

APPROVED FORM OF SALE AND PURCHASE AGREEMENT FOR UNCOMPLETED DEVELOPMENT (RESIDENTIAL PROPERTIES) FOR NON-CONSENT SCHEME UNDER RULE 5C(3) OF SOLICITORS' PRACTICE RULES

- Note : 1.** Clauses highlighted in grey are substantially provisions required to be included under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“Ordinance”). It is, however, the responsibility of solicitors to ensure compliance of the Ordinance as amended from time to time.
- 2(a)** Clauses underlined are for mandatory inclusion and should not be altered unless prior approval has been obtained from Council. Detailed reason(s) has/have to be given for each of the proposed amendment to the mandatory clauses. A non-refundable application fee of HK\$25,000 (subject to revision) for each agreement is payable on filing of the application.
- (b)** No amendment of a drafting nature to the mandatory clauses will be considered.
- (c)** No application for consent to amendments to the non-mandatory clauses is necessary except to the extent that those amendments might conflict with the terms of the mandatory clauses.
- (d)** Application has to be made for consent from the Council for introduction of any new clauses or amendments to non-mandatory clauses which have the effect of altering the nature of the mandatory clauses.
- 3.** For the avoidance of doubt, it is the responsibility of solicitors to ensure the agreement for sale and purchase to be entered into by the vendor and the purchaser are in compliance with all legal requirements, including but not limited to the Ordinance, if applicable. The use of this Approved Form should not be taken by solicitors as compliance with all such legal requirements.

THIS AGREEMENT is made the day of

Two thousand and

BETWEEN the Vendor *[the Financier] and the Purchaser whose particulars are set out in Schedule 1.

WHEREAS :-

Recitals (1) *[The Vendor intends to erect and complete upon the land before the [] day of [] 20 []

the Development in all respects complying with the building plans.

OR

Under the Exclusion Order the Vendor is obliged to erect and complete not later than [insert building covenant expiry date] the Development on the land in accordance with the building plans.

OR

Under the Redevelopment Order the Vendor is obliged to erect and complete not later than [insert building covenant expiry date] the Development on the land in accordance with the building plans.]

- (2) The land and the Development are notionally divided into undivided shares, such shares being subject to adjustment by the Vendor under clause 22.
- (3) No consent of the Director of Lands is required for the Vendor to enter into (inter alia) this Agreement for the sale of the Property.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

Interpretation

1. (1) In this Agreement -

- (a) "Authorized Person" means the authorized person of the ^yPhase/Development within the meaning given by section 2 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621);

*[(b) "Building Mortgage" means the *[insert description of the instrument]* dated *[insert date of instrument]* and registered in the Land Registry by Memorial No.*[insert memorial number]*];

(c) "building plans" –

- (i) means the plans prepared by the Authorized Person in respect of the *Phase/Development* and approved by the Building Authority; and
- (ii) includes any approved amendments to the plans mentioned in paragraph (i);

(d) “business day” means a day –

- (i) that is not a Saturday, Sunday or public holiday; and
- (ii) on which banks are open for business in the Hong Kong Special Administrative Region;

(e) “Certificate of Compliance” means the certificate issued or to be issued by or on behalf of the Director of Lands to the effect that all the positive obligations of the Vendor under the Government Grant in relation to the land have been complied with;

(f) "Construction Costs" means the aggregate of -

- (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 and the substructure and superstructure construction for the ^γPhase/Development (including the communal *[and recreational] facilities as set out in clause 11(2)), and the making of the ^γPhase/Development fit to qualify for the issue of an Occupation Document ;

(ii) any sums needed to be incurred by the Vendor to install the fittings, finishes and appliances of the ^γPhase/Development (including the fittings, finishes and appliances as set out in clause 11(1)) and in making every unit in the ^γPhase/Development ready for handover to purchasers on completion of the sale and purchase; and

(iii) any other sums (excluding Professional Fees) which in the reasonable opinion of the Authorized Person needed to be incurred to complete the ^γPhase/Development to qualify for the issue of an Occupation Document and to comply with this Agreement;

(g) "Deed of Mutual Covenant" means the document to be registered in the Land Registry which defines the rights, interests and obligations of all or any of the co-owners of the land and the Development among themselves and incorporates a Management Agreement (if any);

(h) "Development" means *[insert brief description of the development giving as much information as reasonably practicable so that a purchaser will have a general understanding as to the nature and composition of the development, the communal and recreational facilities (if any) provided in the development, and other special features (if any), etc.]* now being constructed or to be constructed on the land and intended to be known as " *[insert name of the development]*";

*[(i) "Exclusion Order"

- (i) means the Exclusion Order dated *[insert date of instrument]* and registered in the Land Registry by Memorial No.*[insert memorial number]*; and
- (ii) includes any order amending that Exclusion Order;]

*[(j) "expiry date of the Building Covenant Period" means-

- (i) the last day of the period within which the Development is required to be completed under the *Government Grant/Exclusion Order/Redevelopment Order; or
- (ii) if that period has been extended by the Government, the last day of the extended period;]

(k) "Government" means the Government of the Hong Kong Special Administrative Region;

(l) "Government Grant" means *[insert description of the instrument]*, as set out in

Schedule 2;

(m) "land" means all that piece or parcel of land registered in the Land Registry as
[insert lot number];

(n) "Occupation Document" –

(i) where the Development is a Relevant NTEH Development, means the
letter to be issued by the Director of Lands confirming that the Director of
Lands has no objection to every building in the ^yPhase/Development being
occupied; or

(ii) in any other case, means the occupation permit or temporary occupation
permit to be issued by the Building Authority under Section 21 of the
Buildings Ordinance (Cap. 123) for every building in the
^yPhase/Development;

(o) "office hours" means the period beginning at 10 a.m. of a day and ending at 4:30
p.m. of the same day;

^β[(p) "Phase " means Phase [insert phase number] of the Development comprising
[insert description of buildings comprising the Phase];]

(q) "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 the ^yPhase/Development;

