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THE UNIVERSITY OF HONG KONG

**A STUDY OF MORTGAGE TRANSACTION GOVERNANCE IN HONG KONG
WITH PARTICULAR REFERENCE TO MORTGAGE DEFAULT**

**A DISSERTATION SUBMITTED TO
THE FACULTY OF THE ARCHITECTURE
IN CANDIDACY FOR THE DEGREE OF
BACHELOR OF SCIENCE IN SURVEYING**

DEPARTMENT OF REAL ESTATE AND CONSTRUCTION

BY

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HONG KONG

APRIL 2004

MODEL MORTGAGE DEED

Prepared by
The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong

Convened by
The Hong Kong Mortgage Corporation Limited



Project on Standardization of Mortgage Origination Documents in Hong Kong

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The Hong Kong Association of Restricted Licence Banks and Deposit-Taking Companies

Hong Kong Bar Association

Hong Kong Monetary Authority

The Land Registry

The Law Faculty of The University of Hong Kong

The Law Society of Hong Kong

Planning and Lands Bureau

**The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

July 2001

Project on Standardization of Mortgage Origination Documents in Hong Kong (the “Project”)

Guidance Notes to the Mortgage Deed

1. The Mortgage Deed is a standard form of mortgage deed prepared by the Steering Committee of the Project.
2. **Each member of the Steering Committee of the Project expressly disclaims any liability to the fullest extent possible for the contents of the Mortgage Deed, any loss, damage or claim suffered or incurred by any mortgagee or any other person in connection with, arising from or in reliance on, the whole or any part of the Mortgage Deed. Any mortgagee or any other person proposing to use the Mortgage Deed must seek its own legal advice as to the suitability of the Mortgage Deed for its intended purposes.**
3. The Mortgage Deed is only a recommended form of mortgage deed. It is voluntary and not mandatory for the mortgagee and the mortgagor to adopt the Mortgage Deed. In deciding whether to adopt the Mortgage Deed, the mortgagee should consider whether the Mortgage Deed is compatible with its operational procedures and the complexity of the loan transaction.
4. If any mortgagee wishes to adopt the Mortgage Deed, it should adopt the Mortgage Deed in whole. Any modification or amendment made to the Mortgage Deed should be drawn to the attention of the mortgagor, and it should be made clear to the mortgagor that the modified or amended form used is not the standard form of the Mortgage Deed as approved by the Steering Committee.
5. The Mortgage Deed creates a legal charge over completed residential property to secure repayments of any type of banking facilities and loans granted to the mortgagor, and performance of the mortgagor’s obligations under the Mortgage Deed. The Mortgage Deed is in a 2-party form which can be executed by an individual or corporate mortgagor.
6. The Mortgage Deed consists of two parts: (a) the blank form portion and (b) the Mortgage Conditions (2001 Edition).
7. The **blank form portion** contains a number of blank spaces for filling in the details of the mortgaged property, the mortgagee, the mortgagor, the interest rate and the default interest rate in relation to the mortgage.
8. The **Mortgage Conditions (2001 Edition)** contains the standard terms and conditions of the mortgage. The mortgagee should note that the Mortgage Deed as drafted is not repayable “on demand”, and the mortgagee should pay particular attention to clause 3 and clause 8 which may require changes to its existing operational procedures.
9. In order to comply with the Personal Data (Privacy) Ordinance, the mortgagee should (to the extent not already done so):
 - (a) supply the mortgagor with a leaflet containing the latest data privacy statement adopted by the mortgagee before the mortgagor signs the mortgage application form;
 - (b) ensure that the mortgage application form contains a provision referring to the latest data privacy statement adopted by the mortgagee and advise the mortgagor to read through the data privacy statement before the mortgagor signs the mortgage application form; or
 - (c) take the mortgagor through the latest data privacy statement adopted by the mortgagee before the mortgagor signs the mortgage application form.

10. When the mortgagor sells the property, and if the mortgagee has previously assigned or transferred its rights and interests in the Mortgage Deed to its assignee/transferee, the mortgagee should make available to the mortgagor or his/her solicitors without cost, in order to enable the mortgagor to discharge his/her duty to show good title, certified true copies of all the assignment/transfer documents which have been executed by the mortgagee in favour of its assignee/transferee.
11. **Before the mortgagor signs the Mortgage Deed**, the mortgagee or its solicitors should advise the mortgagor to read through the Mortgage Deed and the **Important Notices** on the first page of both the blank form portion and the Mortgage Conditions (2001 Edition). The mortgagee should advise the mortgagor that he/she is entitled to seek independent legal advice from solicitors of his/her choice if he/she wishes to understand the legal commitments he/she will assume by signing the Mortgage Deed.
12. The mortgagor should only sign the execution page of the English version of the completed blank form portion, and not on the Chinese translation which is not a document for signing and is only intended to provide the mortgagor with a translation of the terms and contents of the Mortgage Deed.
13. To register the Mortgage Deed with the Land Registry, the signed and completed blank form portion attached with the Mortgage Conditions (2001 Edition) should be submitted to the Land Registry for registration.

**The Steering Committee of the Project on
Standardization of Mortgage Origination Documents in Hong Kong**

July 2001

MORTGAGE DEED

Important Notice:

This Mortgage is an important legal document. The Mortgage Conditions form part of this Mortgage. Before signing this Mortgage, you should read this Mortgage together with the Mortgage Conditions carefully. You have the right to seek independent legal advice from solicitors of your own choice to make sure that you understand the terms and conditions contained in the Mortgage Conditions, and your commitment and the full consequences of your signing this Mortgage.

If you sign this Mortgage, you will be legally bound by the terms and conditions (including the Mortgage Conditions) of this Mortgage. If more than one of you sign this Mortgage, the terms and conditions of this Mortgage will bind all of you jointly and also each of you on your own. Accordingly, the Secured Liabilities secured under this Mortgage will be payable by all of you jointly and also each of you on your own.

Your obligation to pay us the Secured Liabilities is not affected by this Mortgage. But, in addition to your obligation to repay, if you fail to pay us the Secured Liabilities in accordance with the terms and conditions of this Mortgage, our rights include the right to take possession of the Property, sell the Property and then use the sale proceeds to discharge any sum you owe us. If those sale proceeds are insufficient to discharge all the sums you owe us, we may claim against you for the balance.

You acknowledge that you have been provided with a copy of the Mortgage Conditions and any agreement in relation to the Secured Liabilities.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of this Mortgage Deed in its entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong expressly disclaim any liability to the fullest extent possible for the contents of this Mortgage Deed, any loss, damage or claim suffered or incurred by any mortgagee or any other person in connection with, arising from or in reliance on, the whole or any part of this Mortgage Deed. Any mortgagee or any other person proposing to use this Mortgage Deed must seek its own legal advice as to the suitability of this Mortgage Deed for its intended purposes.

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THIS MORTGAGE is made on []

Section A: Parties to this Mortgage

you: [Name of the mortgagor] with *home address⁽¹⁾/registered office in Hong Kong⁽²⁾/principal place of business in Hong Kong⁽²⁾ at [], holder of *Hong Kong identity card number⁽¹⁾/passport number⁽¹⁾/business registration number⁽²⁾/company number⁽²⁾: [].

we: [Name of the mortgagee bank] with *registered office in Hong Kong/principal place of business in Hong Kong at [].

Section B: Definitions

In this Mortgage, the following words or expressions shall have the following meanings:

Building means [Description of the building or development located on the Lot];

Deed of Mutual Covenant means [Description of any deed of mutual covenant or Sub-deed of mutual covenant in relation to the Property];

Expenses means such expenses as described in clause 21 of the Mortgage Conditions;

Government Lease means a *government lease/New Grant/Conditions of Sale/Conditions of Exchange/Conditions of Grant No. [] in relation to the Lot with the following particulars:

Date: []

Parties: []

Term: []

*Extension/Modification/Variation :

[]

Lot means [Lot number and section in relation to the Property];

Mortgage Conditions means Mortgage Conditions (2001 Edition) as described in Section D of this Mortgage;

Property means the property described in Section C of this Mortgage;

Secured Liabilities means all money, obligations and liabilities in any currency (together with any accrued interest) due, owing or incurred by you (or any one or more of you if there is more than one of you) to us now or in the future, actual or contingent, primary or secondary, on your own or jointly with any other person and includes any part of the Secured Liabilities;

we means the party denoted as “we” to the Mortgage and includes successors and assigns; and **us, our, ourselves** and **ours** shall be construed accordingly;

you means the party denoted as “you” to the Mortgage and includes successors and assigns; and **your, yours** and **yourself(ves)** shall be construed accordingly.

* Delete as appropriate

⁽¹⁾ Only applicable where the mortgagor is an individual person.

⁽²⁾ Only applicable where the mortgagor is a corporation or firm.

Section C: Property charged under this Mortgage

Property charged under this Mortgage subject to the following exceptions and reservations and together with the following easements and appurtenant rights is described below:

(a) Description and address:

[] equal undivided parts or shares of and in the Lot and the Building thereon together with the exclusive right and privilege to hold, use, occupy and enjoy [description of the flat] of the Building, which is *[more particularly] *(for the purposes of identification only) shown on the plan annexed to an assignment registered at [] Land Registry by Memorial No. [].

(b) Exceptions and reservations

[].

(c) Easements and other appurtenant rights

[].

Section D: Terms and conditions of this Mortgage

The Mortgage Conditions (2001 Edition) are incorporated into this Mortgage as the terms and conditions of this Mortgage.

Section E: Contact details of the parties to this Mortgage

Our contact details are set out below:

Address: []
Fax number: []

We may change our contact details at any time by giving you a notice in writing.

Your contact details are set out below:

Address: []
Fax number: []

You may change your contact details at any time by giving us a notice in writing.

Section F: Charge over the Property

Where your interest in the Property is a legal estate, you charge as beneficial owner your full interest in the Property to us by way of a first fixed legal charge subject to, and with the benefit of, the Government Lease and the Deed of Mutual Covenant to secure payment of the Secured Liabilities and performance of your obligations under this Mortgage.

Where your interest in the Property is an equitable interest, you assign as beneficial owner your full interest in the Property to us subject to, and with the benefit of, the Government Lease and the Deed of Mutual Covenant to secure payment of the Secured Liabilities and performance of your obligations under this Mortgage.

You assign to us (and agree to assign to us and will, if we require, execute a separate assignment(s) in the form and substance as we may require) the sale proceeds, the rents and other sums of money and deposits now or to become payable by virtue of any sale

* Delete as appropriate

agreement, lease, tenancy agreement or other agreement concluded now or in the future in respect of the whole or any part of your interest in the Property together with power to us to sue for recovery and give effectual discharges for the above in your name.

Section G: Default interest rate for the unpaid Expenses

Default interest rate for the unpaid Expenses referred to in clause 3.4 of the Mortgage Conditions is [].

Section H: Default interest rate for the unpaid Secured Liabilities

Default interest rate for the unpaid Secured Liabilities referred to in clause 15 of the Mortgage Conditions is as follows:

- (a) in relation to the mortgage loan granted by us to you in respect of the Property, [];
- (b) in relation to any credit or other banking facility (other than the mortgage loan mentioned in (a) above) granted by us to you, the default interest rate as specified in the applicable terms and conditions governing the grant of any such credit or other banking facility.

Your Declaration

You acknowledge that before signing this Mortgage, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on this Mortgage and the Mortgage Conditions before signing this Mortgage.

⁽³⁾SIGNED SEALED and DELIVERED by [name of the mortgagor] in the presence of a *witness/solicitor:

Your signature:

L.S.

Your name:

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate

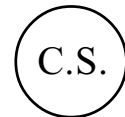
⁽³⁾ Only applicable where the mortgagor is an individual.

Your Declaration

You acknowledge that before signing this Mortgage, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on this Mortgage and the Mortgage Conditions before signing this Mortgage.

⁽⁴⁾SEALED with the COMMON SEAL of [name of the mortgagor] AND SIGNED by [name(s) of the authorized signatory(ies) of the mortgagor] in the presence of a *witness/solicitor:

Signature of the authorized signatory(ies):



Name and title of the authorized signatory(ies):

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate

⁽⁴⁾ Only applicable where the mortgagor is a corporation.

MORTGAGE CONDITIONS (2001 EDITION)

Important Notice:

These Mortgage Conditions are an important legal document. Once you have signed your Mortgage, these Mortgage Conditions will form part of, and apply to, your Mortgage, and will therefore be legally binding on you. If there is more than one of you, these Mortgage Conditions will bind all of you jointly and also each of you on your own.

Before signing your Mortgage, you should read carefully your Mortgage together with these Mortgage Conditions. You have the right to seek independent legal advice from solicitors of your own choice to make sure you understand the terms and conditions contained in these Mortgage Conditions, and your commitment and the full consequences of your signing the Mortgage.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of these Mortgage Conditions in their entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong expressly disclaim any liability to the fullest extent possible for the contents of these Mortgage Conditions, any loss, damage or claim suffered or incurred by any mortgagee or any other person in connection with, arising from or in reliance on, the whole or any part of these Mortgage Conditions. Any mortgagee or any other person proposing to use these Mortgage Conditions must seek its own legal advice as to the suitability of these Mortgage Conditions for its intended purposes.

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1. Definitions

1.1 In these Mortgage Conditions, the following words and expressions shall have the following meanings:

Building	means the Building described in the Mortgage;
Deed of Mutual Covenant	means the Deed of Mutual Covenant described in the Mortgage and includes any modification of the Deed of Mutual Covenant from time to time;
Event of Default	means any event set out in clause 13;
Expenses	means such expenses as described in clause 21;
Facility Agreement	means any existing or subsequent agreement(s) by which any banking, credit or other facilities or accommodation are made available by us to you and includes any modification, supplement or replacement of that/those Facility Agreement from time to time;
Government Lease	means the Government Lease described in the Mortgage and includes any modification, renewal or extension of the Government Lease from time to time;
Hong Kong	means the Hong Kong Special Administrative Region of the People's Republic of China;
Mortgage	means a mortgage or charge over the Property incorporating these Mortgage Conditions executed by you in our favour to secure repayment of the Secured Liabilities, and includes any modification, supplement or replacement of the Mortgage from time to time;
Ordinance	means the Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong) and includes any modification, supplement or re-enactment of the Ordinance from time to time;
person	means any individual, company, corporation, trust, partnership or firm and includes successors and assigns;
Property	means the Property described in the Mortgage and includes any part of the Property;
Receiver	means any person (including our officers or employees) we appoint in writing to be a receiver and/or a manager of the Property and includes any person substituting for the Receiver;
Secured Liabilities	means all money, obligations and liabilities in any currency (together with any accrued interest) due, owing or incurred by you (or any one or more of you if there is more than one of you) to us now or in the future, actual or contingent, primary or secondary, on your own or jointly with any other person and includes any part of the Secured Liabilities;
security	means any instrument or collateral given to secure payment/repayment of any debts, liabilities or obligations and includes, but is not limited to, any charge, mortgage, guarantee, pledge and lien;

- we** means the party denoted as “we” to the Mortgage and includes successors and assigns; and **us, our, ourselves** and **ours** shall be construed accordingly;
- you** means the party denoted as “you” to the Mortgage and includes successors and assigns; and **your, yours** and **yourself(ves)** shall be construed accordingly.

1.2 In these Mortgage Conditions:

- (a) “he” shall include “she” and “it”, and “his” shall include “her” and “its”;
- (b) the singular shall include the plural, and the plural shall include the singular;
- (c) headings shall be for ease of reference only and shall not form part of these Mortgage Conditions;
- (d) unless otherwise expressly stated, any reference to a numbered clause or schedule shall be a reference to the clause or the schedule with that number in these Mortgage Conditions;
- (e) all references to time and date shall be the time and date in Hong Kong;
- (f) all references to a document shall include that document as amended, supplemented or replaced from time to time; and
- (g) reference to any statutory provision shall be deemed also to refer to any modification, supplement or re-enactment of such statutory provision or to any statutory instrument, order or regulation made under any of them.

2. Forming part of the Mortgage

These Mortgage Conditions shall form part of the Mortgage and must be read together with the Mortgage.

3. Your agreement to pay

- 3.1 You agree to pay the Secured Liabilities when they have become due and payable under the relevant Facility Agreement.
- 3.2 You agree to pay the Expenses immediately on our written demand. Any unpaid Expenses shall be added to, and form part of, the Secured Liabilities.
- 3.3 You agree that before we demand payment of the Secured Liabilities or the Expenses from you, we do not need to demand payment from any other person first or to take any other action to obtain payment (such as selling the Property or any other security we hold).
- 3.4 If you fail to pay any Expenses on our written demand, you shall pay us default interest at the rate specified in the Mortgage on the unpaid amount from the date(s) on which the Expenses were incurred until the date of actual payment. You shall pay any default interest accrued under this clause 3.4 immediately on our written demand. Otherwise, any unpaid default interest so accrued shall be added to, and form part of, the Secured Liabilities.

4. Payment without deduction

- 4.1 Each payment made by you under the Mortgage shall be made without any deduction of any tax or similar charge unless you are obliged by law to make that deduction. If you need to make that deduction, you shall pay us any extra sum necessary to ensure that we receive the full amount due from you under the Mortgage.

4.2 Each payment made by you under the Mortgage shall be made without any deduction of any sum we owe you, and you shall pay us the amount of the Secured Liabilities as demanded by us from time to time.

5. Indemnity

5.1 You undertake with us (for ourselves and as agent for each of our directors, officers and employees, each an “**Indemnified Person**”) that you shall indemnify and keep indemnified each Indemnified Person from and against all liabilities, reasonable losses and damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) which may be brought against, suffered or incurred by, any Indemnified Person by reason of your breach of the Mortgage or any breach of your representations and warranties given under the Mortgage.

5.2 Any amount which you are liable to pay us under clause 5.1 shall be treated as, and form part of, the Expenses.

6. Release of the Mortgage

6.1 When the Secured Liabilities are fully repaid and you have performed all your obligations under the Mortgage, we shall, at your cost, execute a document in the usual form to:

- (a) acknowledge receipt of the full amount of the Secured Liabilities;
- (b) release or discharge the Mortgage; and
- (c) (if your interest in the Property is an equitable interest) re-assign the Property to you.

6.2 Release or discharge of the Mortgage, acknowledgement of receipt or re-assignment of the Property made pursuant to clause 6.1, shall be subject to the condition that no money we receive in repayment of the Secured Liabilities shall be subsequently returned or reduced pursuant to any law.

6.3 If we have released or discharged the Mortgage, acknowledged receipt of the full amount of the Secured Liabilities or re-assigned the Property to you pursuant to clause 6.1, and are later obliged under the law to return any money paid to us in repayment of the Secured Liabilities, you shall:

- (a) remain liable under the Mortgage as if we had never received that money; and
- (b) at your cost, execute any document and do any thing necessary to charge (if your interest in the Property is a legal estate) or assign (if your interest in the Property is an equitable interest) your full interest in the Property to us,

and subject to the rights acquired by any purchaser of the Property in good faith for valuable consideration without notice, we shall be entitled to enforce the Mortgage as if that release or discharge of the Mortgage, acknowledgement of receipt or re-assignment of the Property, had never occurred.

6.4 If we agree to release, discharge or re-assign the Property at your request without receiving full payment of the Secured Liabilities, you shall remain liable for the remaining balance of the Secured Liabilities.

7. Your representations and warranties

You represent and warrant to us that at the date of the Mortgage:

- (a) you are the sole beneficial owner of the Property and have a good and marketable title to the Property;
- (b) no encumbrance or security exists over the Property and the Property is not subject to any tenancy or licence to occupy (except as already disclosed to and acknowledged by us in writing) in favour of any other person;
- (c) you have not breached any law, rule, regulation, judgment, order, agreement, authorization or obligation applicable to or binding on you by signing the Mortgage;
- (d) the particulars of the Property set out in the Mortgage are true, accurate and complete;
- (e) each of the Government Lease and the Deed of Mutual Covenant is valid and in force, and has not been amended so far as it relates to the Property and no circumstances exist which entitle the government of Hong Kong to terminate the Government Lease;
- (f) you have fully and punctually paid the premium, rent and other money payable in respect of the Property under the Government Lease or the Deed of Mutual Covenant, and have observed the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they affect the Property;
- (g) you have fully and punctually paid the management fees, rates, taxes and other outgoings and money payable in respect of the Property;
- (h) no litigation, arbitration or administrative proceedings in relation to the Property are currently taking place or threatened;
- (i) no Event of Default, or any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed, has happened;
- (j) all the information (including your personal data and financial information) you supplied to us in connection with the Mortgage, the Secured Liabilities and the Property is true, accurate and complete;
- (k) you have not omitted to disclose to us in writing any information which, if disclosed to us, may affect our decision as to whether to advance any money to you or the amount to be advanced to you;
- (l) you have the necessary power, capacity and legal right to sign or execute the Mortgage and to perform your obligations under the Mortgage;
- (m) you have obtained all necessary approvals for the signing or execution of and the validity of the Mortgage and the performance of your obligations under the Mortgage, and those approvals shall remain in force so long as the Mortgage is in force; and
- (n) (if you are a corporation) you are duly incorporated and are validly existing under the laws of the place of your incorporation, and have duly authorized your officer(s) to sign or execute the Mortgage and have the power to perform all your obligations under the Mortgage.

