

**Form MIP**

Standard Legal Charge Form (Non-guarantee)  
(Mortgage Insurance Programme)  
(Version: Sep 2018)

This form is **ONLY** applicable to eligible applicant of **FFSS Secondary Market Financing** under “Flat-for-Sale Scheme” and “Subsidised Sale Flats Project completed before Year 2024” of Hong Kong Housing Society (HKHS).

**Note: This Form is NOT catered to financing of first-hand sales from HKHS**

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

("the Borrower")

to

("the Lender")

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**LEGAL CHARGE**

**in respect of**

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REGISTERED in the Land Registry  
by Memorial No. \_\_\_\_\_  
on \_\_\_\_\_

for Land Registrar

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SOLICITORS, ETC.,  
HONG KONG SAR.

**THIS LEGAL CHARGE** is made the day and year set out in the Schedule hereto

**BETWEEN**

- (1) The Borrower of the one part and
- (2) The Lender of the other part.

**WHEREAS:-**

- (1) The Borrower is the registered and beneficial owner of the Property.
- (2) The Lender has agreed to lend to the Borrower the Loan upon having the repayment thereof together with interest thereon secured in manner hereinafter appearing.
- (3) This Legal Charge is subject to the terms and conditions contained in the Government Grant.

**NOW THIS DEED WITNESSETH that:-**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Legal Charge, if the context so permits or requires and where not inapplicable the following terms shall have the following meanings:-

**“Application Form”**

shall mean a document as prescribed by the Lender whereby the Obligors, inter alia, (i) made an application to the Lender for the Loan as referred to in the Facility Letter and (ii) provided such information and documents as requested by the Lender, together with all accompanying documents and information provided by the Obligors to the Lender from time to time;

**“Assignment”**

shall mean the latest deed of Assignment of the Property in which the Society was the assignor;

**“Borrower”**

shall mean the Borrower whose name, address and identity document are set out in the Schedule hereto and in the case of an individual shall include the person specifically herein named and his executors administrators successors and assigns and in the case of persons holding as tenants in common include the persons specifically herein named and any of them and their respective executors administrators successors and assigns and in the case of persons holding as joint tenants include the persons specifically herein named and the survivors or survivor of them and the executors administrators and successors of such survivor and his or their assigns;

**“Deed of Covenant”**

shall mean the Deed of Covenant set out in the Schedule hereto and any variation or modification thereof;

**“Director”**

shall mean the Director of Lands;

“Event of Default”

shall mean an event of default as specified in Clause 6.1 hereof;

“Facility Letter”

shall mean any facility letters, letters of offer, instruments or documents issued by the Lender to the Borrower setting out (inter alia) the terms and conditions mutually agreed by the Lender and the Borrower in relation to or in connection with the Loan to be secured by this Legal Charge;

“Government”

shall mean the Government of the Hong Kong Special Administrative Region;

“Government Grant”

shall mean the Government Grant more particularly set out in the Schedule hereto and any variation or modification thereof under which the Property is held from the Government;

“HKMCI”

shall mean HKMC Insurance Limited (including its successors and assigns);

“Lender”

shall include the company or corporation specifically named as the Lender in the Schedule hereto and its successors and assigns;

“Loan”

shall mean the Loan set out in the Schedule hereto which is advanced by the Lender to the Borrower under this Legal Charge or any part thereof for the time being remaining owing under this Legal Charge;

“Master Mortgage Insurance Policy”

shall mean the master mortgage insurance policy entered into by the Lender under the Mortgage Insurance Programme pursuant to which HKMCI, subject to the terms thereof, has agreed to provide certain Mortgage Insurance Cover to the Lender in respect of loans to be provided by the Lender to the Borrower for financing the purchase of residential properties in Hong Kong;

“Mortgage Insurance Cover”

shall mean the mortgage insurance cover taken out and maintained by the Lender with HKMCI pursuant to the Master Mortgage Insurance Policy for the protection, interest and benefit of the Lender in respect of a portion of the Loan as secured by this Legal Charge;

“Mortgage Insurance Programme”

shall mean the mortgage insurance programme operated by HKMCI in which the Lender has agreed to participate by entering into the Master Mortgage Insurance Policy;

“Obligor”

shall mean any person legally obligated to repay the debt obligation and/or discharge any liability created pursuant to the Loan as secured by this Legal Charge, including without limitation the Borrower, any mortgagor and guarantor in respect of the Loan;

“Premium”

shall mean the mortgage insurance premium and other additional premium (if any) payable by the Lender to HKMCI pursuant to the Master Mortgage Insurance Policy in respect of the Mortgage Insurance Cover pertaining to a portion of the Loan as secured by this Legal Charge;

“Property”

shall mean the property set out in the Schedule hereto;

“Secured Indebtedness”

shall mean the Loan and interest thereon and all other moneys and obligations in respect of moneys which the Borrower covenants to pay to the Lender under the terms of this Legal Charge including without limitation any amount equal to any Premium payable by the Lender and/or any advances made by the Lender to the Borrower in connection therewith together with all costs, charges and expenses for taking out and/or maintaining the Mortgage Insurance Cover in respect of a portion of the Loan as secured by this Legal Charge, whether such amounts, costs, charges and expenses have been specifically mentioned herein or otherwise, and which the Borrower has covenanted to pay or discharge to the Lender and/or to keep the Lender indemnified against under the terms of the Facility Letter and/or this Legal Charge or otherwise; and

“Society”

shall mean Hong Kong Housing Society, a body corporate incorporated under the Hong Kong Housing Society Incorporation Ordinance, Cap. 1059, Laws of Hong Kong.

- 1.2 Words importing the singular number shall include the plural number and vice versa, and words importing the masculine gender shall include feminine and neuter gender and vice versa.
- 1.3 The headings herein are included for the purpose of easy reference only and shall be ignored in the interpretation and construction of this Legal Charge.
- 1.4 If the Borrower consists of two or more persons, each covenant and/or agreement herein on the part of the Borrower shall be deemed to have been given or made by all such persons jointly and severally to the intent that each such person shall be held fully liable and responsible for complying with the obligations contained in this Legal Charge even if this Legal Charge cannot be enforced against the other(s) of such persons.