- (r) "Property" means the property described in Schedule 3 ^z[and in the context of clause 11(3)(c) and Schedule 4, excludes the parking space constituting separate unit described in Schedule 3];

*[(s) "Redevelopment Order" –

- (i) means *a redevelopment order (as defined by the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337)/an order for sale (as defined by the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)), dated [*insert date of instrument*] and registered in the Land Registry by Memorial No. [*insert memorial number*]; and
- (ii) includes any order amending that *redevelopment order/order for sale;]

- (t) "Relevant NTEH Development" means a specified NT development as defined in section 5 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) where, under the Government Grant, the consent of the Director of Lands is not required to be given for this sale and purchase;

- (u) "Statutory Declaration" means the Statutory Declaration of the Vendor's Solicitors and all other solicitors (if any) acting for the Vendor registered in the Land Registry by Memorial No.[*insert memorial number*] in compliance with

Rule 5C(3) of the Solicitors' Practice Rules; and

(v) “Vendor’s Solicitors” means Messrs. *[insert name of solicitors’ firm of the vendor]*.

(2) In this Agreement –

- (a) “saleable area” has the meaning given by section 8 of the Residential Properties (First-hand Sales) Ordinance (Cap. 621);
- (b) the floor area of an item under paragraph (a) of Schedule 4 is calculated in accordance with section 8(3) of that Ordinance; and
- (c) the area of an item under paragraph (b) of Schedule 4 is calculated in accordance with Part 2 of Schedule 2 to that Ordinance.

(3) In this Agreement, if the context permits or requires, the singular number includes the plural and the masculine gender includes the feminine and the neuter.

Sale and
purchase

2. The Vendor shall sell and the Purchaser shall purchase the Property TOGETHER with the right in common with the Vendor or other person or persons claiming through, under or in trust for the Vendor to use for the purpose of access to and egress from the Property the lifts, entrance hall, staircases and landings in the Development and such of the passages in the Development intended for common use and serving the Property and the appurtenances thereto and TOGETHER with all rights of way (if any) and other rights and all privileges, easements and appurtenances thereunto belonging or appertaining AND all the estate, right, title, interest,

property, claim and demand whatsoever of the Vendor in and to the Property EXCEPTING AND RESERVING unto the Vendor and its successors and assigns other than the Purchaser the right to the exclusive use, occupation and enjoyment of the whole of the Development *[including the external walls (if any) of the Property] SAVE AND EXCEPT :-

- (a) the Property; and
- (b) such areas and facilities (if any) as may be designated as common areas or common parts and common facilities in the Deed of Mutual Covenant or are intended for common use.

Purchase
price

3. (1) The purchase price is the sum set out in Schedule 5, payable by the Purchaser to the Vendor's Solicitors as stakeholders in the manner set out in Schedule 5.

(2) In the event of any money paid under this Agreement to the stakeholders not being applied in the manner set out in clause 26, such money is deemed to have been paid by the Purchaser to the Vendor's Solicitors as agents for the Vendor.

(3) In the event of the Purchaser being required pursuant to Schedule 5 to pay the balance of the purchase price when the Vendor is not at that time in a position validly to assign the Property to the Purchaser for whatever reason, the Purchaser is entitled to withhold such payment until the Vendor is in a position validly to assign the Property and has given at least 14 days' notice in writing to that effect to the Purchaser. Where the Purchaser has opted for payment of the full balance of the purchase price within a specified period after the signing of this Agreement as set out in Schedule 5, then this sub-clause (3) shall not apply.

(4) In respect of each payment of the purchase price or any part of the purchase price required to be made under this Agreement, the Purchaser shall deliver to the Vendor's Solicitors on the date on which such payment is required to be made a cashier order issued or a cheque certified good for payment by a licensed bank in the Hong Kong Special Administrative Region in favour of the Vendor's Solicitors for the relevant amount.

(5) Subject to sub-clause (3) but without prejudice to any other remedy under this Agreement, the Vendor is entitled to demand and receive payment of interest on the amount of any part of the purchase price not paid on its due date at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time calculated from the date on which the same ought to have been paid by the Purchaser to the date of actual payment.

Construction
of
Development,
extension of
time,
rescission

4. (1) The Vendor shall –

- (a) continue the construction of the Development with all due expedition;
- (b) comply with the requirements of the Building Authority (where applicable) and of any other relevant Government authority relating to the Development; and
- (c) complete the ⁰Phase/Development in all respects in compliance with ^ψ[the conditions subject to which a certificate of exemption is issued under the Buildings Ordinance (Application to the New Territories Ordinance (Cap.121)

and] the building plans (if any) on or before the [*insert the estimated material date for the development, or the estimated material date for the phase (in the case of a phase of a phased development, other than the final phase of a phased development where, under the Government Grant, the consent of the Director of Lands is required to be given to the Vendor to enter into this Agreement), as provided by the Authorized Person – see sections 2(1) and 3(3) of the Residential Properties (First-hand Sales) Ordinance (Cap. 621) for the meanings of “material date” and “phased development”*] subject to such extensions of time as may be granted by the Authorized Person in accordance with sub-clause (5)(a).

*[(2) Despite clause 4(1)(c), the Vendor shall complete the Development by the expiry date of the Building Covenant Period as required under the *Government Grant/Exclusion Order/Redevelopment Order. If at any time it appears likely in the opinion of the Authorized Person that the Development will not be completed by the expiry date of the Building Covenant Period, the Vendor shall promptly apply for and obtain such extension of time for completing the Development as is required and shall pay any premium to the Government for such extension. The Vendor shall notify the Purchaser in writing of such application and the terms of extension granted within 30 days after each event.

(3) If the Vendor fails to apply for and obtain any necessary extension of time for completing the Development under sub-clause (2) and fails to complete the Development by the expiry date of the Building Covenant Period, the Purchaser is entitled, ^β[unless the completion of the sale and purchase in this Agreement has taken place], in addition to any other remedy that the Purchaser

may have, to give the Vendor notice in writing to rescind this Agreement and upon service of such notice, this Agreement is rescinded, and the Vendor shall, within 7 days after the rescission, repay to the Purchaser all amounts paid by the Purchaser under this Agreement together with interest on those amounts at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time from the date or dates on which such amounts were paid up to the date of repayment, the repayment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor under this Agreement.]

