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8 July 2004

**Legal Advisory and Conveyancing Office ("LACO")**  
**Circular Memorandum ("CM") No. 54**

**Review of the Consent Scheme**

The Lands Department has carried out a review of the Consent Scheme in consultation with the various professional, consumer and property industry organizations. It has now been decided that additional measures should be introduced into the administration of the Consent Scheme.

The introduction of some of these measures progressively on a case by case basis over the last several months has proved helpful in refining some of the practical requirements and enabling developers and their professional advisers to become familiar with them. These were described on an interim basis in LACO CM No. 51 issued on 21<sup>st</sup> August 2003.

The measures set out in the **Annex** to this CM will apply to all applications for consent to sell uncompleted developments received after 1st July 2004, irrespective of whether the consent relates to residential units or non-residential units. The measures set out in LACO CM No. 51 shall continue to apply to those applications received before 1<sup>st</sup> July 2004.

All previous LACO Circular Memoranda relating to consent to sell uncompleted units are hereby further amended, as appropriate. Except as varied by this CM, all other terms of the Consent Scheme remain in full force and effect.

Copies of this CM and its Annex and Appendices may be downloaded from the Lands Department website at [www.info.gov.hk/landsd/](http://www.info.gov.hk/landsd/).

For information of potential purchasers, to facilitate them in contacting individual solicitors firm, the current enquiry telephone number and website address of the Law Society of Hong Kong are as follows:

Enquiry telephone number:

2846 0500

Website address:

[www.hklawsoc.org.hk](http://www.hklawsoc.org.hk)

(T. E. Berry)  
Deputy Director/Legal  
for Director of Lands

To: All Solicitors

c.c. Consumer Council

The Real Estate Developers Association of Hong Kong

The Hong Kong Institute of Surveyors

The Hong Kong Institute of Architects

The Hong Kong Association of Banks

The Hong Kong Institute of Real Estate Administration

## **ANNEX**

**This Annex sets out all measures introduced in this CM No. 54. Section I in this Annex contains measures applicable to all applications for consent to sell uncompleted units (including residential developments and non-residential developments); and Section II contains measures applicable only to developments to be financed by building mortgage.**

### **Section I      For all consents to sell**

#### **1.      Disclosure of more information to the public**

1.1 LACO CM No. 40C requires, among other things, the disclosure of the names of contractors and the Authorized Person (“AP”) to be included in sales brochures.

1.2 To provide more information to purchasers of units, the names of the following parties involved in a development project must be disclosed clearly in sales brochure and any advertisements (including electronic media):

- (a) the developer company (i.e. the registered owner of the lot) and its parent or holding company;
- (b) the AP and the professional firm to which the AP belongs;
- (c) the main superstructure contractor registered with the Building Authority;
- (d) the solicitors firm representing the developer in the sale of units;
- (e) any mortgagee bank financing the construction of the development under a building mortgage;
- (f) any bank which has given an Undertaking to provide finance to complete the development; and
- (g) any Financier which have already provided loans to finance the development and which will join in the Agreement for Sale and Purchase (“ASP”).

1.3 An exception to Paragraph 1.2 in this Section I is hereby made for certain media (e.g. radio, television, advertising on public transport vehicles, Mass Transit Railway premises, roadside billboards etc.) where it is impractical to include all the required information in the advertisement. In other cases, where the developer considers that it is not practical

to include any of the required information in an advertisement which is not covered by the above exception, it may make an application with justifications to LACO to waive the requirement in a specific case, at the absolute discretion of LACO.

- 1.4 The developer shall provide to the relevant media all the mandatory information required to be disclosed under Paragraph 1.2 in this Section I and request them to include all of the information in free advertisements which may include editorial comment, (whether solicited or unsolicited) to be provided by the media in any case where the developer is aware that free advertisements will be provided.
- 1.5 The information in Paragraph 1.2 in this Section I, as provided by developers, will be included in the monthly press release of LACO to the public, the fax-on-demand service of LACO's Consent Hotline (No. 2147 5475) and the Lands Department website.
- 1.6 Any changes in the parties described in Paragraph 1.2 in this Section I should be promptly reflected in the sales brochure and any advertisements.

## **2. Declaration by solicitors, substitution and addition of firms of solicitors**

- 2.1 Prior to commencing any sale of units, a partner of the solicitors firm who obtained the consent will be required to make a Statutory Declaration ("SD") in the form as in **Appendix I** attached.
- 2.2 If, at the time when the solicitor is to make the SD, the solicitor proposes to make any change to the form of the SD approved by LACO, or if subsequent to the making of the SD, the solicitor wishes to make any change to the SD, or if the certificate of the AP (to be exhibited to the SD) last accepted by LACO for the purpose of consent is dated more than 3 calendar months earlier than the proposed date of the SD, the solicitor must first submit to LACO a draft or revised draft of the proposed SD with any updated exhibits for approval by LACO.
- 2.3 If a solicitors firm who obtains the consent to sell ceases to act for the developer in the sale of units, no further sales of any unit may take place until LACO has approved a further SD to be made by a partner of the substituted firm and which is registered in the Land Registry.

- 2.4 If a developer wants to instruct any other firm of solicitors to act on its behalf in the sale of units in addition to the firm already approved at the time of consent, the additional firm cannot act in the sale until LACO has given its approval to a form of further SD to be made by a partner of the additional firm and which is registered in the Land Registry. Any application for LACO's approval to add a solicitors firm must be made through the solicitors firm which obtained the original consent to sell or the firm appointed in substitution of the original firm.
- 2.5 Up to date certificates as to the progress of construction, financing, etc. may be required where any further SD is to be made under Paragraphs 2.2, 2.3 or 2.4 in this Section I.

### **3. Additional notifications to Purchasers relating to date of development completion**

In order that purchasers may be made aware of any occurrence of events which entitle them to rescind the agreement as provided in Clauses 4(3) and 4(4)(a) of the standard form of ASP, developers, as the vendors, must also notify purchasers in writing of:

- (a) any failure to apply for or obtain any necessary extension of the Building Covenant ("BC") expiry date or to complete construction of the development before expiry of the BC; and
- (b) the reasons for any extension by the AP under Clause 4(5)(a) (of the standard form of ASP) and any failure to complete construction of the development by the contractual date for completion specified in Clause 4(1)(c) or by the date as extended by the AP under Clause 4(5)(a).

Developers must also, in any of those circumstances, draw the attention of purchasers to their right of rescission under Clause 4(3) or Clause 4(4)(a) (of the standard form of ASP).

### **4. Operation of Stakeholder Account**

- 4.1 No solicitors firm may act in the sale of units until the firm has provided LACO with a copy of their letter of appointment to act from the developer. Any withdrawal of the

appointment must also be copied to LACO within 2 working days of receipt by the solicitors firm.

- 4.2 Any stakeholder account must be opened with a licensed bank and designated for the development. All purchasers' payments in respect of the purchase price (including any preliminary deposits and by whatever means payment is made e.g. electronically, cheque etc.) must be made directly to the bank for the account of the solicitors firm and designated for the named development.
- 4.3 Any release of funds from the stakeholder account must be strictly in accordance with the provisions in the ASP. Pending completion of the sale and purchase, no funds in the stakeholder account can be released to the developer at any time under Clause 26(1)(d) of the standard form of ASP unless, as at the time of the intended withdrawal, there is a sufficient sum in the stakeholder account to cover the total outstanding construction costs and professional fees at the relevant time.
- 4.4 No money should be drawn from any stakeholder account for reimbursement to the developer or for payment as construction costs to any contractor, sub-contractor or supplier other than those whose names have already been disclosed in the AP's certificates or as professional fees. Further, any monies so drawn must be for payment of construction costs and professional fees already expended and which have been paid or are payable by the developer.
- 4.5 Where the developer has instructed more than one solicitors firm to act on its behalf in the sale of units, the written agreement of all the firms so instructed is required to any release of funds from any of the stakeholder accounts.

## **5. Disclosure of conflict of interest of solicitor and AP**

- 5.1 If any conflict of interest exists between the professionals (i.e. the solicitor and AP) and the developer company, its parent or holding company and the main superstructure contractor, it should be made transparent to the public to assist purchasers in making a decision to purchase a unit in the development.
- 5.2 When applying for consent to sell units, the AP and solicitor must disclose to LACO

their personal relationships and financial relationships with the developer company, its parent or holding company and the main superstructure contractor.

5.2.1 Personal relationship:

The following are considered to be personal relationships for the purposes of this CM including the Appendices :

Husband	Wife
Father	Mother
Son	Daughter
Brother	Sister
Grandfather	Grandmother
Grandson	Granddaughter

5.2.2 Financial relationship:

The following are considered to be financial relationships for the purposes of this CM including the Appendices:

- (a) Where the developer company, its parent or holding company or the main superstructure contractor is:
- a private company, the AP or solicitor holds more than 10% of the shares in that private company; or
  - a listed company, the AP or solicitor holds more than 1% of the issued shares in that public company.
- (b) Irrespective of whether the developer company, its parent or holding company or the main superstructure contractor are private or listed companies, where the AP is an employee or a Director or Secretary of any of these companies, or the solicitor is a Director or Secretary of any of these companies, regardless of whether or not the person holds any shares

in the company. <sup>(Note 1)</sup>

5.3 If any of these personal or financial relationships exists, the sales brochure and any advertisements in the printed media (e.g. newspapers, magazines, etc.) (excluding electronic media) should contain clearly a statement of disclosure, as follows (subject to any variation which may be approved by LACO):

5.3.1 As to personal relationship:

If the AP is personally related to a Director or Secretary of the developer company, its parent or holding company or the main superstructure contractor, then a statement along the lines of ‘The Authorized Person for the development, Mr. X, is personally related to a Director/Secretary of the developer/the developer’s parent/holding company/the main superstructure contractor.’ should be inserted.

If the solicitor making the SD in support of the consent application is personally related to a Director or Secretary of the developer company, its parent or holding company or the main superstructure contractor, then a statement along the lines of ‘A partner of the solicitors firm, Messrs Z & Co, acting for the developer in the sale of units, is personally related to a Director/Secretary of the developer/the developer’s parent/holding company/the main superstructure contractor.’ should be inserted.

5.3.2 As to financial relationship:

If the AP is financially related to the developer company, its parent or holding company or the main superstructure contractor, then a statement along the lines of ‘The Authorized Person for the development, Mr. X, is an employee/a shareholder/Director/Secretary of the developer/the developer’s parent/holding company/the main superstructure contractor.’ should be inserted.

If the solicitor making the SD in support of the consent application is financially related to the developer company, its parent or holding company or the main

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Note 1: The terms “Director”, “Secretary” and “holding company” wherever appearing in this CM shall have the same meaning as in the Companies Ordinance (Cap. 32).



superstructure contractor, then a statement along the lines of ‘A partner of the solicitors firm, Messrs X & Co, is a shareholder/Director/Secretary of the developer/the developer’s parent/holding company/the main superstructure contractor.’ should be inserted.

