

IN THE MATTER of [here insert the particulars of the property]

and

IN THE MATTER of the Oaths and Declarations Ordinance

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

NOTE:

* Delete as appropriate

(1) I am *the sole proprietor/a partner of the firm of [name of the solicitors' firm] solicitors who has been instructed by [name of the owner] ("the Owner") to act in connection with the sale of *[residential/non-residential] units */[car parking spaces/motor cycle parking spaces] ([collectively,] the "Units") now in the course of construction in the development of the abovementioned property ("Development").

NOTE:

If the proposed sale covers residential units (with or without parking spaces) only, the prescribed form of Sale and Purchase Agreement for residential units should be exhibited;

If the proposed sale covers non-residential units only (e.g. shops, individual parking spaces), the prescribed form of Sale and Purchase Agreement for non-residential units should be exhibited;

If the proposed sale covers both residential and non-residential units, both forms of Sale and Purchase

(2) I make this Declaration on behalf of the said firm ("my firm") preliminary to the sale of the Units*[in Phase __of the Development ("Phase")] [in the Development].

(3) In accordance with instructions received from the Owner, my firm has drawn up the forms of Sale and Purchase Agreement[s] ("Agreement[s]") and Deed of Mutual Covenant ("Deed of Mutual Covenant") for the sale of the Units in the *Phase/Development and the forms so drawn are now produced to me respectively marked [A-1 and A-2 / A-1, A-2 and A-3] exhibited hereto. I have personally examined the form[s] of the Agreement[s] which [is/are] the form[s] produced to me and marked [A-1 / A-1 and A-2] and the form of the Deed of Mutual Covenant which is the form produced to me and marked [A-2 / A-3] and confirm that (a) the form[s] of the

Agreements should be exhibited

Agreement[s] contain[s] all the clauses which are required by Rule 5C of the Solicitors' Practice Rules upon the sale of undivided shares in uncompleted buildings; and (b) the form of Deed of Mutual Covenant conforms to the Guidelines referred to in Practice Direction No.A5/ the Guidelines referred to in Practice Direction No.A5 do not apply because [here set out the reason e.g. a waiver has been granted by [the Council of the Law Society] / and that the form of Deed of Mutual Covenant conforms to the Guidelines referred to in Practice Direction No.A5 save and except paragraphs [] thereof which have been waived or modified by [the Council of the Law Society] as set out in a letter dated [], a copy whereof is produced and shown to me marked A-[insert exhibit number].

NOTE:

*Delete as appropriate

**If the proposed sale covers non-residential units only, the words "*for the construction of the*

**Phase/Development*" should be adopted.

- (4) (a) My firm has received confirmation from the Owner that [name of authorized person], *an architect/an engineer/a surveyor listed in the authorized persons' register kept by the Building Authority under section 3(1) of the Buildings Ordinance ("the Authorized Person") of [name and address of firm/corporation of authorized person] has been appointed as the co-ordinator ** [of building works for the *Phase/Development][for the construction of the *Phase/Development].
- (b) The Authorized Person has issued his certificate dated [date of certificate] ("the AP's Certificate") in respect of the *Phase/Development which certificate is now produced to me marked A-[insert exhibit number] and exhibited hereto.
- (c) The Authorized Person has confirmed the following in the AP's Certificate: -
- (i) the building plans of the *Phase/Development have been approved by the Building Authority under the

Buildings Ordinance (Reference No. [reference number]);

- (ii) the foundations of the proposed building(s) (“the Building(s)”) within the *Phase/Development have been completed and the Building Authority was notified in Form BA 14 dated [date of Form BA 14];
- (iii) consent to commence building works on the superstructure of the *Phase/Development has been issued by the Building Authority on [insert date] in Form BD 103 under section 14 of the Buildings Ordinance;
- (iv) the Authorized Person has on [insert date] notified the Building Authority in Form BA 10 of the appointment of [name of the main superstructure contractor] (“the Building Contractor”) for the construction of the superstructure of the *Phase/Development. The building works on the superstructure have commenced/will commence on [commencement date]. The Building Contractor is a general building contractor registered with the Building Authority under section 8A of the Buildings Ordinance;
- (v) A building contract covering the *Phase/Development has been entered into between the Owner and the Building Contractor. A copy of the Memorandum of Agreement relating to the building contract is now produced to me marked A - [insert exhibit number] and exhibited hereto.