**2. COVENANT FOR REPAYMENT**

- 2.1 In consideration of the Loan paid by the Lender to the Borrower (the receipt whereof the Borrower hereby acknowledges), the Borrower HEREBY COVENANTS with the Lender to repay to the Lender the Loan with interest thereon and all other sums of money owing by the Borrower to the Lender under the Facility Letter and/or this Legal Charge by such number and amount of consecutive instalment as set out in the Facility Letter, the first of such instalments and all subsequent instalments to be paid by the Borrower according to the terms stipulated by the Lender in the Facility Letter.
- 2.2 Notwithstanding anything herein contained to the contrary in the event of the Borrower failing to pay any instalments due under Clause 2.1 hereof or other moneys payable by the Borrower in accordance with this Legal Charge then and in any such event but without prejudice to the rights vested in the Lender by virtue of such default the instalment

or other moneys so remaining unpaid shall bear interest from the due date for payment until actually paid at such rate as the Lender shall from time to time determine and shall be deemed to be part of the Secured Indebtedness and the Property shall thenceforth stand charged with such payment to the Lender and this Legal Charge shall not be redeemable without payment of such interest.

- 2.3 The Lender may at the request of the Borrower vary the amount of each outstanding instalment thereby varying the said number of instalments provided that in such event interest shall be recalculated and shall be charged only on the amount then remaining due on the Loan and interest accrued thereon.

### **3. INTEREST**

- 3.1 Subject to Clause 3.2 hereof interest on the Loan shall be charged at the rate as is more particularly set out in the Facility Letter or at such other rate as may from time to time be stipulated by the Lender. Such interest shall be calculated with the usual monthly rests or on such other basis as may from time to time be stipulated by the Lender in the Facility Letter.
- 3.2 Any change in the rate of interest chargeable on the Loan shall be notified in writing by the Lender to the Borrower and any change in the rate of interest as aforesaid shall take effect on the date specified in the Lender's notice.
- 3.3 If the rate of interest to be charged by the Lender changes (the rate so changed shall be hereinafter referred to as "the varied rate") the Loan shall be repayable either:-
- (a) by the number of instalments referred to in clause 2.1 hereof as may be varied from time to time under the provisions of this Legal Charge less the number of instalments already paid but the amount of each of such instalments shall be increased or decreased (as the case may be) according to recalculation of interest at the varied rate; or
  - (b) by equal consecutive instalments of such amount and of such number as the Lender and the Borrower shall mutually agree.
- 3.4 All instalments shall be credited first in respect of the interest and default interest (if any) due on the Loan and secondly (but only if the Lender shall elect so to do) in discharge of any other disbursements or expenses outstanding as already paid by the Lender in connection with the Property pursuant to the provisions herein contained and thirdly in reduction of the Loan owing on the date of payment.
- 3.5 In the event of the Lender electing to discharge any of the disbursements or expenses referred to in Clause 3.4 hereof then the remaining instalments shall be increased by such amount to ensure that when the final instalment is paid, the amount discharged by the Lender in respect of such disbursements or expenses shall have been paid and discharged by the Borrower.

### **4. CHARGE OF PROPERTY**

- 4.1 In consideration of the Loan and as security for the repayment of the Secured Indebtedness the Borrower as Beneficial Owner HEREBY CHARGES the Property to the Lender SUBJECT ALWAYS to the terms and conditions in the Government Grant PROVIDED ALWAYS that if the Borrower shall pay to the Lender the Secured Indebtedness in the manner aforesaid and shall have duly performed and observed all the terms, covenants

and agreements herein provided the Lender shall at the request and at the cost of the Borrower duly discharge this security. The charge herein contained shall be a legal charge insofar as the Property is a legal estate.

4.2 Notwithstanding the provisions of Clause 4.1 hereof, if no Government Lease in respect of the Property or any part thereof has been issued or deemed to have been issued at the date hereof, the following provisions shall apply and operate, namely:-

- (a) The Borrower as beneficial owner hereby assigns unto the Lender All That the estate right title benefit and interest of and in the Property by way of mortgage as security for the repayment of the Secured Indebtedness TO HOLD the same with their and every of their appurtenances unto the Lender absolutely subject to the terms and conditions herein mentioned subject also to the Government Grant and to the proviso for redemption contained in Clause 4.1 hereof.
- (b) All the terms covenants and conditions contained herein shall so far as they do not contravene any applicable law have full force and effect.

## **5. PREPAYMENT**

5.1 Notwithstanding the provisions of Clause 2 hereof the Borrower may prepay the whole or part of the Loan subject to the terms and conditions as are more particularly specified in the Facility Letter.

5.2 The Loan after any partial prepayment shall be repayable by such number and such amount of equal instalments as the Lender and the Borrower shall mutually agree.