8. Your obligation to take out insurance policy for the Property

- 8.1 You shall insure and keep the Property insured at your cost so long as the Mortgage is in force against losses and damage caused by fire and other related perils as we may require, for the insured amount and with an insurance company as we require and on the terms and conditions as we approve. If you fail to perform your obligations under this clause 8.1, we may do so at your cost.
- 8.2 You shall provide us with the original or a copy (as required by us) of any insurance policy taken out for the Property for our records.
- 8.3 You shall ensure that our interest is noted by endorsement in the form we require on the insurance policy for the Property. If so requested by us, you shall take out the insurance policy for the Property in the joint names of you and us, or assign to us your benefit and interest in the insurance policy for the Property.
- 8.4 You shall punctually pay the premium or other money payable under the insurance policy for the Property, and shall provide us with the original or a copy (as required by us) of the receipt for that payment.
- 8.5 You agree that the insurance policy for the Property shall contain provisions to the effect that any payment of claims made under that insurance policy will be paid directly to us. If you receive payment of any claim under any insurance policy for the Property, you shall hold any money so received on trust for us.
- 8.6 You shall notify us immediately if you wish to make a claim under any insurance policy for the Property.
- 8.7 We shall be entitled to act for you to settle or adjust any claim you may have under any insurance policy for the Property. If we decide to do so, you shall sign all necessary documents and do all necessary things to enable us to do so.
- 8.8 If any money is paid out as a settlement or compensation for a claim under any insurance policy for the Property, we shall be entitled to choose to use that money either to repay or reduce the Secured Liabilities or to repair or rebuild the Property.
- 8.9 If we decide that money paid out in clause 8.8 shall be used to repair or rebuild the Property, you shall use the money for that purpose only and at your own expense make up any deficiency so as to make sure that the repair or rebuilding is done to a standard comparable to that before the damage occurred.
- 8.10 You shall not do, or cause or allow to be done, anything which may:
 - (a) reduce the scope of insurance cover or the insured amount for the Property;
 - (b) increase the premium of any insurance policy for the Property;
 - (c) prevent or hinder any claim being settled in full under any insurance policy for the Property;
 - (d) cancel, end or invalidate any insurance policy for the Property; or
 - (e) adversely affect any insurance policy for the Property.

9. Your positive obligations

Unless we otherwise agree in writing, you undertake to do the following things at your cost so long as the Mortgage is in force:

- (a) to remain the sole beneficial owner of the Property and to hold a good and marketable title to the Property;
- (b) to inform us promptly of the existence of any circumstances which entitle the government of Hong Kong to terminate the Government Lease so far as it relates to the Property;
- (c) to keep the Government Lease valid and in force so far as it relates to the Property;
- (d) to pay fully and punctually all premiums, rents, management fees, rates, taxes and other outgoings and money payable in respect of the Property or under the Government Lease or the Deed of Mutual Covenant and to provide us promptly with reasonable evidence of that payment on our demand;
- (e) to observe the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they relate to the Property;
- (f) to keep the Property in good repair and condition;
- (g) to allow ourselves, our workmen, the Receiver and the Receiver's workmen to enter the Property to do any necessary repairs if you fail to keep the Property in good repair and condition;
- (h) to allow ourselves, our appointed representative, the Receiver and the Receiver's appointed representative to inspect the Property at all reasonable times upon giving reasonable notice and those persons shall not be treated as having taken possession of the Property by that inspection;
- (i) to send us, within 7 days of your receipt, a copy of any notice served on you or the Property demanding any overdue payments in respect of the Property or threatening any litigation, arbitration or administrative proceedings in respect of the Property;
- (j) to inform us promptly of any dispute or complaint concerning the Property and the outcome of that dispute or complaint, and to send us, within 7 days of your receipt, a copy of all notices or papers sent to or by you or your representative in relation to that dispute or complaint;
- (k) to comply with all laws, rules, regulations, judgments, orders, agreements and authorizations in relation to the Property;
- (l) to send us, within 7 days of your receipt, a copy of any judgment or order in respect of the Property and all the orders, notices and proposals issued in respect of the Property by any governmental authority or manager of the Building and affecting the validity of the Mortgage;
- (m) to comply with any order, notice or proposal issued in respect of the Property by any governmental authority or manager of the Building;
- (n) at our request, to make or join us in making a claim, a defence or a response in accordance with our instructions in any litigation, arbitration or administrative proceedings in respect of the Property;

- (o) at our request, to make or join with us in making an objection, appeal or a response in accordance with our instructions in relation to any judgment, order, notice or proposal issued in respect of the Property by any court, governmental authority or manager of the Building, or any dispute or complaint concerning the Property;
- (p) to observe the terms and conditions of the Facility Agreement;
- (q) to keep us informed promptly of any change and any incorrect, inaccurate or incomplete information in the particulars of the Property set out in the Mortgage, and to correct promptly that incorrect, inaccurate or incomplete information;
- (r) to provide us promptly with any information about yourself or the Property as we may request from time to time for any of the following purposes:
 - (i) enforcement of the Mortgage;
 - (ii) preservation of the Property; or
 - (iii) recovery of the Secured Liabilities;
- (s) to inform us promptly of any change in the information (including your personal data and financial information) you supplied to us in respect of the Mortgage, the Secured Liabilities or the Property;
- (t) to deliver to us all documents of title relating to the Property for our custody;
- (u) to inform us promptly of the happening of any Event of Default or any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed;
- (v) to pay us all costs and expenses reasonably incurred by us in the production of photocopies, certified copies or originals of any document in relation to the Property or the Mortgage at the request of yourselves or your solicitors;
- (w) to keep the Mortgage and the Facility Agreement valid and in force, to maintain the value of the Property and to enable us and the Receiver to exercise the respective rights and powers of ourselves and the Receiver under the Mortgage;
- (x) to obtain all necessary approvals for the validity of the Mortgage and the Facility Agreement and the performance of your obligations under them;
- (y) to sign any document and to do any thing necessary to keep valid and in force all the approvals obtained for the signing or the validity of the Mortgage and the Facility Agreement or the performance of your obligations under them;
- (z) if at any time the power of sale contained in the Mortgage becomes exercisable by us, upon notice by us, to immediately quit and deliver up vacant possession of the Property to us or whomever we may nominate or direct;
- (aa) to do everything required by the Mortgage at your own cost;
- (bb) at our request at any time sign and execute all documents (including a legal charge if your equitable interest in the Property becomes a legal interest (if applicable)) and do all acts and things as we may reasonably require for perfecting the security intended to be created under the Mortgage;

(Paragraphs (cc) and (dd) below are applicable only if you are a corporation or firm.)

- (cc) to keep proper accounting records in respect of your business; and
- (dd) to engage a firm of qualified auditors to audit and certify your financial statements, and to provide those audited and certified financial statements to us within such period as set out in the relevant Facility Agreement.

10. Your negative obligations

You agree not to do, or cause or allow to be done, the following things without our prior written consent so long as the Mortgage is in force:

- (a) to sell, transfer, sub-divide or dispose of the Property;
- (b) to create any rights or interests or to impose obligations (including any security) in favour of any other person over the Property;
- (c) to use the Property for unlawful or immoral uses or any use not permitted under the Deed of Mutual Covenant or the Government Lease;
- (d) to pull down or to make any structural alterations or additions to the Property unless required by law, the Government Lease or the Deed of Mutual Covenant, or to make any illegal structures to the Property;
- (e) to do anything which may decrease the value of the Property or prejudice the security created under the Mortgage;
- (f) to apply for any planning permission, building consent or any grant for improvements or repairs in respect of the Property; or
- (g) to vary or give up any term or right contained in the Government Lease or the Deed of Mutual Covenant.

11. Occupying the Property

11.1 Without our prior written consent, you shall not do the following things:

- (a) enter into any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (b) vary or give up any term of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (c) accept early termination of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement; or
- (d) terminate or do anything to terminate any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property in case of any breach by the other party to that lease, tenancy or agreement.

11.2 Subject to clause 11.1, you shall do the following things at your cost:

- (a) send us certified copies of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property and any of its subsequent variation or modification within 14 days from the date of that lease, tenancy or agreement or its variation or modification, or if any such lease, tenancy or agreement has been stamped or adjudicated, a certified copy with stamping or adjudication;
- (b) perform all your obligations under any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (c) do your best in good faith to ensure the performance of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement;
- (d) inform us promptly of any breach of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement;
- (e) inform us promptly of any request to extend or vary any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement; and
- (f) inform us promptly of any modification to any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property.

12. Renewal, extension and re-grant of the Government Lease

12.1 If the government of Hong Kong offers a renewal, extension or re-grant of the Government Lease, you shall:

- (a) forthwith accept that offer;
- (b) satisfy promptly all the conditions of that offer and pay promptly any premium and other consideration as demanded;
- (c) upon completion of renewal, extension or re-grant of the Government Lease, at your own cost execute a mortgage of the Property under the renewed, extended or re-granted Government Lease in our favour in the same form as the Mortgage with those consequential amendments as the circumstances may require; and
- (d) pending the signing of the mortgage pursuant to clause 12.1(c), hold your interest in the Property under the renewed, extended or re-granted Government Lease on trust for us.

12.2 Upon expiry of the Government Lease, if you fail to obtain a renewal, extension, re-grant or new grant of the Government Lease, you shall provide additional security as we require for the Secured Liabilities.

13. Events of Default

Each of the following events shall be an Event of Default:

- (a) you fail to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which you are party;
- (b) any of your representations or warranties made to us in the Facility Agreement or the Mortgage is breached or found to have been incorrect;

- (c) you fail to repay any debt due and payable;
- (d) you admit your inability to repay any debt due and payable;
- (e) any action is taken to enforce any security created by you;
- (f) any law, rule, regulation, judgment or order, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (g) any order, notice or proposal issued by any governmental authority or under any law or regulation, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (h) the Property is destroyed or damaged;
- (i) any governmental or other authority re-enters or re-takes or expresses an intention or any proposal to re-enter or re-take possession of the Property;
- (j) the Government Lease, so far as it relates to the Property, is terminated;
- (k) the Property is compulsorily purchased or acquired (whether or not any compensation is paid);
- (l) the Facility Agreement or any other security provided to us becomes invalid or unenforceable or is terminated;
- (m) it becomes impossible to perform your obligations under the Facility Agreement or the Mortgage;
- (n) any third party applies for a court order in respect of the Property;
- (o) any third party occupies or takes possession of the Property without our prior written consent;
- (p) you or any other security provider in respect of the Secured Liabilities enters into or proposes to enter into an arrangement in respect of your or his debts with or for the benefit of your or his creditors;
- (q) any necessary approval for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement has not been obtained;
- (r) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities becomes ineffective;
- (s) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities is modified in a way which, in our reasonable opinion, might affect materially and adversely your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Secured Liabilities;

- (t) any action taken or omission by you or any other security provider which in our reasonable opinion might materially and adversely affect your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Secured Liabilities;

(Paragraph (u) below is applicable if you are an individual person.)

- (u) a petition for your bankruptcy is presented to the court and is not discharged within 7 days;

(Paragraphs (v) to (dd) below are applicable if you are a corporation or firm.)

- (v) a receiver or similar officer is appointed over any part of your business or assets;
- (w) creditors take possession of any part of your business or assets;
- (x) a legal process is commenced against any part of your business or assets and is not discharged within 7 days of the commencement of that legal process;
- (y) a petition is presented to the court, or a legal process commenced, or an order made, or a resolution passed, for your winding-up, administration, reorganization or dissolution;
- (z) you dispose of, or express your intention to dispose of, any substantial part of your business or assets;
- (aa) any substantial part of your business or assets is compulsorily purchased or taken over or acquired (whether or not any compensation is paid);
- (bb) you cease, or express your intention to cease, to carry on any substantial part of your business;
- (cc) you make or express your intention to make, any significant change to the nature or scope of your business; and
- (dd) any material and adverse change in your business or financial condition which, in our reasonable opinion, might materially or adversely affect your ability to perform your obligations under the Facility Agreement or the Mortgage.

References to "you" in paragraphs (u) to (dd) above include a security provider for the Secured Liabilities.

14. Enforcement of the Mortgage

If an Event of Default happens, the Mortgage shall become enforceable; the Secured Liabilities shall become immediately due and payable; and we shall be entitled to do the following things:

- (a) terminate all banking, credit or other facilities or accommodation provided to you so that our obligations under all those banking, credit or other facilities or accommodation to further advance money to you shall cease immediately;
- (b) require you to pay the Secured Liabilities;
- (c) exercise all powers given to us as mortgagee by law (including the Ordinance) (as varied or extended by the Mortgage); and
- (d) exercise all powers given to us by the Mortgage.

15. Default interest rate and charges

If you fail to pay the Secured Liabilities (except for the unpaid Expenses) in accordance with clause 14(b) or as otherwise required under the Facility Agreement, you shall pay us default interest, late charges and/or other handling fees on the unpaid amount at any rate and upon any terms as specified in the relevant Facility Agreement.

16. Appointment of the Receiver

16.1 If an Event of Default happens, we shall be entitled to appoint the Receiver without giving further notice to you or obtaining your prior consent.

16.2 Subject to clause 17.2, you and we agree that section 50 of the Ordinance shall apply to the appointment of the Receiver.

16.3 The Receiver shall have:

- (a) all powers given to the Receiver as a receiver by law (including the Ordinance) (as varied or extended by these Mortgage Conditions); and
- (b) all powers given to the Receiver by the Mortgage.

17. Our powers and those of the Receiver

17.1 If an Event of Default happens, each of ourselves and the Receiver shall have the power:

- (a) to sell or otherwise dispose of or deal with the Property, in any manner, at any price (whether in cash or in any other form) and on any terms as we or the Receiver think fit;
- (b) to assign the Property either in our name or in your name in exercise of our or the Receiver's power under the Mortgage;
- (c) to enter and take possession of the Property;
- (d) to receive any rent, deposit and profit in respect of the Property and request you to sign and execute an assignment of such rent or profit to us or the Receiver;
- (e) subject to any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property lawfully granted by you in accordance with our prior written consent, to grant any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property on any terms as we or the Receiver think fit;
- (f) to sign any document and do anything as we or the Receiver think fit for the sale, lease or tenancy of the Property or the granting of any other right to occupy or possess the Property pursuant to the Mortgage;
- (g) to insure the Property, and to keep the Property insured, against fire and other risks that we may require, for the insured amount and on the terms as we or the Receiver think fit;
- (h) to carry out all repairs, renovations, alterations, improvements and developments to the Property as we or the Receiver think fit;
- (i) to appoint any agent, workman, professional or non-professional adviser or employee in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage for any remuneration and on any terms as we or the Receiver think fit;
- (j) to delegate any of our or the Receiver's powers and rights under the Mortgage to any person for any remuneration and on any terms as we or the Receiver think fit;

- (k) to incur reasonable costs and expenses in exercise of any of our or the Receiver's powers and rights under the Mortgage;
 - (l) in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage, to raise money on any terms as we or the Receiver think fit, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage **provided that**:
 - (i) the Receiver shall not exercise this power without our prior written consent and we shall not be liable for giving or refusing to give that consent in any way; and
 - (ii) any person lending money to the Receiver as a result of the exercise of this power shall be entitled to assume that the Receiver is entitled to borrow that money and is borrowing that money in accordance with this sub-clause;
 - (m) to institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;
 - (n) to use your name in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage; and
 - (o) to do any other lawful act as we or the Receiver consider necessary or incidental to the exercise of any of our or the Receiver's powers and rights under the Mortgage.
- 17.2 To the extent permitted by any statute, any restriction on the exercise of our or the Receiver's power to sell the Property under the Mortgage including those in the Ordinance shall not apply.
- 17.3 In exercise of our powers and rights under the Mortgage, we shall not be liable to account for any money except for the money we have actually received.
- 17.4 We and the Receiver shall not be liable for any loss arising from the exercise of any of our or the Receiver's powers and rights under the Mortgage unless the loss is caused by our or the Receiver's fraud or gross negligence; however, we and the Receiver shall each be liable only for loss caused by our respective fraud or gross negligence.
- 17.5 Any person dealing with ourselves or the Receiver shall be entitled to assume that:
- (a) we and the Receiver are entitled to exercise all or any of our or the Receiver's powers and rights under the Mortgage;
 - (b) we and the Receiver exercise all or any of our or the Receiver's powers and rights in accordance with the Mortgage;
 - (c) we and the Receiver use all or any of the money received in exercise of our or the Receiver's powers and rights in accordance with the Mortgage; and
 - (d) our or the Receiver's receipt for all or any of the money paid to us or the Receiver shall be a good and sufficient discharge of any person paying that money.

All references in this clause 17 to "we or the Receiver" shall mean either we or (as the case may be) the Receiver.

18. Your remedy

Your remedy for any unauthorized, improper or irregular exercise of our or the Receiver's powers and rights under the Mortgage shall be in damages only.

19. Application of proceeds of security realization

Subject to applicable law, we and the Receiver shall apply any money we or the Receiver receive under the Mortgage in the following order of priority:

- (a) the Expenses;
- (b) in payment of the Secured Liabilities (with interest being paid first) pursuant to the Mortgage; and
- (c) paying the remaining balance to you or any other person who is entitled to receive that money.

20. Effects of bankruptcy or insolvency laws

- 20.1 If we receive any payment or security from you or any other person for the Secured Liabilities, and are later obliged under any bankruptcy or insolvency laws to restore our position to what it would have been if that payment or security had not been received, then you shall be liable under the Mortgage as if we had never received that payment or security.
- 20.2 We shall be entitled, before any order under those bankruptcy or insolvency laws is made against us, to agree or settle any claim arising under those laws on any terms as we think fit without your prior consent.
- 20.3 If we do agree or settle a claim pursuant to clause 20.2, you shall be liable under the Mortgage as if a court order had been made containing the terms we have agreed in relation to that claim.
- 20.4 If we have given a release, discharge or re-assignment of any security (including the Mortgage) given by you in our favour in return for any payment or security from you or any other person, then that release or discharge shall be conditional upon no claims being made against us under the bankruptcy or insolvency laws in relation to that payment or security.

21. The Expenses

The Expenses shall mean:

- (a) all reasonable costs and expenses (including legal costs) incurred by us or (as the case may be) the Receiver under or in connection with the Mortgage, for example, for the following purposes:
 - (i) preparing, negotiating, signing or registering the Mortgage;
 - (ii) exercising any of our or the Receiver's powers under the Mortgage;
 - (iii) recovering or attempting to recover the Secured Liabilities;
 - (iv) protecting or enforcing any of our or (as the case may be) the Receiver's rights under the Mortgage;
 - (v) preserving or attempting to preserve the Property;
 - (vi) making any claim or defending any claim against us or the Receiver in respect of the Secured Liabilities, the Mortgage or the Property;

- (vii) preparing, signing or registering a release of the Mortgage;
 - (viii) certifying receipt of full payment of the Secured Liabilities;
 - (ix) (if your interest in the Property is an equitable interest) preparing, signing or registering all documents or doing all things necessary to re-assign the Property to you upon full payment of the Secured Liabilities;
 - (x) giving or refusing to give our consent under the Mortgage;
 - (xi) (if you fail to perform your obligations under the Mortgage) performing your obligations under the Mortgage; or
 - (xii) taking possession of or selling or leasing or granting other rights to occupy or possess the Property pursuant to the Mortgage; and
- (b) the Receiver's remuneration as reasonably agreed between the Receiver and ourselves; and
 - (c) any amount which you are liable to pay us under clause 5.1.

22. Deductions from other credit balances and lien

You agree that if you fail to pay any part of the Secured Liabilities due and payable under the Mortgage, we shall be entitled to do the following things without giving prior notice to you or any other person:

- (a) use any credit balance in any of your accounts (whether in your own name or in joint names with other persons) with us to pay that unpaid sum to us;
- (b) off set that unpaid sum by any debt or liability we owe you now or in the future;
- (c) have a lien on all of your assets or property held by us; and
- (d) sell any of your assets or property held by us at such price and in such manner at our sole discretion, and use the proceeds to pay such unpaid sum.

23. Payment in other currencies

23.1 The Secured Liabilities shall not be treated as fully paid unless they are fully paid in the currency in which they were incurred.

23.2 If the Secured Liabilities are not paid in a currency in which they were incurred (the "**Original Currency**"), we shall be entitled to convert that currency into the Original Currency within a reasonable period at an exchange rate as we reasonably determine. If there is any shortfall between the Original Currency and the currency in which the Secured Liabilities are actually paid (whether the currency conversion takes place or not), you shall remain liable under the Mortgage for the amount of the shortfall calculated as at the date of currency conversion, or if there is no such currency conversion, as at the date of actual payment.

24. Appointment as your attorney

24.1 By this Mortgage, you appoint, as a separate appointment, each of ourselves, the Receiver, the successors and the assigns of our or the Receiver's rights and powers under the Mortgage, to act as your attorney on his own or jointly with the others. This appointment is given by way of security and is irrevocable so long as the Mortgage is in force.

- 24.2 Your attorneys appointed under clause 24.1 shall have full power to appoint another person as your attorney in replacement for themselves.
- 24.3 Your attorneys appointed under clause 24.1 shall have full power to, in your name or on your behalf, sign, seal and deliver all documents and do all things as they think fit for:
- (a) performing any of your obligations (which you fail to perform) under the Mortgage;
 - (b) exercising any power or right given to us or the Receiver under the Mortgage; or
 - (c) giving to us the full benefits of the Mortgage.
- 24.4 You agree to and hereby ratify and confirm any document signed or anything done from time to time by your attorneys appointed under clause 24.1.

25. Evidence of the Secured Liabilities

A certificate duly signed by our officer as to the amount of the Secured Liabilities, the Expenses, any interest, default interest, late charge or handling fee is conclusive evidence against you for all purposes in the absence of obvious error or fraud.

