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LEGAL ADVISORY AND CONVEYANCING OFFICE
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我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.
香港北角渣華道三三三號北角政府合署二十樓
20/F., NORTH POINT GOVERNMENT OFFICES
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15 November 2018

**Legal Advisory and Conveyancing Office (“LACO”)
Circular Memorandum (“CM”) No. 34A**

**Revised Government Property Administrator’s
Guidelines and Checklist for Deeds of Mutual Covenant (“DMC”)
for developments involving Government Accommodation**

The Government Property Administrator’s Guidelines and Checklist attached to LACO CM No. 34 has been revised to reflect the current requirements relating to the supporting documents to be submitted to the Government Property Administrator (“GPA”). The revised GPA’s Guidelines and Checklist is attached hereto and the same will apply to all new applications for approval of DMC for developments involving Government Accommodation.

With immediate effect, when submitting an application for approval of DMC involving Government Accommodation, the GPA’s Guidelines and Checklist in the format attached hereto should be adopted. In addition, it is no longer necessary to forward a copy of the completed GPA’s Guidelines and Checklist to LACO for record.

The attachment to LACO CM No. 34 is hereby superseded. Except as varied by this CM, LACO CM No. 34 remains in full force and effect.

Copies of this CM and the attachment can be downloaded from Lands Department website at www.landsd.gov.hk.

Yours faithfully,

(Mrs. Maria LAM)
Deputy Director/Legal
for Director of Lands

To : All Solicitors

c.c. Transport and Housing Bureau
Home Affairs Bureau
Home Affairs Department
The Real Estate Developers Association of Hong Kong
Consumer Council
Estate Agents Authority
The Hong Kong Institute of Surveyors
The Hong Kong Institute of Architects
Government Property Agency

GPA's Guidelines and Checklist

for the preparation of Deeds of Mutual Covenant ("DMC") for developments involving Government Accommodation ("GA")

TO : GOVERNMENT PROPERTY ADMINISTRATOR ("GPA")
Government Property Agency
Legal Advisory Division
31/F, Revenue Tower
5 Gloucester Road
Wanchai
Hong Kong

I. Documents

The DMC will not be scrutinized until all supporting documents in Items 1, 2, 3, 4 and 5 listed below are submitted to the satisfaction of GPA together with this Guidelines and Checklist duly completed: -

Item	Description of documents	Please tick when submitted	Remarks
1.	Three copies of the DMC (revised drafts/pages also in triplicate).		
2.	Five copies of the DMC Plans showing the common areas and the GA and certified by the Authorized Person, with one additional copy if the GA comprises a public transport terminus (additional copy or copies to be provided if required by GPA).		
3.	One copy certified by the Land Registry or a solicitor of the Land Grant including any modifications ("the Conditions").		
4.	One copy of the updated historical and current Land Registry search of the lot.		

Item	Description of documents	Please tick when submitted	Remarks
5.	<p>Authorised Person's Certificate which shall certify: -</p> <p>(a) (i) the gross floor area ("gfa")^(Note 1) of the GA;</p> <p>(ii) the total gfa of all "buildings" as defined in the Buildings Ordinance (Cap. 123) erected or to be erected on the lot;</p> <p>(iii) the number of undivided shares allocated to the GA;</p> <p>(iv) the total number of undivided shares in the whole of the lot;</p> <p>(v) the number of management shares (if any) allocated to the GA;</p> <p>(vi) the total number of management shares in the whole of the lot; and</p> <p>(vii) separate figures of gfa, undivided shares and management shares (if any) given for each component of the GA^(Note 2); and</p> <p>(b) that the proportion of undivided shares and management shares (if any) in the whole of the lot allocated to the GA shall bear the same proportion which the gfa of the GA bears to the total gfa of all the buildings on the lot.</p>		
6.	<p>Upon request by GPA, one copy of the latest approved Building Plans of the GA on a scale not smaller than 1:200 clearly delineating the boundary of the GA (additional copy or copies to be provided if required by GPA).</p>		

^(Note 1) The gfa of the GA and of all the buildings on the lot shall include their gfa irrespective of whether that gfa is accountable under the Buildings Ordinance or under the Conditions.

