must not be enclosed in whole or in part other than as under the approved building plans;</p> <p>(ii) communal sky gardens, communal podium gardens and mail delivery rooms with mail boxes must be designated as common areas.</p> <p>(Any undertaking as required under paragraph 2(b) of Appendix A to the Joint Practice Note No. 1 of the Building, Lands & Planning Departments must be submitted to LACO)</p>		
(b)	<p>Except with the prior consent of the Building Authority, communal sky gardens must not be used for any purposes or by any persons other than for the following purposes and by the following persons :</p> <p>(i) communal sky gardens must have natural ventilation, greenery and recreational garden space for communal use;</p> <p>(ii) communal sky gardens in residential developments must be for the common use and benefit of the residents, tenants and their visitors only;</p> <p>(iii) communal sky gardens in non-residential developments must be for the common use and benefit of the owners, occupiers, tenants and their visitors only.</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(c)	<p>Except with the prior consent of the Building Authority, communal podium gardens in non-residential developments must not be used for any purposes or by any persons other than for the following purposes and by the following persons:</p> <p>(i) communal podium gardens must not be used for any purpose other than as a sitting-out area;</p> <p>(ii) communal podium gardens must be for the common use and benefit of the owners, occupiers, tenants and their visitors only.</p>		
(d)	There must be conditions in the DMC for the control, operation, financial support and maintenance of the green and innovative features.		
(e)	The location of the green and innovative features should be clearly identified. If the location is identified by plans, the accuracy of the plans must be certified by or on behalf of the Authorized Person. [new]		
35. (a)	The owners must at their own expense maintain and carry out all works in respect of any and all slopes, slope treatment works, retaining walls and other structures (collectively “slope structures”) within or outside the lot as required by the conditions of the land grant and in accordance with “Geoguide 5 - Guide to Slope Maintenance” issued by the Geotechnical Engineering Office (as amended or substituted from time to time) and the maintenance manual for the slope structures ("slope maintenance manual") prepared in accordance with Geoguide 5.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	<p>If there is one or more slope structures, a plan of a scale of not less than 1:500 showing (for identification purposes only) all the slope structures existing at the date of the DMC, certified by the Authorized Person that it includes all the slope structures must be annexed to the DMC or the sub-DMC, as appropriate.</p> <p>(For the purpose of this Guideline, it is not necessary for the developer to submit the slope plans and the slope maintenance manual to LACO, or annex a copy of the manual to the DMC.)</p>		
(c)	The manager (which for this purpose must include the Owners' Corporation) must be given full authority by the owners to engage suitable qualified personnel to inspect, keep and maintain in good substantial repair and condition, and carry out any necessary works in respect of, the slope structures in compliance with the conditions of the land grant and in accordance with the slope maintenance manual and all guidelines issued from time to time by the appropriate Government departments regarding the maintenance of the slope structures.		
(d)	The DMC must have adequate provisions for the payment to the manager by all owners of all costs lawfully incurred or to be incurred by the manager in carrying out maintenance, repair and any other works in respect of the slope structures.		
(e)	The manager must not be made personally liable for carrying out these requirements of the conditions of the land grant, which must remain the responsibility of the owners if, having used all reasonable endeavours, the manager has not been able to collect the costs of the required works from all owners.		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(f)	The DMC must provide for the developer to deposit a full copy of the slope maintenance manual in the management office within one month of the date of the DMC for inspection by all owners free of charge and taking copies upon payment of a reasonable charge. All charges received must be credited to the Special Fund. [G 28]		
36. (a)	<p>There must be incorporated in the DMC a schedule of all major works and installations ("the Works and Installations") in the development, which will require regular maintenance on a recurrent basis. The schedule must include the following items :</p> <ul style="list-style-type: none"> (i) structural elements; (ii) external wall finishes and roofing materials; (iii) fire safety elements; (iv) the slope structures (if applicable); (v) plumbing system; (vi) drainage system; (vii) fire services installations and equipment; (viii) electrical wiring system; (ix) lift installations (if applicable); (x) gas supply system; (xi) window installations; and (xii) other major items (e.g. central air-conditioning and ventilation system, escalators etc.) 		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(b)	<p>The developer must compile for the reference of the owners and the manager a maintenance manual for the Works and Installations (“maintenance manual for the Works and Installations”) setting out the following details :</p> <ul style="list-style-type: none"> (i) As-built record plans of the building and services installations together with the necessary technical information (such as specifications of materials and design standard) for maintenance of all facilities and equipment; (ii) All warranties and guarantees provided by contractors (together with the names of the companies providing the warranty and the contact telephone numbers) in respect of all facilities and equipment; (iii) Recommended maintenance strategy and procedures; (iv) A list of items of the Works and Installations requiring routine maintenance; (v) Recommended frequency of routine maintenance inspection; (vi) Checklist and typical inspection record sheets for routine maintenance inspection; and (vii) Recommended maintenance cycle of the Works and Installations. <p>(For the purpose of this Guideline, it is not necessary to submit the manual to LACO or annex a copy to the DMC.)</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
(c)	The developer must deposit a full copy of the maintenance manual for the Works and Installations in the management office within one month of the date of the DMC for inspection by all owners free of charge and taking copies at their own expense and on payment of a reasonable charge. All charges received must be credited to the Special Fund.		
(d)	The owners must at their own expense inspect, maintain and carry out all necessary works for the maintenance of the development and their own units including the Works and Installations.		
(e)	All costs incidental to the preparation of the schedule and the maintenance manual for the Works and Installations will be borne by the developer.		
(f)	<p>(i) Provisions must be made in the DMC to provide for future revisions to the schedule and the maintenance manual for the Works and Installations as may be necessary (e.g. the addition of works and installations in the development, the updating of maintenance strategies in step with changing requirements etc.).</p> <p>(ii) The owners may, by a resolution of owners at an owners' meeting convened under the DMC, decide on revisions to be made to the schedule and the maintenance manual for the Works and Installations, in which event the manager must procure from a qualified professional or consultant the revised schedule and the revised maintenance manual for the Works and Installations within such time as may be prescribed by the owners in an owners' meeting convened under the DMC.</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
	<p>(iii) All costs incidental to the preparation of the revised schedule and the revised maintenance manual for the Works and Installations will be paid out of the Special Fund.</p> <p>(iv) The manager must deposit the revised maintenance manual for the Works and Installations in the management office within one month from the date of its preparation for inspection by all owners free of charge and taking copies at their own expense and on payment of a reasonable charge. All charges received must be credited to the Special Fund. [new]</p>		