- (4) (a) Subject to sub-clause (4)(b), if the Vendor fails to complete the ⁰Phase /Development by the date specified in sub-clause (1)(c) as extended by any extensions of time granted by the Authorized Person under sub-clause (5)(a), the Purchaser is at liberty, in addition to any other remedy that the Purchaser may have, by notice in writing to the Vendor to rescind this Agreement and upon service of such notice, this Agreement is rescinded, and the Vendor shall, within 7 days after the rescission, repay to the Purchaser all amounts paid by the Purchaser under this Agreement together with interest on those amounts at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time from the date or dates on which such amounts were paid up to the date of repayment, the repayment of such amounts and interest to be in full and final settlement of all claims by the Purchaser against the Vendor under this Agreement.

(b) If the Purchaser does not rescind this Agreement under sub-clause (4)(a) within 28 days after the date specified in sub-clause (1)(c) or any extended date under sub-clause (5)(a), the Purchaser is deemed, without prejudice to the Purchaser's rights under sub-clause (4)(c), to have elected to wait for completion of the ⁰Phase/Development. In such event the Vendor shall pay to the Purchaser interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on all amounts paid under this Agreement from the date following the date specified in sub-clause (1)(c) or any extended date under sub-clause (5)(a) up to the date of completion of the ⁰Phase/Development. Such interest shall be paid or allowed as a credit to the Purchaser in respect of the purchase price on completion of the sale and purchase.

(c) Despite sub-clauses (4)(a) and (4)(b), if the ⁰Phase/Development is not completed within a period of 6 months from the date specified in sub-clause (1)(c) or any extended date under sub-clause (5)(a), the Purchaser is at liberty either to rescind this Agreement in which event the provisions of sub-clause (4)(a) relating to repayment and interest apply or to await the completion of the ⁰Phase/Development in which event the provisions of sub-clause (4)(b) relating to the payment of interest apply.

(5) (a) The Vendor is entitled to such extensions of time for completion of the ⁰Phase/Development beyond the date specified in sub-clause (1)(c) as granted by the Authorized Person and appear to the Authorized Person to be reasonable having

regard to delays caused exclusively by any one or more of the following reasons –

- (i) strike or lock-out of workmen;
- (ii) riots or civil commotion;
- (iii) force majeure or Act of God;
- (iv) fire or other accident beyond the Vendor's control;
- (v) war; or
- (vi) inclement weather.

For the purpose of this clause, “inclement weather” means rainfall in excess of 20 millimetres in a twenty-four hour period (mid-night to mid-night) as recorded at the Hong Kong Observatory, or the issue of a Black Rainstorm Warning Signal, or the hoisting of Typhoon Signal No.8 or above, at any time between the hours of 8 a.m. and 5 p.m.

- (b) The Vendor shall within 14 days after the issue of any such extensions of time granted by the Authorized Person under sub-clause (5)(a) furnish the Purchaser with a copy of the relevant certificate of extension.

Apply
Certificate
of
Compliance/
Occupation
Document

- 5. (1) The Vendor shall apply in writing for an Occupation Document in respect of the ⁰Phase/Development within 14 days after its having completed the ⁰Phase/Development as stipulated in clause 4(1)(c).

- (2) For the purposes of clauses 4(1), 4(4)(a), 4(4)(b), 4(4)(c), 4(5)(a) and 5(1) –

- (a) where, under the Government Grant, the consent of the Director of Lands is required to be given for this sale and purchase, the issue of Certificate of

Compliance or consent to assign by the Director of Lands is conclusive evidence that the ⁰Phase/Development has been completed or is deemed to be completed as the case may be and nothing in this sub-clause precludes the Vendor from proving that the Vendor has complied with clause 4(1)(c) by any other means; or

(b) where, under the Government Grant, the consent of the Director of Lands is not required to be given for this sale and purchase, the ⁷Phase/Development is deemed to be completed on the date on which the Occupation Document is issued.

6. (1) (a) Where, under the Government Grant, the consent of the Director of Lands is required to be given for this sale and purchase, the Vendor shall notify the Purchaser in writing that the Vendor is in a position validly to assign the Property within one month after the issue of the Certificate of Compliance or the consent of the Director of Lands to assign, whichever first happens.

(b) Where, under the Government Grant, the consent of the Director of Lands is not required to be given for this sale and purchase, the Vendor shall notify the Purchaser in writing that the Vendor is in a position validly to assign the Property within six months after the issue of the Occupation Document.

Completion
of sale and
purchase

(2) The sale and purchase shall be completed at the offices of the Vendor's Solicitors during office hours within 14 days after the date of the notification to the Purchaser that the Vendor is in a position validly to assign the Property to the Purchaser.

*[Where the Purchaser under this Agreement is not the assignee personally executing the Assignment of the Property from the Vendor, the Purchaser is hereby required to disclose

such information as will enable the Vendor to set out at length in the Assignment full details (including identity card numbers and full addresses) of all confirmors, nominees, sub-purchasers or other intermediate parties who had purchased or sold the Property or any interest therein by any means whatsoever and the full monetary price or other consideration and including any commissions, reservation or agents fees or any other amount which any of the parties knows has been paid or given to any person in connection with any intermediate transaction in addition to the consideration payable to the Vendor for the assignment under this Agreement, and in the event of the failure of the Purchaser and any other intermediate party failing to provide the required information to the satisfaction of the Vendor, the Vendor may notwithstanding anything to the contrary contained in clause 7 hereof refuse to complete the assignment in favour of any assignee other than the Purchaser under this Agreement without incurring any liability for damages or otherwise to the Purchaser or any of the intermediate parties, whether disclosed or not.]