26. Suspense account

- 26.1 On the happening of an Event of Default and until the Secured Liabilities have been paid in full, we shall be entitled to hold any money we receive under the Mortgage (other than an amount as shall wholly satisfy the Secured Liabilities) in a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Secured Liabilities.
- 26.2 If we have not already done so pursuant to clause 26.1, all money we receive under the Mortgage shall be treated as having been credited to a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Secured Liabilities, and shall not operate to reduce the amount of the Secured Liabilities.
- 26.3 Amounts standing to the credit of a suspense account pursuant to clause 26.1 or a deemed suspense account pursuant to clause 26.2 shall bear interest at our prevailing rate for deposit accounts with a similar credit balance from time to time.

27. Continuing security

- 27.1 The Mortgage shall be a continuing security securing the Secured Liabilities due, owing or incurred by you to us from time to time. Your liabilities and obligations under the Mortgage shall continue until full payment of the Secured Liabilities, and accordingly shall not be affected or discharged by the happening of any of the following events:
- (a) your death, mental incapacity, bankruptcy, insolvency or liquidation (where applicable) or change of name;
 - (b) any change in the name or constitution of ourselves or our successors or assigns;

- (c) (if you are a partnership or any other organization) any change in the name or membership or constitution of the partnership or organization (in that case, the Mortgage shall continue to bind those persons who make up the partnership or the organization as so constituted for the time being);
- (d) the takeover of yourselves by, your absorption of or your merger with, any other person;
- (e) the takeover of ourselves by, our absorption of or our merger with, any other bank or institution;
- (f) the appointment of a receiver over your business or assets;
- (g) your entry into any arrangement with your creditors to repay your debts or other liabilities; and
- (h) any assignment of the Secured Liabilities, any transfer of the Mortgage or any declaration of trust or other acts affecting our rights in respect of the Secured Liabilities or the Mortgage.

27.2 From time to time, we or the Receiver may:

- (a) give any other security provider for the Secured Liabilities more time to pay money due and payable;
- (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of any other security provider for the Secured Liabilities;
- (c) make any other arrangement, compromise or settlement with any other security provider for the Secured Liabilities;
- (d) take or deal with any other security or legal commitment for the Secured Liabilities;
- (e) fail to take any other security or legal commitment for the Secured Liabilities; or
- (f) neglect, release, enforce or choose not to enforce any of our rights under the Mortgage or any other security or legal commitment for the Secured Liabilities.

If we or the Receiver carry out any of the above acts in this clause 27.2 or do or fail to do anything else, this shall not affect our rights or your liabilities under the Mortgage even if it would have done so had this clause 27.2 not existed.

27.3 Your liabilities under the Mortgage shall not be affected by any of the following matters:

- (a) the invalidity of any other security or legal commitment for the Secured Liabilities;
- (b) the invalidity of or irregularity in entering into the Facility Agreement or the Mortgage;
- (c) lack of power by you to enter into, or perform any of your obligations under, the Facility Agreement or the Mortgage; or

- (d) any act, omission, event or circumstance which may operate to prejudice, adversely affect or discharge the Mortgage had this clause 27.3 not existed.

28. Other general matters

- 28.1 Exercising or failing to exercise a right under the Mortgage shall not prevent us or the Receiver from exercising any other right under the Mortgage.
- 28.2 Our or the Receiver's rights under the Mortgage may be exercised as often as we or (as the case may be) the Receiver think fit.
- 28.3 Exercising part of a right under the Mortgage shall not prevent us or the Receiver from subsequently exercising that right to the fullest extent.
- 28.4 A delay in exercising a right or the non-exercise of a right under the Mortgage shall not prevent us or the Receiver from exercising that right subsequently.
- 28.5 Our rights under the Mortgage shall be in addition to any other rights which we may have under the law.
- 28.6 We shall be entitled to employ debt collecting agent(s) to collect any sum due but unpaid by you under the Mortgage.

29. Severability

If at any time, any provision of the Mortgage is or becomes invalid, illegal or unenforceable under the law of any jurisdiction, this shall not affect its validity, legality or enforceability under the law of any other jurisdiction nor the validity, legality or enforceability of any other provision of the Mortgage.

30. Amendments

Any amendment of any provision of the Mortgage shall be in writing and signed by you and us.

31. Further security

If in our reasonable opinion from time to time, the Property is not a sufficient security for the Secured Liabilities, we shall be entitled to request you to provide further security for the Secured Liabilities and you shall provide promptly on our written demand further security to our satisfaction.

32. Assignment or transfer of rights and obligations

- 32.1 We shall be entitled to assign or transfer at any time all or any of our rights or obligations under the Mortgage to any person without your consent.
- 32.2 You shall not assign or transfer any of your rights or obligations under the Mortgage without our prior written consent.
- 32.3 You shall sign any document and do any thing as we require for effecting any assignment or transfer of our rights or obligations under the Mortgage.
- 32.4 Once the assignment or transfer of our rights or obligations under the Mortgage has become effective, any person who takes over our rights or (as the case may be) obligations under the Mortgage shall have exactly the same rights or (as the case may be) obligations as we had under the Mortgage before that assignment or transfer and we shall be released from those rights or (as the case may be) obligations.

33. Disclosure of your information

- 33.1 You agree to allow us to disclose your information subject, in the case of personal information, to the provisions of Personal Data (Privacy) Ordinance Cap.486 to those persons or for those purposes as expressly stated in our data privacy statement published from time to time relating to the above ordinance, a copy of which has been made available to you.
- 33.2 You agree to allow us to provide to any other security provider for the Secured Liabilities a copy of the Mortgage, these Mortgage Conditions, the Facility Agreement and any agreement in relation to the Secured Liabilities.

34. The Mortgage independent of any other guarantee or security

- 34.1 The Mortgage shall be independent of, and in addition to, any other guarantee or security which we presently have or may in the future have in relation to the Secured Liabilities.
- 34.2 If we have any other security for the Secured Liabilities, we shall be entitled to choose which security we will enforce or the order of enforcement.
- 34.3 We shall not be obliged to enforce any other security for the Secured Liabilities or to take any steps or proceedings before we enforce the Mortgage.

35. No right to our security

You agree that you shall not be entitled to receive any money from the sale or other dealing of any security (including the Property) which we presently hold or may acquire in the future in respect of the Secured Liabilities, or to share in any other money received by us to reduce the Secured Liabilities until all the Secured Liabilities have been paid in full.

36. Postponement of your rights

- 36.1 Until the Secured Liabilities have been paid in full, you shall not be entitled to do any of the following things without our prior written consent:
- (a) exercise or enforce any right (including any right of set-off) against any other security provider for the Secured Liabilities; or
 - (b) pursue any claim against any other security provider for the Secured Liabilities; or
 - (c) make a claim in competition with us in the bankruptcy or insolvency of any other security provider for the Secured Liabilities; or
 - (d) receive the benefit of any payment or distribution or security from any other security provider for the Secured Liabilities.
- 36.2 You shall give us the benefit of each claim and pay us of all money you receive in breach of clause 36.1 and in the meantime shall hold them on trust for us.
- 36.3 If you take any security referred to in clause 36.1(d), (whether with or without our consent), you shall hold that security on trust for us and shall pay us all money you receive in respect of that security.

37. Joint and several liability

- 37.1 If there is more than one of you, the Mortgage shall bind all of you jointly and each of you. We shall be entitled to discharge or come to an arrangement with any one of you on any terms as we may agree without affecting our rights and remedies against the others.
- 37.2 If there is more than one of you, the Mortgage will bind each of you separately even if it is unenforceable against all or any of you.

38. Notices and demands

- 38.1 Any notice or demand to be given under the Mortgage shall be in writing and shall be given to the relevant party in any one or more of the following ways:
- (a) by serving the notice or demand in a way which is prescribed by law;
 - (b) by sending the notice or demand by post to the address of the relevant party set out in the Mortgage (or the last address provided to the sender). In this case, the notice or demand shall be treated as given on the second business day after the posting date;
 - (c) by delivering the notice or demand by hand to the address of the relevant party set out in the Mortgage (or the last address provided to the sender). In this case, the notice or demand shall be treated as given at the time of delivery; or
 - (d) by sending the notice or demand by fax to the fax number of the relevant party set out in the Mortgage (or the last fax number provided to the sender). In this case, the notice or demand shall be treated as given at the time of dispatch.
- 38.2 If there is more than one of you, a notice or demand served by us on any one of you shall be a sufficient notice or demand on all of you.
- 38.3 If you are an individual person, any notice or demand served after your death in accordance with this clause 38 shall be deemed to be a sufficient notice or demand to your personal representative(s).

39. Governing law and jurisdiction

- 39.1 The Mortgage shall be governed by, and construed in accordance with, Hong Kong law.
- 39.2 You agree that any proceedings relating to the Mortgage shall only be brought by you in a court of competent jurisdiction in Hong Kong. However, we shall be entitled to take legal proceedings against you under the Mortgage in any country where you or your assets may be located.

40. Language

The Mortgage (including these Mortgage Conditions) is written in English and accompanied by its Chinese translation. The Chinese translation is for reference purposes and only the English version is intended to have legal effect.

標準按揭契據

由香港按揭文件標準化計劃統籌委員會制定

由香港按揭證券有限公司召集



香港按揭文件標準化計劃

統籌委員會會員

召集人

香港按揭證券有限公司

代表人

彭醒棠先生
總裁(統籌委員會主席)
張秀芬律師
首席法律顧問及公司秘書
李詠賢律師
法律顧問(統籌委員會秘書)

會員

美國運通銀行

周秉樑先生
零售信貸業務總監

美國亞洲銀行

冼超風先生
副總裁

中國銀行

錢麗顏女士
放款部經理

東亞銀行

張經瑜律師
法律顧問

浙江第一銀行

鄭景開律師
副總經理兼首席法律顧問

道亨銀行

沈銘誠先生
法律部高級經理

第一太平銀行

蔡承業先生
高級副總裁

惠譽國際評級有限公司

Mr. Ben McCarthy
董事

恒生保險有限公司

曾婉儀女士
高級經理

香港大律師公會

湯家驊大律師
資深大律師

香港上海滙豐銀行有限公司

侯瑞芸律師
法律顧問

香港大學法律系

詩鴻屏律師
前副教授

香港律師會

夏向能律師
的近律師行合夥人

穆迪亞太有限公司

葉敏先生
結構融資部董事總經理

渣打銀行

馬卓筠律師
法律及監察顧問

United Guaranty Mortgage Indemnity
Company

關綺蕙女士
Associate Director of Insurance Operations

草擬副委員會會員

香港按揭證券有限公司

第一太平銀行

香港大律師公會

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香港大學法律系

香港律師會

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代表人

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(草擬副委員會主席)

李詠賢律師
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高級副總裁

湯家驊大律師
資深大律師

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法律顧問

詩鴻屏律師
前副教授

夏向能律師
的近律師行合夥人

馬卓筠律師
法律及監察顧問

謹此鳴謝下列各人士及機構對按揭契據及擔保及彌償保證契據(下稱「標準文件」)所付出的重大努力和寶貴時間：

烈顯倫法官，GBM，對標準文件提出寶貴意見。

律政司法律草擬科及其代表嚴元浩先生，SBS，JP(法律草擬專員)，對標準文件的中文譯本作出詳細審閱。

高偉紳律師行及其代表鄧鳳雯律師(合夥人)，提供協助草擬標準文件的中文譯本。

我們亦感謝下列諮詢機構對標準文件提出寶貴意見和建議：

消費者委員會

律政司

香港銀行公會

香港有限牌照銀行及接受存款公司公會

香港大律師公會

香港金融管理局

土地註冊處

香港大學法律系

香港律師會

規劃地政局

香港按揭文件標準化計劃統籌委員會

2001年7月

香港按揭文件標準化計劃 (下稱「計劃」)

按揭契據指導說明

1. 本按揭契據是由計劃統籌委員會制定的按揭契據的標準格式文書。
2. 計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除對本按揭契據的內容以及對任何承按人或其他人因與本按揭契據之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭契據的承按人或其他人必須就本按揭契據對其擬採用的目的的合適性自己尋求法律意見。
3. 本按揭契據僅為一份按揭契據的建議格式。承按人和按揭人採用此按揭契據與否屬自願性，而非硬性規定的。在決定是否採用本按揭契據時，承按人應考慮本按揭契據是否與承按人本身之運作程序及貸款交易之複雜性配合。
4. 如有任何承按人希望採用本按揭契據，應予完整採用。對本按揭契據所作的任何變動或修改，均應促使按揭人注意，並應向按揭人清楚說明，所使用的經變動或修改的格式文本，並非由統籌委員會通過的本按揭契據的標準格式文本。
5. 本按揭契據對已建竣的住宅物業設置法定押記，以抵押按揭人償還向其授予之任何銀行融資和貸款及履行按揭人根據按揭契據下之責任。本按揭契據是一份由兩方訂立的格式文書，可由個人按揭人簽立，亦可由法團按揭人簽立。
6. 按揭契據由兩部分組成：(a)空白表格部分和(b)按揭條件(2001年版)。
7. 空白表格部分中包含若干空格，用於填寫按揭物業、承按人、按揭人及與按揭有關的息率和違約利息息率的詳情。
8. 按揭條件(2001年版)包含各項按揭的標準條款和條件。承按人應注意現時草擬的按揭契據並非「應要求」即須作出償還的按揭，而承按人為符合第3條款和第8條款可能須對其現行的相關運作程序作出變更，故此應特別注意這兩條條款。
9. 為了遵守《個人資料(私隱)條例》的規定，承按人如未作以下安排，則應該：
 - (a) 在按揭人簽署按揭申請表之前，向按揭人提供一份為承按人所採用的最新資料私隱聲明小冊子；
 - (b) 確保按揭申請表中有條款提及承按人所採用的最新資料私隱聲明，並務請按揭人在簽署按揭申請表之前先通讀此資料私隱聲明；或
 - (c) 在按揭人簽署按揭申請表之前，先向按揭人通讀承按人所採用的最新資料私隱聲明。

10. 當按揭人出售物業時，若承按人已事前將其於按揭契據的權利和利益轉讓予其受讓人，則承按人應向按揭人或他／她的代表律師提供所有承按人惠及其受讓人簽立的轉讓文件的核證副本，以供按揭人履行其需證明妥善業權的責任，而承按人不應就該等核證副本收取費用。
11. **按揭人簽署按揭契據之前**，承按人或其代表律師應務請按揭人通讀本按揭契據、空白表格部份的封面上之**重要通告**，及按揭條件(2001年版)封面上之**重要通告**。承按人應告知按揭人，假若他／她希望了解簽署按揭契據後須承擔的各項法律承諾，他／她有權向其自己選定的律師徵詢獨立法律意見。
12. 按揭人只應在按揭契據經填妥的英文版空白表格部分的簽名頁上簽署姓名，而不應簽署在其中文譯本上。中文譯本並非用作簽署的文件，乃是用作向按揭人提供按揭契據條款和內容的翻譯。
13. 向土地註冊處辦理按揭契據註冊時，應連同按揭條件(2001年版)，向土地註冊處提交經填妥並簽署的空白表格部分，以辦理註冊。

香港按揭文件標準化計劃統籌委員會

2001年7月

按揭契據

重要通知：

本按揭是一份重要的法律文件。按揭條件構成本按揭的一部分。在簽署本按揭之前，務請你小心閱讀本按揭和按揭條件。你有權向你自己選定的律師徵詢獨立的法律意見，以確保你明白按揭條件內所載的條款和條件、你所作的承諾和你簽署本按揭的全部後果。

你簽署本按揭後，在法律上即受本按揭的條款和條件（包括按揭條件）的約束。如你們多於一人簽署本按揭，本按揭的條款和條件將對你們一起具有共同約束力，亦對你們每人有各別約束力。因此，你們一起須共同負責而你們每人亦須各別負責繳付本按揭所抵押的有抵押債務。

你向我們繳付有抵押債務的責任不受本按揭所影響。除還款的責任外，如你不按照本按揭的條款和條件向我們繳付有抵押債務，我們有權取得物業的管有權、出售物業和以出售物業所得利益清償你欠我們的任何款項。如出售物業所得利益不足夠清償你欠我們的款項，我們可以向 you 申索餘額。

你確認你已獲得按揭條件及任何關乎有抵押債務的協議之文本。

香港按揭證券有限公司同意任何人以不牟利性質使用、複製及向公眾分發本按揭契據的全文。任何人絕對不得違反以上條件出售或分發本按揭契據。香港按揭證券有限公司及香港按揭文件標準化計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除任何對本按揭契據的內容以及對任何承按人或任何其他人士因與本按揭契據之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭契據的承按人或任何其他人士必須就本按揭契據對其擬採用的目的的合適性自己尋求法律意見。

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本按揭於〔 〕年〔 〕月〔 〕日訂立

A部： 本按揭的簽署各方

你： 〔按揭人姓名或名稱〕，*住址⁽¹⁾／在香港的註冊辦事處⁽²⁾／在香港的主要營業地點⁽²⁾位於〔 〕，*香港身份證⁽¹⁾／護照⁽¹⁾／商業登記⁽²⁾／公司⁽²⁾號碼〔 〕。

我們： 〔承按人銀行名稱〕，*在香港的註冊辦事處／在香港的主要營業地點位於〔 〕。

B部： 定義

在本按揭中，下列詞語具有下列涵義：

- 樓宇** 指〔位於地段之上的樓宇或發展項目的描述〕；
- 公契** 指〔關乎物業的任何公契或分公契的描述〕；
- 開支** 指按揭條件第21條所述的各項開支；
- 政府租契** 指關乎地段的*政府租契／新批租約／賣地條件／換地條件／批地條件（編號〔 〕），當中載有下列詳情：
- 日期：〔 〕
簽署方：〔 〕
年期：〔 〕
*續期／修訂／更改：〔 〕
- 地段** 指〔關乎物業的地段編號及段數〕；
- 按揭條件** 指本按揭D部所述的按揭條件（2001年版）；
- 物業** 指本按揭C部所述的物業；
- 有抵押債務** 指你（如你們多於一人，則指你們其中一人或多於一人）到期未付、欠下或招致我們以任何貨幣計算的一切的款項、責任和法律責任（連同任何累算的利息），不論該款項、責任和法律責任是現時或將來的、實際的、或有的、基本或間接的，亦不論是你自己或與任何其他共同欠下的款項、責任和法律責任，並包括有抵押債務的任何部分；
- 我們** 指按揭中用「**我們**」表明的一方，並包括繼承人和受讓人；
- 你** 指按揭中用「**你**」或「**你們**」表明的一方，並包括繼承人和受讓人。

* 刪去不適用者

⁽¹⁾ 只適用於屬個人的按揭人。

⁽²⁾ 只適用於屬法團或商行的按揭人。

C部： 藉本按揭押記的物業

根據本按揭押記的物業受下述原權益保留條款和新權益保留條款所規限，以及附帶下述地役權和從屬權，該物業的詳情如下：

(a) 說明及地址：

地段的〔 〕份相等的分割部分或份數和位於其上的樓宇，連同持有、使用、佔用和享用該樓宇〔住宅單位之說明〕的權利和特權，亦為在〔 〕土地註冊處登記的轉讓契約（編號〔 〕）所附的圖則內*（僅為識別目的）*〔更詳盡地〕顯示的樓宇。

(b) 原權益保留條款及新權益保留條款

〔 〕。

(c) 地役權和其他從屬權

〔 〕。

D部： 本按揭的條款和條件

本按揭收納按揭條件（2001年版）為本按揭的條款和條件。

E部： 本按揭簽署各方的聯絡詳情

我們的聯絡詳情如下：

地址：〔 〕
傳真號碼：〔 〕

我們可以隨時向你發出書面通知更改我們的聯絡詳情。

你的聯絡詳情如下：

地址：〔 〕
傳真號碼：〔 〕

你可以隨時向我們發出書面通知更改你的聯絡詳情。

F部： 物業押記

凡你在物業中的權益為法定產業權，你即以實益擁有人的身分以第一法定押記形式將你在物業中的全部權益押記予我們，作為繳付有抵押債務及履行你根據本按揭的責任的抵押品，該押記受制和受惠於政府租契和公契。

凡你在物業中的權益為衡平法權益，你即以實益擁有人的身分將你在物業中的全部權益轉讓予我們，作為繳付有抵押債務及履行你根據本按揭的責任的抵押品，該轉讓受制和受惠於政府租契和公契。

你轉讓給我們（和同意轉讓給我們，並會應我們要求的格式和內容另外簽立轉讓書）根據現在或將來為你的物業的權益之全部或任何一部分訂

立的任何銷售協議、租約、租賃合約或其他協議應當繳付的所有現在和將來的各項銷售收益、租金、其它款項和按金，連同我們以你的名義興訟追討上述款項和將其有效解除的權力。

G部：未付開支的違約利息息率

按揭條件第3.4條所述的就未繳付開支徵收的違約利息息率為〔 〕。

H部：未付有抵押債務的違約利息息率

按揭條件第15條所述的就未繳付的有抵押債務徵收的違約利息息率如下：

- (a) 對於我們提供給你關乎物業的按揭貸款，息率為〔 〕；
- (b) 對於我們提供給你的任何信貸或其它銀行融資(上述(a)段中提到的按揭貸款除外)，息率為管轄任何此類信貸或其它銀行融資的適用條款和條件中指明的違約利息息率。