XII – Telecommunications Network Areas

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
37. (a)	Areas for the installation or use of aerial broadcast distribution or telecommunications network facilities must form part of the common areas.		
(b)	<p>The DMC must provide that contracts for the installation or use of aerial broadcast distribution or telecommunications network facilities and contracts for the provision of broadcast distribution network or telecommunications network services to be entered into by the manager must be subject to the following conditions:</p> <p>(i) the term of the contract will not exceed 3 years;</p>		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
	<p>(ii) the right to be granted under the contract must be non-exclusive and must provide for sharing the use of the facilities and network with other service providers; and</p> <p>(iii) no owner is required to make any payment in any form attributable to the installation or provision of the facilities or services, unless he is a subscriber to the relevant service. [new]</p>		

XIII – Miscellaneous

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
38.	All owners of undivided shares who do not occupy the units to which those shares relate must provide the manager with an address in Hong Kong for service of notices under the DMC. [G 32]		
39.	The developer must at his own cost provide a direct translation in Chinese of the DMC. The developer must deposit a copy of the DMC and the Chinese translation in the management office within one month of the date of the DMC for inspection by all owners free of costs and for taking copies at their own expense and upon payment of a reasonable charge. All charges received must be credited to the Special Fund. The DMC must specify that the version of the DMC approved by the Director will prevail in the event of a dispute as to the effect of the Chinese translation and the English language document. [G 33]		