There is no need to disclose in the public statement the actual personal relationship or the name of the related person, or to state publicly the percentage or number of shares held, but LACO reserves the right to request the relevant information in individual cases.

- 5.4 The requirements of disclosing personal and financial relationships contained in Paragraph 5.3 in this Section I also apply to any other AP or solicitor who is a partner or director of the applicant firm, even though they do not personally give the AP’s certificate or SD in relation to the consent. The respective statements of disclosure should follow the format provided in Paragraphs 5.3.1 and 5.3.2 in this Section I except that the name of the other related AP partner or AP director does not need to be disclosed in the statement. If there is more than one firm of solicitors to act on behalf of the developer in the sale of units, all requirements of disclosure of conflict of interest contained in this Paragraph 5 will apply to each solicitors firm instructed.
- 5.5 Where the firm of the AP is in the same group of companies as the developer company, its parent or holding company or the main superstructure contractor, then similar public disclosure is also required. A disclosure statement along the lines of ‘The Authorized Person’s firm, XXXX Co, is a member of the same group of companies as the developer/the developer’s parent/holding company/the main superstructure contractor.’ should be inserted.
- 5.6 Where any of the personal or financial relationships stipulated in Paragraphs 5.2, 5.4 and 5.5 in this Section I exists, the AP, the solicitor, or the applicant firm would not be automatically prohibited from acting as AP or conveyancing solicitor in the project, but, in addition to the requirements of public disclosure stated in Paragraphs 5.3, 5.4 and 5.5, LACO reserves the right, in individual circumstances, to seek specific assurances or undertaking from the related party to ensure their independence in the progress of the development.

- 5.7 So long as the consent to sell remains in effect, the AP and solicitor must inform LACO immediately in writing if he or any other partners or directors in his firm has entered into any personal or financial relationships (as defined in Paragraph 5.2 in this Section I) with the developer company, its parent or holding company or the main superstructure contractor (e.g. an appointment as an employee or as a Director or Secretary or a purchase of shares resulting in the shareholding threshold of 1% or 10% being exceeded). The AP must also inform LACO immediately in writing if his firm becomes a related company of the developer company, its parent or holding company or the main superstructure contractor. LACO may then impose further conditions for the consent already given including the making of a supplemental SD by the solicitor and the public disclosure of the relationship.
- 5.8 The provisions in Paragraphs 1.3 and 1.4 in this Section I shall apply in respect of the requirements of public disclosure stipulated in this Paragraph 5.

## **6. The role of APs and AP's Certificate in the project**

- 6.1 The AP's certificate accompanying each application for consent to sell must be in the standard form as in **Appendix II** attached.
- 6.2 Generally, an AP's certificate will not be accepted for processing if the date of the AP's certificate is more than 3 calendar months old. The AP's certificate submitted immediately before LACO giving consent, on which the final check will be conducted, must also be dated not more than 3 calendar months before the date of consent. If, at the time of the solicitor making the SD, the AP's certificate last accepted by LACO is dated more than 3 calendar months earlier than the proposed date of the SD, LACO will require the solicitor to exhibit an updated AP's certificate to the SD. The proposed SD, together with the new AP's certificate and other updated exhibits, must first be submitted to LACO for further approval.
- 6.3 Except for the independent AP required under Paragraph 6.9 in this Section I, the AP providing a certificate under the Consent Scheme must be the AP registered with the Building Authority ("BA") for the project for the time being.

- 6.4 The main superstructure contractor, to be identified in the AP's certificate, must also be registered with the BA for the project. All other contractors, sub-contractors and suppliers for the project (e.g. for demolition works, site formation works, foundation works, pile caps, lifts, gas installation works, landscaping etc.) should also be identified in the AP's certificates for the purpose of drawing down funds from the stakeholder account or any building mortgage, against properly delivered invoices.
- 6.5 For the purposes of this CM including the Appendices, the definitions of "construction costs" and "professional fees" are set out below.
- 6.5.1 "Construction costs" means (i) any sum incurred or to be incurred in connection with any works done or to be done, and materials or goods supplied or to be supplied, in connection with the site formation on the lot for the development or a phase in it for which consent is applied for, the substructure and superstructure construction of the building(s), (including the communal and recreational facilities as set out in the ASP between the developer and purchasers), and the making of that development or a phase in it fit to qualify for the issue of an Occupation Permit and to comply with the land grant conditions in so far as the conditions relate to that development or a phase in it; (ii) any sums needed to be incurred by the developer to install the fittings and finishes of that development or a phase in it (including the fittings and finishes as set out in the ASP between the developer and purchasers) and in making every unit in that development or a phase in it ready for handover to purchasers on completion of the sale and purchase and (iii) any other sums (excluding the professional fees) which in the reasonable opinion of the AP needed to be incurred to complete the construction of that development or a phase in it fit to qualify for the issue of an Occupation Permit and to comply with the land grant conditions in so far as the conditions relate to that development or a phase in it and the ASP.
- 6.5.2 "Professional fees" means any sums incurred or to be incurred by the developer for the employment of the AP and other professional persons or consultants in relation to the completion of the development or a phase in it for which consent is applied for.
- 6.5.3 The professional fees must first be confirmed to the AP in writing by an appropriate senior or financial officer of the developer.

6.6 In respect of the amounts of construction costs and professional fees confirmed to have been paid or to be payable by the developer, the AP must obtain adequate written supporting evidence to satisfy himself that the sums to date have been paid or are to be paid to the contractors, sub-contractors, suppliers and professionals as claimed. Individual receipts or invoices in support of the payment need not be produced to LACO, unless specifically required in any particular case at LACO's discretion.

6.7 The AP must confirm to LACO, for himself and the professional firm to which he belongs, including any other partners or directors in that firm, whether there is any conflict of interest in the project, in accordance with the requirements set out in Paragraphs 5.2, 5.4 and 5.5 in this Section I.

6.8 Change of AP in a project

6.8.1 The AP must inform LACO, the stakeholder solicitors firm and any mortgagee bank holding a security over the lot under a building mortgage, of any change of AP registered for the project (unless it is a temporary change within the same professional firm), in writing in accordance with the AP's certificate.

6.8.2 Where an AP is appointed temporarily and the developer wishes to rely on the certificate of this temporarily appointed AP for the purpose of obtaining consent to sell or drawing down money from the stakeholder account or any building mortgage, then LACO's approval of that AP must first be obtained before his certificate can be accepted for any of the purposes.

6.8.3 In obtaining LACO's approval, the temporarily appointed AP must first confirm to LACO that he is the AP registered with the BA for the project for the time being, and disclose any conflict of interest in accordance with the requirements in Paragraphs 5.2, 5.4 and 5.5 in this Section I. The stakeholder solicitors firm and the mortgagee bank must also be notified in writing of any temporary appointment of AP approved by LACO before drawing down any money. On resuming appointment by the original registered AP, he must again inform LACO, the stakeholder solicitors firm and the mortgagee bank of his re-registration with the BA for the project and the cessation of appointment of the temporary AP.

## 6.9 Independent AP or Quantity Surveyor (“QS”)

### 6.9.1 If

- (a) the AP is a Director, Secretary or employee of the developer company, its parent or holding company or the main superstructure contractor; or
- (b) the professional firm of the AP is in the same group of companies as the developer company, its parent or holding company or the main superstructure contractor;

then the various amounts relating to the construction costs and professional fees (including any payment made) appearing in any certificate of the AP to be submitted to LACO or the stakeholder solicitors firm must be verified by an independent AP or QS.

6.9.2 The developer company must confirm to the AP whether the main superstructure contractor is in the same group of companies as the developer company or its parent or holding company. If the main superstructure contractor is in the same group of companies, the AP may, in his discretion, require the various amounts relating to the construction costs and professional fees to be further verified by an independent QS.

6.9.3 For the purposes of this CM including the Appendices, an independent AP/QS means:

- (a) an AP/QS who is neither financially related (as defined in Paragraph 5.2.2 in this Section I) to the developer company, its parent or holding company, the main superstructure contractor or the firm of AP acting in the project, nor personally related (as defined in Paragraph 5.2.1 in this Section I) to a partner, Director or Secretary of the developer company, its parent or holding company, the main superstructure contractor or the firm of AP acting in the project;

- (b) the firm of the independent AP/QS is not in the same group of companies as the developer company, its parent or holding company, the main superstructure contractor or the firm of AP acting in the project; and
- (c) none of the partners or directors in the firm of the independent AP/QS is financially related (as defined in Paragraph 5.2.2 in this Section I) to the developer company, its parent or holding company, the main superstructure contractor or the firm of AP acting in the project, or personally related (as defined in Paragraph 5.2.1 in this Section I) to a partner, Director or Secretary of the developer company, its parent or holding company, the main superstructure contractor or the firm of AP acting in the project.

6.9.4 The certificate of the independent AP/QS must be attached to the AP's certificate to which it relates, and follow the respective forms attached to **Appendix II** and **Appendix IV** to this CM.

## **7. Periodic reports and AP's certificates**

7.1 The following submissions are required to be made after the issue of consent to sell:

7.1.1 The stakeholder solicitors firm must prepare regular reports, on a calendar monthly basis and confirm as correct, information relating to the progress of sales of units the ASP of which are handled by the firm, receipt and release of monies from the stakeholder account held by the firm and details of units the sale of which are handled by the firm and for which full payment or balance of the purchase price has been made within each calendar month. In the event of more than one solicitors firm being instructed by the developer to act in the sale of units, then each solicitors firm instructed shall provide its own respective reports for those units, the ASP or sale of which are handled by that firm.

7.1.2 These reports should be in the form as in **Appendix III** attached, and should be forwarded to the developer and copied to any mortgagee bank and LACO for information.

7.1.3 The AP for the project must, on a quarterly basis, provide LACO and copy to the developer, stakeholder solicitors firm and any mortgagee bank with an updated AP's certificate in the form in **Appendix IV** attached. The requirement of verification by an independent AP or QS also applies to this quarterly update by the AP, in the event of any of the circumstances described in Paragraph 6.9 in this Section I applying.

7.2 These reports and certificates must be submitted :

- (a) until the issue by the Director of Lands of a consent to assign in respect of the development or a phase in it for which LACO's consent has been given, or
- (b) if no consent to assign has been issued, until the issue by the Director of Lands of a certificate of compliance in respect of the development and a certificate issued by the AP to LACO confirming that the fittings and finishes of those units which have been sold under LACO's consent will be installed in accordance with the ASP.

## **8. Cost overrun**

8.1 In addition to the quarterly AP's certificate to be submitted to LACO after obtaining the consent to sell, the AP must immediately notify LACO, the stakeholder solicitors firm and any mortgagee bank, if there is or likely to be an increase in the total of the construction costs and professional fees previously certified by the AP in obtaining LACO's consent ("cost overrun").