你的聲明

你確認在簽署本按揭之前，你已留意到首頁的「重要通知」並特別留意到建議你就本按揭和按揭條件徵詢獨立法律意見的陳述。

〔此乃中文譯本，請簽署在英文本上〕

按揭條件(2001年版)

重要通知：

本按揭條件是一份重要的法律文件。你一旦簽署按揭，本按揭條件將構成你所簽署的按揭的一部分並適用於該按揭，因而在法律上對你具有約束力。如你們多於一人，則本按揭條件對你們一起有共同的約束力並對你們每人有各別的約束力。

你在簽署該按揭之前，應該小心閱讀按揭和本按揭條件。你有權向你自己選定的律師徵詢獨立法律意見，以確保你明白本按揭條件內所載的條款和條件、你的承諾和你所簽署的按揭的全部後果。

香港按揭證券有限公司同意任何人以不牟利性質使用、複製及向公眾分發本按揭條件的全文。任何人絕對不得違反以上條件出售或分發本按揭條件。香港按揭證券有限公司及香港按揭文件標準化計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除任何對本按揭條件的內容以及對任何承按人或任何其他人士因與本按揭條件之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭條件的承按人或任何其他人士必須就本按揭條件對其擬採用的目的的合適性自己尋求法律意見。

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1. 定義

1.1 在本按揭條件中，下列詞語具有下列涵義：

樓宇	指按揭中所述的樓宇；
公契	指按揭中所述的公契，並包括不時對該公契作出的任何修訂；
違約事件	指第13條所列的任何事件；
開支	指第21條所述的各項開支；
融資協議	指我們向你提供任何銀行融資、信貸安排或其他融資或通融所依據的現有或將來的協議，並包括不時對該(等)融資協議作出的變更、補充或取代；
政府租契	指按揭中所述的政府租契，並包括不時對政府租契作出的變更、續期或延期；
香港	指中華人民共和國香港特別行政區；
按揭	指收納本按揭條件、並由你所簽立的以我們為受惠人和用以抵押償還有抵押債務的物業按揭或押記，並包括不時對按揭作出的變更、補充或取代；
條例	指《物業轉易及財產條例》(香港法例第219章)，並包括不時對條例作出的變更、補充或重新制定；
人	指個人、公司、法團、信託、合夥或商號，並包括其繼承人和受讓人；
物業	指按揭所述的物業，並包括物業的任何部分；
接管人	指我們書面委託作為物業接管人和／或管理人的的人(包括我們的人員或僱員)並包括取代接管人的任何人；
有抵押債務	指你(如你們多過一人，則指你們其中一人或多於一人)到期未付、欠下或招致我們以任何貨幣計算的一切的款項、責任和法律責任(連同任何率累算的利息)，不論該款項、責任和法律責任債務是現時或將來的、實際的、或有的、基本或間接的，亦不論是你自己或與任何其他共同欠下的款項、責任和法律責任，並包括有抵押債務的任何部分；
抵押品	指為抵押繳付／償還任何債項、法律責任或責任而作出的文據或抵押品，並包括但不限於押記、按揭、擔保、質押和留置權；

我們	指按揭中用「我們」表明的一方，並包括繼承人和受讓人；
你	指按揭中用「你」或「你們」表明的一方，並包括繼承人和受讓人。

1.2 在本按揭條件中，

- (a) 「他」包括「她」和「它」，而「他的」亦包括「她的」和「它的」；
- (b) 所有詞語同時具有單數詞和複數詞的涵義；
- (c) 標題僅為方便參考而設，不得作為本按揭條件的一部分；
- (d) 除非明文另有所指，否則凡以編號提述某條或附表，即指本按揭條件中標上該編號的條或附表；
- (e) 凡提述時間及日期，即指香港時間及日期；
- (f) 凡提述某份文件，即包括提述對該文件不時作出的修訂、補充或取代；和
- (g) 凡提述任何法定條文時，應視為也提述該等法定條文的修改、補充或重新制訂，以及根據該等法定條文的修改、補充或重新制訂而制訂的任何從屬法例、命令或規例。

2. 構成按揭的一部分

本按揭條件構成按揭的一部分並必須與按揭一併理解。

3. 你同意繳付的協議

- 3.1 你同意在有抵押債務根據有關的融資協議到期應付時繳付有抵押債務。
- 3.2 你同意應我們的書面要求立即繳付開支。任何未付開支須加入有抵押債務，並構成有抵押債務的一部分。
- 3.3 你同意我們要求你繳付有抵押債務或開支前，毋須先要求其他人付款或採取其他行動取得付款（例如出售物業或出售我們持有的其他抵押品）。
- 3.4 如你沒有應我們的書面要求繳付任何開支，你須就未付款項按照按揭指明的息率向我們繳付自開支招致日期起至實際付款日期止期間的違約利息。你須應我們的書面要求立即繳付根據本第3.4條累算的違約利息。否則，任何累算而未付的違約利息須加入有抵押債務，構成有抵押債務的一部分。

4. 不得從付款中扣減款項

- 4.1 你根據按揭作出的每筆付款均不得從中扣減任何稅款或類似的收費，但如根據法律你有責任作出該扣減則除外。如你需作出該扣減，你須向我們繳付額外款項，以確保我們收到根據按揭你應繳付的全部款項。

4.2 你根據按揭作出的每筆付款均不得從中扣減任何我們欠下你的款項，你須向我們繳付根據按揭不時要求你繳付的該筆有抵押債務。

5. 彌償

5.1 你向我們承諾（我們代表我們自己，也作為我們的每位董事、高級職員和普通僱員的代理人，每位皆為一「受彌償人」）你得對每位受彌償人因你違反按揭，或任何違反你根據按揭所作的陳述和保證，致使任何一位受彌償人遭提出的，或其蒙受的或招致的所有法律責任、合理的損失和損害、訴訟、司法程序、要求、申索和合理的費用和支出（包括律師費），向其作出彌償。

5.2 你根據第5.1條有法律責任繳付給我們的任何款項須視作開支處理，並構成開支的一部分。

6. 按揭的解除

6.1 當有抵押債務已全部償還，而你已根據按揭履行所有責任，我們須按通常格式簽立一份文件，以便進行下列事項，而費用由你承擔：

- (a) 確認收到全部有抵押債務；
- (b) 解除或撤銷按揭；和
- (c) （如你在物業中的權益為衡平法權益）將物業再轉讓予你。

6.2 依據第6.1條解除或撤銷按揭、確認收到全部有抵押債務或再轉讓物業須受下述條件規限，即我們就償還有抵押債務所收到的款項其後不得依據任何法律予以退回或減少。

6.3 在我們依據第6.1條解除或撤銷按揭、確認收到全部有抵押債務或再轉讓物業予你後，如根據法律我們有責任退回任何就償還有抵押債務所繳付予我們的款項，則你須：

- (a) 仍然根據按揭承擔法律責任，猶如我們未曾收到該筆款項一樣；和
- (b) 簽立所需的任何文件和作出所需的事情，以將你在物業中的全部權益押記（如你在物業中的權益是法定產業權）或轉讓（如你在物業中的權益是衡平法權益）予我們，而費用由你承擔，

並且受限於在不知悉情況下為物業付出價值的任何真誠購買人所獲得的權利，我們有權強制執行按揭，猶如按揭的解除或撤銷、收取款項的確認或物業的再轉讓從未發生一樣。

6.4 如我們同意應你的要求未收到全部有抵押債務的情況下解除、撤銷或再轉讓物業，則你仍須就有抵押債務的餘款承擔法律責任。

7. 你的陳述和保證

你向我們陳述和保證在訂立按揭的當日：

- (a) 你是物業的唯一實益擁有人，並擁有物業的妥善和有價的業權；
- (b) 物業並未被設置任何產權負擔或抵押品，且物業不受惠及他人的租賃或佔用許可(以書面已向我們披露並獲我們確認者除外)的限制；
- (c) 你簽署按揭並沒有違反適用於你或對你具有約束力的任何法律、規則、規例、判決、命令、協議、授權或責任；
- (d) 按揭中所列物業的詳情全屬真實準確和完整；
- (e) 政府租契和公契均有效並在實施中，且不曾對該租契和公契作出關乎物業的修改，亦不存在香港政府有權終止政府租契的情況；
- (f) 你已根據政府租契或公契全數並準時繳付就物業須予繳付的地價、地稅和其他款項，並已遵守政府租契及公契中涉及物業的條款和條件；
- (g) 你已全數並準時繳付就物業須予繳付的管理費、差餉、稅項和其他支出及款項；
- (h) 現時並沒有關乎物業的訴訟、仲裁或行政程序正在進行，亦沒有人威脅要提出該等訴訟、仲裁或行政程序；
- (i) 沒有違約事件發生，亦沒有任何因發出通知或符合任何條件或期限屆滿而可能成為違約事件的事件發生；
- (j) 你就按揭、有抵押債務及物業向我們提供的所有資料(包括你的個人資料和財務資料)全屬真實準確和完整；
- (k) 你沒有遺漏向我們書面披露任何可能會影響我們是否向你放貸任何款項或向你放貸款項的款額的決定的資料；
- (l) 你具有簽署或簽立按揭和根據按揭履行責任所需的權力、行為能力和法律權利；
- (m) 你已取得簽署或簽立按揭和使按揭具有法律效力所需的所有批准以及根據按揭履行責任所需的所有批准，而該等批准在按揭有效期間仍然有效；和
- (n) (如你是一法團)你是根據你的法團成立地的法律正式成立、並有效存在的法團，你亦已正式授權你的人員簽署或簽立按揭並有權履行你根據按揭須履行的所有責任。

8. 你投購物業保險的責任

- 8.1 在按揭生效期間，你須就物業因火災和其他我們要求的相關的嚴重危險而造成的損毀向我們規定的保險公司，並按我們批准的條款及條件和我們規定的投保金額自費投購保險。如你不根據本第8.1條履行你的責任，我們可代辦，但費用由你承擔。
- 8.2 你須向我們提供我們所要求的物業保險單的正本或其副本，以茲記錄。
- 8.3 你須確保物業保險單上有應我們要求的格式註明我們的利益。你須應我們要求，以你和我們的共同名義投購物業保險或將你在物業保險單中的利益和權益轉讓給我們。
- 8.4 你須準時繳付根據物業保險單須予繳付的保費金或其他款項，並須向我們提供我們所要求的付款收據的正本或副本。
- 8.5 你同意物業保險單須載有條文規定申索款項須直接支付予我們。如你收取根據該保險單支付給你的申索款項，你須以信託形式為我們持有。
- 8.6 如你欲根據物業保險單提出申索，你必須立即通知我們。
- 8.7 我們有權代表你就物業保險單所提出的申索達成和解或作出調整。在此情況下，你須簽署所有所需的文件並作出所有所需的事情，以使我們能達成上述和解或作出上述調整。
- 8.8 如有和解或賠償的款項就根據物業保險單所作的申索支付，則我們有權選擇將該筆款項用於償還或減少有抵押債務或用於修葺或重建物業。
- 8.9 如我們決定將根據第8.8條支付的款項用於修葺或重建物業，則你須將該筆款項只作此用途，並自資補足欠缺款額，以確保該項修葺或重建工程達到與損壞發生前相若的水平。
- 8.10 你不得作出任何引致下列後果的事情，亦不得安排或容許有任何引致下列後果的事情作出：
 - (a) 縮窄物業保險投保範圍或減少保險金額；
 - (b) 增加物業保險單的保費；
 - (c) 阻止或妨礙任何申索根據物業保險單達成完全和解；
 - (d) 取消或終止物業保險單或使其無效；或
 - (e) 對物業保險單造成不利影響。

9. 你的積極責任

除非得到我們的書面同意，你承諾在按揭生效期間自費作出以下事項：

- (a) 繼續作為物業的唯一實益擁有人並持有物業的妥善和有價業權；
- (b) 凡有任何使香港政府有權終止關乎物業的政府租契的情況出現，盡快將該等情況通知我們；
- (c) 維持關乎物業的政府租契的效力；
- (d) 準時繳付就物業所須繳付或根據政府租契或公契所須繳付的所有地價、地稅、管理費、差餉、稅項及其他支出和款項之全數，並應我們的要求立即向我們提供已付款的合理證據；
- (e) 遵守政府租契和公契中關乎物業的條款及條件；
- (f) 保持物業維修妥善和狀況良好；
- (g) (如你不保持物業維修妥善和狀況良好)容許我們、我們所僱用的工人、接管人和接管人所僱用的工人進入物業進行所需的維修；
- (h) 容許我們、我們所委任的代表、接管人及其所委派的代表在發出合理通知後於合理的時間視察物業，而該等人士不得因進行該項視察而被視作取得物業的管有權；
- (i) 將送達於你或物業的關乎物業的逾期欠款通知的文本或威脅可能就物業提出訴訟、仲裁或行政程序的通知文本，於收到後7日內送交我們；
- (j) 你或你的代表盡快通知我們任何關乎物業的爭議或投訴以及其結果，並在收到關乎該爭議或投訴的通知後7日內，將所有通知的文本送交我們；
- (k) 遵守所有關乎物業的法律、規則、規例、判決、命令、協議和授權；
- (l) 在你收到關乎物業的任何判決或命令，及由政府當局或樓宇管理人所發出關乎物業並影響按揭有效性的全部命令、通知及建議後7日內，將其文本送交我們；
- (m) 遵守政府當局或樓宇管理人所發出的關乎物業的命令、通知及建議；
- (n) 應我們的要求並按照我們的指示，就關乎物業的訴訟、仲裁或行政程序，提出申索、抗辯或作出回應或與我們共同提出申索、抗辯或作出回應；

- (o) 應我們的要求並按照我們的指示，就法庭、政府當局或樓宇管理人所發出的任何關乎物業的判決、命令、通知或建議、或涉及物業的爭議或投訴，提出反對、上訴或作出回應或與我們共同提出反對、上訴或作出回應；
- (p) 遵守融資協議的條款和條件；
- (q) 凡按揭內所列的物業詳情有任何更改、不正確、不準確或不完整，須盡快通知我們並對其作出糾正；
- (r) 應我們不時為下列目的而作出的要求，盡快提供有關你或物業的資料：
 - (i) 強制執行按揭；
 - (ii) 保存物業；或
 - (iii) 追討有抵押債務；
- (s) 如你向我們提供的關乎按揭、有抵押債務或物業的資料(包括你的個人資料和財務資料)有任何更改，須盡快通知我們；
- (t) 將所有關乎物業的所有權的文件送交我們保管；
- (u) 如發生任何違約事件，或因發出通知、符合任何條件或期限屆滿而可能成為違約事件的事情，須盡快通知我們；
- (v) 繳付我們按照你或你的律師的要求所提供關乎物業或按揭的文件的影印本、核證副本或正本而招致的所有合理費用和支出；
- (w) 維持按揭和融資協議的效力、保持物業的價值，並使我們和接管人可根據按揭行使各自的權利和權力；
- (x) 取得使按揭及融資協議具有法律效力之批准以及履行你根據按揭及融資協議所須履行的責任所需之批准；
- (y) 凡你已取得簽署按揭及融資協議之批准或已取得使按揭及融資協議具有法律效力之批准或已取得履行你根據按揭及融資協議所須履行的責任之批准，則你須簽署所需文件和作出所需事情以確保所有的批准繼續有效；
- (z) 如我們可行使根據按揭所具有的出售權力，則你應在收到我們的通知後，立即遷出物業並將物業的空置管有權交給我們或我們指定的人；
- (aa) 你須自費辦理按揭要求你辦理的一切事項；
- (bb) 不時應我們要求簽署和簽立所有文件(如你在物業中的權益由衡平法權益轉為法定權益(如適用)，則包括法定押記)和應我們合理要求作出所需事情，致使按揭所意圖設立的抵押得以完備；

(如你是法團或商行，則以下(cc)和(dd)段適用。)

- (cc) 妥善保存你業務的會計記錄；和
- (dd) 聘請合資格的核數師行審計和核證你的財務報表，並於有關的融資協議中所列的時段內向我們提供該等經審計和核證的財務報表。

10. 你的消極責任

你同意在按揭生效期間，未經我們書面同意，不會作出下列事情，亦不會安排或容許有下列事情作出：

- (a) 出售、轉讓、再拆分或處置物業；
- (b) 在物業上設定任何權利或利益或施加責任(包括任何抵押品)以惠及任何其他人；
- (c) 利用物業作不合法或不道德用途或作公契或政府租契不允許的用途；
- (d) 拆卸物業或對物業作出結構性改動或加建，但法律、政府租契或公契要求作出者除外，或加建非法僭建物；
- (e) 作出任何可能會降低物業的價值或損害根據按揭所設立的抵押品的事情；
- (f) 就物業申請任何規劃許可、建築同意或改善或修葺工程授權；或
- (g) 更改或放棄政府租契或公契所載的任何條款或權利。

11. 佔用物業

11.1 未經我們事先書面同意，你不得作出下列事情：

- (a) 訂立任何租約、租賃或使任何人因此獲准佔用或管有物業的任何協議；
- (b) 更改或放棄任何租約、租賃或使任何人因此獲准佔用或管有物業的任何協議中的任何條款；
- (c) 接受提前終止租約、租賃或使任何人因此獲准佔用或管有物業的任何協議；或
- (d) 在租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方違約的情況下終止或作出任何事情終止該租約、租賃或該等協議。

11.2 在第11.1條規限下，你必須自費作出下列的事情：

- (a) 在訂立租約、租賃或使任何人因此獲准佔用或管有物業的任何協議或其後之修改的日期後14日內，向我們送交該租約、租賃或協議，及其後之修改的核證副本。如該等租約、租賃或協議是加蓋印花或經裁決的，則應向我們送交該帶有印花或經裁決的租約或租賃或協議的核證副本；
- (b) 履行你根據租約、租賃或使任何人因此獲准佔用或管有物業的任何協議你須履行的責任；
- (c) 竭力真誠確保租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方履行該租約、租賃或協議；
- (d) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方違反該租約、租賃或協議，盡快通知我們；
- (e) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方要求延續或更改該租約、租賃或協議，盡快通知我們；和
- (f) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議有所變更，盡快通知我們。

12. 政府租契的續期、延期和重批

12.1 如香港政府提出政府租契續期、延期或重批的建議，你必須：

- (a) 立即接受該建議；
- (b) 盡快履行該建議的所有條件並應要求盡快支付地價和其他代價；
- (c) 在完成政府租契續期、延期或重批後，根據已續期、延期或重批後的政府租契簽立一份惠及我們的物業按揭（費用由你支付），除按情況作出必要的相應修訂外，該按揭的格式須與現有按揭相同；和
- (d) 在依據第12.1(c)條簽訂另一按揭之前，以受託人身分為我們持有你根據獲續期、延期或重批的政府租契而具有的物業權益。

12.2 在政府租契屆滿後，如你沒有取得政府租契的續期、延期、重批或新批，則你須按照我們的要求就有抵押債務提供額外抵押品。

13. 違約事件

下列每一項事件均為違約事件：

- (a) 你沒有遵守融資協議或按揭或任何有你作為立約方的其他貸款協議中的條款；
- (b) 你違反在融資協議或按揭內向我們作出的任何陳述或保證，或任何該等陳述或保證被發現為不正確；

- (c) 你沒有償還到期應付的任何債項；
- (d) 你承認無力償還到期應付的任何債項；
- (e) 有強制執行行動針對你所設立的抵押品提出；
- (f) 你根據融資協議或按揭須承擔的責任因任何法律、規則、規例、判決或命令而被暫停執行、更改、終止或豁免；
- (g) 你根據融資協議或按揭須承擔的責任因任何政府當局發出的，或根據任何法律或規例發出的命令、通告或建議而被暫停執行、更改、終止或豁免；
- (h) 物業被毀壞或損壞；
- (i) 任何政府當局或其他機構重收物業或重新取得物業的管有權或它們表示有意或提出任何建議要重收物業或重新取得物業的管有權；
- (j) 政府租契(在與物業有關的程度上)終止；
- (k) 物業被強制購買或收購(不論有否支付任何補償金)；
- (l) 融資協議或向我們提供的任何其他抵押品變成無效或不可強制執行或被終止；
- (m) 你變得不可能根據融資協議或按揭履行責任；
- (n) 任何第三方就物業向法庭申請命令；
- (o) 任何第三方未經我們事先書面同意而佔用物業或取得物業的管有權；
- (p) 你或任何其他就有抵押債務提供抵押品的人與你或他的債權人就你或他的債項而訂立安排或建議訂立安排，或為你或他的債權人的利益，就該債項訂立安排或建議訂立安排；
- (q) 沒有取得簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所需的批准，或沒有取得根據按揭或融資協議履行你的或任何提供抵押品的人的責任所需的任何批准；
- (r) 就簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所取得的批准變成無效，或根據按揭或融資協議或有抵押債務的其他抵押品履行你的或任何其他提供抵押品的人的責任所取得的批准變成無效；
- (s) 就簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所需取得的批准，或根據按揭或融資協議或有抵押債務的其他抵押品履行你的或任何其他提供抵押品的人的責任所需取得的批准被修改，而我們合理地認為該修改可能會重大和不利地影響你或提供抵押品的人根據融資協議或按揭或就有抵押債務的其他抵押品履行責任的能力；

- (t) 我們合理地認為你或任何其他提供抵押品的人所作出的任何行動或不作為，會重大和不利地影響你或提供抵押品的人根據融資協議或按揭或有抵押債務的其他抵押品履行你的或提供抵押品的人的責任的能力；

(如你是個人，則下文(u)段適用。)

- (u) 有人向法庭提出針對你的破產呈請，且該呈請在呈交法庭後7日內仍未被撤消；

(如你是法團或商行，則下文(v)至(dd)段適用。)