Proper
assurance
#Applicable
if the
optional part
in clause 6 is
adopted

7. #[Subject to clause 6 above, on] [On] completion of the sale and purchase, the Vendor and all other necessary parties (if any) will execute a proper assurance of the Property to the Purchaser or the Purchaser's nominee or sub-purchaser free from incumbrances but subject to the Government Grant and the Deed of Mutual Covenant. Subject as hereinafter mentioned, the Purchaser or the Purchaser's nominee or sub-purchaser shall on completion of the sale and purchase be entitled to vacant possession of the Property, all outgoings including Government rent, rates and management fees up to and inclusive of the completion date being paid by the Vendor.

Risk 8. The Property, as between the Vendor and the Purchaser, remains at the Vendor's risk until the date fixed for completion of the sale and purchase in clause 6.

Requisition on title 9. (1) Subject to clause 13(2) and without prejudice to Sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219), the Vendor shall not restrict the Purchaser's right under the law to raise requisition or objection in respect of title.

(2) If the Purchaser makes and insists on any objection or requisition in respect of the title or otherwise which the Vendor is unable or (on the ground of difficulty, delay or expense or on any other reasonable ground) unwilling to remove or comply with, the Vendor is, notwithstanding any previous negotiation or litigation, at liberty to cancel the sale on giving to the Purchaser or his solicitors at least 14 days' notice in writing to that effect, in which case unless the objection or requisition is in the meantime withdrawn, the sale is cancelled on the expiry of such notice and the Purchaser is entitled to a return of the deposit and other sums of money already paid but without interest, costs or compensation.

Government Grant, easements mis-description 10. (1) The Property is sold subject to and with the benefit of the Government Grant, for the term of years created thereby or absolutely (as the case may be) and with any right of renewal thereby granted and subject to all easements (if any) subsisting therein.

(2) No error, mis-statement or mis-description shall cancel the sale nor shall any compensation be allowed in respect of such error, mis-statement or mis-description save as otherwise provided in this Agreement and except where such error, mis-statement or

mis-description relates to a matter materially and adversely affecting the value or user of the Property.

Warranties

11. (1) The Vendor shall, on or before completion of the ⁰Phase/Development, incorporate into the Property the fittings, finishes and appliances as follows –

the fittings, finishes and appliances as set out in Schedule 6.

Provided Always that if the Vendor is prevented by force majeure or other reason beyond its control from obtaining such fittings, finishes and appliances, other fittings, finishes and appliances certified by the Authorized Person to be of comparable quality may be substituted.

(2) The communal *[and recreational] facilities are as follows –

the communal *[and recreational] facilities as set out in Schedule 7.

(3) The Vendor warrants –

- (a) that at the date hereof (i) the building plans have been duly approved; (ii) the Authorized Person has duly certified that the foundations of the ¹Phase/Development have been completed; (iii) the consent of the Building Authority has been given under the Buildings Ordinance (Cap. 123) to commence building works on the superstructure of the ¹Phase/Development and (iv) to the best of the Vendor's knowledge, no impediment exists which would prohibit or impede the completion of the ⁰Phase /Development within the time specified in clause 4(1)(c);

- (b) that the fittings finishes and appliances as set out in clause 11(1) shall, on or before completion of the ⁰Phase /Development, be incorporated into the Property;
- (c) that subject to clause 21(1), the Property will, on completion of the ⁰Phase /Development, be as shown on the plan attached to this Agreement and the measurements of the Property will be those as set out in Schedule 4; and
- (d) that on completion of the Development the Vendor shall provide the communal *[and recreational] facilities as set out in clause 11(2).

%(4) The Vendor also warrants that the parking space constituting separate unit described in Schedule 3 will, on completion of the ⁰Phase/Development, be as shown on the plan attached to this Agreement and the area of such parking space to be measured from the centre of its demarcating lines or (if applicable) the interior face of the enclosing walls is as follows –

[insert figure] square metres/[insert figure] square feet.]

(5) In addition to clauses 11(3)(b), (c) and (d) mentioned in clause 29 hereof, all other provisions of this clause 11 will survive completion of the sale and purchase by the Assignment.

Rights of
Purchaser

12. (1) The Purchaser is at any time before completion of the sale and purchase at liberty to:-

#Applicable
if sub-clause
(2) is
adopted

- (a) #[subject to sub-clause (2) hereof,] sub-sell the Property or transfer the benefit of this Agreement without any interference or charges by the Vendor or anyone

claiming under or through the Vendor;

- (b) charge or mortgage the Property for the purchase price or any part of the purchase price Provided Always that notice in writing of any such charge or mortgage is given to the Vendor or the Vendor's Solicitors; and
- (c) instruct any firm of solicitors of his choice to act for him in this Agreement and the Assignment to the Purchaser;

Delete as inappropriate

**This must be adopted if this transaction is one to which Section 34A(3) of the Conveyancing and Property Ordinance (Cap.219) will apply if the Purchaser shall choose to have separate representation

**[in which event, each party shall pay its own solicitors' costs of and incidental to this Agreement and the Assignment to the Purchaser (including all legal costs and disbursements of and incidental to the preparation, completion, stamping and registration of this Agreement and the Assignment).]

OR

In cases where Section 34A(3) of the CPO does not apply, either ** or ***could be adopted as appropriate

***[Provided Always that the Purchaser shall in this event bear and pay to the Vendor's Solicitors on behalf of the Vendor the costs of this Agreement at the full scale charge and the costs of the Assignment at half scale charge;]

*[(2) The Purchaser hereby covenants with the Vendor that in the event that the Purchaser sub-sells the Property or transfers the benefit of this Agreement in any manner whatsoever and

whether by written or unwritten agreement before the completion hereof, the Purchaser will procure from the sub-purchaser, donee, nominee, beneficiary, attorney or other transferee whomsoever a covenant in the sub-sale Agreement for Sale and Purchase or impose a binding obligation in such other agreement to the effect that such sub-purchaser or other transferee whomsoever shall (i) disclose, by setting out at length in the sub-sale Agreement for Sale and Purchase or other agreement whatsoever, full details (including identity card numbers and full addresses) of all confirmors, nominees and other intermediate parties who had purchased or sold the Property or any interest therein by any means whatsoever and the full monetary price or other consideration including any commission, reservation or agents fee or any other amount which any of the parties knows has been paid or given over to any person in addition to the consideration payable to the Vendor for the Assignment and (ii) will procure from any subsequent sub-purchaser or other transferee a covenant, in the subsequent sub-sale Agreement for Sale and Purchase or impose a binding obligation in any other agreement, having similar effect as this clause 12(2).]