8.2 If there is any cost overrun, the developer may (subject to the provisions of the building mortgage, if any) continue to draw money from the stakeholder account in accordance with the provisions in the ASP, provided that no money can be released from any stakeholder account for payment of any amount over and above the respective amounts of total construction costs and total professional fees previously certified by the AP in obtaining LACO's consent, until sufficient proof of adequate finance to cover also the cost overrun has been produced to the satisfaction of LACO.

- 8.3 If the cost overrun is 10% or more above the total of the construction costs and professional fees previously certified by the AP in obtaining LACO's consent, the developer must, within 6 weeks of the notification by the AP of the cost overrun show to the satisfaction of LACO that it has adequate finance to cover also the amount of the cost overrun, failing which no further sale of uncompleted units may be allowed and LACO reserves the right to suspend the consent.
- 8.4 For the purposes of the requirements in Paragraphs 8.2 and 8.3 in this Section I, holding sufficient funds in the stakeholder account will be considered by LACO as acceptable proof of adequate finance for the cost overrun, among other options open to the developer.

**9. Prominent display of bilingual notice regarding joint representation**

- 9.1 Purchasers of units are entitled to instruct solicitors of their own choice to act for them in the purchase of units.
- 9.2 To facilitate purchasers to make an informed decision as to whether to exercise that right before entering into the formal ASP, the bilingual "Warning to Purchasers" notice prescribed in Forms A1 and A2 (both for Consent Scheme) referred to in Rule 5C of the Solicitors' Practice Rules in the Solicitors' Guide to Professional Conduct issued by The Law Society of Hong Kong should be incorporated in all sales brochures and preliminary agreements. The Forms are now copied at **Appendix V** attached.
- 9.3 The developer should also include in the sales brochure and make available to the public at the sales office the enquiry telephone number and website address of The Law Society of Hong Kong, to facilitate prospective purchasers to obtain easy access to the details of solicitors firms available to them. The enquiry telephone number and website address of The Law Society of Hong Kong can also be found on page 2 of this CM.

**10. Provision of information to purchasers**

The developer should make available by its solicitor, upon request by purchasers who have signed a formal ASP, a written copy of information as to the total construction



costs and total professional fees of the development and those construction costs and professional fees expended and paid from time to time. The information should be updated on a calendar monthly basis, and a nominal fee of not more than HK\$100 may be charged in respect of the service to be provided to the purchaser. The right of purchasers to obtain such information should also be clearly stated in the sales brochure.

**11. Revised form of Bank Undertaking**

Where the development is to be financed by a Bank Undertaking, the solicitor must first produce to LACO a draft Bank Undertaking, in a form as in **Appendix VI** attached, for approval.

**12. Submission of Checklist**

A revised checklist for applications for consent to sell uncompleted developments is at **Appendix VII** attached. Any application to be submitted after the date of this CM, whether it relates to residential or non-residential development, must be accompanied by a checklist duly completed by the solicitor in the prescribed form, otherwise the application will be rejected without any allocation of priority number to the application. If consent to sell units is sought at the same time for both the residential portion and non-residential portion of a development, only one checklist is required to be submitted for processing.

**13. Amendments to the standard forms of ASP**

Pending the issue of new forms of ASP, the amendments set out in **Appendix VIII** attached must now be incorporated in the standard forms of ASP prescribed in LACO CM No. 40A (as varied) for residential units and LACO CM No. 1 (as varied) for non-residential units.

## **Section II For developments financed by building mortgage**

In addition to the requirements stipulated in Section I, the following measures also apply to applications to sell uncompleted developments to be financed by building mortgage:

### **1. Partial release from bank security**

1.1 A mortgagee bank holding a security over the lot under a building mortgage (“BM”) will now be required to include an irrevocable undertaking in the BM to the developer to unconditionally discharge any unit and release it from the security upon completion of the sale and purchase (the terms of which have been approved by the mortgagee bank), where the entire proceeds of that sale have been paid into a stakeholder account to be opened with the mortgagee bank and operated in the manner described in Paragraph 2 in this Section II.

1.2 The following steps will be introduced to give effect to the requirement of an undertaking by mortgagees:

1.2.1 In future land grants, the provisions for a BM contained in the restriction on alienation before compliance will be amended as set out in **Appendix IX** attached.

1.2.2 There are current land grants in which the lease conditions do not contain the requirement for this specific undertaking for partial release on completion of the sale and purchase. Therefore, if an application for consent based on those lease conditions is submitted to LACO and a BM has been entered into for the purpose of financing the construction costs and professional fees, the developer will submit for LACO’s approval a draft of a Deed of Variation to the BM or a written Undertaking from the mortgagee bank in the form as in **Appendix X** attached, that the mortgagee bank will fulfill the obligation of partial release as mentioned in Paragraph 1.1 in this Section II. The Deed of Variation or the written Undertaking shall be registered before the first preliminary agreement is signed. A Tripartite Stakeholders’ Agreement, as stipulated in Paragraph 2.2 in this Section II, will also be required in these cases.

## 2. Administration of Stakeholder Account

The following requirements will apply in substitution for those set out in Paragraph 4 in Section I:

- 2.1 No solicitors firm may act in the sale of units until the firm has provided LACO with a copy of their letter of appointment to act from the developer. Any withdrawal of the appointment must also be copied to LACO within 2 working days of receipt by the solicitors firm.
- 2.2 To ensure proper management of stakeholder account for developments subject to a BM, which creates a legal interest or security over the lot, the solicitors firm acting as stakeholder in the sale of units in the development will be required to enter into a Tripartite Stakeholders' Agreement with the mortgagee bank and the developer.
- 2.3 In the event of the developer instructing more than one firm of solicitors to act on its behalf in the sale of units, each of the additional solicitors firms must also enter into a Tripartite Stakeholders' Agreement.
- 2.4 LACO does not require the Tripartite Stakeholders' Agreement to be in a prescribed form, but the Agreement must comply in all respects with the requirements set out in this CM and **Appendix XI** attached.
- 2.5 The Tripartite Stakeholders' Agreement must be executed before the first preliminary agreement is signed by the purchaser.
- 2.6 Any release of funds from the stakeholder account must be strictly in accordance with the provisions in the ASP and the Tripartite Stakeholders' Agreement. Pending completion of the sale and purchase, no funds in the stakeholder account can be released to the developer at any time under Clause 26(1)(d) of the standard form of ASP unless, as at the time of the intended withdrawal, there is a sufficient sum in the stakeholder account to cover the total outstanding construction costs and professional fees at the relevant time.

- 2.7 No money should be drawn from any stakeholder account or under a BM for reimbursement to the developer or for payment as construction costs to any contractor, sub-contractor or supplier other than those whose names have already been disclosed in the AP's certificates or as professional fees. Further, any monies so drawn must be for payment of construction costs and professional fees already expended and which have been paid or are payable by the developer.

----- ENDS -----

Legal Advisory & Conveyancing Office,  
Lands Department  
8<sup>th</sup> July 2004

**Statutory Declaration**

IN THE MATTER of (here insert the name of development and lot number of the property)

and

IN THE MATTER of the Oaths and Declarations Ordinance

I, \_\_\_\_\_ of \_\_\_\_\_, solicitor, do hereby solemnly and sincerely declare as follows :-

(1) I am a partner in the firm of \_\_\_\_\_, solicitors, which has been instructed by \_\_\_\_\_ (“the Owner”) to act in connection with the sale of units now in the course of construction on the above-mentioned property (“the Development”).

(2) I make this Statutory Declaration on behalf of my firm for the purpose of obtaining consent to the sale of units \*[and car parking spaces] in \*[Phase ..... of] the Development (“the Consent”) under the provisions of the Conditions of \*[Sale] \*[Grant] \*[Exchange] \*[New Grant] No. \_\_\_\_\_ Government Lease \*[as modified by an Exclusion Order] \*[a Modification Letter/Extension Letter dated \_\_\_\_\_ and registered in the Land Registry/\_\_\_\_\_ New Territories Land Registry by Memorial No. \_\_\_\_\_] under which the above-mentioned property is held from the Government of the Hong Kong Special Administrative Region (“the Grant”).

(3)(a) In accordance with instructions received from the Owner my firm has drawn up the form of Agreement for Sale and Purchase (“the ASP”) for the sale of units \*[and car parking spaces] in \*[Phase .....of ] the Development and it is now produced to me marked Exhibit A-1 and exhibited hereto. I have PERSONALLY EXAMINED the form produced to me and marked Exhibit A-1 and declare that \*[except insofar as any variations have been approved by the Legal Advisory and Conveyancing Office (“LACO”)] its contents in all respects

#For residential  
development

@For non-residential  
development

accord with the standard form of the ASP #[at Appendix IX to  
\*[Legal Advisory and Conveyancing Office ("LACO")]  
\*[LACO] Circular Memorandum No. 40A (as varied).]  
@[annexed to \*[Legal Advisory and Conveyancing Office  
("LACO")] \*[LACO] Circular Memorandum No. 1 (as varied).]

Applicable where  
DMC approval is  
required

- (b) My firm has received instructions from the Owner to prepare the form of Deed of Mutual Covenant incorporating a Management Agreement (if any) ("the DMC") for the sale of units \*[and car parking spaces] in \*[Phase ..... of] the Development. I have PERSONALLY EXAMINED the form thereof and produced to me marked Exhibit A-2 and exhibited hereto \*[and I hereby declare that \*[except insofar as any variations have been approved by LACO] its contents :

(i) in all respects accord with :-

(a) the guidelines set out in LACO Circular Memorandum No. 41 (as varied),

(b) all the conditions of the Grant;

(ii) are not in any respect contrary to any of the said guidelines \*[except as aforesaid] nor to any of the conditions of the Grant;

and its form has been approved by LACO.]

( ) I hereby declare that \_\_\_\_\_ of \_\_\_\_\_, an architect/engineer/surveyor listed in the authorized persons' register maintained by the Building Authority under section 3(1) of the Buildings Ordinance for the construction of \*[Phase ..... of] the Development ("the Authorized Person") has issued his certificate ("the AP's Certificate") dated \_\_\_\_\_ in respect of \*[Phase ..... of] the Development which certificate is now produced to me marked Exhibit A-\_\_ and exhibited hereto.

Applicable where  
DMC approval is  
required

\*[( ) I hereby further declare that the Authorized Person has issued his certificate dated \_\_\_\_\_ confirming to me the basis for allocation of undivided shares and management shares under the

DMC in respect of the whole of the Development which certificate is now produced to me marked Exhibit A-\_\_ and exhibited hereto.]