## **6. EVENTS OF DEFAULT**

6.1 It is hereby agreed and declared that if:-

- (a) the Borrower makes default in the payment of any instalments (or any part thereof) at the time or times hereinbefore appointed for the payment thereof (whether demanded or not); or
- (b) the Borrower makes default in the payment of any other moneys for the time being due or claimed by the Lender to be due under any of the claims covenants or conditions herein contained (whether demanded or not); or
- (c) the Borrower makes default in the payment of the Secured Indebtedness or any part thereof following demand duly made; or
- (d) there shall be any breach of or omission to observe any of the agreements, covenants or obligations under this Legal Charge; or
- (e) there shall be any default made in payment of Government rent and/or premium (if any) and/or other moneys reserved by or in performance of any of the covenants terms and conditions contained in the Government Grant and/or the Deed of Covenant or of the Borrower's due contribution to or proportion of the same or in performance of any of the covenants herein contained; or the Borrower makes default in payment of the moneys for the time being owing on the security of this Legal Charge after notice given by the Borrower to the Lender of his intention to pay off such moneys; or

- (f) the Government or any competent authority shall re-enter or threaten to re-enter upon and take back possession of the Property or any part thereof Provided that the provision of this sub-clause(g) shall apply, mutatis mutandis, to any competent authority that extends or agrees to extend the terms of the Government Grant or grants, regrants or agrees to grant or regrant to the Borrower the Property; or
- (g) (if applicable) the Borrower shall become bankrupt or otherwise become insolvent or make any arrangement or composition with the Borrower's creditors; or
- (h) an encumbrancer takes possession or a receiver or other similar officer is appointed for the whole or any part of the assets or the undertaking (if applicable) of the Borrower or a distress or execution is levied or enforced upon or sued out against any of the chattels or property of the Borrower and is not discharged within thirty days of being levied; or
- (i) the Borrower shall without the consent in writing of the Lender stop payment to creditors generally; or
- (j) the Borrower becomes bound to repay prematurely any other loan or similar obligation for borrowed money, after any applicable grace period, by reason of a default by the Borrower in the Borrower's obligations in respect of the same or fails to make any payment in respect thereof on the date, after any applicable grace period, such payment becomes due unless contested in good faith; or
- (k) the Property or a substantial part thereof is destroyed by fire, typhoon, storm, floods, explosion, earthquake, aircraft damage or otherwise; or
- (l) the Property or a substantial part thereof is seized, expropriated or is compulsorily purchased or acquired, whether or not any compensation is paid therefor; or
- (m) any warranty or representation made by any Obligor under this Legal Charge and/or the Application Form is or becomes untrue or incomplete and/or any Obligor has failed to observe or perform any undertaking or covenant on his part pursuant to the Facility Letter, this Legal Charge or other documents ancillary thereto;

then and in any such case the Borrower will notify the Lender in writing of the occurrence of such event and regardless of whether notice of such event has or has not been given by the Borrower to the Lender as required above, an Event of Default shall have occurred.

- 6.2 Notwithstanding anything to the contrary, express or implied, contained in the Facility Letter, or any other instrument, agreement or document to which the Borrower and/or the Lender is a party, the Lender shall be under no liability at any time after the occurrence of an Event of Default to honour any further obligations hereunder and the Secured Indebtedness and all other moneys obligations and liabilities hereby secured not otherwise so repayable shall become repayable immediately on demand, together with interest accrued thereon to the date of repayment in full at the rate herein provided. Cash cover shall be provided on demand for all contingent liabilities (if any) notwithstanding that the maturity thereof shall not have arrived or that the Borrower shall not have been called upon to pay thereunder and the Borrower shall forthwith pay the same to the Lender upon demand.

## **7. LENDER'S POWERS**

7.1 If any Event of Default shall have occurred then subject to Clause 7.8 below, it shall be lawful for the Lender at any time or times thereafter without any consent on the part of the Borrower or of any person to exercise all rights and powers incidental to the ownership of the Property as if the Lender were the legal and beneficial owner thereof including but not limiting to the following rights and powers:-

- (a) enter into or upon and take possession of the Property and for that purpose to take any legal proceedings, and/or thenceforth to hold possess and enjoy and to receive the rents and profits thereof without any lawful interruption or disturbance by the Borrower or any other persons;
- (b) to do all things necessary or desirable to preserve, maintain and manage the Property;
- (c) (subject to any lease or tenancy lawfully granted by the Borrower) to let or lease the Property at such rent, for such period and upon such terms and conditions as the Lender shall think fit and appoint any person or persons at such reasonable and proper remuneration as the Lender shall determine to collect the rents and profits of the Property on behalf of the Lender;
- (d) to surrender and accept the surrender of any tenancies or leases relating to the Property;
- (e) to settle, adjust, refer to arbitration, compromise and arrange any claim, demand or dispute relating to the Property;
- (f) to bring, prosecute, enforce, defend, compromise and abandon any claim, action, suit, distress or proceeding in relation to the Property;
- (g) (whether or not the Lender shall have made such entry or taken possession as aforesaid) to sell, assign, call in, collect and convert into money the Property or any interest therein free from this Legal Charge and any other estates, interests and rights to which this Legal Charge has priority, with full power to sell the Property either by public auction or tender or private contract or partly by one of such methods of sale and partly by the other one or more of such methods of sale with power upon any such sale to make any stipulations as to title or evidence of commencement of title or otherwise in such manner and subject to such lawful conditions as the Lender shall think expedient and either for a lump sum or for a sum to be paid by instalments or for a sum on account and subject to a charge or other security for the balance and with full power to give any option to purchase the same or to buy in or rescind or vary any contract of sale of the same and to re-sell the same without being responsible for any loss which may be occasioned thereby with power for the Lender to enter into a Deed of Mutual Covenant or Sub-Deed of Mutual Covenant or Supplemental Deed of Mutual Covenant and/or Management Agreement and/or any other documents of similar nature or grant any rights easements or privileges as the Lender shall in its absolute discretion think fit and with full power to compromise and effect compositions, and for the purpose aforesaid or any of them to execute and do all such assurances and things as the Lender shall think fit;

PROVIDED HOWEVER that where the Event of Default relates to the payment of any moneys payable hereunder no such sale, calling-in, collection or conversion into money shall be put into effect until the Lender shall have previously served

on the Borrower a notice requiring payment of Secured Indebtedness and default shall have been made in payment thereof for a period of one calendar month after such notice;