NOTE:
If more than one contractor is involved, then identify all.

NOTE:
If more than one contractor is involved then identify all contracts

* delete as appropriate

NOTE:

If the Phase/Development is subject to the application of the Residential Properties (First-hand Sales) Ordinance, the words “estimated material date” should be adopted; otherwise the words “estimated date of completion” should be adopted.

(vi) the stage of the work as at the date of the certificate;

(vii) the *estimated material date/estimated date of completion of the *Phase/Development as at the date of the certificate; and

(viii) the costs expended and what remains to be expended to complete the *Phase/Development as at the date of the certificate.

(5) My firm has received written confirmation from the Owner that the balance of the development costs will be financed in the following manner:-

(e.g. In its entirety by a building mortgage covering the costs of the entire Development already entered into by the Owner with [name of the mortgagee bank])

I have no reason to doubt any of the information received from the Owner in this regard.

(6) The Authorized Person has issued his certificate dated [date of certificate] confirming to me the basis for allocation of undivided shares *[and management shares] under the Deed of Mutual Covenant in respect of the whole of the *Phase/Development which certificate is now produced to me marked A-[insert exhibit number] and exhibited hereto.

NOTE:

Applicable where the Vendor has entered into a building mortgage/debenture. Delete as appropriate.

[(7) (a) My firm has received written confirmation from the Owner that, to finance the total of the construction costs and the professional fees to complete the *Phase/Development (collectively “the Total Development Costs”) as stated in the AP’s Certificate, a *building mortgage/debenture dated [insert date of instrument] and registered in the Land

Registry by Memorial No. [insert memorial number] (“the Building Mortgage”) has been entered into between the Owner and [insert name of licensed bank or registered deposit-taking company] (“the Mortgagee”).

- (b) My firm has received confirmation in writing from the Mortgagee as to the amount of the facilities remaining undrawn under the Building Mortgage and that the facilities are sufficient to finance that part of the Total Development Costs expended but not yet paid and that part of the Total Development Costs remaining to be expended to complete the *Phase/Development as stated in the AP’s Certificate (collectively “the Outstanding Development Costs”). A copy of the confirmation dated [insert date of confirmation] is now produced to me marked A-[insert exhibit number] and exhibited hereto. The Mortgagee has undertaken to inform in writing my firm in the event of any of the facilities still remaining being cancelled for any reason other than drawings pursuant to the Building Mortgage or payment of the Outstanding Development Costs from other sources.

- (c) In the event of the Mortgagee advising my firm of the cancellation of the facilities for any reason and my firm does not hold sufficient funds in the stakeholder account as provided in the Agreement[s] to finance the Outstanding Development Costs, or] in the event of my firm becoming aware of any reason to doubt any of the information referred to in paragraph (5) of this Declaration, my firm recognizes that no further Units should be sold until a further Declaration has been registered adequately dealing with alternative financial arrangements to complete the *Phase/Development.

(d) In the event of my firm ceasing to act for the Owner in respect of the *Phase/Development and the sale of the Units therein, it has been explained to the Owner that no further Units should be sold until a further Declaration has been registered in like form to this Declaration by *the sole proprietor/a partner of the alternative firm who has been instructed by the Owner to act in connection with the sale of Units in the *Phase/Development.

NOTE:

Applicable where unsecured loans have been made or will be made. Delete as appropriate.

[(8)(a) To finance the Total Development Costs, unsecured loans have been made and will be made to the Owner by [insert name of Financier] (“the Financier”).

(b) My firm has received confirmation in writing from the Financier that the Financier will not call back any loans made or to be made to the Owner until the *Phase/Development has been completed and that, if necessary, the Financier will provide all further finance to enable the Owner to complete the *Phase/Development.