Applicable for use  
with B/M

( ) To finance the total of the construction costs and the professional fees to complete \*[Phase ..... of] the Development (collectively “the Total Development Costs”) as stated in the AP’s Certificate, a building mortgage/a debenture dated \_\_\_\_\_ and registered in the Land Registry/\_\_\_\_\_ New Territories Land Registry by Memorial No. \_\_\_\_\_ (“the Building Mortgage”) has been entered into between the Owner and \_\_\_\_\_ (“the Mortgagee”). My firm has received confirmation from the Mortgagee as to the amount of the facilities remaining undrawn under the Building Mortgage and that the facilities are sufficient to finance that part of the Total Development Costs expended (but not yet paid) and that part of the Total Development Costs remaining to be expended to complete \*[Phase ..... of] the Development as stated in the AP’s Certificate (collectively “the Outstanding Development Costs”). A copy of the confirmation dated \_\_\_\_\_ is now produced to me marked Exhibit A-\_\_ and exhibited hereto. The Mortgagee has undertaken to inform my firm in the event of any of the facilities still remaining being cancelled for any reason other than drawings pursuant to the Building Mortgage or payment of the Outstanding Development Costs from other sources.

( ) In the event of the Mortgagee advising my firm of the cancellation of the facilities for any reason, my firm undertakes to inform the Director of Lands and to confirm whether my firm holds sufficient funds in the stakeholder account as provided in the ASP to finance the Outstanding Development Costs. If my firm does not hold sufficient funds, the Consent will be deemed to have been cancelled insofar as the units \*[and car parking spaces] unsold at that time are concerned and I have informed the Owner accordingly.

Applicable for Bank  
Undertaking

( ) [Name \_\_\_\_\_ of \_\_\_\_\_ Bank] has undertaken with the Government of the Hong Kong Special Administrative Region and the Director of Lands that if the Owner shall be unable to finance the total of the construction costs and the professional fees to complete \*[Phase ..... of] the Development as stated in the AP’s Certificate (collectively “the Total Development Costs”), they will upon written request by the Director of Lands advance to the Owner an amount

not exceeding HK\$\_\_\_\_\_. A copy of the Undertaking dated \_\_\_\_\_ is now produced to me marked Exhibit A-\_\_ and exhibited hereto.

Applicable for  
unsecured loans

( ) To finance the Total Development Costs, unsecured loans have been made and are to be made to the Owner by [name of Financier] (“the Financier”). My firm has received confirmation in writing from the Financier that they will not call back any loans made or to be made to the Owner until \*[Phase ..... of] the Development has been completed and that, if necessary, the Financier will provide all further finance to enable the Owner to complete \*[Phase ..... of] the Development.

( ) In the event of the Financier advising my firm that they will not, or will not be able to, provide all further finance to complete \*[Phase ..... of] the Development for any reason, my firm undertakes to inform the Director of Lands and recognizes that the Consent will be deemed to have been cancelled insofar as the units \*[and car parking spaces] unsold at that time are concerned and I have informed the Owner accordingly.

( ) My firm further undertakes that all purchase monies paid by purchasers of units \*[and car parking spaces] in \*[Phase ..... of] the Development will be held by my firm as stakeholder and will not be released except in accordance with the provisions set out in the ASP and the conditions of the Consent.

( ) In the event of my firm ceasing to act in respect of \*[Phase ..... of] the Development or any part thereof and the sale of any units \*[and car parking spaces] therein, my firm undertakes to inform the Director of Lands and recognizes that the Consent will be deemed to have been cancelled insofar as the units \*[and car parking spaces] unsold at that time are concerned and I have informed the Owner accordingly.

( ) My firm further undertakes that we will check the terms and contents of all signed preliminary agreements in respect of units \*[and car parking spaces] which have been sold and for which we are instructed by the purchaser to prepare the ASP and will satisfy ourselves that the terms of the preliminary agreements do not breach any conditions of the Consent. My firm will not act for either party in the sale of any unit \*[and car parking spaces] in respect of which the terms of the preliminary agreement are in breach of the Consent and my firm will immediately notify the Director of



Lands of any such breach with details of the units \*[and car parking spaces] concerned. I acknowledge that any breach of the Consent apparent on the face of the preliminary agreement will immediately act as a suspension of the Consent for the whole of \*[Phase ..... of] the Development and that my firm will immediately inform the Owner that no further sales of units \*[and car parking spaces] in \*[Phase ..... of] the Development shall take place until the Director of Lands has confirmed in writing that the Consent is reinstated in respect of the unsold units \*[and car parking spaces].

( ) I further declare that my firm has received confirmation from the Owner:

- (a) that the sales brochures and the price list(s) have been/will be made available to the prospective purchasers and in accordance with the conditions of the Consent, will contain, inter alia, the information about \*[Phase ..... of] the Development required under Paragraphs II 11.3.1(a) and (b) in the Annex to LACO Circular Memorandum No. 40A (as varied), all other information as required in the Consent and, in particular in the sales brochures, the bilingual "Warning to Purchasers" notice as per the Approved Forms A1 and A2 (both for Consent Scheme) referred to in Rule 5C of the Solicitors' Practice Rules in the Solicitors' Guide to Professional Conduct issued by The Law Society of Hong Kong ("the Bilingual Warning Notice") and that copies of the sales brochures and the price list(s) have been/will be sent to the Consumer Council, the Permanent Secretary for Housing, Planning and Lands, and the Estate Agents Authority; and
- (b) that the Bilingual Warning Notice has been or will be incorporated in all preliminary agreements for sale of units in \*[Phase ..... of] the Development to be signed by the purchasers.

( )(a) I hereby confirm:

- (i) that I am \*[not] a Director/Secretary of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the

Development;

- (ii) that I am \*[not] personally related to a Director/Secretary of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the Development;
- (iii) that none of the partners/\_\_\_ partner(s) in my firm is/are a Director/Secretary of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the Development;
- (iv) that none of the partners/\_\_\_ partner(s) in my firm is/are personally related to a Director/Secretary of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the Development;
- (v) that I \*[do not] hold more than 1%/10% of the total issued shares/shares of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the Development; and
- (vi) that none of the partners/\_\_\_ partner(s) in my firm hold more than 1%/10% of the total issued shares/shares of the Owner/the parent or holding company of the Owner/the main superstructure contractor of \*[Phase ..... of] the Development.

(b) I further undertake to inform LACO immediately if there is any change to (a)(i) to (iv) of this paragraph resulting in an appointment as a Director or Secretary and if there is a change to (a)(v) and (vi) of this paragraph resulting in the shareholding threshold of 1% or 10% being exceeded subsequently.

( ) I further undertake to provide on a calendar monthly basis a report as per the form at Appendix III of LACO Circular Memorandum No. 54 to the Owner and copy to \*[the Mortgagee and] LACO. The reports will be forwarded to the parties on or before the 15<sup>th</sup> day of each succeeding calendar month :

- (a) until the issue of the consent to assign in respect of \*[Phase ..... of] the Development by the Director of Lands; or
- (b) if no consent to assign has been issued, until the issue by the Director of Lands of a certificate of compliance in respect of the Development together with a certificate issued by the Authorized Person to the Director of Lands confirming that the fittings and finishes of those units in \*[Phase ..... of] the Development which have been sold under the Consent will be installed in accordance with the ASP,

at which time a final report covering the period from the end of the last calendar month to either (a) or (b) will be submitted within 15 days of either (a) or (b).

AND I MAKE this Statutory Declaration conscientiously believing the same to be true, by virtue of the Oaths and Declarations Ordinance.

DECLARED by )  
)  
)  
)

Before me,  
Notary Public/ Solicitor

\* Delete if inapplicable

**Standard Form of the Authorized Person's Certificate  
for Applications for Consent to Sell Uncompleted Units**

To : Director of Lands (LACO/District/Section)

c.c. [Name of the Developer i.e. the registered owner of the lot]

[Name(s) of the Solicitors firm(s)]

\*[Name of the Mortgagee ]

(      **Date**                      )

Lot No: \_\_\_\_\_ ("the Development")

Phase: Phase \_\_\_\_\_ of the Development

Name of the Development:

1. I, .....of, .....  
..... an architect/engineer/surveyor listed in the authorized persons' register maintained by the Building Authority under section 3(1) of the Buildings Ordinance, do certify that:

- (a) I am appointed by ..... ("the Developer") as the Authorized Person for the construction of \*[Phase ..... of] the Development. The Building Authority was notified of this appointment in Form BA 4 dated..... .
- (b) The building plans of \*[Phase ..... of] the Development have been approved by the Building Authority under the Buildings Ordinance (Reference No.....).
- (c) The foundations of the proposed building(s) ("the Building(s)") within \*[Phase ..... of] the Development have been completed and the Building Authority was notified in Form BA 14 dated ..... .
- (d) (I) Consent to commence building works on the superstructure of the Building(s) has been issued by the Building Authority on ..... in Form BD 103 under section 14 of the Buildings Ordinance.

(II) I have on ..... notified the Building Authority in Form BA 10 of the appointment of ..... (“the Main Superstructure Contractor”) for the construction of the superstructure of \*[Phase ..... of] the Development. The building works on the superstructure have commenced/will commence on..... . The Main Superstructure Contractor is a general building contractor registered with the Building Authority under section 8A of the Buildings Ordinance.

(e) The following contracts for the site formation, substructure works, superstructure works and completion of \*[Phase ..... of] the Development (including the installation of all fittings, finishes, communal and recreational facilities (if any) specified in the Agreements for Sale and Purchase in respect of \*[Phase ..... of] the Development) have been entered into :

<u>Purpose of the contract(s)</u>	<u>Name(s) of the contractors, subcontractors and suppliers</u>
-----------------------------------	---

I confirm that I will not certify any money to be drawn from the stakeholder account or the building mortgage (if any) for payment of the construction costs to any contractors, subcontractors and suppliers except for construction costs which are identified in this certificate or any other certificate(s) issued by me.

(f) (I) The total construction costs of \*[Phase ..... of] the Development is : HK\$.....

(II) The Developer has confirmed to me in writing that the total professional fees of \*[Phase ..... of] the Development is : HK\$.....

(III) The total construction costs and the total professional fees (“the Total Development Costs”) for completion of \*[Phase .....of] the Development is : HK\$.....

(g) As at ..... (“the Date”), the following sums have been expended on \*[Phase ..... of] the Development:

(I)	Construction costs	HK\$ .....
(II)	Professional fees	HK\$ .....
(III)	Total of (I) and (II) above	HK\$ .....

(h) I have received written confirmation with supporting evidence from the Developer that, as at the Date, in respect of the sums expended in paragraph 1(g) above, the following sums have been paid, representing:

(I)	Construction costs	HK \$ .....
(II)	Professional fees	HK \$.....
(III)	Total of (I) and (II) above	HK \$.....

(i) The amount of that part of the Total Development Costs expended (but not yet paid) [i.e. 1(g)(III) – 1(h)(III)] and that part of the Total Development Costs remaining to be expended [i.e. 1(f)(III) – 1(g)(III)] to complete \*[Phase.....of] the Development is: HK\$ .....