- (h) to do all things necessary or desirable for realising the Property or any part thereof; and
  - (i) to exercise any powers or rights incidental to the ownership of the Property.
- 7.2 Upon any letting leasing or sale purporting to be made in pursuance of the aforesaid powers in that behalf and upon the exercise by the Lender of any of the aforesaid powers, any tenant or purchaser or any other person dealing with the Lender in connection therewith shall not be bound to see or enquire whether any default has been made in payment of the Secured Indebtedness at the time hereinbefore appointed for payment thereof or whether any money remains owing on the security of this Legal Charge or as to the propriety or regularity of the exercise of the aforesaid powers or of such letting leasing or sale nor in the case of any sale whether any notice in writing requiring payment has been given to the Borrower (but this provision shall not be construed as requiring notice to pay being given in any other case).
- 7.3 Notwithstanding any impropriety or irregularity whatsoever in the exercise of the aforesaid powers or in such letting leasing or sale the same, shall, as far as regards the safety and protection of the tenant or purchaser or any other person dealing with the Lender, be deemed to be within the aforesaid powers and be valid and effectual accordingly.
- 7.4 The remedy of the Borrower in respect of any breach of the clauses or provisions hereinbefore contained or any legal obligations imposed by law upon the Lender from time to time with regard to the exercise of such powers or to such letting leasing or sale shall be in damages only.
- 7.5 The aforesaid powers may be exercised by any person who for the time being shall be entitled to receive and give a discharge for the moneys owing on the security of this Legal Charge.
- 7.6 Subject as aforesaid the Lender shall not be answerable for any involuntary losses which may happen in the exercise of the powers (including those relating to the trusts hereinafter mentioned) herein contained or any of them.
- 7.7 The provisions of this Clause 7 shall continue to apply, mutatis mutandis, after the expiry of the term granted or agreed to be granted under the Government Grant, in so far as an extension of the term under the Government Grant or a grant or regrant of the Property has been made to the Borrower by any competent authority and subject to such terms and conditions as may be imposed by such competent authority.
- 7.8 NOTWITHSTANDING ANYTHING HEREIN CONTAINED the Lender in exercising any of its rights and/or powers in respect of the Property shall observe perform and comply with all the terms and conditions contained in the Government Grant so far as they are relevant to the exercise of such rights and/or powers and that the said terms and conditions shall in such event be applied to the Lender in same force and effect as on the Borrower.

## **8. APPOINTMENT OF RECEIVER**

- 8.1 If default in payment of the Secured Indebtedness or any other Event of Default shall have occurred (and no delay or waiver of the right to exercise the powers conferred

hereby shall prejudice the future exercise of such powers) the Lender may without further notice appoint in writing under the hand of the Manager or Acting Manager of the Lender for the time being such person or persons as he thinks fit to be a receiver and manager or receivers and managers (hereinafter referred to as a "Receiver") of the Property, and the Lender may from time to time remove any Receiver so appointed and appoint another or others in his place and the following provisions shall have effect:-

- (a) such appointment may be made either before or after the Lender shall have entered into or taken possession of the Property;
- (b) such Receiver may be vested by the Lender with such powers and discretions, including powers of management, as the Lender may think expedient;
- (c) without prejudice to the generality of the foregoing, such Receiver shall have power to complete any building (if any) under construction on the Property and to generally complete the development thereof and to demand and recover all the income of the Property of which he is appointed receiver by action, distress or otherwise in the name either of the Borrower or the Lender to the full extent of the estate or interest which the Borrower could dispose of and to give effectual receipts accordingly for the same;
- (d) unless otherwise directed by the Lender, such Receiver may exercise all the powers and authorities vested in the Lender hereunder;
- (e) such Receiver shall in the exercise of his powers, authorities and discretions conform to any regulations and directions from time to time made and given by the Lender;
- (f) the Lender may from time to time fix the remuneration of such Receiver and the Receiver shall be entitled to retain out of any money received by him that remuneration and all costs, charges and expenses properly incurred by him as Receiver;
- (g) the Lender may from time to time and at any time require any such Receiver to give security for the due performance of his duties as such Receiver and may fix the nature and amount of the security to be so given, but the Lender shall not be bound in any case to require any such security;
- (h) save so far as otherwise directed by the Lender, all monies from time to time received by such Receiver shall be paid over to the Lender to be held by the Lender on the trusts herein declared of and concerning moneys which arise from any letting, leasing, sale, calling in, collection, conversion or other dealing with the Property;
- (i) the Lender may pay over to such Receiver any moneys constituting part of the Property or the income thereof to the intent that the same may be applied for the purposes hereof by such Receiver, and the Lender may from time to time determine what funds the Receiver shall be at liberty to keep in hand with a view to the performance of his duties as such Receiver;
- (j) subject as hereinafter provided, any such Receiver may, for the purpose of defraying any costs, charges, losses or expenses (including his remuneration) which shall be incurred by him in the exercise of the powers, authorities and discretion vested in him and for all other purposes hereof or any of them, raise and borrow money on the security of the Property or any interest therein either in priority to the moneys hereby secured and the security hereby constituted or

otherwise and at such rate of interest and generally on such terms and conditions as he may think fit and no person lending any such money shall be concerned to enquire as to the propriety or purpose of the exercise of this power or to see to the application of any moneys so raised or borrowed provided however that a Receiver shall not exercise this present power without first obtaining the prior written consent of the Lender;

- (k) every such Receiver shall be the agent of the Borrower for all purposes and the Borrower alone shall be responsible for his acts and defaults, loss or misconduct and for his remuneration and the Lender shall not incur any liability therefor by reason of the Lender making his appointment as such Receiver or otherwise;
- (l) any Receiver may act in his own name or in the name of the Borrower;
- (m) every Receiver, attorney, manager, agent or other person appointed by the Lender hereunder shall be entitled to be indemnified out of the Property and the income thereof in respect of all liabilities and expenses incurred by him in the execution or purported execution of the terms and conditions of this Legal Charge and against all actions, proceedings, claims and demands in respect of any matter or thing done or omitted in anywise relating to the Property and the Lender may retain and pay out of any money in the Lender's hands arising from the terms and conditions of this Legal Charge all sums necessary to effect such indemnity and all such sums shall be a charge on the Property;
- (n) where more than one Receiver is appointed in accordance with the provisions herein contained any reference in this Legal Charge to a Receiver shall apply to both or all of the Receivers so appointed, and the appointment of the Receivers shall be deemed to be a joint and several appointment to the intent that the rights, powers, duties and discretions vested in the Receivers may be exercised jointly by the Receivers so appointed or severally by each of them.