	Subject	Clause No. (Page No.) [Insert where applicable]	Remarks
40.	The Director will not be concerned whether or not pets are permitted or subject to any controls. [G 34]		
41.	The Director will not be concerned as to any arrangements or restrictions on the design, decoration or colour schemes of any parts of the development. [G 35]		

Notes to Guidelines

- (1) The Guidelines apply to all developments regardless of user and size. LACO reserves the right to approve or reject any request for deviation from the Guidelines or to impose any other requirements as may be appropriate to the circumstances of any particular case. A request for deviation from the Guidelines must be fully justified.
- (2) These Guidelines are not intended to be incorporated into DMCs verbatim, but to indicate a broad framework of what is required in a straightforward case for the approval of the Director under the conditions of the land grant. The wording used should be suitably adapted for particular cases. As far as the DMC complies with the Guidelines, and unless a provision in the DMC appears, on the face of it, to be contrary to the spirit of the Guidelines, LACO will not be concerned with the detailed drafting of the DMC.
- (3) The guideline number as appeared in the 1999 Guidelines attached to LACO CM No. 41 is inserted at the end of the individual revised Guideline, if applicable.

	Seventh Schedule to the BMO		
	<p>1. Determination of total amount of management expenses</p> <p>(1) Subject to subparagraphs (3), (5), (6) and (8), the total amount of management expenses payable by the owners during any period of 12 months adopted by the manager of a building as the financial year in respect of the management of that building shall be the total proposed expenditure during that year as specified by the manager in accordance with subparagraph (2).</p> <p>(2) In respect of each financial year, the manager shall-</p> <ul style="list-style-type: none"> (a) prepare a draft budget setting out the proposed expenditure during the financial year; (b) send a copy of the draft budget to the owners' committee or, where there is no owners' committee, display a copy of the draft budget in a prominent place in the building; (c) send or display, as the case may be, with the copy of the draft budget a notice inviting each owner to send his comments on the draft budget to the manager within a period of 14 days from the date the draft budget was sent or first displayed; (d) after the end of that period, prepare a budget specifying the total proposed expenditure during the financial year; (e) send a copy of the budget to the owners' committee or, where there is no owners' committee, display a copy of the budget in a prominent place in the building. <p>(3) Where, in respect of a financial year, the manager has not complied with subparagraph (2) before the start of that financial year, the total amount of the management expenses for that year shall-</p> <ul style="list-style-type: none"> (a) until he has so complied, be deemed to be the same as the total amount of management expenses (if any) for the previous financial year; 		

(b) when he has so complied, be the total proposed expenditure specified in the budget for that financial year, and the amount that the owners shall contribute towards the management expenses shall be calculated and adjusted accordingly.

- (4) Where a budget has been sent or displayed in accordance with subparagraph (2)(e) and the manager wishes to revise it, he shall follow the same procedures in respect of the revised budget as apply to the draft budget and budget by virtue of subparagraph (2).
- (5) Where a revised budget is sent or displayed in accordance with subparagraph (4), the total amount of the management expenses for that financial year shall be the total expenditure or proposed expenditure specified in the revised budget and the amount that owners shall contribute towards the management expenses shall be calculated and adjusted accordingly.
- (6) If there is a corporation and, within a period of 1 month from the date that a budget or revised budget for a financial year is sent or first displayed in accordance with subparagraph (2) or (4), the corporation decides, by a resolution of the owners, to reject the budget or revised budget, as the case may be, the total amount of management expenses for the financial year shall, until another budget or revised budget is sent or displayed in accordance with subparagraph (2) or (4) and is not so rejected under this subparagraph, be deemed to be the same as the total amount of management expenses (if any) for the previous financial year, together with an amount not exceeding 10% of that total amount as the manager may determine.
- (7) If any owner requests in writing the manager to supply him with a copy of any draft budget, budget or revised budget, the manager shall, on payment of a reasonable copying charge, supply a copy to that person.
- (8) For the purposes of this paragraph, "expenditure" includes all costs, charges and expenses to be borne by the owners, including the remuneration of the manager.