(j) As at the Date, [describe the stage the construction work has reached so far].

(k) In my professional opinion, the Conditions of \*[Sale] \*[Grant] \*[Exchange] \*[New Grant] No. .... \*[Government Lease] \*[as modified by an Exclusion Order/a Modification Letter /an Extension Letter dated ..... and registered in the Land Registry/ ..... New Territories Land Registry by Memorial No. ....] in respect of \*[Phase ..... of] the Development can be complied with by (insert date).....

A copy each of the Forms BA 4, BA 14, BD 103 and BA 10 referred to above is now attached to this certificate.

\*(l) A certificate from an independent Authorized Person or Quantity Surveyor is not necessary.

\*(l) The respective amounts set out in paragraphs 1(f), (g), (h) and (i) above \*have been/will be verified and confirmed by (Name of the independent \*Authorized Person/Quantity Surveyor) in the Annex attached to this certificate.

2. I hereby undertake, in the event of my ceasing to be the Authorized Person appointed under the Buildings Ordinance for \*[Phase ..... of] the Development, to inform Messrs. .... (“the Stakeholder”), \*[..... Bank (“the Mortgagee”)] and the Legal Advisory and Conveyancing Office (“LACO”) immediately. In the event of another Authorized Person being nominated to act temporarily in my absence for the construction of \*[Phase ..... of] the Development, I understand that no certification from that Authorized Person will be accepted for the purposes of releasing

monies from the stakeholder account or drawing of facilities under any building mortgage affecting the above lot except with the prior written approval of LACO.

3. I confirm :

- (a) that the Developer has confirmed to me in writing that the Developer/the parent or holding company of the Developer and the Main Superstructure Contractor are \*[not] in the same group of companies ;
- (b) that I am \*[not] an employee/a Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (c) that my firm is \*[not] in the same group of companies as the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (d) that I am \*[not] personally related to a Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (e) that I \*[do not] hold /more than 1%/10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (f) that \* ..... partner(s)/Director(s)/none of the partners/Directors in my firm is/are an employee/a Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (g) that \* ..... partner(s)/Director(s)/none of the partners/Directors in my firm is/are personally related to a Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor; and
- (h) that \* ..... partner(s)/Director(s)/none of the partners/Directors in my firm hold more than 1% /10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor.

4. I undertake to inform LACO, \*[the Mortgagee,] the Developer and the Stakeholder immediately:

- (a) of any change to any of the information contained in paragraphs 1(d)(II), (f) and (k) above;



- (b) on being informed by the Developer of any change to paragraph 3(a) resulting in the Developer/the parent or holding company of the Developer and the Main Superstructure Contractor being in the same group of companies;
- (c) of any change to paragraph 3(c) resulting in my firm being in the same group of companies as the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor;
- (d) of any change to paragraphs 3(b), (d), (f) and (g) resulting in an appointment as an employee/a Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor; and
- (e) if there is any change to paragraphs 3(e) or (h) above resulting in the shareholding threshold of 1% or 10% being exceeded subsequently.

5. I undertake to provide regular certificates in the form prescribed in Appendix IV of LACO CM No. 54 on a quarterly basis to LACO and copy to \*[the Mortgagee,] the Developer and the Stakeholder. The quarterly certificates will be forwarded to the parties on or before the 15<sup>th</sup> day of the month following the quarter :

- (a) until the issue of the consent to assign in respect of \*[Phase ..... of] the Development by the Director of Lands; or
- (b) if no consent to assign has been issued, until the issue by the Director of Lands of a certificate of compliance in respect of the Development together with a certificate issued by the Authorized Person to the Director of Lands confirming that the fittings and finishes of those units in \*[Phase ..... of] the Development which have been sold under the consent will be installed in accordance with the Agreements for Sale and Purchase,

at which time a final certificate covering the period from the end of the last quarter to either (a) or (b) will be submitted within 15 days of either (a) or (b).

(                      Name                      )  
Authorized Person

**\* Delete if inapplicable**

**Independent\*Authorized Person's Certificate/  
Quantity Surveyor's Certificate**

(        **Date**        )

1. I, (Name of the independent \*Authorized Person/Quantity Surveyor) of (\*Name of the independent professional firm and Address), \*an architect/engineer/surveyor listed in the authorized persons' register maintained by the Building Authority under section 3(1) of the Buildings Ordinance/a Quantity Surveyor and a member of the Hong Kong Institute of Surveyors (Quantity Surveying Division) or a registered professional surveyor (Quantity Surveying) registered under the Surveyors Registration Ordinance, do certify that :-

- (a) I have verified the various amounts mentioned in paragraphs 1(f),(g) and (i) of the certificate issued by (Name of the Authorized Person) on ..... in respect of \*[Phase .....of] the Development (" the Certificate") and confirm that they are true and correct.
- (b) I have received written confirmation with supporting evidence from the Developer that the construction costs and professional fees as referred to in paragraph 1(h) of the Certificate have been paid.

2. I confirm:

- (a) that I am not an employee/a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/(Name of the professional firm to which the Authorized Person who gives the Certificate belongs) ("the AP Firm");
- (b) that my firm is not in the same group of companies as the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (c) that I am not personally related to a partner/Director/ Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;

- (d) that I do not hold more than 1%/10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (e) that none of the partners/Directors in my firm is/are an employee/a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (f) that none of the partners/Directors in my firm is/are personally related to a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm; and
- (g) that none of the partners/Directors in my firm hold more than 1%/10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm.

(                      Name                      )

\*Authorized Person/Quantity Surveyor

**\* Delete if inapplicable**

**\*Monthly/Final Report by Solicitors**

**Report on funds in the stakeholder account and progress of sales as at the last day of the month of \_\_\_\_\_, 20\_\_\_\_\_.**

To : [Name of the Developer i.e. the registered owner of the lot]

c.c. Director of Lands (LACO/District/Section)

\*[Name of the Mortgagee ]

1. Lot No. : \_\_\_\_\_
2. Name of the Developer : \_\_\_\_\_
3. Name of the Development : \_\_\_\_\_
4. Phase No. (if applicable) : \_\_\_\_\_
5. No. of units in the Development : \_\_\_\_\_
6. \*No. of units in Phase \_\_\_\_\_  
(if applicable) of the Development : \_\_\_\_\_
7. Date of the consent letter : \_\_\_\_\_
8. Effective date of the consent : \_\_\_\_\_
9. Date of consent to assign (if issued) : \_\_\_\_\_
10. (a) Date of certificate of compliance (if issued) : \_\_\_\_\_  
(b) Date of certificate of fittings and finishes : \_\_\_\_\_

**I. Receipt and application of funds in the stakeholder account**

Item No.			Sum b/f from previous month	Sum received or paid in the month	Total of sum c/f to next month	Ref No.
Receipt						
A	(1)	Sales proceeds received				
	(2)	Interest on sales proceeds received				
Sub-total:						A
Payment						
B	Payment pursuant to Clause 26(1)(a) of the Agreement for Sale and Purchase (“ASP”)					B
C	Repayment of funds drawn under the building mortgage and interest under Clause 26(1)(b) of the ASP					C
D	Repayment of other moneys secured by the building mortgage under Clause 26(1)(c) of the ASP					D
E	Refund to purchasers					E
F	Release of funds to the Developer under Clause 26(1)(d) of the ASP					F
G	Release of interest on sale proceeds to the Developer					G
Balance of funds in the stakeholder account c/f [A-B-C-D-E-F-G]						

## II. Progress of sale of units

### A. No. of units sold

	b/f from previous <u>month</u>	Current <u>mont</u> <u>h</u>	<u>Total</u>
(1) Total no. of units handled by my firm for which ASPs signed and are subsisting			
(2) Total no. of units handled by my firm for which full payment of purchase price has been made			

### B List of all units in IIA(2) for which full payment of purchase price is made in the current month :-

<u>Flat</u>	<u>Floor</u>	<u>Block</u>

I, \_\_\_\_\_, a partner in the firm of \_\_\_\_\_,  
solicitors which has been instructed by the Developer to act in connection with the sale of units  
now in the course of construction on the above-mentioned property, do certify the contents of this  
report as true and correct as at the last day of the month to which this report relates.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

( \_\_\_\_\_ Name \_\_\_\_\_ )  
Solicitor

**\*Delete if inapplicable**

**\*Quarterly/Final Certificate**  
**by the Authorized Person after Issue of Consent to Sell Uncompleted Units**

To : Director of Lands (LACO/District/Section)  
cc [Name of the Developer i.e. the registered owner of the lot]  
[Name(s) of the Solicitors firm(s)]  
\*[Name of the Mortgagee ]

(        **Date**        )

Lot No: \_\_\_\_\_ ("the Development")

Phase: Phase \_\_\_\_\_ of the Development

Name of the Development:

I,.....of.....  
....., an architect/engineer/surveyor listed in the authorized  
persons' register maintained by the Building Authority under section 3(1) of the Buildings  
Ordinance, do certify that:

- (a) I am appointed by ..... ("the Developer") as the Authorized Person  
and am registered with the Building Authority for the construction of \* [Phase ..... of]  
the Development.
- (b) The total construction costs and professional fees ("the Total Development Costs") for  
completion of \*[Phase .... of ] the Development \*remains at/is now:

(I)	Construction costs:	HK\$
(II)	Professional fees:	HK\$
(III)	Total of (I) and (II) above:	HK\$

- (c) As at the end of \*March/June/September/December 20....., the following sums have  
been expended on \* [Phase ..... of] the Development:

		Sum reported as expended in the *AP's Certificate <sup>(Note)</sup> /previous quarterly certificate (HK\$)	Sum expended *in this quarter/since the AP's Certificate <sup>(Note)</sup> (HK\$)	Total sum expended (HK\$)
(I)	Construction costs			
(II)	Professional fees			
(III)	Total of (I) and (II) above			(x)

2. I have received written confirmation with supporting evidence from the Developer that, as at the end of \*March/June/September/December 20....., in respect of the total sum expended in paragraph 1(c) above, the following sums have been paid, representing:

		Sum reported paid in the *AP's Certificate/previous quarterly certificate (HK\$)	Sum paid *in this quarter/since the AP's Certificate (HK\$)	Total sum paid (HK\$)
(a)	Construction costs			
(b)	Professional fees			
(c)	Total of (a) and (b) above			(y)

3. The amount of that part of the Total Development Costs expended (but not yet paid) [i.e. 1(c)(III) and marked (x) – 2(c) and marked (y)] and that part of the Total Development Costs remaining to be expended [i.e. 1(b)(III) – 1(c)(III) and marked (x)] to complete \*[Phase .... of] the Development is HK\$..... .

\*4. Since the \*AP's Certificate and previous quarterly certificate(s) by the Authorized Person, the following contracts have been entered into:

Purpose of the contract (s)	Name(s) of the contractors, subcontractors and suppliers

5 As at \*the end of March/June/September/December, 20....., [describe the stage which the construction work has reached so far].