8.2 Neither the Lender nor any Receiver shall be liable, by reason of any entry into possession of the Property, to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

8.3 NOTWITHSTANDING ANYTHING HEREIN CONTAINED the Receiver in exercising any of its rights and/or powers in respect of the Property shall observe perform and comply with all the terms and conditions contained in the Government Grant so far as they are relevant to the exercise of such rights and/or powers and that the said terms and conditions shall in such event be applied to the Receiver in same force and effect as on the Borrower.

## **9. THIRD PARTY ENQUIRIES**

9.1 No person dealing with the Lender or any Receiver appointed by the Lender or with its or his attorneys or agents shall be concerned to enquire whether any event has occurred to authorise the Receiver to act or the security hereby constituted has become enforceable or whether the power exercised or purported to be exercised has become exercisable or whether any moneys remain due upon the security of this Legal Charge or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale, calling in, collection, conversion or power exercised or to see to the application of any money paid to the Lender or to any Receiver or its or his attorneys or agents, and in the absence of fraud on the part of such person such dealing shall be deemed so far as regards the safety and protection of such

person to be within the powers hereby conferred and to be valid and effectual accordingly and the remedy of the Borrower in respect of any irregularity or impropriety whatsoever in the exercise of such powers shall be in damages only.

#### **10. LENDER'S OR RECEIVER'S RECEIPT**

- 10.1 Upon any such letting, leasing, sale, calling in, collection or conversion as aforesaid and upon any other dealing or transaction under the provisions herein contained the receipt of the Lender or any Receiver for the rent or proceeds thereof and for any other moneys paid to it or him shall effectually discharge the tenant, lessee, purchaser or person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

#### **11. PROCEEDS OF SECURITY REALIZATION**

- 11.1 The Lender or any Receiver so appointed shall hold the moneys arising from any such letting, leasing, sale, calling in, collection, conversion or dealing under the powers herein contained and all moneys received under any powers hereby conferred upon the Lender or upon any Receiver after the security hereby created has become enforceable upon trust:-

- (a) firstly, in discharge of all rent, taxes, rates and other outgoings due and affecting the Property;
- (b) secondly, in payment of the receiver's lawful remuneration, costs, charges and expenses and all lawful costs and expenses properly incurred in the sale or other dealing;
- (c) thirdly, unless
  - (i) the Society purchases back the Property in accordance and in compliance with the right of first refusal provisions set out in the Government Grant or
  - (ii) if applicable, the Lender or any Receiver sells the Property to eligible persons,in payment to the Society on behalf of the Government or to the Government direct (as the Government Grant requires) an amount equal to that proportion of the full market value of the Property, as assessed by the Society and approved by the Director or as assessed by the Director or by such competent government officer (as the Government Grant requires), at the time of that payment which is the same proportion of the full market value of the Property as specified in the Assignment which was not paid by the purchaser to the Society at the time of the Assignment to him. For the purpose of this subclause (c)(ii), "eligible persons" means persons who have been certified by the Society to be eligible to buy units in the Flat-for-Sale Scheme Secondary Market; and
- (d) fourthly, in payment of the Secured Indebtedness due under this Legal Charge, and any residue shall be paid to the person who immediately before any sale or other dealing was entitled to the Property or authorized to give a receipt for the proceeds of sale of the Property.

#### **12. FURTHER ASSURANCES AND ATTORNEY**

- 12.1 The Borrower shall from time to time and at any time, whether before or after the security hereby constituted shall have become enforceable, execute and do all such transfers, assignments, assurances, acts and things as the Lender may reasonably require for perfecting the security intended to be hereby constituted and for any part thereof and the exercise by

it of all the powers, authorities and discretions hereby conferred on the Lender or any Receiver appointed by it, and the Borrower shall also give all notices, orders and directions which the Lender may think expedient. For the purposes of this Clause a certificate in writing signed by or on behalf of the Lender to the effect that any particular transfer, assignment, assurance, act or thing required by the Lender is reasonably required shall be conclusive evidence of the fact.

- 12.2 The Borrower hereby irrevocably and by way of security appoints the Lender and any Receiver jointly and each of them severally to be the Borrower's attorney (with full power of substitution) and in his name and on his behalf to execute, sign and do all deeds, instruments, acts and things whatsoever which it shall in the opinion of the Lender (whose opinion shall be conclusive and binding upon the Borrower) be necessary or expedient that the Borrower should execute, sign or do for the purpose of carrying out any trust or obligation hereby declared or imposed upon the Borrower or for giving to the Lender on his behalf the full benefit of any of the provisions hereof and generally to use his name in the exercise of all or any of the powers hereby conferred on the Lender or any Receiver appointed by the Lender hereunder. The Borrower covenants that he will ratify and confirm all that the attorney shall lawfully do or cause to be done by virtue of these presents.