2. Keeping of accounts

- (1) The manager shall maintain proper books or records of account and other financial records and shall keep all bills, invoices, vouchers, receipts and other documents referred to in those books and records for at least 6 years.

- (2) Within 1 month after each consecutive period of 3 months, or such shorter period as the manager may select, the manager shall prepare a summary of income and expenditure in respect of that period and shall display a copy of it in a prominent place in the building.
- (3) Within 2 months after the end of each financial year, the manager shall prepare an income and expenditure account and balance sheet for that year.
- (4) Each income and expenditure account and balance sheet shall include details of the special fund required by paragraph 4 and an estimate of the time when there will be a need to draw on that fund, and the amount of money that will be then needed.
- (5) The manager shall-
 - (a) permit any owner, at any reasonable time, to inspect the books or records of account and any income and expenditure account or balance sheet; and
 - (b) on payment of a reasonable copying charge, supply any owner with a copy of any record or document requested by him.
- (6) If there is a corporation and the corporation decides, by a resolution of the owners, that any income and expenditure account and balance sheet should be audited by an accountant or by some other independent auditor as may be specified in that resolution, the manager shall without delay arrange for such an audit to be carried out by that person.
- (7) The financial year may not be changed more than once in every 5 years, unless that change is previously approved by a resolution of the owners' committee (if any).

3. Manager to maintain bank account

- (1) The manager shall maintain an interest-bearing account and shall use that account exclusively in respect of the management of the building.
- (2) Subject to subparagraphs (3) and (4), the manger shall without delay pay all money received by him in respect of the management of the building into the account maintained under subparagraph (1).

- (3) Subject to subparagraph (4), the manager may, out of money received by him in respect of the management of the building, retain or pay into a current account a reasonable amount to cover expenditure of a minor nature, but that amount shall not exceed such figure as is determined from time to time by a resolution of the owners' committee (if any).
- (4) The retention of a reasonable amount of money under subparagraph (3) or the payment of that amount into a current account in accordance with that subparagraph and any other arrangement for dealing with money received by the manager shall be subject to such conditions as may be approved by a resolution of the owners' committee (if any).
- (5) Any reference in this paragraph to an account is a reference to an account opened with a bank within the meaning of section 2 of the Banking Ordinance (Cap. 155), the title of which refers to the management of the building.

4. Special fund

- (1) The manager shall establish and maintain a special fund to provide for expenditure of a kind not expected by him to be incurred annually.
- (2) If there is a corporation, the corporation shall determine, by a resolution of the owners, the amount to be contributed to the special fund by the owners in any financial year, and the time when those contributions shall be payable.
- (3) The manager shall maintain at a bank within the meaning of section 2 of the Banking Ordinance (Cap. 155) an interest-bearing account, the title of which shall refer to the special fund for the building, and shall use that account exclusively for the purpose referred to in subparagraph (1).
- (4) The manager shall without delay pay all money received by him in respect of the special fund into the account maintained under subparagraph (3).
- (5) Except in a situation considered by the manager to be an emergency, no money shall be paid out of the special fund unless it is for a purpose approved by a resolution of the owners' committee (if any).

5. Contracts entered into by manager

The manager shall not, in any financial year, enter into any contract that involves an average annual expenditure of more than 20% of the budget or revised budget, as the case may be, for that financial year or of such greater amount as the Authority may specify by notice in the Gazette unless the contract complies with such standards and guidelines as may be specified in a Code of Practice referred to in section 20A(3) and relating to procurement and tender procedures.