\*6. A certificate from an independent Authorized Person or Quantity Surveyor is not necessary.

Note "AP's Certificate" wherever appears in this quarterly/final certificate means the Authorized Person's certificate annexed to the statutory declaration..



\*6. The respective amounts set out in paragraphs 1(b) and (c), 2 and 3 above\*have been/will be verified and confirmed by (Name of the independent \*Authorized Person/Quantity Surveyor) in the Annex attached to this certificate .

(            Name            )  
Authorized Person

**\* Delete if inapplicable**

**Independent \*Authorized Person's Certificate/  
Quantity Surveyor's Certificate**

(      **Date**      )

1. I, (Name of the independent \*Authorized Person/Quantity Surveyor) of (\*Name of the independent professional firm and Address), \*an architect/engineer/surveyor listed in the authorized persons' register maintained by the Building Authority under section 3(1) of the Buildings Ordinance/a Quantity Surveyor and a member of the Hong Kong Institute of Surveyors (Quantity Surveying Division) or a registered professional surveyor (Quantity Surveying) registered under the Surveyors Registration Ordinance, do certify that :-

- (a) I have verified the various amounts mentioned in paragraphs 1(b), (c) and 3 of the quarterly/final certificate issued by (Name of the Authorized Person) on ..... in respect of \*[Phase ..... of] the Development ("the Quarterly/Final Certificate") and confirm that they are true and correct.
- (b) I have received written confirmation with supporting evidence from the Developer that the construction costs and professional fees as referred to in paragraph 2 of the Quarterly/Final Certificate have been paid.

2. I confirm :

- (a) that I am not an employee/a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/(Name of the professional firm to which the Authorized Person who gives the Quarterly/Final Certificate belongs) ("the AP Firm");
- (b) that my firm is not in the same group of companies as the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (c) that I am not personally related to a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;

- (d) that I do not hold more than 1%/10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (e) that none of the partners/Directors in my firm is/are an employee/a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm;
- (f) that none of the partners/Directors in my firm is/are personally related to a partner/Director/Secretary of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm; and
- (g) that none of the partners/Directors in my firm hold more than 1%/ 10% of the total issued shares/shares of the Developer/the parent or holding company of the Developer/the Main Superstructure Contractor/the AP Firm.

(        Name        )

\*Authorized Person/Quantity Surveyor

**\*Delete if inapplicable**

## Rule 5C of the Solicitors' Practice Rules

"A1"

(for consent scheme)

### **WARNING TO PURCHASERS - PLEASE READ CAREFULLY!**

1. This is NOT A BINDING AGREEMENT FOR YOU to buy the property but is binding on the vendor. But, if you withdraw from the purchase, you will forfeit 5% of the purchase price to the vendor and you will be entitled to be repaid only the remaining part of the deposit after deduction of the forfeited amount.
2. Before you sign the formal sale and purchase agreement which you have to sign if you go on with your purchase you should instruct a solicitor to protect your interests and to ensure that your purchase is properly completed.
3. You can instruct your own independent solicitor to act for you to conduct the purchase or you can instruct the vendor's solicitor to act for you as well as for the vendor.
4. YOU ARE RECOMMENDED TO INSTRUCT YOUR OWN SOLICITOR, who will be able at every stage of your purchase to give you independent advice.
5. If you instruct the solicitor for the vendor to act for you as well and if a conflict arises between you and the vendor he will not be able to protect your interests and you will then have to instruct your own solicitor anyway, in which case the total fees you will have to pay may be higher than the fees which you would have had to pay if you had instructed your own solicitor in the first place.
6. Please think carefully before deciding whether to instruct your own independent solicitor, or the vendor's solicitor, to protect your interests. You are free to choose whichever option you prefer.

I/We acknowledge receipt of a copy of this warning and fully understand the contents thereof.

Dated this    day of

"A2"

(適用於同意方案)

**重要提示**  
**買方請小心閱讀**

1. 此合約對你最後完成此宗交易與否並沒有約束力，但賣方則需要遵守此合約之條文。  
若你取消此合約，賣方有權沒收百分之五之樓價，而你只可取回其餘部分之定金。
2. 如你欲繼續此宗交易，你須要簽署一張正式買賣合約，在此之前，應請教律師保障你的權益，使此交易可妥善完成。
3. 你可聘用自己選擇的獨立律師來完成此宗交易，或聘用賣方的律師處理此宗交易。
4. 此提示建議你聘用自己選擇的律師，他能在此宗交易每一階段中給你獨立專業意見。
5. 如你聘用賣方的同一律師來代表你以及如買賣雙方發生利益衝突時，賣方律師將會不能保障到你的權益，在此情況下你須另聘律師，而最後你所須付的全部律師費或會比你從開始便僱用獨立律師為高。
6. 請你小心考慮是否聘用自己選擇的獨立律師或僱用賣方的同一律師來保障你的權益。  
你可自由選擇。

我/我們已收到此提示之副本及完全明白此提示之內容。

公曆      年      月      日

**Bank Undertaking**

To: The Government of the Hong Kong Special Administrative Region and  
The Director of Lands

Lot No: \_\_\_\_\_ (“the Development”)

Phase : Phase \_\_\_\_\_ of the Development

Name of the Development :

IN CONSIDERATION of the Director of Lands granting his consent under Special Condition No. \_\_\_\_\_ of the \*Government Lease/Conditions of Sale/Grant/Exchange No. \_\_\_\_\_ /New Grant No. \_\_\_\_\_ \*as varied or modified by a Modification Letter/Extension Letter dated the \_\_\_\_\_ day of \_\_\_\_\_ and registered in the Land Registry/\_\_\_\_\_New Territories Land Registry by Memorial No. \_\_\_\_\_ (“the Grant”) under which the above lot is held from the Government of the Hong Kong Special Administrative Region to \_\_\_\_\_ (“the Owner”) to enter into Agreements for Sale and Purchase of undivided shares of and in the above lot (“the Agreements for Sale and Purchase”), together with the right to the exclusive use and occupation of units or car parking spaces in \*[Phase ..... of] the Development as more particularly described in the Agreements for Sale and Purchase, prior to full compliance with the terms and conditions of the Grant, WE [name of bank] whose registered office is situated at \_\_\_\_\_

\_\_\_\_\_ DO UNDERTAKE COVENANT AND CONFIRM that should the Owner for any reason be unable to finance the completion \*[of Phase .....] of the Development in accordance with the terms and conditions of the Grant and the Agreements for Sale and Purchase, we shall pay any amounts to the Owner or to any other person or persons as you shall direct, in either case as will ensure completion of \*[Phase ..... of] the Development PROVIDED always that:-

- (1) Our liability hereunder shall be limited to whichever is the lesser of (a) HK\$(insert the amount certified by the AP in para. 1(i) of Appendix II of LACO CM No. 54); and (b) the total of the amounts being that part of the total construction costs and the total professional fees expended (but not yet paid) and that part of the total construction costs and the total professional fees remaining to be expended to complete \*[Phase ..... of] the Development at any time certified by the Authorized Person (as defined in the Agreements for Sale and Purchase) ("the Authorized Person") as being required to complete \*[Phase .....

of] the Development (“the Outstanding Development Costs”), as reduced by the total of the amount(s) from time to time remaining in the stakeholder account(s) maintained by the Owner’s solicitor(s) under the terms of the Agreements for Sale and Purchase.

(2) Our liability hereunder will automatically cease and determine on whichever is the earlier of the following :

- (a) the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ [this date to be whichever is the later of (i) the date which is 12 months after the estimated completion date of \*[Phase ..... of] the Development, as certified by the Authorized Person at the time the Undertaking is given, and (ii) the date which is 12 months after the expiry of the building covenant date in the Grant]; or
- (b) upon (i) the issue by the Director of Lands of the consent to assign in relation to \*[Phase .....of] the Development, or (ii) if no consent to assign has been issued, the issue by the Director of Lands of a certificate of compliance in respect of the Development and the issue of a certificate by the Authorized Person to the Director of Lands confirming that the fittings and finishes of those units in \*[Phase .... of] the Development which have been sold under the consent will be installed in accordance with the Agreements for Sale and Purchase; or
- (c) when the total amount in the said stakeholders’ account(s) is sufficient to meet the Outstanding Development Costs; or
- (d) when our liability hereunder, as ascertained in accordance with paragraph (1) above, has been reduced to zero.

For the purpose of determining from time to time our contingent liability hereunder, we shall be entitled to rely upon certificates from the solicitors maintaining the relevant stakeholder account(s) certifying as to the aggregate amounts maintained in these accounts and upon certificates from the Authorized Person certifying the Outstanding Development Costs.

We shall be entitled to require this Undertaking to be returned to us for cancellation when our liability hereunder has ceased and determined in accordance with paragraph (2) above.

IN WITNESS whereof we have caused our Common Seal to be hereunto affixed this day of \_\_\_\_\_ 20\_\_.

SEALED with the Common Seal     )  
of [name of bank]                     )  
and SIGNED by                         )  
  )  
[SIGNED, SEALED and                 )  
DELIVERED by the lawful            )  
attorney of [name of bank]]         )  
whose signature(s) is/are            )  
verified by : -                         )

Solicitor,  
Hong Kong SAR

I, [name of solicitor], hereby confirm that the above Undertaking has been duly executed in accordance with the Memorandum and Articles of Association of [name of the bank] and duly authorized by a properly convened meeting and resolution of the [name of bank] or by the lawful attorney of [name of the bank] pursuant to a Power of Attorney granted by the bank.

Solicitor  
Hong Kong SAR

\* Delete if inapplicable



## **Checklist for Application for Consent to Sell Uncompleted Units**

(To be completed by the solicitors firm submitting the consent application "the Lead Solicitors Firm")

Date \_\_\_\_\_

(I) <b>MANDATORY DOCUMENTS SUBMITTED</b>		For Official Use Only	
		Checked	Remarks
<input type="checkbox"/>	1. One full set of land grant conditions (refer to Part (IV)1) 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 Statutory Declaration ("SD") in the form as per Appendix I to LACO CM No. 54 (in duplicate)		
<input type="checkbox"/>	4. Draft Agreement for Sale and Purchase ("ASP") (in duplicate) <sup>(Note 1)</sup>		
<input type="checkbox"/>	5. Authorized Person's Certificate in the form as per Appendix II to LACO CM No. 54 ("AP's Certificate"). Date of AP's Certificate: .....		
<input type="checkbox"/>	6. If a Building Mortgage ("BM") has been entered into for financing the Development, the following documents must be submitted:		
<input type="checkbox"/>	(a) Full set of BM (certified by the Land Registrar or a solicitor) with the Partial Re-assignment Clause identified and highlighted (Clause No. ....on page .....)		