### **13. BORROWER'S FURTHER COVENANTS AND AGREEMENTS**

- 13.1 The Borrower HEREBY FURTHER COVENANTS AND AGREES with the Lender as follows, namely that:-

- (a) the Government Grant and the Deed of Covenant are now good, valid and subsisting and in nowise void or voidable and that the moneys due under any covenant relating to the Property have been paid and any other terms, covenants, conditions and obligations relating to the Property to be performed and observed by the Borrower have been duly paid, performed and observed up to the date hereof;
- (b) the Borrower has good right and title to charge the Property in manner aforesaid free from all incumbrances save as may be specified herein;
- (c) the Borrower will at all times keep and maintain the Property in good and tenantable repair and condition to the satisfaction of the Lender and the relevant governmental authorities and will allow the Lender and its servants or agents to enter and view the state of repair of the Property at all reasonable times without the Lender by so doing only being deemed to have taken possession of the Property;
- (d) the Borrower will effect and maintain insurance of the Property against loss or damage by fire and such other risks as the Lender may think fit in its full insurable value with some local insurance company or such other insurance company or office as the Lender shall first approve in writing and if so required by the Lender in joint names of the Lender and the Borrower and will punctually pay all premia or sums of money necessary for effecting and keeping up such insurance immediately upon the same becoming due and will at any time on demand made for that purpose on the Borrower as hereinafter provided endorse over, produce to or leave with the Lender such policy of such insurance and the receipt for every such payment and the Lender shall have a lien on the same and on all moneys thereby assured PROVIDED ALWAYS that if the Borrower shall fail to insure the Property in accordance with the provisions contained in this Clause the Lender may insure the Property upon such terms and conditions as the Lender shall in its absolute discretion think fit and any money paid for such insurance shall be a

charge on the Property in addition to the Secured Indebtedness with the same priority and with interest at the same rate;

- (e) in the event of the Property being destroyed the Borrower shall, unless otherwise agreed in writing by the Lender, lay out the insurance money received and at the Borrower's own expense make up any deficiency so as to fully and completely rebuild or reinstate the same to its original state and condition in accordance with the plans and specifications as shall be approved by the Lender and the relevant government departments;
- (f) the Borrower shall make payment of (i) the Government rents, management and maintenance charges, instalments of premium (if any) and other monies or proportions thereof payable in respect of the Property under the Government Grant and the Deed of Covenant (ii) the charges for power, lighting, water and all rates and taxes assessed on the Property and (iii) expenses for all the repairs of the Property as may be necessary under the Government Grant or the Deed of Covenant and shall produce to the Lender receipts or other evidence of such payments;
- (g) the Borrower shall fully and completely perform and observe the terms, covenants, conditions and obligations contained in the Government Grant and the Deed of Covenant;
- (h) if default shall be made by the Borrower in any of the obligations specified herein it shall be lawful for the Lender to pay or perform the same;
- (i) the Borrower will at all times keep the Lender indemnified against all actions, suits, claims, costs and expenses which may be incurred, sustained on account of the non- payment of the premium or other moneys (if any) or Government rent, property tax, rates, charges, outgoings and impositions or any part thereof or the breach or non- performance of the covenants, obligations and agreements herein contained;
- (j) the Borrower shall not without the prior written consent of the Lender at any time during the continuance of this Legal Charge assign, sub-divide, underlet, part with possession of the Property or any part thereof or any interest therein or enter into any agreement or arrangement so to do or diminish, jeopardise or prejudice the security hereby afforded to the Lender or permit the same to be done. Without limiting the generality of the foregoing and for the avoidance of doubt, the Lender agrees that the Borrower shall not be required to obtain the prior written consent from the Lender to create further mortgages or charges on the Property in favour of the Financial Secretary Incorporated or the organization of the Borrower's employer approved by the Society;
- (k) during the continuance of this security the Borrower shall not make or cause or permit to be made any illegal or immoral use of or any alteration in or in the use of the Property nor to permit the Property or any part thereof to suffer depreciation by neglect or mis-management and the Borrower will use the Property as a private residence for himself and his family only;
- (l) if at any time the power of sale herein contained shall become exercisable by the Lender the Borrower will upon being given notice so to do by the Lender forthwith quit and deliver up vacant possession of the Property to the Lender or to whomsoever the Lender may nominate or direct;

- (m) the Borrower shall provide the Lender with copies of all notices to or from all relevant government departments or otherwise relating to the Property within seven (7) days of the service of such notices by or on the Borrower or within such shorter period as is reasonable in the circumstances and shall comply with all governmental or other legal requirements and notices whether statutory or otherwise in respect of the Property;
- (n) (if applicable) the Borrower will whenever requested so to do in writing by the Lender apply to the Director for apportionment of the Government Rent and/or premium in respect of the Property pursuant to the provisions of the Government Rent and Premium (Apportionment) Ordinance, Chapter 125;
- (o) (if applicable) the Borrower will if required (if necessary in conjunction with the owners for the time being of the other undivided shares of and in the Lot or Lots more particularly described in the Schedule hereto (hereinafter called "the said Lot")) execute and take up the Government Lease relating to the said Lot when called upon so to do by the Director and pay the due proportion of the costs and expenses in connection therewith, and the Borrower shall execute a new charge in favour of the Lender of the said Lot or the shares owned by the Borrower of and in the said Lot (as the case may be), when such Government Lease has been taken up, in substitution for this Legal Charge;
- (p) (if applicable) the Borrower will, not later than six months before the expiry of the term agreed to be granted by the Government Grant exercise any right of renewal (if any) granted by the Government Grant (if necessary in conjunction with the other owners for the time being of the other undivided parts or shares of and in the said Lot) and will execute such deeds or documents as shall be required to effectuate such renewal and pay such fees as shall be demanded by the Director or other competent authority and shall execute a new charge in favour of the Lender of the said Lot or any substituted lot, or the shares owned by the Borrower of and in the said Lot or any substituted lot for such renewed term, in substitution for this Legal Charge;
- (q) in the event of the Borrower being or becoming entitled to, and/or entitled to apply to any competent authority for, an extension of the term agreed to be granted by the Government Grant or the Borrower being or becoming entitled to, and/or entitled to apply to any competent authority for, a re-grant or new grant of an interest in the whole or any part of the said Lot or of such new or substituted lot as referred to in sub-clauses (o) and (p) hereof, the Borrower shall forthwith comply with any terms and conditions affecting such entitlement (including the payment of such fees as shall be demanded by the competent authority) and/or shall forthwith make application to the competent authority for such re-grant or new grant, and thereafter shall do and perform all acts (including the payment of such fees as aforesaid) and execute such deeds and documents as may be necessary to secure an extension or new grant or re-grant as aforesaid, and shall thereafter execute a new charge (or such other security interest as the Lender shall require) to the Lender of or in respect of the subject matter of such extension, re-grant or new grant, as security for the Secured Indebtedness;
- (r) if on the expiry of the term granted or agreed to be granted under the Government Grant the Borrower does not become or is not entitled to an extension of the term granted by the Government Grant, and/or does not become or is not entitled to a re-grant or new grant of an interest in the whole or any part of the said Lot

or of such new or substituted lot as referred to in sub-clauses (o) and (p) hereof, the Borrower shall forthwith furnish such alternative security to the Lender as the Lender shall require;