6. Resignation of manger

- (1) No resignation of the manager shall take effect unless he has previously given not less than 3 months' notice in writing of his intention to resign-
 - (a) by sending such a notice to the owners' committee; or
 - (b) where there is no owners' committee, by serving such a notice on each of the owners and by displaying such a notice in a prominent place in the building.
- (2) Service of a notice on an owner under this paragraph may be effected-
 - (a) personally upon the owner; or
 - (b) by post addressed to the owner at his last known address; or
 - (c) by leaving the notice at the owner's flat or depositing the notice in his letter box.

7. Termination of manager's appointment by owners' corporation

- (1) Subject to subparagraph (5) and 5(A), at a general meeting convened for the purpose a corporation may, by a resolution of the owners of not less than 50% of the shares, terminate by notice the manager's appointment without compensation.
- (2) A resolution under subparagraph (1) shall have effect only if-
 - (a) the notice of termination of appointment is in writing;

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| <ul style="list-style-type: none"> (b) provision is made in the resolution for a period of not less than 3 months' notice or, in lieu of notice, provision is made for an agreement to be made with the manager for the payment to him of a sum equal to the amount of remuneration which would have accrued to him during that period; (c) the notice is accompanied by a copy of the resolution terminating the manager's appointment; and (d) the notice and the copy of the resolution is served upon the manager not more than 14 days after the date of the meeting. <p>(3) Service of the notice and the copy of the resolution required to be served under subparagraph (2)(d) may be effected-</p> <ul style="list-style-type: none"> (a) personally upon the manager; or (b) by post addressed to the manager at his last known address; or (c) by leaving the notice at the address of the registered office of the corporation. <p>(4) This paragraph operates without prejudice to any other power there may be to terminate the manager's appointment.</p> <p>(5) The manager's appointment may not be terminated under this paragraph-</p> <ul style="list-style-type: none"> (a) in the case of a corporation in respect of which a certificate of registration was issued under section 8 prior to the commencement of section 41 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (27 of 1993), by a notice that expires before the end of a period of 9 months from that commencement; (b) in any other case, by a notice that expires before the end of a period of 1 year from the commencement of section 41 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 (27 of 1993); (c) if, within the previous 3 years, the appointment of a previous manager was terminated under this paragraph; or | | |
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(d) if the manager was appointed by the corporation under subparagraph (6)(b).

(5A) For the purposes of subparagraph (1) –

- (a) only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote;
- (b) the reference in subparagraph (1) to “the owners of not less than 50% of the shares” shall be construed as a reference to the owners of not less than 50% of the shares who are entitled to vote.

(6) If a notice to terminate a manager's appointment is given under this paragraph-

- (a) no appointment of a new manager shall take effect unless the appointment is approved by a resolution of the owners' committee (if any); and
- (b) if no such appointment is approved under sub-subparagraph (a) by the time the notice expires, the corporation may appoint another manager and, if it does so, the corporation shall have exclusive power to appoint any subsequent manager.

(7) If any person has given an undertaking in writing to, or has entered into an agreement with, the Government to manage or be responsible for the management of the building, and the corporation has appointed a manager under subparagraph (6)(b), the corporation shall be deemed to have given to that person an instrument of indemnity under which the corporation shall be liable to indemnify that person in respect of any act or omission by the manager appointed under that subparagraph that may otherwise render that person liable for a breach of that undertaking or agreement.

(8) This paragraph is subject to any notice relating to the building that may be published by the Authority under section 34E(4) but does not apply to any single manager referred to in that section.