Cancellation
of
Agreement

(3) In the event of the Purchaser requesting and the Vendor agreeing to execute a Cancellation Agreement or any other means which has the effect of cancelling this Agreement or the obligations of the Purchaser under this Agreement, the Vendor is entitled to retain the sum of 5% of the total purchase price of the Property as consideration for his agreeing to cancel this Agreement and not as a penalty and the Purchaser will in addition pay or reimburse, as the case may be, to the Vendor all legal costs, charges and disbursements (including any stamp duty) in connection with the cancellation of this Agreement.

Good Title 13. (1) The Vendor shall at his own expense show a good title to the Property and produce to the Purchaser for his perusal such certified or other copies of any deeds or documents of title, wills and matters of public record as may be necessary to complete such title. The costs of verifying the title, including search fees, shall be borne by the Purchaser who shall also, if the Purchaser requires certified copies of any documents in the Vendor's possession relating to other property retained by the Vendor as well as to the Property, pay the cost of such certified copies.

(2) The Purchaser shall raise no objection if the Vendor's interest in the Property is an equitable interest and not a legal estate.

Documents of title 14.(1) Such of the documents of title as relate exclusively to the Property shall be delivered to the Purchaser. All other documents of title in the possession of the Vendor shall be retained by the Vendor who shall, if so required on completion of the sale and purchase, give to the Purchaser a covenant for the safe custody of those documents and for production and delivery of copies of those documents at the expense of the Purchaser, such covenant to be prepared by the Purchaser.

(2) The provision of clause 14(1) shall survive completion of the sale and purchase by the Assignment.

Costs and disbursements of Agreement 15.(1) Subject to the provisions of clause 12(1)(c), all legal costs and disbursements of and incidental to the preparation, completion, stamping and registration of this Agreement and the Assignment to the Purchaser shall be borne and paid by the *Purchaser/Vendor, and in the event that the Purchaser instructs solicitors other than the Vendor's Solicitors to act for him:-

Revision to this clause may be necessary as a result of Section (a) if the Purchaser shall request the Vendor to execute more than one assignment in respect of the Property the Purchaser shall on completion pay the additional costs

34A(3) of the
Conveyancing
and Property
Ordinance
(Cap.219)

charged by the Vendor's Solicitors for their approval; and

- (b) if the Purchaser shall request the Vendor to assign the Property to his nominee or sub-purchaser the Purchaser shall on completion pay the additional costs charged by the Vendor's Solicitors for the perusal of any instrument of Nomination or Sub-Sale Agreement.

Stamp duty,
etc.

- (2) All registration fees payable on the provisional agreement or this Agreement (if any) and the Assignment shall be borne and paid by the *Purchaser/Vendor.

(3) The ad valorem stamp duty, if any, payable on this Agreement and the Assignment shall be borne and paid by the *Purchaser/Vendor.

(4) The special stamp duty, if any, payable on this Agreement and the Assignment shall be borne and paid by the *Purchaser/Vendor.

- (5) The professional fees for the plan(s) to be annexed to this Agreement and the Assignment shall be borne and paid by the Purchaser.

Time of the
essence

16. Time is in every respect of the essence of this Agreement.

Default of
Purchaser

17. (1) Should the Purchaser fail to observe or comply with any of the terms and conditions contained in this Agreement or to make the payments in accordance with Schedule 5 or any interest payable under this Agreement within 7 days after the due date, the Vendor may (subject

to clause 3(3)) give to the Purchaser notice in writing calling upon the Purchaser to make good his default. If the Purchaser fails within 21 days after the date of service of such notice fully to make good his default, the Vendor may by a further notice in writing forthwith determine this Agreement and in such event-

- (a) all sums paid by the Purchaser up to 10% of the purchase price by way of deposit shall be forfeited to the Vendor; and
- (b) where the Purchaser has entered into possession of the Property, the Vendor is entitled to re-enter upon the Property and repossess the same free from any right or interest of the Purchaser in the Property and to receive from the Purchaser as occupation fee a sum equal to interest at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time on the unpaid balance of the purchase price for the period during which the Purchaser was in occupation.

(2) Upon determination of this Agreement pursuant to sub-clause (1), the Vendor may resell the Property either by public auction or private contract subject to such stipulations as the Vendor may think fit and any increase in price on a resale belongs to the Vendor. On a resale, any deficiency in price shall be made good and all expenses attending such resale shall be borne by the Purchaser and such deficiency and expenses shall be recoverable by the Vendor as and for liquidated damages Provided That the Purchaser shall not be called upon to bear such deficiency or expenses unless the Property is resold within 6 months after the determination of this Agreement.

Default of
Vendor

18. In the event of the Vendor failing to complete the sale in accordance with the terms and conditions of this Agreement, it shall not be necessary for the Purchaser to tender an Assignment to the Vendor for execution before taking proceedings to enforce specific performance of this Agreement.

Deed of
Mutual
Covenant

19. On completion of the sale and purchase, the Purchaser shall EITHER enter into a Deed of Mutual Covenant and, if required by the Vendor, a Management Agreement, with the Vendor OR at the Vendor's option accept an Assignment of the Property from the Vendor subject to and with the benefit of the Deed of Mutual Covenant and a Management Agreement (if any) entered into by the Vendor with another purchaser or purchasers in respect of the land and the Development. Such Deed of Mutual Covenant and Management Agreement (if any) shall follow closely the draft exhibited to the Statutory Declaration subject however to such modifications as are necessitated by changes in the building plans, adjustment of the undivided shares, change in the management company and the like. The provisions of the Deed of Mutual Covenant shall not conflict with the Guidelines set out in Law Society Circular 12-886(PA) as amended from time to time unless otherwise permitted by the Law Society of Hong Kong.