<sup>(Note 1)</sup> There is no need to submit the draft ASP to LACO for approval if the proposed form of the ASP is in exactly the same form as annexed to LACO CM No. 1 (as varied) or as at Appendix IX to LACO CM No. 40A (as varied). Where deviations are proposed to the standard form, then full justifications for the proposed deviations must be provided. Any variation to the standard form must be highlighted in the draft ASP submitted.

(I) <b>MANDATORY DOCUMENTS SUBMITTED</b>		For Official Use Only	
		Checked	Remarks
<ul style="list-style-type: none"> <li>In any case where any of the documents in this Part (I), where applicable, are not submitted, the application will be rejected. No priority number will be allocated to the case until the missing items are submitted</li> <li><input checked="" type="checkbox"/> Please tick if submitted</li> </ul>			
<input type="checkbox"/>	(b) Mortgagee's Certificate to confirm the amount already drawn and the undrawn balance under the BM (refer to Part (V) 3(c))		
<input type="checkbox"/>	(c) *Undertaking of the partial release in the form as per Appendix X to LACO CM No. 54 or the Deed of Variation to the BM relating to the partial release		
<input type="checkbox"/> 7.	If financing by way of Bank Undertaking ("BU"), a draft BU (in duplicate) in the form as per Appendix VI to LACO CM No. 54 is submitted		
<input type="checkbox"/> 8.	Letter(s) of appointment of the solicitors firm(s) from the developer		

(II) <b>GENERAL INFORMATION</b>		English	Chinese	For Official Use Only	
				Checked	Remarks
1.	Lot No.				
2.	Address of the Lot				
3.	Name of the Development and the Phase (if applicable)				

(II) GENERAL INFORMATION		English	Chinese	For Official Use Only	
				Checked	Remarks
4.	Name of the Registered Owner ("the Developer")				
5.	Name(s) of the Parent or Holding Company/Companies of the Developer (if any) and its/their respective shareholding in the Developer	Name(s) of the Parent or Holding Company/Companies			
		English	Chinese	%	
6.	(a) Address of the Developer				
	(b) Fax No. of the Developer		N.A.		
7.	(a) Name of the Lead Solicitors Firm				

(II) GENERAL INFORMATION		English	Chinese	For Official Use Only	
				Checked	Remarks
	(b) Name(s) of the other participating Solicitors Firm(s)				
8.	Address of the Lead Solicitors Firm				
9.	Fax No. of the Lead Solicitors Firm		N.A.		
10.	E-mail address of the Lead Solicitors Firm		N.A.		
11.	Name of the Authorized Person ("AP")				
12.	Name of the professional firm to which the AP belongs				
13.	Name of the Main Superstructure Contractor named in the AP's Certificate				
14.	Name of the Mortgagee where BM has been created				

(II) GENERAL INFORMATION		English	Chinese	For Official Use Only	
				Checked	Remarks
15.	Name of the Bank/Deposit Taking Company which will give/has given the BU				
16.	Name(s) of the Financier(s)				

(III) PREMISES AFFECTED BY THIS APPLICATION			For Official Use Only	
			Checked	Remarks
1.	Phase (if any)	*Phase ..... / N/A		
2.	Block (if any)	*Block ..... / N/A		
3.	Total number of ..... *residential units ..... *service apartments ..... *non-residential units (please specify, e.g. shops, office, cinema, etc.) .....			
4.	Total number of ..... *car parking spaces/ ..... motor cycle spaces / ..... bicycle spaces			
5.	Consent fee to be charged	HK\$.....	Paid on .....	

(IV) LEASE REQUIREMENTS			For Official Use Only	
			Checked	Remarks
1.	Details of the land grant conditions	Conditions of *Sale / Exchange / Grant / New Grant No ..... / Government Lease dated ..... *as modified by Modification Letter(s) dated ..... (M/N .....) / *Extension Letter(s) dated ..... (M/N .....) / *Paragraph ..... of the Exclusion Order dated ..... (M/N .....)		
2.	User Restriction (SC No. .... in the land grant conditions)	*Private residential / residential / Non-industrial / .....		
3.	Building covenant ("BC") expiry date	(a) BC expiry date ..... as set out in *SC No. .... in the land grant conditions/ Paragraph ..... of the Exclusion Order		
		(b) (i) Any BC extension granted? *Yes/No (ii) If yes, BC extension premium paid? *Yes/No (iii) *The extended BC expiry date ...../ N/A (iv) A copy of the BC Extension Letter is submitted.		

(IV) LEASE REQUIREMENTS			For Official Use Only	
			Checked	Remarks
4.	(a) (i) Date of compliance as certified by the AP in the AP's Certificate <sup>(Note 2)</sup> for residential development			
	(ii) Date of completion as certified by the AP in the AP's Certificate for non-residential development <sup>(Note 3)</sup>			
	(b) (i) Date of compliance inserted in Clause 4(1)(c) of the draft ASP for the residential development or the residential portion of the composite development <sup>(Note 4)</sup>			
	(ii) Date of completion inserted in Clause 4(1)(c) of the draft ASP for non-residential development or the non-residential portion of the composite development <sup>(Note 5)</sup>			
5.	Approval/Consent required under the land grant conditions:			
	(a) Consent to sell prior to compliance required under SC No. ....			

(Note 2)

This date should not exceed 3 months from the current BC expiry date referred to in Part (IV) 3(a) or 3(b)(iii) as extended.

(Note 3)

This date should not exceed 12 months from the current BC expiry date referred to in Part (IV) 3(a) or 3(b)(iii) as extended.

(Note 4)

This date should be the same date as Part (IV) 4(a)(i).

(Note 5)

This date should be the same date as Part (IV) 4(a)(ii).

(IV) LEASE REQUIREMENTS			For Official Use Only	
			Checked	Remarks
	(b) Approval of DMC	(i) *Required under SC No. .... / Not required		
		(ii) Draft submitted on .....		
		(iii) Draft approved on .....		
		(iv) *Provision of Government Accommodation (please specify ..... ) required under SC No. .... / Not required		
	(c) Approval of design, disposition and height	(i) *Required under SC No. .... / Not required		
		(ii) Approved on ..... Copy of approval *submitted / to be submitted		
	(d) Approval of Master Layout Plan	(i) *Required under SC No. .... / Not required		
		(ii) Approved on ..... Copy of approval *submitted / to be submitted		
	(e) Approval of Landscaping Proposal <sup>(Note 6)</sup>	(i) *Required under SC No. .... / Not required		
		(ii) Approved on ..... Copy of approval *submitted / to be submitted		
	(f) Approval of carving-out of the lot	(i) *Required under SC No. .... / Not required		
		(ii) Approved on ..... Copy of approval *submitted / to be submitted		
	(g) Surrender of a carved out portion of the lot	(i) *Required under SC No. .... / Not required		

<sup>(Note 6)</sup> Where a Comprehensive Landscaping Clause requiring a two-staged submission is imposed in the land grant conditions, approval to the Conceptual Submission will be accepted for the presale consent application.



(IV) LEASE REQUIREMENTS			For Official Use Only	
			Checked	Remarks
		(ii) *Deed Poll / Agreement to Surrender / Deed of Surrender signed / executed on ..... (M/N .....)		
	(h) Deposit / Registration of the car park layout plan	*Deposited/Registered by M/N ..... on ...../ Not required		
	(i) *Others (please specify) / N/A	(i) *Yes, required under SC No. .... / Not required		
		(ii) If yes, approved on..... Copy of approval *submitted / to be submitted		

(V) DEVELOPMENT COSTS & FINANCE			For Official Use Only	
			Checked	Remarks
1.	Total Development Costs referred to in the AP's Certificate	HK\$ .....		
2.	Total amount of that part of the Total Development Costs expended (but not yet paid) and that part of the Total Development Costs remaining to be expended ("the Outstanding Development Costs") <sup>(Note 7)</sup> as certified in the AP's Certificate	HK\$ ..... as at ..... (the date as referred to in para. 1(g) of the AP's Certificate "the Date")		
3.	For financing by BM			
	(a) Date of BM	.....		
	(b) Registered by	M/N .....		
	(c) (i) Total amount secured under the BM to finance the development costs for the development of the lot <sup>(Note 8)</sup>	HK\$ .....		
	(ii) Amount drawn as certified by the Mortgagee as at <sup>(Note 9)</sup> .....	HK\$ .....		
	(iii) Undrawn balance as at <sup>(Note 9)</sup> .....	HK\$ .....		
	(d) Undrawn balance sufficient to cover the Outstanding Development Costs?	*Yes / No		

<sup>(Note 7)</sup> This amount should be the same amount mentioned in paragraph 1(i) of the AP's Certificate.

<sup>(Note 8)</sup> This relates solely to the amount secured under the loan document for construction purposes.

<sup>(Note 9)</sup> Date of certification referred to in the Mortgagee's Certificate should not be earlier than the Date referred to in Part (V) 2.

(V) DEVELOPMENT COSTS & FINANCE			For Official Use Only	
			Checked	Remarks
	(e) If not, means of further finance:	*Further BM by (Name of the Bank / the Deposit Taking Company) / Further BU by (Name of the Bank / the Deposit Taking Company) for HK\$ .....		
	(f) Professional fees secured under the BM does not exceed 5% of the total amount secured <sup>(Note 8)</sup> ?	*Does not exceed / Exceed		
	(g) Undertaking of the partial release accords with Appendix X of LACO CM No. 54	*Yes, confirmed / No		
4.	For financing by BU			
	(a) Draft BU in standard form as per Appendix VI of LACO CM No. 54?	*Yes / No (If No, please provide brief reasons)		
	(b) Liability	HK\$ .....		
	(c) Liability amount sufficient to cover the Outstanding Development Costs?	*Yes/No		
	(d) If not, means of further finance:	*Further BM by (Name of the Bank / the Deposit Taking Company)/ Further BU by (Name of the Bank / the Deposit Taking Company) for HK\$ .....		

<sup>(Note 8)</sup> This relates solely to the amount secured under the loan document for construction purposes.