- (v) 有接管人或類似的人員被委任接管你的業務或資產中任何部分；
- (w) 債權人取得你的業務或資產中任何部分的管有權；
- (x) 有法律程序針對你的業務或資產的任何部分而展開，該法律程序在展開後7日內未被撤消；
- (y) 有人向法庭提出針對你的清盤、破產管理、重組或解散的呈請或法律程序，或有命令就此頒布或有決議就此通過；
- (z) 你處置或表示有意處置你的業務或資產的任何重大部分；
- (aa) 你的業務或資產的任何重大部分被強制購買、接管或收購（不論有否支付任何補償金）；
- (bb) 你停止或表示有意停止經營你的業務的重大部分；
- (cc) 你對你的業務性質或範圍作出重大變更或表示有意對其作出重大變更；和
- (dd) 你的業務或財務狀況發生任何重大和不利的變更，而我們合理地認為這變更可能重大和不利地影響你根據融資協議或按揭履行責任的能力。

上述第(u)至(dd)段中提述「你」時，也包括就有抵押債務提供抵押品的人。

14. 按揭的強制執行

如發生違約事件，按揭即可強制執行；有抵押債務立即成為到期應付，而我們有權作出下列事情：

- (a) 終止已提供予你的所有銀行融資、信貸安排和其他信貸服務或通融，以立即終止我們按照該等銀行融資、信貸安排和其他信貸服務或通融向你進一步放貸的責任；
- (b) 要求你繳付有抵押債務；
- (c) 行使法律（包括條例）賦予我們作為承按人的所有權力（按照按揭有所更改或擴展）；和
- (d) 行使按揭賦予我們的所有權利。

15. 違約利息息率和各項收費

如你沒有依據第 14(b)條或融資協議的要求繳付有抵押債務（未付開支除外），你必須按有關融資協議內指明的任何息率和條款就該筆未付款項向我們繳付違約利息、逾期付款收費和／或手續費。

16. 接管人的委任

16.1 如發生違約事件，我們有權不給你進一步通知或未經你事先同意而委任接管人。

16.2 在第 17.2 條之規限下，你我雙方同意條例第 50 條適用於接管人的委任。

16.3 接管人擁有：

- (a) 法律（包括條例）賦予其作為接管人的所有權力（按照本按揭條件有所更改或擴展）；和
- (b) 按揭賦予接管人的所有權力。

17. 我們的權力和接管人的權力

17.1 如發生違約事件，我們和接管人各自具有下列權力：

- (a) 按我們或接管人認為合適的任何方式，以任何價格（不論是現金或其他形式）和條款出售、處置或處理物業；
- (b) 在根據按揭行使我們或接管人的權力之時，以我們或你的名義轉讓物業；
- (c) 進入物業和取得物業的管有權；
- (d) 就物業收取任何租金、按金和利潤，及要求你簽署和簽立將此租金或利潤轉讓給我們或接管人的轉讓書；
- (e) 按照我們或接管人認為合適的條款授予租約、租賃或使任何人因此獲准佔用或管有物業的任何協議，惟此權力須受遵照我們事先的書面同意合法地授權的物業租約、租賃或使任何人因此獲准佔用或管有物業的任何協議所規限；
- (f) 為根據按揭所具有出售、出租物業或物業任何一部分或給予其他佔用或管有物業的權利而簽署我們或接管人認為合適的文件和作出我們或接管人認為合適的事情；
- (g) 按照我們或接管人認為合適的投保金額和條款為物業投保火險和我們要求投保的其他各項風險；
- (h) 對物業進行我們或接管人認為合適的所有修葺、翻新、改建、改善和發展；
- (i) 在與行使我們或接管人根據按揭所具有的權利和權力有關連的情況下，按照我們或接管人認為合適的報酬和條款，委聘代理人、工人、專業或非專業顧問或僱員；
- (j) 按照我們或接管人認為合適的報酬和條款，將我們或接管人根據按揭所具有的權力和權利轉授予任何人；

- (k) 在我們或接管人根據按揭行使權力和權利時招致合理的費用和支出；
 - (l) 在與行使我們或接管人根據按揭所具有的權力和權利有關的情況下，按照我們或接管人認為合適的條款，包括以物業作抵押品（不論是較按揭優先或受按揭管限）的條款，而籌集資金，**但是**：
 - (i) 接管人未經我們事先書面同意不得行使此權力，我們亦毋須就是否給予該項同意而承擔任何法律責任；和
 - (ii) 如有任何人因接管人行使此權力而向接管人貸款，則該人有權假設接管人有權借取該筆款項，並且是按照本條借取該筆款項；
 - (m) 提出或抗辯關乎物業的任何訴訟、仲裁或行政程序；
 - (n) 在與行使我們或接管人根據按揭所具有的權力和權利有關連的情況下，使用你的名義；和
 - (o) 作出我們或接管人認為為行使我們或接管人的權力和權利的任何其他合法行為或附帶於上述權力和權利的其他合法行為。
- 17.2 在法例許可的範圍內，任何對我們或接管人行使根據按揭所具有出售物業的權力的限制（包括條例中的那些限制）並不適用。
- 17.3 在行使我們根據按揭所具有的權力和權利時，除我們實際已收取的款項外，我們毋須就任何其他款項作出交代。
- 17.4 我們和接管人毋須就行使我們或接管人根據按揭所具有的任何權力和權利所引致的任何損失承擔法律責任，除非該損失是因我們或接管人的詐騙行為或疏忽所引致則除外；但是，我們和接管人將只對我們和接管人各自本身的詐騙行為或疏忽而招致的損失負上法律責任。
- 17.5 任何與我們或接管人交易的人均有權假設：
- (a) 我們和接管人均有權行使根據按揭所具有的全部或任何權力和權利；
 - (b) 我們和接管人是按照按揭行使我們或接管人的全部或任何權力和權利；
 - (c) 我們和接管人使用收取的款項的全部或任何一部分均是按照按揭行使我們或接管人的權力和權利；和
 - (d) 我們或接管人就收取向我們或接管人繳付的全部或任何一部分款項而發出的收據即為充分撤銷繳付該款項的人的付款責任。

在本第17條中，凡述及「我們或接管人」即指我們或（視屬何情況而定）接管人。

18. 你的補救方法

就未經授權、不正當或不妥當行使我們或接管人根據按揭所具有的權力和權利，你的補救方法僅限於損害賠償。

19. 抵押品變現所得收益的運用

以符合適用法律為前提，我們和接管人根據按揭收到的任何款項須按以下順序運用：

- (a) 開支；
- (b) 依據按揭支付有抵押債務（須先支付利息）；和
- (c) 將餘款支付給你或有權收取該款項的任何其他人。

20. 破產或無力償債法律的影響

- 20.1 如我們收到你或任何其他的人就有抵押債務的付款或抵押品之後，根據任何破產或無力償債法律規定我們有責任回復到猶如我們未收到該付款或抵押品的狀況，則你必須根據按揭承擔法律責任，猶如我們並未收到該付款或抵押品一樣。
- 20.2 在尚未有命令根據該等破產或無力償債法律針對我們作出之前，我們有權未經你事先同意而按照我們認為合適的條款，同意就根據該等法律引起的申索達成協議或和解。
- 20.3 如我們依據第20.2條就上述申索達成協議或和解，你須根據按揭承擔法律責任，猶如法庭已作出一項載有我們就該申索同意的條款的命令一樣。
- 20.4 如我們已解除、撤銷或再轉讓你所作出的惠及我們的任何抵押品（包括按揭）以交換你或其他的人所作出的任何付款或抵押品，則該項解除或撤銷的附帶條件為任何人不得根據破產或無力償債法律而就該筆付款或該項抵押品向我們提出申索。

21. 開支

開支指：

- (a) 我們或接管人根據按揭或在與按揭相關的情況下而為下列目的所招致的所有合理開支（包括法律費用），舉例說：
 - (i) 擬備、洽談、簽署或登記按揭；
 - (ii) 行使我們或接管人根據按揭所具有的權力；
 - (iii) 追討或企圖追討有抵押債務；
 - (iv) 保護或強制執行我們或接管人（視屬何情況而定）根據按揭所具有的權利；
 - (v) 保存或企圖保存物業；
 - (vi) 就有抵押債務、按揭或物業提出申索，或就關乎有抵押債務、按揭或物業而針對我們或接管人提出的申索進行抗辯；

- (vii) 擬備、簽署或登記解除按揭的文件；
 - (viii) 核證全數收到有抵押債務；
 - (ix) (如你在物業中的權益為衡平法權益)於全數收到有抵押債務後，擬備、簽署或登記為將物業再轉讓予你所需的所有文件，或作出為此目的所有必須的事情；
 - (x) 根據按揭給予或拒絕給予同意；
 - (xi) (如你沒有履行根據按揭所承擔的責任)履行你根據按揭須履行的責任；或
 - (xii) 依據按揭取得物業的管有權或出售或出租物業，或給予其他佔用或管有物業的權利；和
- (b) 接管人與我們合理議定的接管人報酬；和
- (c) 根據第5.1條你須承擔法律責任而向我們繳付的款項。

22. 自其他貸方餘額扣減款項和留置權

你同意如你沒有根據按揭繳付到期應付的有抵押債務，我們有權在不給予你或其他人事先通知而作出下列事情：

- (a) 使用你在我們處開設的帳戶(不論是以你個人名義或與其他人以共同名義開設)的貸方餘額繳付該筆未付的款項；
- (b) 以我們現在或將來欠你的任何債項或法律責任抵銷該筆未付的款項；
- (c) 對我們持有的你的全部資產或財產具有留置權；和
- (d) 以我們絕對酌情權決定的價格和方式出售我們持有屬於你的任何資產或財產，並將所得利益用以支付該等未付的款項。

23. 以其他貨幣付款

- 23.1 有抵押債務必須全數以招致有抵押債務的貨幣(「原貨幣」)繳付，否則不得被視作已全數繳付。
- 23.2 如不以原貨幣繳付有抵押債務，我們有權在合理時段內將繳付有抵押債務的貨幣按照我們合理地釐定的滙率轉換為原貨幣。如原貨幣與實際繳付有抵押債務所使用的貨幣(不論有否進行貨幣轉換)出現差額，你仍然須根據按揭就貨幣轉換當日或(如無貨幣轉換)實際繳款當日計算出的差額承擔法律責任。

24. 獲委任為你的受權人

- 24.1 作為一項獨立委任，你藉本按揭委任我們每一人、接管人、繼承和受讓我們或接管人根據按揭所具有的權利和權力的人，單獨或與他人共同作為你的受權人。此項委任是以提供抵押品的方式作出且在按揭有效期間為不可撤銷的。

- 24.2 你根據第24.1條所委任的受權人，具有全權委任另一人代其出任你的受權人。
- 24.3 你根據第24.1條所委任的受權人具有全權以你的名義或代表你為下列目的就所有我們認為適當的文件作出簽署、蓋章和交付，並作出所有我們認為適當的事情：
- (a) 在你沒有根據按揭履行責任的情況下，根據按揭履行你的責任；
 - (b) 行使任何根據按揭賦予我們或接管人的權力或權利；或
 - (c) 給予我們按揭的全部利益。
- 24.4 你同意並在此對你根據第24.1條委任的受權人不時所簽署的任何文件或作出的任何事情作出追認和確認。

25. 有抵押債務的證據

我們的人員就有抵押債務、開支、任何利息、違約利息、逾期付款收費或手續費的款額所妥為簽署的證明書，在沒有明顯錯誤或詐騙的情況下，須為針對你在各方面而言的不可推翻的證據。

26. 臨時帳戶

- 26.1 當有違約事件發生，我們有權將我們就按揭所收到的任何款項（足以全數抵償有抵押債務的款項除外）保存在一個臨時帳戶中，以保留向你們其中任何人或任何其他就有抵押債務提供抵押品的人提出全數申索的權利，直至有抵押債務全數繳付為止。
- 26.2 如我們並未依據第26.1條行事，我們根據按揭收到的所有款項必須視作已貸記存入一個臨時帳戶，以保留對你們其中任何人或任何其他提供抵押品的人提出全數申索的權利，而該筆款項不得用作扣減有抵押債務的款額。
- 26.3 依據第26.1條貸記存入臨時帳戶的款項或依據第26.2條當作貸記存入推定臨時帳戶的款項，須按照我們不時提供給予有相同貸方餘額的存款帳戶通行利率衍生利息。

27. 持續抵押品

- 27.1 按揭須為一項持續抵押品，藉以抵押你不時到期未付、欠下或招致我們的有抵押債務。你根據按揭須承擔的法律責任和責任將持續直至完全繳付有抵押債務為止，因此，該等法律責任和責任不得因發生任何下列事件而受到影響或被撤銷：
- (a) 你去世、精神上無行為能力、破產、無力償債或遭清盤（如適用的話）或名稱發生變更；
 - (b) 我們或我們的繼承人或受讓人改名或改組；

- (c) (若你屬合夥或任何其他組織)合夥或組織的名稱或成員或組成有任何更改(在該情況下,按揭繼續對當時組成該合夥或組織的人具有約束力);
- (d) 其他人收購你們、或你們吸納其他人或你們與其他人合併;
- (e) 其他銀行或機構收購我們、我們吸納其他銀行或機構或我們與其他銀行或機構合併;
- (f) 有接管人被委任接管你的業務或資產;
- (g) 你與你的債權人就償還債項或其他法律責任達成安排;和
- (h) 任何有抵押債務的轉讓、按揭的轉讓或有任何信託聲明的設立或有影響我們在抵押債務或按揭方面的權利的其他作為。

27.2 我們或接管人可不時:

- (a) 給予任何其他就有抵押債務提供抵押品的人更長時間繳付到期應付的款項;
- (b) 更改、擴展、解除、減少、交換、增加、加速、重訂或撤銷任何其他就有抵押債務提供抵押品的人的責任或法律責任;
- (c) 與任何其他就有抵押債務提供抵押品的人達成任何安排、妥協或和解;
- (d) 接受或處理任何其他就有抵押債務提供的抵押品或法律承諾;
- (e) 不接受其他任何就有抵押債務提供的抵押品或法律承諾;或
- (f) 忽略、解除、強制執行或選擇不強制執行根據按揭所具有的權利或根據就有抵押債務提供的任何抵押品或法律承諾所具有的權利。

我們或接管人作出本第27.2條所述的任何作為或作出或不作出其他事情,並不影響我們根據按揭所具有的權利或你須承擔的法律責任,儘管設若本第27.2條不存在則將會產生上述影響亦然。

27.3 你根據按揭須承擔的法律責任並不受任何下列事宜影響:

- (a) 任何其他就有抵押債務提供的抵押品或法律承諾的無效;
- (b) 按揭或融資協議的訂立是無效或不符合規定的;
- (c) 你無權訂立融資協議或按揭,或無權履行你根據按揭或融資協議須承擔的責任;或

- (d) 如本第27.3條不存在，任何可能會損害、不利地影響或撤銷按揭的作為、不作為、事件或情況。

28. 其他一般事項

- 28.1 行使或沒有行使根據按揭所具有的一項權利，並不妨礙我們或接管人行使根據按揭所具有的其他權利。
- 28.2 我們或接管人可在我們或接管人（視屬何情況而定）認為適當時行使根據按揭所具有的權利。
- 28.3 局部行使根據按揭所具有的任何權利並不妨礙我們或接管人其後完全行使該項權利。
- 28.4 延誤行使或不行使根據按揭所具有的任何權利並不妨礙我們或接管人其後行使該項權利。
- 28.5 我們根據按揭所具有的權利是附加於我們根據法律而具有的任何權利之上。
- 28.6 我們有權僱用收債代理人追收你根據按揭到期未付的任何款項。

29. 可劃分性

如在任何時間按揭的任何條文根據任何司法管轄區的法律是為無效、不合法或不可強制執行或成為無效、不合法或不強制可執行，並不影響該條文根據其他司法管轄區的法律的效力、合法性或可強制執行性，亦不影響按揭任何其他條文的效力、合法性或可強制執行性。

30. 修訂

按揭的任何條文如有修訂，必須經你及我們書面簽署同意。

31. 進一步的抵押品

如我們不時合理地認為物業不足夠作為有抵押債務的抵押品，我們有權要求你為有抵押債務提供進一步的抵押品，而你應在我們提出書面要求後立即提供令我們滿意的進一步抵押品。

32. 權利和責任的轉讓

- 32.1 我們有權未經你同意隨時將我們根據按揭所具有或須承擔的全部或任何權利或責任轉讓給任何人。
- 32.2 未經我們事先書面同意，你不得轉讓你根據按揭所具有或須承擔的任何權利或責任。
- 32.3 你必須簽署我們所要求的任何文件和作出我們所要求的任何事情，以完成我們根據按揭所具有或須承擔的權利或責任的任何轉讓。
- 32.4 一旦我們根據按揭所具有或須承擔的權利或責任的轉讓生效後，任何接收該等權利或責任的人則具有或須承擔我們在轉讓前根據按揭所具有或須承擔的相同權利或責任（視屬何情況而定），而我們所具有或須承擔的該等權利或責任（視屬何情況而定）則予以解除。

33. 你的資料的披露

- 33.1 你同意容許我們披露你的資料。對於你的個人資料，你同意容許我們在《個人資料(私隱)條例》(第486章)的規限下向我們就上述條例不時公佈的資料私隱聲明(我們已向你提供其文本)中所提及的人或目的披露你的資料。
- 33.2 你同意容許我們向其他就有抵押債務提供抵押品的人提供按揭、本按揭條件、融資協議和關乎有抵押債務的任何協議的副本。

34. 按揭獨立於任何其他擔保或抵押品

- 34.1 按揭是獨立於和附加於我們現時或將來可能就有抵押債務獲得的任何其他擔保或抵押品。
- 34.2 當我們就有抵押債務獲得任何其他抵押品時，我們有權選擇強制執行哪一項抵押品或強制執行的先後次序。
- 34.3 在強制執行按揭之前，我們毋須就有抵押債務強制執行其他抵押品或採取任何步驟，亦毋須提出任何法律程序。

35. 你無權過問我們的抵押品

你同意在全數繳付有抵押債務之前，你無權收取自出售或以其它方式處置我們現時所持有或將來可能取得的任何抵押品(包括物業)所得的任何關乎有抵押債務的款項，亦無權分享我們所收取的任何其他用以減低有抵押債務的款項。

36. 你的權利的延後

- 36.1 在全數繳付有抵押債務之前，未經我們事先書面同意，你無權作出任何下列事情：
- (a) 針對任何其他就有抵押債務提供抵押品的人行使或強制執行任何權利(包括任何抵銷權利)；
 - (b) 向任何其他就有抵押債務提供抵押品的人提出申索；
 - (c) 在任何其他就有抵押債務提供抵押品的人破產或無力償債的情況下提出與我們對立的申索；或
 - (d) 自任何其他就有抵押債務提供抵押品的人收取任何付款或利益分發或抵押品從而得益。
- 36.2 你必須將你在違反第36.1條的情況下獲得的每筆申索得益和收取的所有款項支付給我們，並在此期間以信託形式為我們持有該等得益和款項。
- 36.3 如你收取第36.1(d)條所述的任何抵押品(不論有否經我們同意)，則你須以信託形式為我們持有此抵押品，並須將你收到的有關該抵押品的全部款項繳付給我們。

37. 共同及各別法律責任

- 37.1 如你們多於一人，則按揭對你們一起具有共同約束力亦對你們每人有約束力。我們有權按照我們同意的任何條款撤銷你們任何一人的法律責任，或與你們任何一人達成安排，而不影響我們對其他人所具有的權利和補救方法。
- 37.2 如你們多於一人，則按揭將分別對你們每一人具有約束力，儘管按揭不能針對你們所有人或任何一人強制執行亦然。

38. 通知和要求

- 38.1 根據按揭發出的任何通知或要求必須採用書面形式，並以下列任何一種或多於一種方式給予有關一方：
- (a) 以法律訂明的方式送達通知或要求；
 - (b) 以郵寄方式將通知或要求送交至有關一方列於按揭的地址（或向發件方提供的最新地址）。在這情況下，通知或要求即被視作於郵寄當日後第二個營業日送達；
 - (c) 以專人親自將通知或要求送交至有關一方列於按揭的地址（或向發件方提供的最新地址）。在這情況下，通知或要求即被視作於送交時送達；或
 - (d) 以傳真方式將通知或要求送交至有關一方列於按揭的傳真號碼（或向發件方提供的最新傳真號碼）。在這情況下，通知或要求即被視作於發件時送達。
- 38.2 如你們多於一人，我們向你們其中一人送達的通知或要求即成為給予你們各人的充分通知或要求。
- 38.3 如你是個人，於你去世後根據本第38條送達的任何通知或要求即被視作給予你的遺產代理人的充分通知或要求。

39. 管轄法律和司法管轄區

- 39.1 按揭受香港法律管限並按照香港法律詮釋。
- 39.2 你同意與按揭有關的任何司法程序只能由你向具有司法管轄權的香港法院提出。然而，我們有權根據按揭在你或你的資產所在的任何國家提出法律程序。

40. 語言

按揭（包括按揭條件）以英文書寫並附上中文譯本。中文譯本僅作參考之用，只有英文本擬有法律效力。

Abstract

In the globe, most households have to borrow significant proportions of the price of residential property for owner-occupation or investment purposes, because a residential property is typically the largest capital investment households make. The same here in Hong Kong, it is common for home purchasers to enter mortgage transaction with the banks to obtain enough capital and buy the property. They sign the mortgage contract, which act as transaction governance mechanism to ensure integrity of the two parties, and to manage contractual disputes (e.g. mortgage default). When mortgage defaults at the *ex post* transaction, the mortgage contract arranges the two parties to settle the contractual hazard.