Costs of
Deed of
Mutual
Covenant

20. The Purchaser shall pay to the *Vendor's Solicitors/Messrs. [] the costs of and incidental to the Deed of Mutual Covenant in accordance with the scale of costs prescribed in the Solicitors (General) Costs Rules which include the costs for the provision of a certified copy of such Deed of Mutual Covenant to the Purchaser.

Alteration of
building
plans

21.(1) Despite anything contained in this Agreement, the Vendor reserves the right to alter the building plans (if any) whenever the Vendor considers necessary Provided That the Vendor shall notify the Purchaser in writing of such alteration if the same affects in any way the Property within 14 days after its having been approved by the Building Authority. If, as a result of such alteration, the measurements of the Property or any part of the Property according to such amended plans differs from the measurements of the Property as set out in Schedule 4, then the purchase price shall be adjusted in proportion to the variation of the measurements of the parts of the Property affected Provided That if the increase or reduction in the measurements of the Property, or any part of the Property, exceeds 5% of the measurements of the Property as set out in Schedule 4, then the Purchaser is at liberty to rescind this Agreement, in which event all moneys paid by the Purchaser under this Agreement shall be returned to the Purchaser with interest on those moneys at the rate of 2% per annum above the prime rate specified by The Hongkong and Shanghai Banking Corporation Limited from time to time from the date or dates of payment to the date of repayment. The Purchaser shall exercise the right of rescission by notice in writing to the Vendor within 30 days after the Purchaser is notified in writing by the Vendor of the approval of such amended plans by the Building Authority, and if no such notice is received by the Vendor within such time, the Purchaser is deemed to have accepted such plans.

(2) Any dispute as to -

- (a) the extent of any variation in the measurements of the Property under sub-clause (1);
- (b) the extent of any adjustment of the purchase price as a result of the variation; or
- (c) whether the proviso to clause 11(1) has been complied with and, if it has not, as to

the extent of the damages which should be paid
shall first be referred to the Authorized Person for a decision thereon.

(3) If either party is dissatisfied with the decision of the Authorized Person made pursuant to sub-clause (2), such party shall within 14 days after the decision is communicated to him give to the other party notice in writing of his intention to refer the decision to another authorized person as defined in section 2(1) of the Buildings Ordinance (Cap. 123) acting as an expert, otherwise the decision of the Authorized Person shall be final and binding on the parties. Should the parties fail to agree on such other authorized person to be appointed within 30 days after the giving of such notice, either party is entitled to apply within 7 days thereafter to the President of The Hong Kong Institute of Surveyors for the appointment of a member of the Institute whose decision shall be final and binding on both parties. If a party, after giving to the other party notice in writing of his intention to refer the decision of the Authorized Person to another authorized person as aforesaid, fails to refer the decision to another authorized person within 44 days after the giving of such notice, then the decision of the Authorized Person shall be final and binding on the parties. The costs of the Authorized Person shall be paid as directed by the Authorized Person in his award.

Adjustment
of undivided
shares

22. The Vendor reserves the right to adjust the number of undivided shares into which the land and the Development are notionally divided and the fraction which each share bears to the whole Provided That such adjustment shall not -

(a) have the effect of increasing the contributions to the management expenses

payable by the Purchaser by more than 5%; or

- (b) affect the Purchaser's exclusive right and privilege to hold, use, occupy and enjoy the Property.

Possession,
utility
deposits, etc.

23. (1) Subject as mentioned in this Agreement, the Purchaser is, on completion of the sale and purchase, entitled to vacant possession of the Property, all outgoings including Government rent, rates and management fees up to and inclusive of the completion date being paid by the Vendor.

(2) Before the Purchaser is entitled to possession of the Property, the Purchaser shall -

- (a) reimburse the Vendor a due proportion of any deposits paid by the Vendor for the supply of water, electricity and gas (if any) to the common areas or common parts of the Development; and

- (b) pay to the Vendor or the manager of the Development all the deposits and advance payments payable under the Deed of Mutual Covenant and the deposit for the removal of debris left by the Purchaser, his agents or contractors.

Registration

24. This Agreement shall be registered in the Land Registry within one month after [insert date of preliminary agreement for sale and purchase] being the date of the preliminary agreement

referred to in paragraph (g) of Schedule 8 of this Agreement.

No
*[further]
mortgage by
Vendor

25. The Vendor shall not after the execution of this Agreement enter into any *[further] mortgage or charge of the Property or any other part of the land or the Development but nothing in this Agreement shall prevent the Vendor from charging the unpaid proceeds of sale under this Agreement (subject however to clause 26) to further finance the Construction Costs and the Professional Fees so long as notice of any such mortgage or charge is given to the Purchaser.

Release of
Purchase
Price

26(1). Subject as provided in this Clause, any part of the purchase price paid by the Purchaser to the Vendor's Solicitors shall be held by them as stakeholders pending completion of the sale and purchase and shall be applied and released in the following manner only –

(a) first, towards payment of the Construction Costs and the Professional Fees to the Vendor from time to time in such amount or amounts as certified by the Authorized Person as having been expended or having become payable on the construction of the ^yPhase/Development;

(b) second, towards repayment of funds drawn under the Building Mortgage (if any) for payment of the Construction Costs and the Professional Fees and interest on the Construction Costs or Professional Fees;

(c) third, in the event of the Vendor's Solicitors and all other solicitors (if any) acting for the Vendor in the sale of the residential units in the ^yPhase/Development at any

time holding as stakeholders a sufficient sum to cover the entire outstanding balance of the Construction Costs and the Professional Fees as certified by the Authorized Person from time to time and other sums referred to in sub-clause (1)(b) above, towards payment of any other moneys secured by the Building Mortgage (if any);
and

- (d) fourth, in the event of the Vendor's Solicitors and all other solicitors (if any) acting for the Vendor in the sale of the residential units in the ^yPhase/Development at any time holding as stakeholders a sufficient sum to cover the total of the sums referred to in sub-clause (1)(c) above, then the Vendor's Solicitors may release the excess amount to the Vendor.