^(Note 2) For example, a Social Centre for the Elderly and a Day Nursery would be two components.

II. The Guidelines

The DMC should include the following: -

No.	Subject	Clause No. and Page No.	Remarks
1.	<p><u>Definitions:</u> -</p> <p>(a) <u>The Financial Secretary Incorporated</u></p> <p>The Government shall hold the GA in the name of The Financial Secretary Incorporated (“FSI”) to be defined as follows:-</p> <p>"The Financial Secretary Incorporated is a corporation sole incorporated under and by virtue of The Financial Secretary Incorporation Ordinance Cap. 1015 of the Laws of Hong Kong and the expression "F.S.I." shall mean FSI in its capacity as the Owner of the Government Accommodation and if the context so permits the successors and assigns of FSI as Owner of the Government Accommodation".</p> <p>(b) <u>The Government Accommodation</u></p> <p>A precise definition by reference to the Conditions must be given.</p> <p>(c) <u>The "Items"</u></p> <p>Include a definition of the "Items" as defined in the Conditions. [3(d), 4(a) and (b) (i) below are relevant]</p>		

No.	Subject	Clause No. and Page No.	Remarks
2.	<p><u>Rights, Privileges and Easements to be incorporated into DMC: -</u></p> <p>(a) (i) In favour of <i>FSI, its lessees, tenants, licensees and persons authorised by it and the Owner or occupier of the GA: -</i></p> <p>(I) the right of shelter, support and protection for the GA;</p> <p>(II) the right at all times of free passage and running of gas, electricity, water, sewage, air-conditioning, telephone and all other services from and to the GA through the gutters, sewers, drains, flues, conduits, ducts, watercourses, cables, pipes, wires and other conducting media now or hereafter laid on or running through any part of the lot and any part of the development on the lot;</p> <p>(III) the right at its own cost to alter, divert, vary, relay or reinstate any of the services and facilities serving exclusively the GA at any time at its absolute discretion without having to obtain the approval or consent of the Grantee/Purchaser or the Manager Provided that proper and adequate care and precaution shall be taken during any such works;</p> <p>(IV) the right to go pass and repass over and along and to use any common parts of the lot or any common parts of the development on the lot in connection with the proper use and enjoyment of the GA and to use and receive the benefit of any common facilities within the lot or the development on the lot;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(V) the right at all reasonable times with or without surveyors, contractors, workmen and others and with or without vehicles, plant, equipment, material and machinery to enter upon the lot or any part of the development on the lot for the purposes of extending or carrying out maintenance, repair, addition alteration and other works to the GA and services and facilities serving the GA;</p> <p>(VI) the free and uninterrupted rights of way to and from the GA;</p> <p>(VII) the exclusive right to install, erect, exhibit, display, maintain, repair, remove and renew signs and advertisements on the walls, columns and other structural elements of, within, around and on the boundary of the GA as FSI shall deem fit and the right of access over the lot or any part of the development on the lot with or without servants, workmen and others and with or without plant, equipment, machinery and material for the purposes of inspecting, installing, erecting, exhibiting, displaying, maintaining, repairing, removing and renewing such signs and advertisements;</p> <p>(VIII) the right of access to the lighting conduits, such fire services, ventilation and other services, facilities, installations, fixtures, ancillary works, plants and materials fixed on in or to the roof slabs, walls and other structural elements of the GA;</p> <p>(IX) the right to alter and run additional services to serve and benefit exclusively the GA on the walls, columns, beams, ceilings, roof slabs, carriageway/floor slabs and other structural elements of, in, around, within, above and below the same and the related right of access over the lot or any part of the development on the lot with or without servants, workmen and others and with or without plant, equipment, machinery and material; and</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(X) such other rights, privileges and easements (if any) as may be deemed necessary or desirable by the Director of Lands (“the Director”) and which are notified to the Grantee/Purchaser by Government or FSI for incorporation into the DMC; and</p> <p>(ii) Reserve to <i>Government or FSI</i> the right to alter or vary at any time the use of the GA without having to obtain the approval or consent of the Grantee/Purchaser or the Manager.</p> <p>(b) In favour of Grantee/Purchaser and its assigns and the Manager: -</p> <p>(i) The rights reserved to <i>the Grantee/Purchaser</i> and the powers and duties of the <i>Manager</i> shall be subject to the rights and privileges of FSI and shall not in any way adversely affect or prejudice the rights easements and privileges reserved to FSI in the DMC and the Conditions;</p> <p>(ii) Where the right is reserved to <i>Grantee/Purchaser</i> to enter upon any part of the Estate to commission, construct and complete the development, such right shall exclude the GA except where entry is unavoidable when, in that event, it shall be subject to prior reasonable notice, least disturbance being caused and an indemnity for costs and expenses incurred for any damage caused to the GA;</p> <p>(iii) In respect of the GA <i>the Manager and Owners of undivided shares</i> can enter the GA for maintenance and repair purposes but they require prior approval to enter upon the GA except in emergency and shall be liable for all costs and expenses incurred for any damage caused to the GA;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(iv) Any amendment to the Master Layout Plan should not affect the GA;</p> <p>(v) The right to designate any part of the Estate to be Estate (or other) Common Areas shall not affect the proper use and enjoyment of the GA;</p> <p>(vi) The right to re-allocate management shares or undivided shares should not affect the proportion of shares allocated to the GA;</p> <p>(vii) The <i>Grantee/Purchaser</i> shall not represent FSI or GPA in any dealings with the Government directly affecting the GA. GPA shall in its sole discretion determine whether or not the GA is directly affected;</p> <p>(viii) The right to change the name of the Estate should not include a right to change the name of the GA;</p> <p>(ix) The right to amend, vary, alter plans should: -</p> <p style="padding-left: 40px;">(I) not impede or restrict access to or from the GA, and</p> <p style="padding-left: 40px;">(II) require approval of the Owner of the GA if it directly affects the GA. GPA shall in its sole discretion determine whether or not the GA is directly affected;</p> <p>(x) The right to vary the terms of the Conditions: -</p> <p style="padding-left: 40px;">(I) shall require prior written approval of the Owner of the GA if in the opinion of GPA it directly affects the GA;</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(II) shall not be prejudicial to the rights of the Owner of the GA in the use and enjoyment of and access to the GA; and</p> <p>(III) must not result in the Owner of the GA being liable for any premium payable for any variation save that the Owner of the GA may agree to pay that portion of the premium payable for the variation to the extent that the variation, in the opinion of GPA, directly benefits the GA but not otherwise;</p> <p>(xi) The right to assign/surrender/dedicate any part of the lot should exclude the GA; and</p> <p>(xii) No chimneys, flues, pipes or other structures or facilities shall be installed or affixed onto the external walls of the GA.</p>		
3.	<p><u>Management and Maintenance:</u> -</p> <p>(a) The Owner of the GA shall manage and maintain the GA.</p> <p>(b) Notwithstanding (a) above, upon the request of the Owner of the GA, the Manager will undertake the maintenance of services, facilities and installations serving exclusively the GA and will be reimbursed with the costs expended in carrying out such maintenance on condition that the maintenance will not be carried out until the Manager has submitted an estimate of costs together with supporting documents and any other relevant information that the Owner of the GA considers necessary and the Owner has approved in writing the estimated costs and the maintenance work to be carried out by the Manager.</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(c) The exercise of the easements rights and privileges reserved in 2(a) above shall not be subject to any permission, approval or consent of the Manager.</p> <p>(d) The Items shall be managed and maintained by the Manager with an indemnity in the DMC by all Owners (excluding FSI) to FSI and the Government for all claims, etc arising out of or as a consequence of a failure to do so.</p> <p>(e) The Estate Rules/House Rules shall not adversely affect or interfere with the use, operation and enjoyment of the GA.</p> <p>(f) The Manager shall not represent FSI or GPA in any dealings with the Government.</p>		
4.	<p><u>Management and Maintenance Charges:</u> -</p> <p><i>In accordance with the Conditions:</i> -</p> <p>(a) Where the Conditions provide that FSI as the Owner of the GA <u>is not liable</u> to pay any management and maintenance charges in respect of the remainder of the development, FSI shall not be liable for any contribution towards any management and maintenance charges in respect of the remainder of the development including management and maintenance charges whatsoever incurred in respect of the common areas and facilities of the development and the Items.</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(b) Where FSI is <u>liable</u> for the payment of management and maintenance charges and reimbursement in respect of expenditure of a capital nature (“the charges”) the charges shall: -</p> <ul style="list-style-type: none">(i) be as determined by GPA or person nominated by the Director for this purpose in respect of the areas, facilities and services and the Items which directly serve or benefit the GA or are used by the Owner of the GA but which liability shall not exceed the proportion that the management shares of the GA bears to the total management shares of the whole development;(ii) first be approved in writing by GPA or person nominated by the Director for this purpose before liability for payment thereof is incurred; and(iii) be payable from the date of the Assignment or the date of taking over the GA, whichever is the earlier. <p>(c) FSI as Owner of the GA shall be <u>exempt</u> from: -</p> <ul style="list-style-type: none">(i) contributing to management deposits, capital equipment fund, insurance premium, debris removal fee, interest and penalty charges on late or default in payment of management and maintenance charges or payment of a like nature;(ii) the Fitting Out Regulations (if any); and(iii) using the Grantee/Purchaser/Manager nominated maintenance or service contractors.		

No.	Subject	Clause No. and Page No.	Remarks
	<p>(d) As may be requested in writing by GPA, the Manager shall provide FSI free of charge with quarterly accounts, audited reports and budgets to justify the expenses incurred/estimated.</p> <p>(e) The said accounts, reports, budgets, notices and demands shall be sent free of charge to the FSI by prepaid post or delivered by hand to GPA, Government Property Agency, 31/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong or such other person and address nominated by FSI in writing.</p> <p>(f) Any consent that the Owner of the GA may be required to obtain from the Manager shall not be unreasonably withheld and shall be provided free of charge.</p> <p>(g) Whether to be annexed to the DMC or lodged in the management office, the Manager shall provide the Owner of the GA with a copy of the common area plans and any amendments that may be made thereto from time to time, free of costs.</p>		
5.	<p><u>Membership on Owners' Committee:</u> -</p> <p>(a) (i) FSI as the Owner of the GA shall be allocated as many seats on owners' committees, as required, dependent on the circumstances of the case, and the need for its participation in decision making. GPA in concert with other relevant authorities shall decide on this. As a general rule however where FSI owns less than 10% of the total undivided shares in a development the right to attend the owners' committee meeting is adequate.</p>		

No.	Subject	Clause No. and Page No.	Remarks
	<p>Where the total undivided shares exceed 10% the number of seats required on the owners' committee should be in direct proportion to the number of undivided shares held by FSI as compared to the total number of undivided shares in the development. In cases where the GA is extremely large, and the number of shares allocated to such are less than 10% of the total, it may be that at least one seat on the owners' committee is still required in view of the special nature of such cases and the size of the accommodation involved. <u>Developers will be advised of FSI's requirements for representation in each case; and</u></p> <p>(ii) Whether or not FSI is a member of the Owners Committee FSI shall still have the right to attend the Owners Committee meetings and to receive notices, agendas and minutes of the meetings free of charge sent in the manner provided in 4(e) hereof.</p> <p>(b) No resolution of the Owners Committee should adversely affect the use, operation or maintenance of the GA or any part thereof.</p>		
6.	<p><u>Owner Meetings:</u> -</p> <p>No resolution of the Owners meetings should adversely affect the use, operation or maintenance of the GA or any part thereof.</p>		