- (s) if the Borrower shall fail or refuse to comply with his obligations under sub-clauses (n), (o), (p), (q), or (r) hereof, then and in any such event it shall be lawful for the Lender to act on behalf of the Borrower, and for such purposes the Borrower hereby irrevocably appoints the Manager or Acting Manager of the Lender for the time being in Hong Kong by way of security to be the attorney of the Borrower to do such acts as may be necessary to ensure performance by the Borrower of such obligations, and to execute and sign, seal and, as the Borrower's act and deed, deliver such deeds and to sign such documents and instruments as the Lender shall consider necessary or desirable for such purpose and to pay such fees on behalf of the Borrower as shall be demanded by the Land Registrar or the Director or by the competent authority as the case may be (which fees, if paid by the Lender on the Borrower's behalf, shall be added to the Secured Indebtedness and shall form part thereof) and to execute and to sign, seal and, as the Borrower's act and deed, deliver a new charge in such form and substance as the Lender shall require (or other security interest or alternative security as aforesaid) to the Lender as hereinbefore provided and to sign such documents and writing and to do all such other matters and things the Lender shall consider to be necessary or desirable for such purpose, and the Borrower shall ratify and confirm all that the said attorney shall lawfully do or cause to be done by virtue of the provisions herein contained.
- 13.2
- (a) The Borrower further represents, warrants, covenants and undertakes with the Lender that all information and documents provided by the Obligor are true, correct and complete, and the Borrower has duly notified the Lender of any material change of any facts and information provided by any Obligor in connection with the Facility Letter, the Application Form or documents referred to therein or accompanying thereto prior to the execution of this Legal Charge.
  - (b) The Borrower hereby acknowledges that the Lender and HKMCI are entitled to and have relied (and/or will rely) on the representations, warranties and information contained in the Facility Letter, the Application Form and other related documents leading to the grant of Loan and the Borrower hereby further acknowledges and agrees that he shall solely be responsible for and shall fully indemnify the Lender against any civil and/or criminal liability(ies) which may arise in connection with any fraudulent or negligent misrepresentations made and/or untrue or incomplete information provided by any Obligor under the Application Form and/or other documents relating thereto.
  - (c) The Borrower further acknowledges that any unauthorised creation of a further or second mortgage/legal charge on the Property or any part thereof may result in (inter alia) cancellation of the Mortgage Insurance Cover, or the increase of Premium payable in respect thereof. Without prejudice to any other rights of the Lender against the Borrower in respect of any default or breach of the covenant mentioned in the Facility Letter, the Application Form and any document accompanying or ancillary thereto and/or this Legal Charge, the Borrower hereby covenants and agrees to pay to the Lender forthwith upon demand by the Lender an amount equal to the amount of any additional Premium which becomes payable or shall have been paid by the Lender to the HKMCI as a result of a breach of any such covenant by any Obligor in any of the above-mentioned documents.

- (d) The Borrower also acknowledges that any default or breach by the Borrower of the covenant on (inter alia) non-alienation of the Property will adversely affect the validity of the Mortgage Insurance Cover and any breach of such covenant may result in cancellation of the Mortgage Insurance Cover or the increase of Premium payable by the Lender. Without prejudice to any other rights of the Lender against any Obligor in respect of any breach or default on his part, the Borrower hereby agrees to pay to the Lender upon its demand an amount equal to the amount of any additional Premium which shall become payable or shall have been paid by the Lender to HKMCI as a result of a breach or default by the Borrower.
  - (e) The Borrower covenants that the Property shall be used for Self-Occupancy (as defined below) and shall, within one month after the receipt of a written request from the Lender on or after each anniversary of the creation of this Legal Charge during the subsistence of the Mortgage Insurance Cover or at such other time(s) as the Lender may deem fit, certify in such form as prescribed by the Lender from time to time that the Property is and shall continue to be occupied by the Borrower and his immediate family member(s) but not otherwise (“Self-Occupancy”). In the event of failure on the part of the Borrower to provide such warranty and certification as to the Self-Occupancy status of the Property or failure to fulfill the requirement on the Self-Occupancy status of the Property, the Lender shall, inter alia, be entitled to demand immediate repayment of the Secured Indebtedness or any part thereof and/or to impose such conditions as the Lender shall at its own discretion see fit (including without limitation payment by the Borrower to the Lender of an amount equal to any additional Premium payable by the Lender in respect of the Mortgage Insurance Cover).
- 13.3 In consideration of the Lender granting/agreeing to grant to the Borrower the Loan applied for and further in consideration of HKMCI agreeing to provide the Mortgage Insurance Cover on such part of the Loan as secured by this Legal Charge, the Borrower expressly agrees and consents to the use, disclosure and transfer of all data, information and documents with respect to himself and the Secured Indebtedness (the “Data”) in the following manner:-
- (a) the Lender may use, disclose and transfer the Data to HKMCI (including without limitation its agents, contractors, third party service providers, successors and assigns) for their use in connection with their dealing with the Mortgage Insurance Cover and/or other related or incidental purposes as they may deem fit, whether inside or outside Hong Kong;
  - (b) HKMCI may use, disclose and transfer the Data to any mortgage reinsurers (including without limitation their principals, agents, contractors, third party service providers, successors and assigns), from whom HKMCI may seek to take out or maintain any mortgage reinsurance policies, for their use in relation to the dealing with the Mortgage Insurance Cover and/or other related or incidental purposes as they may deem fit any time, whether inside or outside Hong Kong;
  - (c) the Data may be used and shall be subject to the Customer Data Policy of the Lender, in force from time to time, a copy of the current version of which has been provided to the Obligor; and
  - (d) the Data may be provided by any of the persons entitled to receive it under the Lender’s Customer Data Policy (a “Recipient”) to any party bearing the same relationship to the party providing the Data as the Recipient bears to the Lender in each case and also to any party whether inside or outside Hong Kong;

and in this respect the Borrower hereby waives his rights of claims or complaints under the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong).