(V) DEVELOPMENT COSTS & FINANCE			For Official Use Only	
			Checked	Remarks
5.	Unsecured Loan (loan already advanced or to be advanced for completion of the *Phase/ Development)			
	(a) Unsecured loan advanced?	*Yes / No		
	(b) If yes, Financer(s) will covenant in the ASP not to call back the whole or any of the unsecured loan and to provide further finance until completion of the *Phase / Development	Clause ..... of the ASP		

**\*Delete if inapplicable**

For Official Use Only

First check by \_\_\_\_\_ on \_\_\_\_\_  
(Name and signature of the LCO)

Final check and update before issue of consent, in particular:

- (1) to confirm no change to any conflict of interest as set out in the draft SD to be sworn and the AP's Certificate prior to issue of consent; and
- (2) to request an updated AP's Certificate and Mortgagee's Certificate if the AP's Certificate submitted was issued more than 3 calendar months.

by \_\_\_\_\_ on \_\_\_\_\_  
(Name and signature of the LCO)

**Amendments to the Standard Forms of ASP**

1. The definition of construction costs (Clause 1(1)(f)) in the respective standard forms of ASP (for residential and non-residential units) is replaced by the following new version:

“ (f) “Construction Costs” means: -

(i) any sum incurred or to be incurred in connection with any works done or to be done, and materials or goods supplied or to be supplied, in connection with the site formation on the land for \*[Phase [ ] of] the Development, the substructure and superstructure construction of the Building, (including the communal and recreational facilities as set out in Schedule 6), and the making of \*[Phase [ ] of] the Development fit to qualify for the issue of an Occupation Permit and to comply with the Government Grant \*[in so far as they relate to Phase [ ] of the Development];

(ii) any sums needed to be incurred by the Vendor to install the fittings and finishes of \*[Phase [ ] of] the Development (including the fittings and finishes as set out in Schedule 5) and in making every unit in \*[Phase [ ] of] the Development ready for handover to purchasers on completion of the sale and purchase; and

(iii) any other sums (excluding the Professional Fees (as defined in Clause 1(1)( ) below)) which in the reasonable opinion of the Authorized Person needed to be incurred to complete the construction of \*[Phase [ ] of] the Development fit to qualify for the issue of an Occupation Permit and to comply with the Government Grant \*[in so far as they relate to Phase [ ] of the Development] and this Agreement.”

\*[For phased development only]

2. New Clause incorporating a definition of professional fees is inserted immediately after the definition “Phase [ ]” in the respective standard forms of ASP, as follow:

“ ( ) “Professional Fees” means any sums incurred or to be incurred by the Vendor for the employment of the Authorized Person and other professional persons or consultants in relation to completion of

\*[For phased development only]      \*[Phase [ ] of] the Development.”

3. Clause 4(1)(c) of the standard form of ASP for residential units is replaced by the following new version:

<p>“*[For phased development only]</p> <p>#Insert AP’s estimated date of compliance</p>	<p>4(1)(c) complete *[Phase [ ] of ] the Development in all respects in compliance with the conditions of the Government Grant *[in so far as they relate to Phase [ ] of the Development], the building plans and this Agreement, incorporating the fittings and finishes as set out in Schedule 5 into the Property, on or before the #[ ] day of [ ] subject to such extensions of time as may be granted by the Authorized Person in accordance with sub-clause (5)(a).”</p>
---	--

4. The term “Authorised Person”, wherever appearing in the standard form of ASP for residential units, is replaced by “Authorized Person”.
5. The term “Construction Cost”, wherever appearing in Clauses 25 and 26 of the respective standard forms of ASP, is replaced by “Construction Costs and Professional Fees”.
6. The phrase “the Building/Development”, only as appears in Clauses 4(4)(a), 4(4)(b), 4(4)(c), 4(5)(a), 4(6), 4(7), 10(b)(iv), 10(c) and 10(d) of the standard form of ASP for residential units, is replaced by “\*[Phase [ ] of] the Development”.

**Restriction On Alienation Before Compliance Clause in Land Grant**

"(d) ..... a building mortgage shall be one :

(i)

(ii)

(iii) under which the Purchaser/Grantee, the mortgagee and the Stakeholder (as hereinafter defined) are required, in the event of the Purchaser/Grantee applying for the prior written consent of the Director under this Special Condition to enter into any agreement to dispose of any share or interest in the lot together with the right to the exclusive use and possession of any unit in the building erected or to be erected on the lot, to enter into an agreement containing the terms and requirements as the Director may from time to time specify or require, including but not limited to the following:

(A) all sums received by the Purchaser/Grantee or the Stakeholder as purchase price or any part thereof under an agreement for sale and purchase in respect of any unit, share or interest in the lot (the terms of which have been approved by the mortgagee) ("the ASP") shall be paid into a bank account designated for the development of the lot and which must be opened, maintained and operated by the Stakeholder with the mortgagee (hereinafter referred to as the "Stakeholder Account");

(B) no monies shall be released from the Stakeholder Account except with the prior written approval of the mortgagee and in accordance with the terms of the ASP and the terms of the Director's consent; and

(C) the mortgagee irrevocably undertakes to the Purchaser/Grantee to, upon completion of the sale and purchase, release unconditionally from the security of the building mortgage, any unit, share or interest in the lot, in respect of which the total purchase price under the ASP is fully paid into the Stakeholder Account;



- (iv) under which the mortgagee is obliged and irrevocably undertakes to, upon completion of the sale and purchase, release unconditionally from the security of the building mortgage, any unit, share or interest in the lot, in respect of which the total purchase price under the ASP is fully paid into the Stakeholder Account; and
- (v) for the purpose only of this Special Condition, "the Stakeholder" means any solicitors firm for the time being appointed by the Purchaser/Grantee to act as stakeholder in respect of the purchase price under the ASP."

**Undertaking as to Partial Release**

To : [Name of the Developer (i.e. the registered owner of the lot)]

Lot No: \_\_\_\_\_ (“the Development”)

Phase : Phase \_\_\_\_\_ of the Development

Name of the Development :

The Mortgagee hereby irrevocably undertakes with the Developer its successors and assigns that, notwithstanding any provisions to the contrary contained in any documents entered into between the Mortgagee and the Developer in relation to provision of finance for the construction of \*[Phase ..... of] the Development including but not limited to the building mortgage dated \_\_\_\_\_ and registered in the \_\_\_\_\_ Land Registry / \_\_\_\_\_ New Territories Land Registry by Memorial No. \_\_\_\_\_ (“the Building Mortgage”), in the event of the Borrower's sale of any part of or share or interest in \*[Phase ..... of] the Development, if the total purchase price under an agreement for sale and purchase of the relevant part of or share or interest in \*[Phase ..... of] the Development, the terms of which have been approved by the Mortgagee, is fully paid into the stakeholder account (as defined in a tripartite stakeholders’ agreement entered into or to be entered into under the terms of the consent to the sale of units in \*[Phase ..... of] the Development issued by the Director of Lands), then, upon completion of the sale and purchase of the relevant part of or share or interest in \*[Phase ..... of] the Development, the Mortgagee shall thereupon unconditionally execute a partial discharge and reassignment in respect of the relevant part of or share or interest in \*[Phase ..... of] the Development as may be necessary to release the relevant part of or share or interest in \*[Phase ..... of] the Development from the security of the Building Mortgage.

IN WITNESS whereof we have caused our Common Seal to be hereunto affixed this day of \_\_\_\_\_ 20\_\_.

SEALED with the Common Seal     )  
of [name of bank]                     )  
and SIGNED by                         )  
  )  
[SIGNED, SEALED and                 )  
DELIVERED by the lawful             )  
attorney of [name of bank]]         )  
whose signature(s) is/are            )  
verified by : -                         )

Solicitor,  
Hong Kong SAR

I, [name of solicitor], hereby confirm that the above Undertaking has been duly executed in accordance with the Memorandum and Articles of Association of [name of the bank] duly authorized by a properly convened meeting and resolution of the [name of bank] or by the lawful attorney of [name of the bank] pursuant to a Power of Attorney granted by the bank.

Solicitor,  
Hong Kong SAR

**Terms and Conditions in a Tripartite Stakeholders' Agreement**

The Tripartite Stakeholders' Agreement required in all cases of financing by building mortgage shall include the following terms and conditions :-

- (1) The Developer shall instruct the stakeholder solicitors firm to open a stakeholder account with the Mortgagee and designated for \*[Phase ..... of] the Development (the "stakeholder account").
- (2) The Developer and the stakeholder solicitors firm shall arrange the sale so that all payments (including any "reservation fee" and preliminary deposit) under any agreements for sale and purchase (including preliminary agreements for sale and purchase) entered into between the Developer and purchasers however made e.g. electronic payment (the "sale proceeds") are made directly to the stakeholder account. The stakeholder solicitors firm shall within 7 working days of paying in, provide the Mortgagee with a detailed list of units for which immediate full payment or balance of payment has been made for the purpose of the unconditional release from the building mortgage referred to in paragraph (5) below or as soon as practicable upon request by the Mortgagee.
- (3) The stakeholder solicitors firm shall hold the sale proceeds as stakeholder and shall not release any of the sale proceeds except in accordance with the provisions of the agreements for sale and purchase approved by the Director of Lands ("ASP"), the terms of the Tripartite Stakeholders' Agreement and the terms imposed by the Director of Lands in issuing consent to sell.
- (4) The stakeholder solicitors firm shall not release any of the sale proceeds from the stakeholder account except with the prior written approval of the Mortgagee and with the prior agreement of all the other stakeholder solicitors firms instructed by the Developer in the sale of units in \*[Phase ..... of] the Development provided that the Mortgagee may withhold its approval in accordance with the provisions of the building

mortgage if, e.g. it has any reasonable doubts on any matter on which it requires to be satisfied under the building mortgage.

- (5) The Mortgagee irrevocably undertakes to release unconditionally, from the security of the building mortgage any unit, share or interest in \*[Phase ..... of] the Development in respect of which the total purchase price under an ASP, the terms of which have been approved by the Mortgagee, is fully paid into the stakeholder account, upon completion of the sale and purchase.
- (6) The stakeholder solicitors firm shall, on or before the 15th day of each calendar month, provide the Developer and copied to the Director of Lands and the Mortgagee with a report in a form prescribed by the Director of Lands, on a calendar monthly basis setting out information relating to the progress of sales of units, receipt and application of the sale proceeds, details of units for which immediate full payment or balance of payment has been made during the preceding month and any other information which the Director of Lands may from time to time require under the consent to sell.
- (7) In the event of the stakeholder solicitors firm ceasing to act in respect of the sale of the units in \*[Phase ..... of] the Development, the Developer shall in addition to other requirements under the terms of the consent to sell, procure the substitute solicitors firm appointed to enter into a similar Tripartite Stakeholders' Agreement which shall include the terms and conditions as set out in this Appendix.
- (8) The Developer and the stakeholder solicitors firm shall not assign or transfer any of their respective rights and obligations under the Tripartite Stakeholders' Agreement without the prior written consent of the Director of Lands.
- (9) If the stakeholder solicitors firm has been informed by the Authorized Person that the costs required to complete the construction of \*[Phase ..... of] the Development have exceeded or will exceed the total of the construction costs and professional fees previously certified by the Authorized Person in obtaining consent to sell, the stakeholder solicitors firm may (subject to the provisions of the building mortgage)

continue to release money from the stakeholder account provided that, the stakeholder solicitors firm shall not release from the stakeholder account any amount over and above the respective amounts of the total construction costs and total professional fees previously certified by the Authorized Person in obtaining consent to sell, until sufficient proof of adequate finance to cover also the excess amount has been produced to the satisfaction of Director of Lands.