After the Asian Financial Crisis, mortgage default cases have been widely reported. The mortgage contract confers a great power to the bank to sell the foreclosed property ‘as think fit’ as a means to settle the dispute. However, it does not specify how the property should be realized. It is observed that, in the market, a price differential exists between property sold through auction and private treaty – the two most frequently used disposal methods. In the empirical study of this dissertation, it is proved statistically that the price of foreclosed property sold through auction is 7.17% lower than that through private treaty.

The analysis of institutional arrangement by using an institutional economics and agency theory approach suggested the rationale for the price differential. The contract itself does not form a closed system, instead, its performance is highly related with the rules of the game – institutional arrangement, consisting of formal (laws, court cases and constitutions) and informal (social norms, traditions, customs, and code of conduct) institutions. For the formal institutions, it is established that the bank is required to dispose the foreclosed property by taking reasonable steps to achieve open market value in 18 months time. For the informal institutions, it is found that people generally accept and support the great power the bank obtains in mortgage default. The prospective buyers also carry a belief that the price of foreclosed property sold through auction is lower than that through private treaty. Principal-agent relationship induces incentive problems when the bank sells the foreclosed property. The bank does not have adequate incentive to be a ‘willing seller’ as they are neutral on price outcome – they are not entitled to the surplus and the mortgagor will take up the remaining price difference between re-sale price and loan value. The findings suggest the reason for 7.17% discount of foreclosed property sold through auction is mainly due to subjective discrimination, which put the mortgagor’s interest at a price disadvantage.

Acknowledgement

I would like to express my deepest gratitude to my dissertation supervisor, Dr. Frederik Pretorius, Associate Professor in the Department of Real Estate and Construction for his patient guidance, inspiration and construction opinions throughout the whole process of this study. Dr. Pretorius has shared me with his invaluable advice that is conducive to the evolution of this dissertation.

Also, I would like to thank Mr. Ronald Cheung, Director of Midland Surveyors Co. Ltd., particularly for providing me with the transaction information and; Mr. H. F. Leung, Head of my home department, particularly for legal consultation in this dissertation. They both offer me extensive discussions on institutional arrangement in Hong Kong real estate market. And I would like to express my gratitude to Mr. Winky Ho for his generous advice in this dissertation.

I must also thank my parents, Mr. K.K. Chan and Ms. L. W. Ho; and sister, Miss Y. L. Chan for their understanding, support and encouragement.

Declaration

I declare that this dissertation represents my own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation or report submitted to this university or to any other institution for a degree, diploma, or other qualification.

Sign _____

Name _____

Date _____

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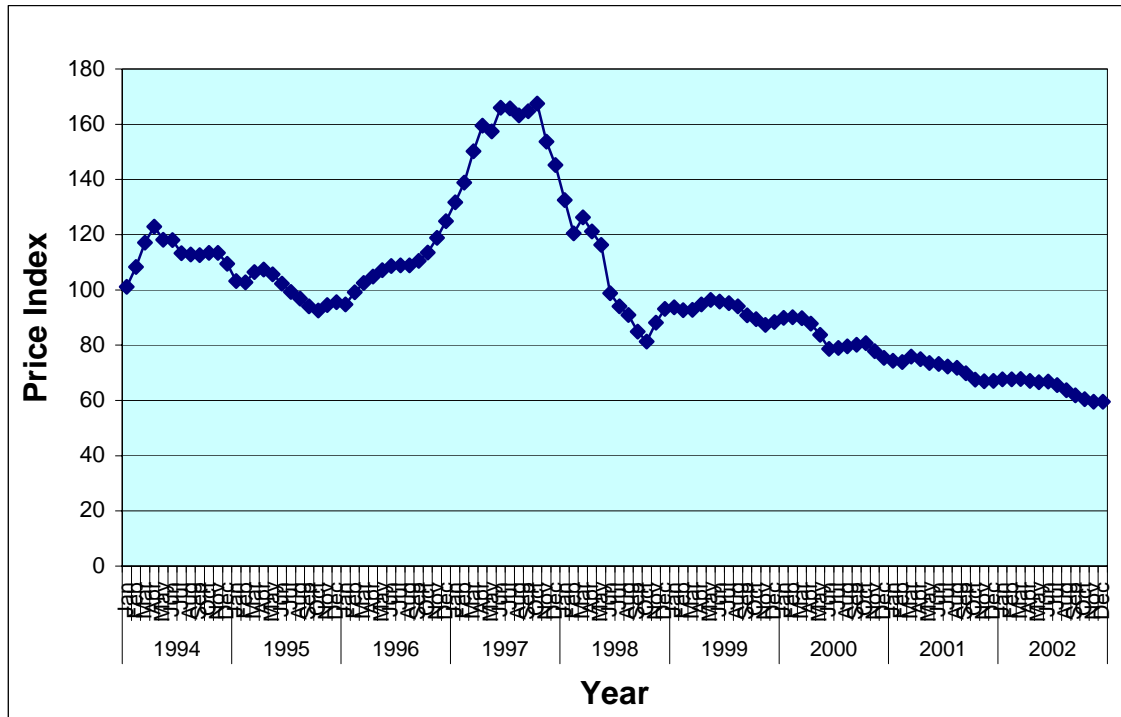
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Chapter 1

Introduction

1.1 Background

It is typical that most households worldwide have to borrow significant proportions of the price of residential property if they wish to purchase for owner-occupation or investment purposes, because a residential property is typically the largest capital investment households make. This is also the case in Hong Kong. A mortgage transaction is carried out between the bank (mortgagee) and home-purchaser (mortgagor), with the mortgage contract as transaction governance to make sure both parties commit to the contract and to handle any contractual disputes. In the mortgage contract, while the home-purchaser gets the money to purchase the property, the bank, in return, has the mortgaged property as an effective form of security. The security will give the bank certain rights over the land when the mortgagor fails to pay the repayment.



to provide adequate housing to all HKSAR residents, the real estate price fell by nearly 55% in January 1998 from the peak in June 1997 (Wall Street Journal 1998). Followed by the effect of the persistently high unemployment rate and depression, since the end of 1997, mortgage default cases have been widely reported (Hong Kong Government Rating and Valuation Department 1998). The bank then exercise power of sale and realized the foreclosed property. The number of foreclosed property has increased considerably from 597 in 1998 to 8000 in September 2002.

The mortgage contract acts as transaction governance, arranging how the bank and mortgagor manage their relationship during the term of the contract and settle disputes (e.g. mortgage default) during *ex post* transaction period. Under the contractual framework, the bank obtains a great power and is entitled to sell the property ‘as think fit’. However, the mortgage contract is not a closed system and not inert to institutional environment. Instead, the performance of foreclosed property sale, as part of the transaction, is highly influenced by the interaction of mortgage contract with existing institutional arrangement. The formal and informal institutions act collectively as rules of the game, for the bank and mortgagor have to comply with when performing the contract.

Most people, especially mortgagors, are not aware of the implicit problems brought

by existing institutional arrangement in *ex post* mortgage transaction period. Instead, they take it for granted. In particular, it has long been commonly accepted in Hong Kong, without formal empirical support or evidence, that residential properties sold at a lower price in auction than otherwise, for example, private treaty. In this study, we are going to use an institutional economics and agency theory approach to understand how the existing institutional arrangement affects the performance of *ex post* mortgage transaction, particularly in foreclosed property sale.

1.2 Objectives of my Study

The objectives of my study are two twofold. The first objective of this study is to determine whether auction or negotiation put foreclosed property at a price disadvantage. The second objective is to study how institutional arrangement in Hong Kong residential real estate market influences operational efficiency. To accomplish these objectives, several sub-objectives are identified:

- 1) to find empirical support and illustrate if auction or private treaty put the foreclosed property sale into a disadvantage.
- 2) to understand how mortgage contract act as transaction governance with respect to mortgage default arrangement.

- 3) to acquire a basic understanding on the existing institutional arrangement in Hong Kong real estate market.
- 4) to explain how the institutional arrangement influence the performance of foreclosed property sale.

1.3 Methodology

This dissertation involved two parts, which are an empirical study on the price differential between foreclosed property sold through auction and private treaty; and institutional arrangement analysis of foreclosed property sale. For the empirical study, a multiple regression analysis by using an appropriate Hedonic Price Model will be adopted. The details will be explained in Chapter 3.

For the institutional arrangement analysis, it will be done by a descriptive-analytical approach and its details are explained now. The methodology of the descriptive-analytical study is as follow. First, the analytical framework consisting of institutional economics and agency theory is presented. Then, the model mortgage deed convened by The Hong Kong Mortgage Corporation Limited (2001) is studied on how it deals with *ex post* transaction governance, especially on mortgage default. The relevant clauses are extracted to appreciate how the terms act as transaction governance mechanism in mortgage default arrangement.

Thirdly, to understand the existing institutional arrangement, interviews, newspaper clippings and publications related to foreclosed property sale are collected and analyzed. Particularly, for informal institutions, an interview with Mr. Ronald Cheung, Director of Midland Surveyors Co. Ltd. and RICS Chartered Surveyor (General Practice Division) was conducted to understand the bank, mortgagee and public's perception and their incentives on foreclosed property sale. For formal institutions, the legal issues of mortgage default arrangement are discussed with Mr. H. F. Leung, Head of Department of Real Estate and Construction, HKU to have a deeper understanding. All the methods taken aim to give a comprehensive and objective discussion on the captioned study.

1.4 Structure of the Dissertation

The dissertation is presented in five chapters. The first chapter is the Introduction. In this chapter, a general introduction is given to the whole dissertation, together with objectives. Particularly, the methodology used for carrying out of descriptive-analytical study on institutional arrangement analysis is outlined. In chapter 2, the analytical framework and its application to this study with respect to foreclosed property sale are introduced.

In Chapter 3, to furnish the market background, an empirical study is carried out to prove that if a price differential exists between foreclosed property sold through auction and private treaty. This acts as strong empirical evidence if the price differential observation holds true and initiates the discussion in Chapter 4 and 5 to understand the rationale behind. Chapter 4 illustrates how the mortgage contract acts as a transaction governance mechanism in dealing with mortgage default during *ex post* transaction period. In Chapter 5, specific details on the institutional arrangement of real estate market in Hong Kong and its influence on foreclosed property sale are discussed. Lastly, in chapter 6, conclusion of this study is drawn.

Chapter 2

Analytical Framework

2.1 Introduction

This chapter introduces the analytical framework adopted in this study, with explanation of relevant concepts. In this study, an institutional economic framework consisting of institutional economics and agency theory is to make up an analytical background and be applied to residential mortgage transaction. The framework is chosen for its suitability to explain the influence of institutional arrangement and incentive problems in the *ex post* mortgage transaction, particular in mortgage default arrangement. With this intention, the following sections give review on the major conceptual terminology associated with the institutional economic framework. We will start from the basic analysis unit -- mortgage transaction, property rights and agency theory. Then, we proceed upward to transaction governance and institutional environment as shown in Fig. 2 in Section 2.2.

2.2 Institutional Economic Framework

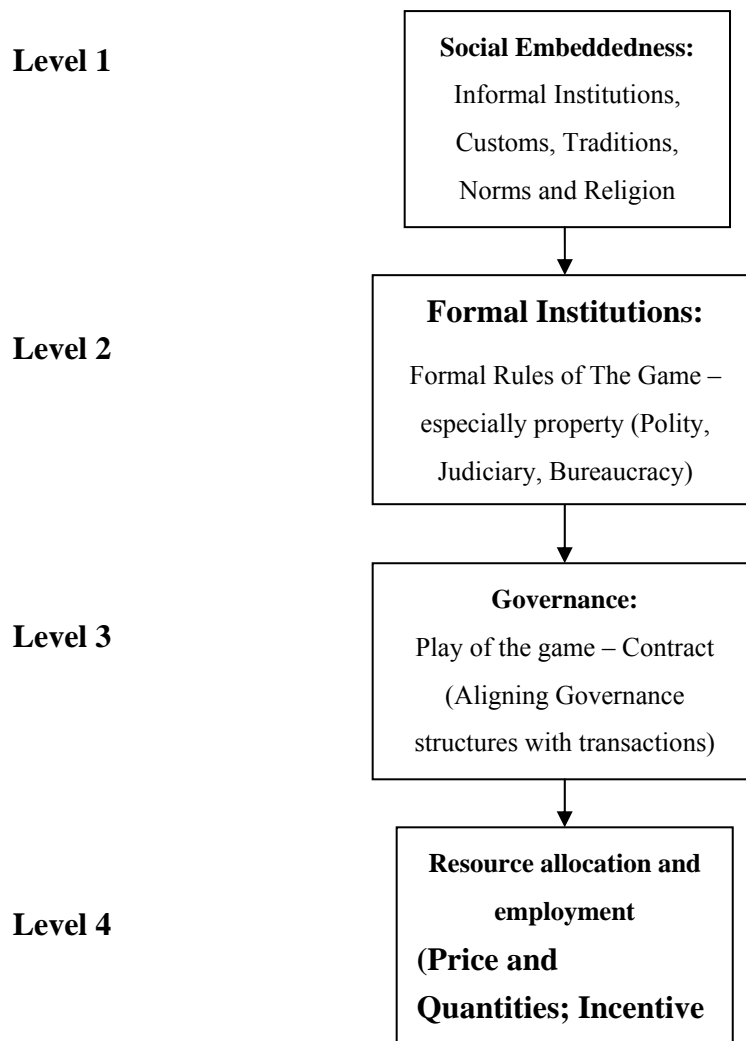
Man, with unlimited wants, lives in a world where resources are limiting. Scarcity is always a way of life. We do not have enough resources such as land, accommodation and talent that meet our needs. To deal with scarcity, man starts division of labour, with splitting of composite tasks into their component parts and having them performed separately; and specialization, with people select in a task that suits their own needs, capabilities and specialize in it, to improve efficiency.

Once we start division of labour and specialization, it directly means that we cannot be economically self-reliant because we are unable to produce all the goods and services we wish to consume. We have to acquire them from exchanging with other specialized people and transaction then takes place. The transacting parties find each other through the co-ordination of market. In a society, innumerable network of transactions have to occur so as to satisfy human's need and to allocate the available goods and services.

Optimal allocation of scarce resources in a society has been the main concern of the economist. Pitelis (1993) states that price mechanism in the market can achieve existence, stability and optimality of market equilibrium. However, Coase (1937)

opposes by identifying that presence of firm stressing that the price mechanism had some-how failed. The transaction costs such as the information costs of discovering the relative prices and cost of writing contracts for individual transaction impair the efficiency of market and the authority of firm is conducive to reduce transaction costs.

Most importantly, Coase further finds that the law and the state are the third major institutional device in market economics for the allocation of resource, which is what we are concerned about in this study. Institutional economics emerges in this context to examine what mechanism can allocate resources in accordance with legally, socially and customarily acceptable manner to fulfill the wants of humans. Pejovich (1998) points out that a variety of institutions play a role in constraining and presenting opportunities to entrepreneurs and a wide range of social and legal tie can exist between people, which influence the exchange between them. Williamson (1998) develops four levels of social analysis; each level imposes constraints on the levels immediately below. The analytical framework of this study follows the development of these four levels in an upward direction.



Arrow (↓) indicate imposing of constraint from Level 1 to Level 4.

Fig. 2 Economics of Institutions

Source: Williamson, O. E. (1998) Transaction Cost Economics: How it works; Where it is headed, *De Economist*, Vol. 146, Issue No. 1.

The economics of institutions is more concerned with the roles of institutional

arrangement on the design and the performance of contracts during transaction. Level 1 is the social embeddedness level where norms, customs, mores, tradition and other forms of informal institutions are located. They change very slowly and are taken as given by most economists. Level 2 is where the formal rules of the game are situated and the transaction has to comply with those rules. They are the product of politics, judiciary, bureaucracy, within which economic activity is organized. Level 1 and 2 are collectively known as institutional environment which is about composite level of activity. The institutional arrangement poses constraints on Level 3, the transaction governance.

Level 3 is institutions of governance operating at individual transaction level, the more microanalytic level at which institutional economics works. This can be identified as the ‘game itself’. Level 4 is about resource allocation and it is where transaction takes place. Neo-classical economics and agency theory have been concerned with this level. With the neo-classical economics deal with price and output, agency theory deals with an efficient incentive alignment in the face of differential risk (Williamson 1996). As will be explained later, the above three levels will affect the performance of mortgage contract and agency problem between the bank and mortgagor. We work upwards from Level 4 to Level 1, to see how the institutional

arrangement affects the *ex post* mortgage transaction, particularly in foreclosed property sale in mortgage default.

2.2.1 Transaction

A transaction occurs when a good or service is transferred across a technological separable entity (Williamson 1996). A transaction can be divided into two stages, *ex ante* and *ex post* transaction. *Ex ante* transaction means before the transaction takes place, while *ex post* transaction means after the contract has been made but before the entire transaction has completed. In this study, the 'transaction' refers to the mortgage transaction, in which money is borrowed to mortgagor with the mortgaged property as security to mortgagee. The bank and mortgagor will sign a mortgage contract, to create a legal relationship and bind each other to the contract. Our focus is at *ex post* transaction at which mortgage default happens before the term of mortgage ends. The mortgage default arrangement is treated as the contingency occurs in the *ex post* transaction period.

When the mortgage defaults, the bank can exercise power of sale under contractual and statutory rights and then realize the property. We are interested in how the mortgage contract as transaction governance mechanism settles mortgage default. As

human participation is a major element in transaction and their interaction will highly affect the outcome of transaction, understanding on human behaviour is needed.

Human behaviour is always assumed to be i) bounded rational and sometime displays ii) opportunistic behaviour.

i) Bounded Rationality

Human behaviour is ‘intentionally rational, but only limited so’ (Simon 1961)

Williamson (1985) interprets bounded rationality as involving neurophysiological

limitations on the one hand and language limitation on the other. It is recognized that

limits on intended rationality are imposed by physical, biological and social factor.

Bounded rationality will pose problems in environments that are characterized by

uncertainty/ complexity. With bounded rationality and complexity, people cannot act

optimally but only satisficingly.

ii) Opportunistic Behaviour

Human being not only is bounded rational, they also display opportunistic behaviour, trying to exploit a situation to their own advantage. Williamson describes opportunism as ‘self interest seeking with guile’ and as making ‘self disbelieved statements’. It is difficult or impossible to distinguish honest and dishonest people in *ex ante*, even in *ex post* situation. Especially, problems exist at *ex post* stage, when disputes arise, the parties may behave in a manner that is self-interested but does not maximize joint profit.

With these two kinds of human behaviour, incentive alignment and commitment to contract are made much more difficult. Especially, either of the two parties may not act best for the both parties when dispute – mortgage default arise during *ex post* mortgage transaction.

2.2.2 Property Rights

Property rights (Pejovich 1998) are relations among individual that arise from the existence of scare goods and pertain to their use. The term ‘property rights’ includes benefits and restrictions/disbenefits in relation to the asset granted to individuals and enforced through institutions. By enforcing a system of defined individual property rights, incentive can be guided to achieve a greater internalization of externalities (Coase 1937).

The property rights are embodied in institutions, and their economic relevance depends on how well the rights are recognized and enforce by other members of society. According to Williamson (1996), the economics of property rights view holds the economic performance is largely determined by the way which property rights are identified. In accordance to Furubotn and Pejovich (1974) and Richter (1991), modern institution economics focuses on the institution of property, and on the system of norms governing the acquisition or transfer of property rights.

Eggertson (1995) describe property rights under four classifications as follows:

- (i) Open access: access to the resource is open to all with no constraints.
- (ii) Communal property: a community of users, different from the government, holds the resources
- (iii) State property: the central government of national states or sub-unit of national states controls the resource.
- (iv) Private property: exclusive rights reside with an individual owner who can trade these property rights with others.

Eggertson (1995) states that property rights constitute a control mechanism over assets. He further points out that the type of property rights system that influence the amount of control that ‘owner’ or ‘user’ of resources have, influences the decisions they make and the way those resources are treated.

The interaction of institutions with property rights limits the property rights of individuals and organizations. However, these rights themselves can be seen as bundles of rights, where others may have the capacity to take away a portion of the bundle (Eggertsson 1995). Traditionally, they are the rights to:

1. Control over use,
2. The benefits of property/ Profits,
3. Transfer or sell,
4. Exclude others, e.g. non-owners.

The nature of property rights support the market transaction and give people incentive in participating in it. It is because firms and individuals will confidently invest in productive asset without concern that they would thereafter be deprived of their just deserved.

The private property rights arrangement in mortgage transaction acts as a good form of security to the bank. The private property rights of the foreclosed property belong to the bank. When the mortgagor defaults the mortgage, the bank applies for a foreclosure order in the court, extinguishing mortgagor's rights to redeem and property rights.

2.2.3 Agency Theory

Agency theory can be applied in *ex post* mortgage transaction when bank conducts his power of sale and realized the property after the mortgage defaults. Although the mortgagor is the one who breach the contract, the court (*Cuckmere Bank Co. Ltd. v*

Mutual Finance Ltd. [1971]) has established that the bank owe a duty of care to take interest of the mortgagor and sell the property at best price due to the particular relationship they have. As a result, the principal-agent relationship exists when the mortgagee realize the mortgaged property.