**14. NOTICES, DEMANDS AND SERVICE OF PROCEEDINGS**

- 14.1 Any demand for payment of the money hereby secured or any notice required to be served upon the Borrower shall, without prejudice to any other effective mode of giving or making the same, be deemed to have been well and sufficiently served on the day after the demand or notice was sent by ordinary prepaid post to the Borrower at his usual or last known place of abode or business or at the address of the Property hereby charged and where two or more persons are hereinbefore defined as “the Borrower” any such notice shall be deemed to have been well and sufficiently served on all such persons if posted in the manner hereinbefore provided to any one of such persons or to the personal representatives of any one of such persons who may have died and any notice to the personal representatives of any party hereto who may have died may be served at such address as is entered into the registers or books maintained by the Lender or at the Lender’s option at the address of the Property and need not name such representatives individually.
- 14.2 Any legal process including any writ or originating summons or otherwise and any other summons or notice to be served on the Borrower by the Lender in any legal proceeding or action in any court or tribunal shall be deemed to be sufficiently and duly served on the Borrower forty eight (48) hours after the same having been left or sent by ordinary pre-paid post to the Borrower at his last known place of abode or business or at the address of the Property and in proving such service it shall be sufficient to prove that the legal process or summon or notice was properly addressed and posted or properly left as the case may be irrespective of whether the same is returned to the Lender through the post undelivered to the Borrower.

**15. SUCCESSORS AND ASSIGNS**

- 15.1 The terms of this Legal Charge shall be binding upon and enure to the benefit of the respective successors-in-title, executors and administrators and assigns of the parties hereto Provided however that the Borrower may not assign any of the Borrower’s rights and obligations hereunder without the express prior written consent and approval of the Lender.

**16. WAIVERS**

- 16.1 No failure to exercise and no delay in exercising on the part of the Lender any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**17. FEES, COSTS AND EXPENSES**

- 17.1 The Borrower (with the object and intention of affording to the Lender a full indemnity for all amounts actually disbursed or incurred by the Lender pursuant to the terms hereof) shall pay or reimburse to the Lender or (as the case may be) to any Receiver, on demand:-
- (a) all costs, charges and expenses incurred and all payments made by the Lender or any Receiver in the lawful exercise of the powers hereby conferred upon the Lender or any Receiver (together with all remuneration payable to the Lender or to any such Receiver);

- (b) all reasonable expenses (including legal expenses on solicitor own client basis) incurred by the Lender in connection with the preparation and thereafter the administration of this Legal Charge and any other documents executed pursuant to the terms hereof and incurred by the Lender in suing for or recovering any sum due from the Borrower to the Lender hereunder or in connection with the protection or enforcement of this security; and
- (c) all stamp and other duties and taxes (if any) to which this Legal Charge, any document(s) of title relating to the Property and any other document executed pursuant to the terms hereof, may be subject;

and the same shall carry interest at the rate applicable under Clause 3.1 hereof from the date of the same being incurred or disbursed until payment and all such costs, charges, expenses and remuneration and all interest thereon shall be a charge on the Property and shall form part of the Secured Indebtedness.

## **18. CONTINUING SECURITY**

- 18.1 The security created herein shall be a continuing security and shall be available to secure whatever may be the balance at any time or from time to time due by the Borrower to the Lender pursuant to this Legal Charge, and such continuing security shall not be discharged by the release of any security or additional security whatsoever which the Lender may for the time being hold or which may hereafter be held by the Lender as security for the Secured Indebtedness.

## **19. APPLICABLE LAW**

- 19.1 This Legal Charge shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Hong Kong Courts.

## **20. THIRD PARTY RIGHTS**

- 20.1 Subject to Clause 20.3, a person who is not a party to this Legal Charge has no right under the Contracts (Rights of Third Parties) Ordinance (Cap.623 of the Laws of Hong Kong) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Legal Charge.
- 20.2 Notwithstanding any term of this Legal Charge, the consent of any person who is not a party to this Legal Charge is not required to rescind or vary this Legal Charge at any time.
- 20.3 Any director, officer, employee, affiliate or agent of the Lender may, by virtue of the Third Parties Ordinance, rely on any provision of this Legal Charge (including without limitation any indemnity, limitation or exclusion of liability) which expressly confers rights or benefits on that person.

IN WITNESS whereof the Borrower has executed this Legal Charge the day and year as set out in the Schedule hereto.

**THE SCHEDULE ABOVE REFERRED TO**

**The date of which this Legal Charge is made:-**

The            day of

**Name and Address of the Borrower:-**

**Identification number:-**

**The Lender:-**

**The Loan:-**

DOLLARS	Hong Kong Currency
(HK\$	)

**The Government Grant:-**

**The Property:-**

(A) Lot number, sections, undivided shares, description and address:-

(B) Exceptions and reservations, etc.:-

(C) Easements and other appurtenant rights, if any:-

**Deed of Covenant:-**

SIGNED SEALED and DELIVERED )  
)  
by the Borrower (who having )  
)  
been previously identified by )  
)  
)  
)  
)  
)  
)  
)  
in the presence of:- )

INTERPRETED by:-