(c) In the event of the Financier advising my firm that the Financier will not, or will not be able to, provide all further finance to complete the *Phase/Development for any reason, my firm recognizes that no further Units should be sold until a further Declaration has been registered adequately dealing with alternative financial arrangements to complete the *Phase/Development.]

(9) My firm further undertakes that all sums paid by purchasers of the Units in the *Phase/Development will be held by my firm as stakeholders and will not be released save in accordance with the provisions included in the Agreement[s] Exhibit[s] A-1 [and A-2].

(10) In the event of my firm ceasing to act for the Owner in respect of the *Phase/Development and the sale of the Units therein, it has been explained to the Owner that no further Units should be sold until a further Declaration has been registered in like form to this Declaration by the sole proprietor/a partner of the alternative firm who has been instructed by the Owner to act in connection with the sale of Units in the *Phase/Development.

NOTE:

This paragraph is applicable to sale of residential properties (with or without parking spaces) that are subject to Residential Properties (First-hand Sales) Ordinance . Delete if inapplicable.

[(11) (a) I confirm that:

(i) the Owner is a corporation and is a *private/listed company; and

(ii) the Building Contractor is a corporation and is a *private/listed company; and

(iii) the holding company of the Owner is a *private/listed company; and

NOTE:

*Delete as appropriate

(iv) *no director/a director/[*insert number*] directors of the Owner *is/are my immediate family member*[s] *[and *no director/a director/[*insert number*] directors of the Owner *is an immediate family member/are immediate family members of the other partner*[s] of my firm]; and

(v) the secretary of the Owner is *[not] my immediate family member *[and the secretary of the Owner is *[not] an immediate family member of the other partner*[s] of my firm]; and

(vi) *no director/a director/[*insert number*] directors of

the Building Contractor **is/are my immediate family member*[s] *[and *no director/a director/[insert number] directors of the Building Contractor *is an immediate family member/are immediate family members of the other partner*[s] of my firm]; and*

- (vii) the secretary of the Building Contractor is **[not] my immediate family member *[and the secretary of the Building Contractor is *[not] an immediate family member of the other partner*[s] of my firm]; and*
- (viii) **no director/a director/[insert number] directors of the holding company of the Owner *is/are my immediate family member*[s] *[and *no director/a director/[insert number] directors of the holding company of the Owner *is an immediate family member/are immediate family members of the other partner*[s] of my firm]; and*
- (ix) the secretary of the holding company of the Owner is **[not] my immediate family member *[and the secretary of the holding company of the Owner is *[not] an immediate family member of the other partner*[s] of my firm]; and*
- (x) I **[do not] hold at least [insert 1% where the Owner is a listed company OR insert 10% where the Owner is a private company] of the issued shares in the Owner *[and *no/[insert number] other partner*[s] of my firm *[each] holds at least [insert 1% where the Owner is a listed company OR insert 10% where the Owner is a private company] of the issued shares in the Owner]; and*

- (xi) I *[do not] hold at least [*insert 1% where the holding company of the Owner is a listed company OR insert 10% where the holding company of the Owner is a private company*] of the issued shares in the holding company of the Owner *[and *no/[*insert number*] other partner*[s] of my firm *[each] holds at least [*insert 1% where the holding company of the Owner is a listed company OR insert 10% where the holding company of the Owner is a private company*] of the issued shares in the holding company of the Owner]; and
- (xii) I *[do not] hold at least [*insert 1% where the Building Contractor is a listed company OR insert 10% where the Building Contractor is a private company*] of the issued shares in the Building Contractor *[and *no/[*insert number*] other partner*[s] of my firm *[each] holds at least [*insert 1% where the Building Contractor is a listed company OR insert 10% where the Building Contractor is a private company*] of the issued shares in the Building Contractor]; and
- (xiii) I am *[not] an employee of the Owner *[and *no/[*insert number*] other partner*[s] of my firm *is an employee/are employees of the Owner]; and
- (xiv) I am *[not] a director of the Owner *[and *no/[*insert number*] other partner*[s] of my firm *is a director/are directors of the Owner]; and
- (xv) I am *[not] the secretary of the Owner *[and *no/one other partner of my firm is the secretary of the Owner]; and

- (xvi) I am *[not] an employee of the Building Contractor *[and *no/[insert number] other partner*[s] of my firm *is an employee/are employees of the Building Contractor]; and
- (xvii) I am *[not] a director of the Building Contractor *[and *no/[insert number] other partner*[s] of my firm *is a director/are directors of the Building Contractor]; and
- (xviii) I am *[not] the secretary of the Building Contractor *[and *no/one other partner of my firm is the secretary of the Building Contractor]; and
- (xix) I am *[not] an employee of the holding company of the Owner *[and *no/[insert number] other partner*[s] of my firm *is an employee/are employees of the holding company of the Owner]; and
- (xx) I am *[not] a director of the holding company of the Owner *[and no/[insert number] other partner*[s] of my firm *is a director/are directors of the holding company of the Owner]; and
- (xxi) I am *[not] the secretary of the holding company of the Owner *[and *no/one other partner of my firm is the secretary of the holding company of the Owner].
- (b) My firm has received confirmation from the Owner that the Owner has engaged [insert name of corporation engaged] (“the JV Partner”) to co-ordinate and supervise the process of designing,

planning, constructing, fitting out, completing and marketing the *Phase/Development. I confirm that:

- (i) the JV Partner is a corporation and is a *private/listed company; and
- (ii) the holding company of the JV Partner is a *private/listed company; and
- (iii) *no director/a director/*[insert number]* directors of the JV Partner *is/are my immediate family member*[s] *[and *no director/a director/*[insert number]* directors of the JV Partner *is an immediate family member/are immediate family members of the other partner*[s] of my firm]; and
- (iv) the secretary of the JV Partner is *[not] my immediate family member *[and the secretary of the JV Partner is *[not] an immediate family member of the other partner*[s] of my firm]; and
- (v) *no director/a director/*[insert number]* directors of the holding company of the JV Partner *is/are my immediate family member*[s] *[and *no director/a director/*[insert number]* directors of the holding company of the JV Partner *is an immediate family member/are immediate family members of the other partner*[s] of my firm]; and
- (vi) the secretary of the holding company of the JV Partner is *[not] my immediate family member *[and the secretary of the holding company of the JV Partner is *[not] an immediate family member of the other partner*[s] of my firm]; and

- (vii) I **[do not]* hold at least [*insert 1% where the JV Partner is a listed company OR insert 10% where the JV Partner is a private company*] of the issued shares in the JV Partner **[and *no/[insert number] other partner*[s] of my firm *[each] holds at least [insert 1% where the JV Partner is a listed company OR insert 10% where the JV Partner is a private company]* of the issued shares in the JV Partner]; and
- (viii) I **[do not]* hold at least [*insert 1% where the holding company of the JV Partner is a listed company OR insert 10% where the holding company of the JV Partner is a private company*] of the issued shares in the holding company of the JV Partner **[and *no/[insert number] other partner*[s] of my firm *[each] holds at least [insert 1% where the holding company of the JV Partner is a listed company OR insert 10% where the holding company of the JV Partner is a private company]* of the issued shares in the holding company of the JV Partner]; and
- (ix) I am **[not]* an employee of the JV Partner **[and *no/[insert number] other partner*[s] of my firm *is an employee/are employees of the JV Partner]; and*
- (x) I am **[not]* a director of the JV Partner **[and *no/[insert number] other partner*[s] of my firm *is a director/are directors of the JV Partner]; and*
- (xi) I am **[not]* the secretary of the JV Partner **[and *no/one other partner of my firm is the secretary of the JV Partner]; and*

- (xii) I am *[not] an employee of the holding company of the JV Partner *[and *no/[insert number] other partner*[s] of my firm *is an employee/are employees of the holding company of the JV Partner]; and
- (xiii) I am *[not] a director of the holding company of the JV Partner *[and no/[insert number] other partner*[s] of my firm *is a director/are directors of the holding company of the JV Partner]; and
- (xiv) I am *[not] the secretary of the holding company of the JV Partner *[and *no/one other partner of my firm is the secretary of the holding company of the JV Partner].
- (c) In this paragraph, “corporation”, “private company”, “listed company”, “holding company” and “immediate family member” shall be as defined respectively in the Residential Properties (First-hand Sales) Ordinance.
- (d) If there is:
 - (i) a change of the information contained in paragraphs (4)(a) and (4)(c) of this declaration; and
 - (ii) a change in the holding company of the Owner [and the JV Partner]; and
 - (iii) a change to [(a)(i) to (a)(xxi)] [and (b)(i) to (b)(xiv)] of this paragraph.]

my firm undertakes that a supplemental declaration

shall be made by the sole proprietor/a partner of my firm and save and except for any change of the information contained in paragraph 4(c)(i), all the purchasers of the *Phase/Development shall be informed in writing of such change and be reminded of their right to seek independent legal advice and representation immediately after being aware of such change.

NOTE:

This paragraph is applicable to sale of properties in situations other than the one stated in the marginal notes to the 1st alternative paragraph 11 above. Delete if inapplicable.

[(11) (a) I confirm that :

(i) *[except that I am a director/secretary of *[the Owner], *[the holding company of the Owner] *[the Building Contractor of the *Phase/Development],] I am *[not] a director/secretary of the Owner, the holding company of the Owner or the Building Contractor of the *Phase/Development;

(ii) *[except that I am personally related to a director/secretary of *[the Owner] *[the holding company of the Owner] *[the Building Contractor of the *Phase/Development],] I am *[not] personally related to a director/secretary of the Owner, the holding company of the Owner or the Building Contractor of the *Phase/Development;

NOTE:

*Delete as appropriate

(iii) *[save and except _____ partner(s),] no *[other] partners in my firm is a director/secretary of the Owner, the holding company of the Owner or the Building Contractor of the *Phase/Development;

(iv) *[save and except _____ partners(s),] no *[other] partners in my firm is personally related to any director/secretary of the Owner, the holding company

of the Owner or the Building Contractor of the
*Phase/Development;

- (v) *[except in *[the Owner] *[the holding company of the Owner] *[the Building Contractor of the *Phase/Development],] I *[do not] hold more than 1% (in the case of a listed company) of the total issued share, or 10% (in the case of a private company) of the total shares, of the Owner, the holding company of the Owner or the Building Contractor of the *Phase/Development; and
 - (vi) *[save and except _____ partner(s),] no *[other] partners in my firm holds more than 1% (in the case of a listed company) of the total issued shares, or 10% (in the case of a private company) of the total shares, of the Owner, the holding company of the Owner or the Building Contractor of the *Phase/Development.
- (b) I undertake that a supplemental declaration shall be made by the sole proprietor/a partner of my firm immediately if there is any change to (a)(i) to (a)(iv) of this paragraph resulting from an appointment as a director or secretary and if there is a change to (a)(v) and (a)(vi) of this paragraph resulting in the shareholding threshold therein being exceeded subsequently.] I also undertake to inform all the purchasers of the *Phase/Development in writing immediately after being aware of the change mentioned aforesaid and remind the purchasers of their right to seek independent legal advice and representation.

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

DECLARED at

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)
)
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Before me,

Solicitor,
Hong Kong.

- Note: 1. While the actual wording of the Declaration has not been made mandatory all the matters covered by the precedent must be covered in each case.
2. If there are material changes to the information provided in the Declaration, the solicitor should consider if it is necessary to make a supplemental declaration.

IN THE MATTER of [here insert the
particulars of the property]

and

IN THE MATTER of the Oaths and
Declarations Ordinance

D E C L A R A T I O N

SOLICITORS, & CO.
HONG KONG.