The origin of agency theory is the separation of control and ownership in large corporation (Smith, 1950) in which he thinks ‘negligence and profusion... must always prevail, more or less, in such a company’. The agency (principal-agent) relationship especially prevails in business sector because modern commercial relations need people who could act on behalf of others. As Metzger says the legal concept of agency is as ‘A two party relationship in which one party (the agent) is authorized to act on behalf of, and under the control of the other party (the principal).’

Jensen (1976) adds that the agency relationship involves delegating some decision-making authority from the principal to the agent. Under the principal-agent relationship, the decision that the agent made shall be so acted to maximize principal’s interest and to achieve his goal.

Agency problem exists due to the assumption that the agent work best for his principal is too idealistic. According to Degeorge (1992), the major difficulty exists in

motivating one person to act on behalf of another was the fact that human being is rational maximizers. Their self-interested behaviour induces them to act for their own goodness at the expense of others. It is also noticed that we are in a world where there are frequent conflicts of interests among the parties. Facing conflict of interest and constraints, the individuals, displaying bounded rationality and opportunism, will always put himself first and make decisions that yield the greatest possible amount of return. However, the action may be adverse to the principal.

In addition to the self-interested human motivation, agency problem in the *ex post* transaction period was intensified by goal incongruity as the bank's preference is not consistent with the mortgagor; uncertainty as the outcome of the sale is combined with unpredictable market which is beyond the bank's control; imperfect information and asymmetry information as the bank has better information about level of effort pay in promoting the sale than the mortgagor. It seems hard for the mortgagor to know whether the bank has put enough effort to ensure the foreclosed property sold at best price.

Theoretically, existence of agency problems can be lessened by monitoring and bonding mechanism. Monitoring mechanism refers to appoint outside bodies to take

the initiative and observe the behaviour of the manager; Bonding mechanism means that the manager takes the initiatives to bind himself and to be monitored. To deal with the agency problem between the bank and mortgagor in mortgagee sale, the mortgagors, theoretically can engage in costly investigation and audit activities, which may need to bear high transaction cost. In reality, it is questionable if it is feasible for the mortgagor to audit the banks' activities. In this study, the agency theory will be applied to understand the foreclosed property sale arrangement in the *ex post* mortgage transaction.

2.2.4 Transaction Governance

In institutional economics, a contract is an agreement under which two parties make reciprocal commitments in terms of their behaviour – a bilateral coordination arrangement (Brousseau and Glachant 2000). Mortgage contract, in Level 2, mediates the mortgage transaction by setting up an agreement between the two parties. Furthermore, it acts as transaction governance (Williamson 1985) by which order is accomplished in a relationship in which potential conflicts threaten to undermine or upset opportunities to realize mutual gain in the transaction, existing in *ex post* transaction period. The study of governance is concerned with the identification,

explanation and mitigation of all form of possible contractual hazard. Mortgage contract sets out the arrangement to settle dispute arising from mortgage default.

As it is difficult for one to know *ex ante* the private information of the other (such as willingness to repay mortgage, quality of financial resources) due to information asymmetric, in addition to bounded rationality and opportunism, it is important for the mortgage contract to function as transaction governance to ensure good order of the two contracting parties. In the Hong Kong real estate market, the mortgage contract is so devised to carry out the mortgage transaction and bind the bank and mortgagor to perform their duties under the contract. The importance of the mortgage contract is revealed from the fact that, in each mortgage, the bank is going to lend a large amount of money to the homebuyer. Especially banking institutions in Hong Kong lend up to 90% of real estate value for mortgages before 1997, the loan amount is undoubtedly huge. The banks cannot depend on one's promise to repay and lend the money. Furthermore, they have to be accountable to their depositors and protect their financial interest. Due to the above reason, banks have to retain security and power of sale should the mortgagee fails to repay the mortgage.

The completeness of the mortgage contract influences the effectiveness of the transaction governance. A contract is complete in the sense that it specifies unambiguously and precisely the obligation of each party in every possible future 'state of the world'. Ideally, to ensure the agreement is honored in every aspect, the contracting parties prefer to have to contract drafted as clear and detail as possible to deal with future contingency. However, contracts are finite object with finite number of clauses, given economic agents' cognitive capacity is limited, contracts are impossible to be complete and address all the contingencies foreseeable (Williamson 1985). As uncertainty and complexity abound, the expected cost of writing, administering, and enforcing fully contingent contracts increase, until to the point where it becomes uneconomical to write fully contingent contracts, and 'market' contract will tend to be incomplete (Williamson 1985). This unavoidable incompleteness is of special concern where human actors are given to opportunism, hence will not reliably self-enforce all promises. The formal institutions such as judicial is present here to determine the level of sophistication of the default clause (Brousseau and Glachant 2000).

On the whole, contract does not constitute a closed universe, and an essential element of the interplay in contractual relationships comes from their institutional environment

(Ménard 2000). The performance of mortgage contract is dependent on the existing institutional environment.

2.2.5 Institution

In dealing with the sale by mortgagee at *ex post* mortgage transaction period, apart from the transaction governance provided by mortgage contracts, law, court cases, custom and social norm also influence the performance of sale by mortgagee. They are collectively known as institutions. Humans interact with prevailing institutional arrangement (rules of the game) and affect the performance of sale.

In the past decades, many economists have contributed his effort on the study of institutional economics, however, the definition of institutions remain broadly. Before the discussion of institutions in this dissertation, a clear concept on ‘institution’ is needed.

Parsons (1940) states that institutions are not simply organization, but are ‘normative patterns which define what are felt to be, in the given society, proper, legitimate, or expected modes of actions or of social relationship’ Veblen (1967) suggest that institution is a usage which has become axiomatic and indispensable by habituation

and general acceptance. Furthermore, Schmid (1972) define institutions as ‘sets of ordered relationship among people which define their rights, exposures to the rights of others, privileges, and responsibilities’. Commons (1934) use wider view that an institution is ‘collective action in control of individual action’. Similarly, Hodgson (1988) also defines institution as a social organization which, through the operation of tradition, custom or legal constraint, tends to create durable and routinized pattern of behaviour. Pejovich (1998) further defines institutions as ‘the legal, administrative and customary arrangement for repeated human interaction’

Researches have highlighted the influence of human factor and accumulation of culture on institution. It is suggested that existing institutions is an evolution of past events, past transaction practice and cultural development of a society. Aoki (2001) agree with these points and he defines institutions as self-sustaining system of collective beliefs that continue changing, interacting and keeping in equilibrium state. And under different economy will have different institutions, given the fact that there are various traditions, customs and legal constraints varies from countries to countries and from time to time, inducing different institutions as a result.

Until 1990, North gives the definition of institutions in a comprehensive and structural way, he states institutions are

the rules of the game in a society or, more formally, are the humanly devised constraints that govern human interaction by constraining opportunistic or arbitrary behaviour... In the jargon of economist, institutions define and limit the set of choices of individuals. (North 1990:3-4).

North (1990) thinks that institutions consist of ‘a set of constraints on behaviour in the form of rules and regulation; and finally, a set of moral, ethical, behaviour norms which define the contours and the constraint the way in which the rules and regulation are specified and enforcement is carried out’ and structures political, economic, and social interaction. He further dichotomized humanly devised constraints into formal constraints (laws and constitutions) and informal constraints (sanctions, traditions, customs, and code of conduct). Formal constraints may change overnight as a result of political or judicial decision, while informal constraints embodied in customs, traditions, and code of conduct are much more impervious to deliberate policies. They are as a guide to human interaction and the practice we know how to perform our task.

The way of configurations of these institutions make a country unique and is collectively known as institutional arrangement.

Institutions arrangement reduces uncertainty by providing a structure to daily life within the society, it at the same time, limit the set of choices as we have to/ better to follow established formality of daily to minimize transaction cost when we carry out transaction. Then, with greater certainty, the costs of the transaction between parties, such as costs of monitoring and enforcement can be reduced.

Institutional economics works predominantly at two levels: the institutional environment and institutions of governance (Williamson 1998). Taking the institutional environment as given by economists, economic agents select institutional governance to effect economizing outcomes with less costly form of governance (Williamson 1996).

The institutional environment should fulfill two conditions to enhance social stability.

The conditions are credibility and stability of institutions:

i) Credibility (enforcement) of institutions:

Enforceable rules encourage transaction to take place. In contrary, rules that are loosely enforced ceases to be a predictor of institutions and the results are higher costs of exchange and fewer exchanges (Pejovich 1998). The rules yield a flow of benefits in such a way that it limits the boundaries in exchanging to prevent discrepancies in exchanges. Pejovich (1998) states that

It is essential for both economic growth and social stability of the community to develop and enforce institutional structures that provides incentives for individuals to seek contracts with other. Individuals far removed from their personal knowledge, or extending over long periods of time, or both

ii) Stability of institutions:

With the passage of time, individuals become well acquainted with the rules. Thus, stable institutions allow individuals to adjust to the system, identify exchange

opportunities, and exploit the most beneficial ones. Stable and enforceable institutions should be the one which property once assigned, have good security features (Pejovich 1998). However, if the rules of the game tend to change frequently, risk and uncertainty associated with transactions also tend to increase. The unstable institutional condition could raise the costs of exchange relative to those in contractual arrangements, which have a shorter time horizon (Pejovich 1998). A stable and credible set of rules provides incentives to create new knowledge about exchange opportunities, and to exploit the most beneficial one.

The same happens in the *ex post* mortgage transaction. In the sale by mortgagee arrangement, foreclosed property is sold through either auction or private treaty. If, from a custom point of view, potential buyers carry a general belief that they can buy the foreclosed property in auction at a price lower than that of private treaty. This discrimination would be unfair to the mortgagor, who is going to pay up the different between the sale price and loan value.

2.3 Conclusion

In this chapter, important concepts adopted and their applications in this study are elaborated upon. We will apply the analytical framework to examine the influence of institutional arrangement on *ex post* mortgage transactions, in particular foreclosure sale in *ex post* transaction period. In the next chapter, we would examine if there exists a price differential between foreclosed property sold by auction and private treaty as the first step to this study.

Chapter 3

Empirical Study of Price Differential between Foreclosed Properties sold through Auction and Private Treaty

3.1 Background

Foreclosed property sale are typically conducted through auction and private treaty in Hong Kong. It has been observed that auctioned foreclosed property seems to sell at a discount than those sold by private treaty. However, there is no empirical study in Hong Kong to prove if price differential really exists. In this chapter, an empirical study by hedonic price model is conducted to investigate if auction or private treaty put foreclosed property sale at disadvantage, by using Kingswood Villas for illustration. This is the first step to study the influence of institutional arrangement to the sale performance, a part of mortgage transaction. In this Chapter, a brief literature review on the nature of the two selling mechanisms – auction and private treaty, researches on their price difference are firstly presented. Then, the empirical study will be explained in details and lastly, its results will be discussed.

3.2 Literature Review

3.2.1 Auction

An auction is where multiple buyers are convened in a central marketplace and their bids are solicited by an auctioneer in a single period. There are various forms of auctions. The four basic auction formats are – English auction, Dutch auction, First-price sealed-bid auction and Second-price sealed-bid auction. Only English auction is adopted in Hong Kong foreclosed property auction.

English auction is characterized by the bidding begins low and edges upward as bidders escalate bids. When the bidding stops, the item for sale is said to be ‘hammered down’. The last remaining bidder receives the goods and pays the amount of his bid. In the foreclosed property sale, with the basic price, the price rises continuously until only one bidder remains and the seller is required to accept the final bid. Very often, a reserve price is set up by the bank and he can disregard the bid price if it is lower than the reserve price. At every price, all bidders know how many other bidders remain active and comparison among the potential buyers can be made by the seller simultaneously (McAfee and McMillian 1987).

3.2.2 Private Treaty

Private treaty is the negotiation between the seller (bank) and potential buyers, with the appointment of real estate agent to bargain on their behalf. The agent acts as middleman to negotiate, bargain and settle on a both agreed price. The seller and buyer spend an information gathering cost (search cost), in form of commission to agent, which is solely paid by the buyer in practice. The seller can accept this offer, or he can reject it and continue the search process. Seller, finally, meets individually with prospective buyers to discuss terms. For it is possible that many interested buyers are present during market bloom. The sale by mortgagee, in the market downturn, may go into one extreme that the seller receives only one offer per period and the offer must be accepted or rejected before another is received is possible. There will be no comparison of offers is possible (Arnold and Lippman 1995).

3.2.3 Price Differential between Properties sold in Auction and Private Treaty

Real estate auction seems to be a derivative of depressed economy but this does not hold true in every parts of the world. In the USA and Hong Kong, real estate auction is perceived as selling properties at below market prices. In contrary, in Australia and New Zealand, real estate auction are a widely accepted means of selling residential estate in good times. Researchers (Adams et al. 1992, Gau and Quan 1992, Mayer 1994, Wright 1989) have studied the performance of auction and private treaty in real estate in those countries where auction and private treaty are both practicing.

Mayer (1994) find out auctioned property obtains discount because the quick sale results in a poorer 'match' between house and the buyer, on average, than could be obtained by waiting longer for a buyer. Auction short-circuits the process by selling a property quickly, but only to buyers who are in the market at a given time (Mayer 1994). Small pool of auction buyers often results in poorer matches between buyers and houses, which have a high mismatch cost². There is a clear trade off of quicker sale but at a lower price for the seller. The situation become prominent especially

² Mismatch cost incurred by the buyer because the house is not a perfect match. It stems from characteristic of the house that does not match a given buyer's preference. Presumably buyer trade off a higher selling price against the quality of a match

when market is down and vacancies rise, the number of buyers decreases and the number of sellers increases.

Adams et al. (1992) conduct a similar finding with Mayer (1994, 1998) by comparing these two techniques by modeling private treaty sale as a slow Dutch auction. He concludes that private treaty, giving a fixed market price, obtains a higher price than an auction. They show that auction sells at lower price because the buyers with the highest valuation at any given time will have a valuation that is lower than that which could be obtained by waiting for a longer period of time drawing from a greater number of buyers.

Mayer (1998) extends his study by taking the economy of USA into account. It is found that properties auctioned in Los Angeles during 1980s boom sold at an estimated discount of 0%- 9%, while sales in Dallas following the oil bust obtained discount of 9%- 21%, compared with private treaty sale. His results confirm, further to his finding in 1994, that auction discount increases in downturns when a seller trade-off a longer expected selling time in a search market against an immediate auction sale. Wright (1989), Gau and Quan (1992) also found that auctioned real estate transacts at a discount of as much as 33%-37%.

There is one exception that auction perform better than private treaty. As shown by Lusht (1996), auction sells properties at a premium in Australia. By one estimate (Macher, 1989), 25% and 50% of all property in Melbourne are listed for sale by auction which strongly suggested that auction is a commonly accepted disposal method.

It is observed that time constraints, quality of property and economy performance affect the performance of auction sale. Most importantly, it is also suggested that social perception plays an important role in determining the performance of auction and private treaty sale. In Australia where widely carry a liberal mind on auction. Auction can fully express its monopolistic and bargaining power and obtain a price better than that sold in private treaty. In contrary, most Americans still view using auctions as last resort and auctioned property are of lower quality. This difference in social norms gives insight to the subjectively discounted price.

There has been no similar research done in Hong Kong. Furthermore, the above researches only worked on original property sale. In this dissertation, we are going to fill in this research gap and investigate whether auction or private treaty put foreclosed property sale into disadvantage.

3.2.4 Hedonic Price Model

The general theory of hedonic relationship and housing attributes has been firstly articulated by Rosen (1974), who firstly used the model to investigate the price of housing commodities on housing value. He concluded that housing, which is comprised of different housing traits, is in connection with the utility function of consumers. This implies the demand of housing from people can be interpreted as the demand of those housing traits. However, it is impossible for someone to buy housing traits separately in the market. Furthermore, the demand of these traits can only be reflected by implicit market. The total payment existed in the implicit market is analyzed as the sum of all individual housing trait in each corresponding individual implicit trait market. He has realized that estimated hedonic price characteristics functions typically identify neither demand nor supply of one characteristic. The function is a description of competitive equilibrium in a plan of several dimensions on which both buyers and sellers locate. The market clearing condition is when 'the amount of commodities offered by sellers at every point on the plane must equal to the amounts demanded by consumers choosing to locate there' (Rosen 1974).

After that, many researches (Linneman (1980), Megbolugbe (1989), Mok et al (1995), Dunse and Jones (1998), Spahr and Sunderman (1999) and Chau, Ng and Hung

(2000)) have been inspired by Rosen work and adopted the Hedonic Price Model to find out the contribution of implicit price of individual factor on the property or housing value. They have investigated effects of each individual trait and quantify their effect on property prices. In 1992, Asabere and Huffman analyzed the price determinants of foreclosed urban land by using Hedonic Price Model and attained a R^2 of 74%, which means that same as normal properties, Hedonic Price Model is applicable to foreclosed property price and are determined by conventional variable such as size, location, neighbourhood and so on. Furthermore, Wright (1989), Gau and Quan (1992), Lusht (1996) and Mayer (1998) have adopted Hedonic Price Model when they carry out their research on price differential between auction and private treaty. There has been recognition of the usefulness of Hedonic Price Model on investigating the influence of sale method on price difference.

3.3 Methodology

Hedonic Price Model is employed in this empirical study for it can reveal the price differential between auction and private treaty successfully by Wright (1989), Gau and Quan (1992), Lusht (1996) and Mayer (1998). The general theory of Hedonic Price Model is proposed by Rosen (1974). The analysis involves isolating the underlying price implicitly paid by the market for each characteristic of the property

using regression technique. The total payment is the sum of all individual housing traits. The Hedonic Price Model posits a relationship between housing price and traits.

The traits can be classified into three categories:

1) Structural Traits (S):

related to the property itself such as gross floor area and age of building, etc.

2) Locational Traits (L):

related to the property location such as transportation accessibility, etc.

3) Neighborhood Traits (N):

related to availability and quality of neighbourhood such as railway, nearby school quality.

The three categories of housing traits are not exhaustive. There are housing traits which cannot be classified under these three categories but should not be ignored. The sale method of property – auction and private treaty are good examples.

Their relationship can be expressed as follow:

$$P = F (S, L, N)$$

The partial derivative of the above equation with respect to any trait is interpreted as ‘the marginal change in the total site valuation associated with a change in that trait when all other trait level are held constant.’ If a linear relationship is assumed, then the equation will be expressed as:

$$P = a_0 + \sum a_j S_j + \sum b_k L_k + \sum c_q N_q + \varepsilon$$

$$\delta P / \delta S_j = a_j$$

$$\delta P / \delta L_k = b_k$$

$$\delta P / \delta N_q = c_q$$

Where

P	= Real Price of an individual unit
S _j	= Variables representing the structural traits j
L _k	= Variables representing the locational traits k
N _q	= Variables representing the neighborhood traits q
a ₀	= Constant Term
a _j , b _k , c _q	= Regression coefficient of the corresponding variables
ε	= Stochastic or error term

The regression coefficients a_j , b_k , c_q measure the changes in P associated with a unit change in the corresponding variable holding other factors constant. The regression coefficients a_j , b_k , c_q are actually the hedonic price of the corresponding housing traits. The regression coefficient is computed by using the programme, E-views. The Ordinary Least Square (OLS) technique is employed to estimate the partial coefficients. The OLS technique estimate the true and unobserved function by minimizing the residual sum of squares.

3.4 Functional Forms

Generally, there are two ways to select suitable functional forms, they are:

1. a prior knowledge of relationship can be logically deduced
2. no prior information of relationship is available

In the first case, the functional form can be logically deduced from prior experience and knowledge, the function form of relationship between dependent and independent variables can be approximately predicted. However, in this study, there are a lot of variables involved in the model such as age, floor level, gross floor area, view and sale method. The overall effects on the property price from each of the individual

housing trait can hardly be predicted. Hence, the selection of functional form is based on the rationale of the second case. The choice of functional form depends on try and error based on empirical observation. The process is as follows:

1. assume a linear function as the first attempt (close approximation over small interval)
2. use more flexible functional forms, (which can assume different shapes depending on the estimated parameters) if the linear assumption fails, e.g. the polynomial function and Box-Cox transformation can be used (provided that there is sufficiently large volume of data and a maximum likelihood estimates (MLE) software is available if the Box-Cox approach is adopted.)

Chau and Ng (1998) comment that the linear model is not significantly different from the more unrestricted Box-Cox model, concluding the simpler OLS estimates of the linear model are sufficient for their studies. The semi-log functional form, instead of linear specification, will be applied and tested in multiple regression analysis in order to find out the price differential.

3.5 Source of Data

The data used in this study is obtained from five main sources. They are:

- 1) **Midland Realty Co. Ltd.,**
- 2) **Chung Shing Auctioneer Co. Ltd.**
- 3) **Economic Property Research Centre (EPRC)**
- 4) **Hong Kong Property Review**
- 5) **Centamap Homepage**

in which first three sources will be discussed together as they are the sources of obtaining raw data of transaction price.

1) Midland Surveyors Co. Ltd and Chung Shing Auctioneer Co. Ltd

Difficulties exist in collection of transaction price data of mortgagee-in-possession property. The transaction records retrieved from Economic Property Research Centre (EPRC) do not indicate foreclosure status and sale method. Depending on newspaper advertisement is not reliable as the ultimate sale method cannot be confirmed. It is usual for foreclosed property advertised for auction may end up selling by private treaty and vice versa. Property agent companies are the most reliable sources in ensuring the property nature and disposal method as they kept all the record for those foreclosed property sold by them.