Provided Always that :-

- (i) in respect of any payment under sub-clause (1)(a) above the Vendor's Solicitors shall not at any time release to the Vendor any sum in excess of the amount certified by the Authorized Person as having been paid and/or become payable towards the Construction Costs and the Professional Fees at that time less the amount which the Vendor has drawn under the Building Mortgage (if any) for payment of the Construction Costs and the Professional Fees; and
- (ii) the Vendor shall not in any circumstances draw under the Building

Mortgage (if any) any part of the Construction Costs and the Professional Fees already paid under sub-clause (1)(a) above;

(2) All moneys received by the Vendor's Solicitors as stakeholders under this Agreement shall be placed in a client account bearing interest and subject to clearance (if the payment is made by cheque) the Vendor shall be entitled to all interest (if any) earned on such account.

Notices

27. Any notice required to be given under this Agreement -

(1) is deemed to have been validly given to a party if –

(a) the notice is addressed to the party; and

(b) the notice is sent by ordinary prepaid post to –

(i) the party's address stated in this Agreement; or

(ii) the party's last known address (where a notification of change of address has previously been given to the other party or the other party's solicitors); and

(2) is deemed to have been served on the second business day after the date of posting.

Defects

28. (1) The Vendor shall, at its own cost and as soon as reasonably practicable after receipt of a written notice served by the Purchaser within 6 months after the date of completion of the sale and purchase under clause 6(2), remedy any defects to the Property, or the fittings, finishes or appliances as set out in clause 11(1), caused otherwise than by the act or neglect of the Purchaser. The provisions of this sub-clause are without prejudice to any other rights or remedies the

Purchaser may have at common law or otherwise.

(2) The Vendor undertakes with the Purchaser to use its best endeavours to enforce all defects and maintenance obligations under all contracts relating to the construction of the Development in so far as such defects relate to or affect the Property or the common areas or common parts and common facilities of the Development.

(3) In the event of the winding-up (whether voluntary or otherwise) or dissolution of the Vendor, the benefit and rights of and in all warranties and guarantees under all contracts relating to the construction of the Development shall be assigned by the Vendor to the Owners' Corporation incorporated under the Building Management Ordinance (Cap. 344) or if no such corporation exists to the manager of the Development for the time being to be held in trust for the Purchaser and all other purchasers of units in the Development.

29. Clauses 11(3)(b), (c), (d) and 28 will survive completion of the sale and purchase by the Assignment.

Non-
business day
etc.

30. If any date stipulated for payment in this Agreement or the day on which completion of the sale and purchase is to take place as provided in this Agreement falls on a day that is not a business day or on a day on which Typhoon Signal No. 8 or above is hoisted or Black Rainstorm Warning Signal is issued at any time between the hours of 9 a.m. and 5 p.m., such date for payment or completion of the sale and purchase is automatically postponed to the immediately following day that is a business day and on which no

Typhoon Signal No. 8 or above is hoisted or Black Rainstorm Warning Signal is issued at any time between the hours of 9 a.m. and 5 p.m.

Financier	<p>*[31. The Financier hereby covenants with the Purchaser that the Financier will not call back the whole or any part of the loan which has been advanced or will be advanced to the Vendor until the Development has been completed and that the Financier will, if necessary, provide all further finance to enable the Vendor to complete the Development.]</p>
Marginal Notes	<p>32. The marginal notes to this Agreement shall not be deemed to be part of this Agreement and do not affect the interpretation or construction of this Agreement.</p>
Certificate of value	<p>33. It is hereby certified that the transaction effected by this Agreement does not form part of a larger transaction or a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds HK\$<i>[insert amount]</i></p>
Stamp Duty Ordinance	<p>34. For the purpose of section 29B(1) and 29B(5) of the Stamp Duty Ordinance (Cap.117), the matters to be specified are as set out in Schedule 8 hereto.</p>
Contracts (Rights of Third Parties) Ordinance (for clauses 35 and 36) * where there is a change to the clause number of clause 28(3)	<p>35.(1) Save for the manager of the Development, and the Owners' Corporation (if applicable) as mentioned in [*clause 28(3)] in respect of the benefit and rights under that clause, no person who is not a party to this Agreement shall have any right to enforce any provisions of this Agreement under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) ("the said Ordinance").</p>

of this Agreement, the reference to clause 28(3) in clauses 35 and 36 hereto have to be amended accordingly.

(2) Section 6(1) of the said Ordinance shall not apply to this Agreement and this Agreement may be rescinded or varied by agreement of the parties hereto from time to time without the consent of any person who is not a party to this Agreement provided that in the case of variation by agreement, the benefit conferred on the manager of the Development and the Owners' Corporation under [*Clause 28(3)] shall not be varied.

(3) For the purpose of sub-clause (2) and for the purpose of section 6(4) of the said Ordinance, the Vendor agrees to take reasonable steps to make the manager of the Development and the Owners' Corporation (if applicable) aware of sub-clause (2) before the circumstances set out in section 6(2)(a) or (b) of the said Ordinance occur. For the avoidance of doubt, this sub-clause (3) will not survive completion of the sale and purchase by the Assignment.

36. Notwithstanding any provisions herein contained, no provisions in this Agreement shall adversely affect [*clause 28(3)] of this Agreement.

SCHEDULE 1

Parties

(a) Vendor:

(b) Purchaser:

[(insert name, title, identification document (if any) and address of the party/parties signing the Agreement) and which for the purposes of this Agreement shall include their executors and administrators.]