8. Obligations after manager's appointment ends

If the manager's appointment ends for any reason, he shall within 2 months of the date his appointment ends-

	<p>(a) prepare-</p> <p>(i) an income and expenditure account for the period beginning with the commencement of the financial year in which his appointment ends and ending on the date his appointment ended; and</p> <p>(ii) a balance sheet as at the date his appointment ended,</p> <p>and shall arrange for that account and balance sheet to be audited by an accountant or by some other independent auditor specified in a resolution of the owners' committee (if any) or, in the absence of any such specification, by such accountant or other independent auditor as may be chosen by the manager; and</p> <p>(b) deliver to the owners' committee (if any) or the manager appointed in his place any books or records of account, papers, documents and other records in respect of the control, management and administration of the building that are under his control or in his custody or possession.</p>		
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	Eighth Schedule to the BMO		
	<p>Meetings of owners' committee</p> <ol style="list-style-type: none"> 1. A meeting of the owners' committee may be convened at any time by the chairman or any 2 members of the owners' committee. 2. Notice of a meeting of the owners' committee shall be served by the person or persons convening the meeting upon each member of the owners' committee at least 7 days before the date of the meeting, and that notice shall specify the place, date and time of the meeting and the resolutions (if any) that are to be proposed. 3. Service of a notice required to be served under paragraph 2 may be effected- <ol style="list-style-type: none"> (a) personally upon the member of the owners' committee; or (b) by post addressed to the member of the owners' committee at his last known address; or (c) by leaving the notice at the member's flat or depositing the notice in his letter box. 4. The quorum at a meeting of the owners' committee shall be 50% of the members of the owners' committee (rounded up to the nearest whole number) or 3 such members, whichever is the greater. 5. A meeting of the owners' committee shall be presided over by- <ol style="list-style-type: none"> (a) the chairman; or (b) in the absence of the chairman, a member of the owners' committee appointed as chairman for that meeting. 6. At a meeting of the owners' committee, each member present shall have 1 vote on a question before the committee and if there is an equality of votes the chairman shall have, in addition to a deliberative vote, a casting vote. 		

7. The procedure at meetings of the owners' committee shall be as is determined by the owners' committee.

Meetings of owners

8. A meeting of owners may be convened by-
- (a) the manager; or
 - (b) the owners of not less than 5% of the shares.
9. Notice of a meeting of owners shall be served by the person or persons convening the meeting upon each owner at least 14 days before the date of the meeting, and that notice shall specify the place, date and time of the meeting and the resolutions (if any) that are to be proposed.
10. Service of a notice required to be served under paragraph 9 may be effected-
- (a) personally upon the owner;
 - (b) by post addressed to the owner at his last known address; or
 - (c) by leaving the notice at the owner's flat or depositing the notice in his letter box.
11. The quorum at a meeting of owners shall be 10% of the owners.
- 11A. For the purposes of paragraph 11, the reference in that paragraph to "10% of the owners" shall –
- (a) be construed as a reference to 10% of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
 - (b) not be construed as the owners of 10% of the shares.
12. A meeting of the owners shall be presided over by the chairman of the owners' committee or, in his absence, by an owner appointed by the owners as chairman for that meeting.

	<p>13. At a meeting of owners-</p> <ul style="list-style-type: none"> (a) each owner shall have 1 vote in respect of each share that he owns; (b) the votes of owners may be given either personally or by proxy; (c) if a share is jointly owned by 2 or more persons, the vote in respect of that share may be cast- <ul style="list-style-type: none"> (i) by a proxy jointly appointed by the co-owners; (ii) by 1 co-owner appointed by the others; or (iii) if no appointment has been made under sub-subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid; and (d) if there is an equality of votes the person presiding over the meeting shall have, in addition to a deliberative vote, a casting vote. <p>14. (1) An instrument appointing a proxy shall be in writing signed by the owner or, if the owner is a body corporate, under the seal of that body.</p> <p>(2) The appointment of proxy shall have no effect unless the instrument appointing the proxy is lodged with the person, or one of the persons, as the case may be, who convened the meeting not less than 24 hours before the time for the holding of the meeting at which the proxy proposes to vote, or within such lesser time as the chairman shall allow.</p> <p>15. The procedure at a meeting of owners shall be as is determined by the owners.</p>		
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I, [name] , of [the firm] , hereby confirm that the Checklist has been duly and accurately completed.

(Signature of Solicitor)

Date: