**Appendix VI**

**(Form B – For use where the outstanding development costs is financed by both Building Mortgage and Finance Undertaking)**

# FINANCE UNDERTAKING

To: (1) The Government of the Hong Kong Special Administrative Region

(2) The Director of Lands

Lot No.: [*insert lot number*] (“the land”)

Development: [*insert name of development*] (“the Development”)

## β[Phase: Phase [*insert phase number*] of the Development (“the Phase”)]

1. IN CONSIDERATION of the Director of Lands granting consent (“the Consent”) under Special Condition No. [*insert number*] of the \*Government Lease dated [*insert date*]/Conditions of Sale/Conditions of Grant/Conditions of Exchange/New Grant No. [*insert number*] \*[as varied or modified by \*a Modification Letter/an Extension Letter/an Exclusion Order/a redevelopment order/an order for sale dated [*insert date of instrument*]and registered in the Land Registry by Memorial No. [*insert memorial number*]] (the Government Grant) under which the land is held from the Government of the Hong Kong Special Administrative Region to [*insert name of registered owner of the land*] (the Vendor) to enter into agreements for sale and purchase (“the ASP”) of undivided shares of and in the land together with the right to the exclusive use, occupation and enjoyment of units in the \*Phase comprising [*insert description of buildings comprising the Phase*]/Development as more particularly described in the ASP, prior to full compliance with the terms and conditions of the Government Grant, WE, [*insert name and address/registered office of licensed bank or registered deposit-taking company*], UNDERTAKE COVENANT AND CONFIRM that should the Vendor for any reason be unable to finance the completion of the γPhase/Development in accordance with the terms and conditions of the Government Grant and the ASP, we shall pay any amounts to the Vendor or to any other person or persons as the Director of Lands shall direct, in either case as will ensure completion of the γPhase/Development PROVIDED always that:-

(1) Our liability under this Undertaking shall be limited to whichever is the lesser of :

(a) HK$[*insert the aggregate amounts of the total construction costs and the total professional fees of the* γ*Phase/Development as certified by an authorized person in his certificate in support of the application for the Consent less the amount of the facilities granted or to be granted by the Mortgagee (as hereinafter defined) under the Building Mortgage (as hereinafter defined) to finance the total construction costs and the total professional fees of the* γ*Phase/Development*]; 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 the γPhase/Development at any time (“the relevant time”) certified by the Authorized Person (as defined in the ASP) (“the Authorized Person”) as being required to complete the γPhase/Development (“the Outstanding Development Costs”), as reduced by (i) the amount of the facilities remaining undrawn (“the Undrawn Balance”) at the relevant time under a \*building mortgage/debenture dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*] (“the Building Mortgage”) as certified by [*insert name of licensed bank or registered deposit-taking company*] (“the Mortgagee”) which may be used to finance the Outstanding Development Costs and (ii) the total of the amount(s) from time to time remaining in the stakeholder account(s) maintained by the solicitors acting for the Vendor in the sale of units in the γPhase/Development (“the Vendor’s Solicitors”) under the terms and conditions of the ASP.

(2) Our liability under this Undertaking will automatically cease and determine on whichever is the earliest of the following:

(a) the [ ] day of [ ] 20[ ] [*this date to be whichever is the later of (i) the date which is 12 calendar months after the estimated date of compliance of the Government Grant in respect of the Development or the Phase (as the case may be), as certified by the Authorized Person at the time this Undertaking is given, and (ii) the date which is 12 calendar months after the expiry date of the building covenant period in the Government Grant*]; or

(b) upon (i) the issue by the Director of Lands of the consent to assign in relation to the γPhase/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, finishes and appliances of those units in the γPhase/Development which have been sold under the Consent will be incorporated in accordance with the terms and conditions of the ASP; or

(c) when the total of the amount(s) in the stakeholder account(s) maintained by the Vendor’s Solicitors is sufficient to meet the Outstanding Development Costs; or

(d) when our liability under this Undertaking, as ascertained in accordance with paragraph 1(1) above, has been reduced to zero.

2. For the purpose of determining from time to time our contingent liability under this Undertaking, we are entitled to rely upon certificates from the Vendor’s Solicitors maintaining the relevant stakeholder account(s) certifying as to the aggregate amounts maintained in these accounts and upon certificates from the Mortgagee certifying the Undrawn Balance and upon certificates from the Authorized Person certifying the Outstanding Development Costs.

3. We are entitled to require this Undertaking to be returned to us for cancellation when our liability under this Undertaking has ceased and determined in accordance with paragraph 1(2) above.

IN WITNESS whereof we have executed this Undertaking as a deed this [ ] day of [ ] 20[ ].

|  |  |
| --- | --- |
| \*[∅[SEALED with the Common Seal of [*insert name of licensed bank or registered deposit-taking company*] and SIGNED by [*insert name(s) and description of office(s) of authorized signatory(ies)*] whose signature(s) is/are verified by:- | )  )  )  )  )  ) |

## Solicitor, Hong Kong SAR]

OR

©[EXECUTED and DELIVERED )

as a deed by [*insert name of licensed bank* )

*or registered deposit-taking company*] )

acting through [*insert name(s) and* )

*description of office(s) of* )

*authorized signatory(ies)*] whose )

signature(s) is/are verified by:- )

Solicitor, Hong Kong SAR]]

|  |  |
| --- | --- |
| \*[SIGNED SEALED and DELIVERED by [*insert name(s) of attorney(s)*], the lawful attorney(s) of [*insert* *name of licensed bank or registered deposit-taking company*] whose signature(s) is/are verified by:- | )  )  )  )  )  ) |

Solicitor, Hong Kong SAR]

I, [*insert name of solicitor*], confirm that the above Undertaking has been duly authorized by [insert *name of licensed bank or registered deposit-taking company*] and duly executed as a deed by \*it/its lawful attorney(s) pursuant to a Power of Attorney granted by it.

Solicitor, Hong Kong SAR

β For phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance) only. Delete as appropriate.

\* Delete as appropriate.

γ Delete “Development” for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance). Otherwise delete “Phase”.

∅ For execution by licensed bank or registered deposit-taking company under its common seal in accordance with the provisions of its articles.

© For execution by licensed bank or registered deposit-taking company in accordance with section 127(3) of the Companies Ordinance.