*(c) Financier:

SCHEDULE 2

Government Grant

(a) *Government Lease/Conditions of Sale/Conditions of Grant/Conditions of Exchange/New Grant No.*[insert number]* *[as varied or modified by a Modification Letter dated *[insert date of the instrument]* and registered in the Land Registry by Memorial No.*[insert memorial number]*], the particulars of which are as follows -

(b) Parties :

(c) Date :

(d) Term : years from expiring on

(e) User :

(f) Lot Number :

SCHEDULE 3

Property

[Insert description of the Property, and where the Property comprises residential unit and parking space each constituting separate unit, insert description of the residential unit and the parking space in separate paragraphs as follows:

- (a) [insert description of the residential unit];*
- (b) [insert description of the parking space constituting separate unit], being the parking space constituting separate unit as referred to in this Agreement.]*

SCHEDULE 4

Measurements of the Property

The measurements of the Property are as follows –

- (a) the saleable area of the Property is *[insert figure]* square metres/*[insert figure]* square feet *[of which-]
- **[insert figure]* square metres/*[insert figure]* square feet is the floor area of the balcony];
 - **[insert figure]* square metres/*[insert figure]* square feet is the floor area of the utility platform];
 - **[insert figure]* square metres/*[insert figure]* square feet is the floor area of the verandah]; and
- (b) other measurements are –
- *[the area of the air-conditioning plant room is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the bay window is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the cockloft is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the flat roof is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the garden is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the parking space is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the roof is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the stairhood is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the terrace is *[insert figure]* square metres/*[insert figure]* square feet];
 - *[the area of the yard is *[insert figure]* square metres/*[insert figure]* square feet].

SCHEDULE 5

Purchase Price

The purchase price is HK\$*[insert amount]*, payable by the Purchaser to the Vendor's

Solicitors as stakeholders as follows -

(i) the amount of *[insert amount]*, has been paid as deposit on signing the agreement preliminary to this Agreement;

(ii) [*insert payment terms in such a way that the operation of clause 6(2) will not be affected*].

SCHEDULE 6

Fittings, Finishes and Appliances

[insert fittings, finishes and appliances]

SCHEDULE 7

Communal *[and Recreational] Facilities

[insert communal and recreational facilities]

SCHEDULE 8

Matters required to be specified under Section 29B(5) of the Stamp Duty Ordinance (Cap. 117):

- (a) (1) Name of the Vendor –
[insert name]
Address/Registered Office of the Vendor –
[insert address/registered office]
- (2) Name of the Purchaser –
[insert name]
Address/Registered Office of the Purchaser –
[insert address/registered office]
- (b) (1) Identification Number of the Vendor -
[insert description and number of identification document]
- (2) Identification Number of the Purchaser -
[insert description and number of identification document]
- (c) (1) Business Registration Number of the Vendor -
[insert business registration number]
- (2) Business Registration Number of the Purchaser –
[insert business registration number]

- (d) Description and location of the Property -
[insert description and location]
- (e) *The Property is a residential property within the meaning of Section 29A(1) of the Stamp Duty Ordinance (Cap. 117)*
- (f) Date of this Agreement -
[insert date]
- (g) This Agreement was preceded by *[insert description of the instrument, e.g. preliminary agreement for sale and purchase]* on the same terms made between *[insert the names of the parties]* on *[insert date of the instrument]* .
- (h) *[insert a statement as to whether or not a date has been agreed for the Conveyance on Sale or Assignment of the Property and, if so, that date].*
- (i) There is an agreed consideration for the Conveyance on Sale or Assignment that is to, or may, take place pursuant to this Agreement and the amount of the consideration is HK\$*[insert amount]*
- (j) *[Insert a statement as to the amount or value of any other consideration which the parties signing this Agreement know has been paid or given, or has been agreed to be paid or given, to any person for or in connection with this Agreement or any Conveyance on Sale or Assignment of the Property pursuant to this Agreement (excluding legal expenses), together with the name, address, and the identification number or business registration number of each person receiving or to receive such consideration, and a description of the benefit to which the consideration relates.] .*

AS WITNESS the hands of the said parties hereto the day and year first above written.

SIGNED by [*insert name(s) and description*])
of office(s) of authorized signatory(ies)])
for and on behalf of the Vendor whose)
signature(s) is/are verified by :-)

Solicitor, Hong Kong SAR

SIGNED by *the Purchaser in the)
presence of / [*insert name(s) and*])
description of office(s) of authorized)
signatory(ies)] for and on behalf of the)
Purchaser whose signature(s) is/are)
verified by :-)

Solicitor, Hong Kong SAR

*[[Ⓢ][EXECUTED and DELIVERED)
as a deed and the Common Seal)
of the Financier affixed in the presence of)
[*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 the Financier)
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]]

INTERPRETED to the Purchaser in the [] dialect of the Chinese language by :-

RECEIVED on or before the day and year first)
)
above written of and from the Purchaser)
)
the sum of HONG KONG DOLLARS [*insert amount*] HK\$)
)

Messrs. [*insert name of the Vendor's Solicitors*] as
stakeholders

- * Delete as appropriate.

- ^γ Delete “Development” for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (Cap. 621)). Otherwise delete “Phase”.

- ^β For phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (Cap. 621)) only. Delete as appropriate.

- ^θ Delete “Development” for phased development (within the meaning of the Residential Properties (First-hand Sales) Ordinance (Cap. 621)) except the final phase of a phased development where, under the Government Grant, the consent of the Director of Lands is required to be given for the Vendor to enter into this Agreement. Otherwise delete “Phase”.

- ^Ψ Applicable only where the Development is a Relevant NTEH Development. Delete as appropriate.

- ^χ For sale of property comprising residential unit and parking space each constituting separate unit. Delete as appropriate.

- [∅] For execution by the Financier under its common seal in accordance with the provisions of its articles.

- [©] For execution by the Financier in accordance with section 127(3) of the Companies Ordinance.

Dated

A G R E E M E N T
for Sale and Purchase of

REGISTERED in the Land Registry
by Memorial No.

on

p. Land Registrar

SOLICITORS, & CO.
HONG KONG SAR