From 2003 to 2004, I have contacted all major foreclosed property sale agents in the territory, asking them to join my study by providing me with the information of foreclosed property handled by them. However, most of them rejected my invitation for participating in this research, claiming that the transaction data is confidential and they have to protect their clients' private information. Luckily, with the generous help from Midland Surveyors Co. Ltd. (MS) and Chung Shing Auctioneer Co. Ltd. (CS), transaction data is available for my dissertation to conduct empirical analysis on the sale method, as result of default in mortgage transaction. From the two sources, essential data can be extracted for analysis directly such as property address, transaction price, floor level and size of unit. After extracting the data form the two companies, counter-checking against the record in EPRC is conducted so as to make sure all the relevant information is correct. In addition, age of building, building plans and other information are collect in EPRC. It is noticed that for any discrepancy exist between private record and EPRC) record, the EPRC record prevails.

2) Hong Kong Property Review

The transaction record of foreclosed property is in nominal term, but not in real term. There exists fluctuation between months as market situation is not identical but keep changing so time effect cannot be ignored. For fair price comparison, a price deflator

is adopted to adjust the time effect for it can minimize the dummies required. This approach gives an objective and realistic adjustment to the nominal price.

We make use of the price index released by Rating and Valuation Department, HKSAR government. There are two types of price deflators for residential sector: Private Domestic (Selected Popular Residential Developments³) Monthly Price Index and Private Domestic Rental and Price Index (Quarterly). The monthly price index is used for its suitability to adjust the monthly transaction price. The index is analyzed based on huge number of transaction of estate in Hong Kong and quality-adjusted so as to remove the effect of change in quality and price value of different properties. The indices are divided into overall, small/medium domestic and large domestic. Class A, B and C flats are grouped as small/medium domestic and Classes D and E flats are grouped as large domestic⁴. The saleable floor area of my data in Kingswood Villas ranges from 42.2 m² to 60.6 m² which suit the B and C groups – small and medium size category. The corresponding indexes are extracted for adjustment of property price.

³ According to technical notes of Hong Kong Property Review 2004, Kingswood Villas is one of the selected developments for the preparation for the indexes.

⁴

- Class A- saleable area less than 40m²
- Class B- saleable area of 40m² to 69.9m²
- Class C- saleable area of 70m² to 99.9m²
- Class D- saleable area of 100m² to 159.9m²
- Class E - saleable area of at least 160m²

3) Centamap Homepage

The record of MS and CS fails to tell the view of each unit. As each unit is private property, I am not authorized to enter each unit for inspection. Instead, the Centamap homepage (www.centamap.com) provided a database that can accurately tell the orientation and view of each unit. The digital mapping information is provided by Survey and Mapping Office of Lands Department. In addition, site visit was carried out to increase the reliability of the view. Generally, most units share similar view of green parks and lake, as will be discussed later.

3.6 Selection of properties

50 transaction records of foreclosed properties in Kingswood Villas, in the year 2003, are used. Kingswood Villas is located at Tin Shui Wai and consists of six phases, namely Locwood, Sherwood, Chestwood, Lynwood, Maywood and Kenswood court. Totally, there are 58 buildings, providing 15,880 residential units. Properties from different courts are used in this study. By selecting one estate, the data used will become more homogeneous in nature (such as similar floor layout and location) and thus independent variables affecting the variation of transaction price can be effectively reduced.

3.7 Variables and their Expected Signs

Variables in this study include dependent and independent variables. The dependent variable and the independent variables are always not directly available in the source.

Some modifications have to be done before applying the data to Hedonic Price Model.

Furthermore, in this section, their respective expected signs will be discussed.

3.7.1 Dependent Variable

1) Real transaction price - P

The dependent variable used in this study is the deflated transaction price of the foreclosed property. The transaction records obtained from the database of two property agency companies, used in this study, are ranged from 1/2003 to 12/2003.

The nominal price is adjusted by price index is adopted to change into real term and for adjusting this time effect.

3.7.2 Independent Variable

1) Structural Attributes

i) Age of property - AGE

AGE represents the physical depreciation of the property. We make use of the difference between the transaction date of the property and the date of issuing Occupation Permit as the age. The transaction date is the date when the Agreement for Sale and Purchase (ASP) is signed. For example, if the occupation permit is issued on 8-Sep-1995 and ASP is signed on 3-Jan-2003, the AGE of the property is 7.33.

As the building gets aged, its physical condition will deteriorate. This will lower the quality of building material, building services and the general appearance. Hence, it is estimated that the coefficient of AGE will be negative.

ii) Gross Floor Area - GFA

GFA indicates the size of the property. This information can be directly got from EPRC database. For a property of 888 square feet, the value of GFA is 888. People have to pay higher price for the larger residential units as space is limiting in Hong Kong and for a more comfortable living environment. In consequence, it is expected that coefficient of GFA is expected to be positive.

2) Locational Attributes

i) Floor level – FL

FL represents the storey level at which the unit is situated in the building. This information is readily available in MS and CS database and EPRC. If the foreclosed property is at 10th floor, then the value of FL is taken as 10. Higher floors suggest lesser air and noise pollution. It is expected that people are generally willing to pay higher price for property that is higher. Thus, the sign of the coefficient of floor level (FL) is expected to be positive.

3) Dummies Variable

i) View -GnPk

Kingswood Villas is so developed that nearly all buildings shares green views. Views are mainly green parks, lakes, clubhouse, and hills. For simplicity, these mentioned views are generally classified as green-park. If the property unit has a green park view, then GnPk =1; otherwise, it is assigned as 0. As it is anticipated that buyers may take the 'green' view as granted when they buy the property. So, if the property has other than 'green park' view, the price will get reduced. It is reasonably to expect that the coefficient of GnPk is positive.

ii) North-south dispersion - NS

All the courts there are not concentrated, but with some dispersal on north and south, separated by a Tin Shui Wai park. While Maywood, Kenswood, Lynwood and Chestwood courts is located at north, Sherwood, Locwood are at south. It is essential to investigate if the North-South dispersal matters in the price determination. For courts located at north, then NS = 1 and 0 for courts located at south. From my visit to the subject site, the walking distance between each court is very short. Furthermore, given the Light Transit Railway stations and Central Bus Terminal, the accessibility of the two sides is expected to be the same. We would allow the empirical result to give an objective analysis.

iii) Auction – AUC

AUC represent the two sale methods – auction and private treaty. For auctioned foreclosed property, AUC = 1 and; otherwise, it is assigned as 0. As people generally think that they can buy property at discount in auction. It is expected that the coefficient of AUC will be negative.

Variable	Maximum	Minimum	Mean	Standard Deviation	Expected Sign of Variables
Dependent Variable					
P	\$ 1353311	\$ 649684	\$ 957488.	\$ 159011	Not Applicable
Independent Variable					
<i>Structural Traits</i>					
GFA	825	573	700.74	85.22	+ VE
AGE	12.05	5.21	9.30	1.96	- VE
<i>Locational Traits</i>					
FL	36	1	17.08	11.09	+ VE
<i>Dummy Variables</i>					
NS	1	0	0.64*	0.48	?
GnPk	1	0	0.48*	0.50	+ VE
AUC	1	0	0.28*	0.45	- VE

Table 1 Descriptive summary statistics of the variables used in the Hedonic Price Model and their expected signs

* The mean for the dummies show the percentage of sample transaction for the variable exist.

3.8 Results

The preceding sections have specified the model, variables that will be used for regression analysis. In this section, empirical results of the Hedonic Price function will be presented. The interpretation of the empirical study will then be explained according to the classification of the housing traits. The corresponding t-statistics, the adjusted R-square and other statistics are also stated. It is then followed by discussing the implication of the result in this study.

3.8.1 Interpretation of Empirical Results

Data sample is input into the model and access to the result by using Ordinary Least Square (OLS) technique. An independent variable will be considered as a major determinant of property price if

1. its level of significant is at the 5% or lower level; and
2. its sign of coefficient is as expected

The model I have used in this study is:

$$\text{Log (P)} = a_0 + a_1 \text{ AGE} + a_2 \text{GFA} + a_3 \text{FL} + a_4 \text{GnPk} + a_5 \text{AUC} + \varepsilon$$

The regression results of the model is summarized in Table 2.

Dependent Variable: Logarithm of Real Transaction Prices LOG(P)
--

Variable	Coefficient	Std. Error	t-Statistic	Prob.
GFA	0.001769	0.000145	12.19013	0*
AGE	-0.01868	0.009212	-2.02749	0.0488*
FL	0.003115	0.001073	2.901843	0.0058*
NS	0.021886	0.037116	0.589658	0.5585
GnPk	0.048647	0.025136	1.935341	0.0595*
AUC	-0.07173	0.025095	-2.85845	0.0065*
C	12.62222	0.156703	80.54888	0*
R-squared	0.809284		F-statistic	30.41095
Adjusted R-squared	0.782672		Durbin-Watson statistics	2.003414

Table 2 Summary of the Result of the Empirical Model on Price Differential between Foreclosed Property sold through Auction and Private Treaty

An * is to indicate the coefficients of the independent variables which are statistically significantly at the 5% level.

The empirical results achieved a satisfactory level. For the above model, the value of the adjusted R-squared is 0.782672, which means that the Hedonic Price Model can explain 78.26% of the variation of the dependent variables. The explanatory power of the model is satisfactory. The selected variables, except **NS**, are the main determinants of property price of foreclosed property sold by the two sale methods.

Besides, all of the independent variables, except **NS**, are statistically significant. All of the coefficients of the independent variables, except **NS**, are of the expected signs

and are statistically significantly at the 5% level as well. Now, the results will be interpreted with reasons explained.

1) Structural Housing Traits

Result of structural housing traits are as follow. The coefficient of GFA (Gross Floor Area) is 0.001769 and is statistically significant at 5% level. It shows the same sign as we expected – a positive relationship between property price and gross floor area. It means that the increase in GFA increase the real price. A larger size unit can give residents more space which is more comfortable. People are generally willing to pay more for a more spacious living environment for that one more square feet space cause 0.17% increase in price. The coefficient of AGE (Age) is -0.018678 and statistically significant at 5% level, same sign as we expected – a negative relationship between property price and its age. As in Kingswood Villas, for 1 year older of the unit, the property price will drop for nearly 1.86%. The ageing of building materials, building services and building appearance may incur financial implication on maintenance matters for new buyers. In face of the potential burden, people pay less for older buildings. It means that the increase in AGE decrease the real price.

2) Locational Housing traits

For the locational housing attributes, the coefficient of FL (Floor Level) is 0.003115 and statistically significant at 1% level, consistent with our expected sign. It means that the increase in FL increase the real price by 0.31%, telling us that better view and lesser pollution such as noise will let people willing to pay more on the property. The coefficient of GnPk is 0.048647 and statistically significant at 10% level, with p-value = 0.0595, which is actually close to 5% level. It means that the increase in GnPk increase the real price. The 'green view' also affects the property price. It may be because Kingswood Villas creates a 'green' living environment for the residents, any unit with no green park but view of car parks and roads will become undesirable to the residents. The coefficient of NS is 0.021886 and statistically insignificant. It means that the geographical dispersion of north and south serve nothing in determining the real price. It may be due to the fact that all buildings there are relatively close together and their transportation accessibility are nearly the same.

3) Other Statistics

i) Durbin –Watson Statistics

It is a test statistic for serial correlation and its values show the probability of serial correlation. The closer to 2, the less likelihood the data is in serial correlation. For a value less than 2, there is evidence of positive serial correlation; for a value more than 2,

there is evidence of negative serial correlation. In the result, D-W value is 2.003414, showing an extreme low probability of serial correlation in the monthly real price of foreclosed property.

ii) F-statistics

The F-statistic is large (30.41095) and significant ($p < 0.01\%$) which means that the hypothesis that adjusted R-squared is not significantly different from zero is rejected and all the partial regression coefficients are different from zero.

3.8.2 Implications of the Results

The focus of the empirical study is to find out if there is any price differentiation between auction and private treaty, the dummy variable, AUC, gives implication of the results.

The coefficient of AUC is -0.071733 and statistically significant at 1% level. As the dependent variable is $\log(P)$, it means that foreclosed property sold less in auction than private treaty by 7.17%. This is a strong evidence proving that price differential do exist in mortgagee-in-possession property sold through auction and private treaty.

The result is consistent with my expectation. The reasons are in four parts. First of all, there is general belief that people can buy foreclosed property at a cheaper price in auction than in private treaty. Most people think that selling through auction is the last resort and so they carry a negative image that property sold through auction is cheap. So, they are not willing to bid at a market value through the auction. While most people do not have such an undesirable feeling on private treaty, there is a higher possibility to get a higher price.

Secondly, in the auction, each potential buyer knows the bidding atmosphere well. In this economic turndown, the market atmosphere is sluggish and so the demand is low. Bidders, in the auction place, visualize the real market demand for the property is not high and they will not bid actively. In contrary, private treaty is a negotiation process which involves the bank, potential buyer and agent as middleman. The property agent may activate both parties response and the real demand of the property is not really visualized.

The third reason is the direct financial implication of the sale contract term. In auction, conditions of sale stating all illegal structure and management fee during vacancy period shall be bear by the new buyer. These terms are all fixed and released to

potential buyers before auction begins. Those who know the exact extra amount will try to compensate off by a lower bid price for sure. For some bidders may not have a full picture on how much extra fee he is going to bear, this adds risks to the bidders' future financial implication and they will bid at discount in the auction. In private treaty, the liabilities of these costs are subject to discussion during the transaction. The bank and new buyer even shared the burden together. The flexibility in private treaty enables potential buyers to pay more.

Fourthly, the clear trade off of a quicker sale with a lower price for the seller in previous study is also applicable here. There exists time limit that the banks are required, under the Banking Ordinance to sell out the foreclosed property in 18 months or they risk condemnation from Hong Kong Monetary Authority. Furthermore, the longer they hold the property, the more the property depreciated. So, banks have a general preference to sell out the property as soon as possible. Through auction, a quick sale is possible. However, the quicker sale will mean high mismatch cost, as it trade off with the search time for a better price.

3.9 Conclusion

From the empirical finding, it is shown that there is evidence that the price of foreclosed property sold through auction is 7.17% lower than that by private treaty. It may thus be argued that it is unfair to sell the foreclosed property through auction, which will likely put the defaulted mortgagor into disadvantage of the ungrounded bias, as he need to pay the difference between the transacted price and his loan value.

From the literature review and our empirical results, it is suggested that human and social norms play as an important factor in determining price difference between auction and private treaty. Hong Kong, similar to the U.S.A. takes the intuition that foreclosures sold through auction are of worse standard, which certainly affect the price. In the next chapter, we would illustrate how a mortgage contract acts as transaction governance mechanism in mortgage default during *ex post* transaction period. In Chapter 5, how institutional arrangement influences mortgage contract, acting as a transaction governance mechanism to settle mortgage default in the *ex post* transaction period will be discussed.

Chapter 4

Mortgage Contract as Transaction Governance Mechanism in *ex post* Mortgage Transaction

4.1 Introduction

In Chapter 3, the empirical study provided evidence that the auctioned foreclosed property is sold at a lower price than those through private treaty by 7.17%. In Chapter 4 and 5, we would investigate the rationale for such a price differential.

In the mortgage transaction, a mortgage contract aims to be the transaction governance to settle disputes arising from mortgage default in *ex post* mortgage transaction. Before enacting as transaction governance, it has to fulfill certain legal requirements. In this section, firstly, development of form of residential mortgage, its definition and legal formalities of a mortgage are reviewed. Secondly, a review will be conducted to illustrate how the mortgage contract acts as transaction governance mechanism with respect to mortgage default arrangement.

4.2 Development of Form of Residential Mortgage in Hong Kong

In this study, residential mortgages are mortgage loans made to individuals or families for purchasing homes. The residential mortgage in Hong Kong is particularly governed by Part V of Conveyancing and Property Ordinance⁵, enacted from 1st November, 1984 and it changes the form of residential mortgage.

The mortgage transaction in Hong Kong changes from a title theory to a lien theory after the passing of Conveyancing and Property Ordinance. Under the title theory, there is a transfer of legal title of the mortgaged property from the borrower to the lender. The mortgaged property serves as a security for the loan. In this case, the lender becomes the legal owner of the property while the borrower becomes the equitable owner. An equitable owner possesses equitable rights over the property. With these rights, the borrower can redeem the legal title of the mortgaged property upon satisfactory repayment of the loan.

In the Pre-Conveyancing and Property Ordinance period, mortgages in Hong Kong were made by the form of assignment or sub-demise of the land to the mortgage-lender (Nield, 1997). If the mortgagor repaid the loan in compliance with the contract terms, the mortgagee had to re-assign or surrender the property to the mortgagor. Thus,

⁵ Chapter 219, Laws of Hong Kong.

the mortgagee was the legal owner, for he held the legal estate of land while the mortgagor was the equitable owner. All other second or subsequent mortgages assigned by the mortgagor are equitable because his interest in the land was just equitable. If the mortgagor fails to repay the mortgage for whatever reason for even one day, the mortgagee was entitled to retain the property that had been assigned to them by way of security. This strict approach to redemption can clearly lead to injustice and the form of law, hence, change.

The other theory is the lien theory which is currently adopted in Hong Kong. Lien is a claim against property as a security for payment and performance of an obligation. In other words, it constitutes an encumbrance on the property. With this method, the borrower retains the legal title of the mortgaged property and creates a lien in favour of the lender. The lien extinguishes when compliance is shown on all contract terms. However, if the borrower defaults, the lender can go to the court to enforce the lien and then sold the property for the repayment. As the power of sale clause is included in the mortgage, the lender can sell the property under contractual rights directly without undergoing judicial procedures.

After enactment of Covenancing and Property Ordinance, the lien theory is applied to Hong Kong. The legal estate in the mortgaged property is no longer transferred to

the mortgagee as in the past, but remains with the mortgagor. The mortgage acts as an encumbrance over the property registered in Land Registry. The mortgagee obtain a legal charge over the mortgaged property, which confers him the same protection, powers and remedies as if the mortgage is made by assignment. If the mortgagor defaults, the mortgage can exercise his rights of power of sale to sell the property under contractual rights as there is a power of sale clause in the mortgage, in addition to power of sale conferred in Property and Conveyancing Ordinance.

4.3 Definition of a mortgage

Section 2 of the Conveyancing and Property Ordinance provides the legal definition of the term ‘mortgage’. It defines a mortgage as ‘a security over land for securing morney or money’s worth.’ Maisel (1992) gives a more comprehensive definition. He states that,

a mortgage is a contract that pledges a specific property as collateral to insure the repayment of a debt. The property serves as a security, or a promise that the borrower will meet the term Agreed upon. If the borrower fails to do so, the lender has the rights to have the property sold to satisfy to debt.’ (Maisel 1992)

The main gists of a mortgage are the provision of security and mortgagor's rights to redeem. The security is a pledge of property to secure a loan (Wiedemer, 1995), which is effective to bond mortgagor's behaviour to repay in compliance with the mortgage. Without the security, the mortgage becomes null and void; furthermore, a mortgage that cannot be redeemed is not a mortgage at all but an absolute assignment of the land to the mortgagee (Nield, 1997). The rights to redeem is the essence of a mortgage. Equity has been alert to prevent any exclusion of the rights to redeem or any other device that may prevent or impede the rights to redeem so as to ensure the mortgage is limited to its intended function of security provision.

4.4 Legal formalities in the Creation of Mortgages in Hong Kong

Mortgage is a type of legal estate⁶ as defined in section 2 of Conveyancing and Property Ordinance. Therefore, its creation and disposal are subject to the formality of legal estates. There are three formalities needed in the mortgage transaction, namely by deed, in writing and registration are identified below.

i) By Deed

All legal mortgages must be dealt with by deed. This stipulation can be observed in several clauses in the Conveyancing and Property Ordinance including Section 4(1),

⁶ According to Section 2 of Conveyancing and Property Ordinance, meaning of 'legal estate' shall include 'legal charge', in which 'legal charge' means a mortgage expressed to be a legal charge.

stating that subject to subsection 4(2), a legal estate in land may be created, extinguished or disposed of only by deed' and in Section 44(1), ' After the commencement of this section, a mortgage of a legal estate, including any second or subsequent mortgage of that legal estate, may be effected at law only by a charge by deed expressed to be a legal charge.'

To be qualified as a deed, a mortgage contract has to be signed, sealed and delivered. The purpose of having a deed is to ensure that the person executing the deed intends to be bound irrevocably by it (Nield, 1996)

ii) In Writing

Subject to exception stipulated in Section 6(2), a mortgage should be in writing. According to Section 3(1) of Conveyancing Property Ordinance stating that 'no action shall be brought upon any contract for the sale or other disposition of land unless the agreement upon which such action is brought or some memorandum or note thereof, is in writing...'

The requirement that a mortgages should be in writing is vital because any interest in land purported to be created orally does not create any legal estate in the land; it create only an interest at will that may be revoked at any time (Nield, 1997)

iii) Registration

A mortgage must be registered in Hong Kong. Registration is an act of entering into the public record -- Land Registry in Hong Kong a written instrument that affects title to property. The effects of registration are to provide a record of the holders of the estate and interests subsisting a lot of land (Nield 1997) and let other people know its existence. Once registered, it cannot be challenged except in a number of limited circumstances. Hence, any subsequent person who is interested in the mortgaged property can do a land search, before getting himself involved into any dealings related to it, to understand all encumbrances and their risk, cost implication attached to the land.

4.5 Review of Mortgage Contract as Transaction Governance in Mortgage Default in *ex post* Transaction

In the mortgage transaction, the mortgagee and mortgagor sign the mortgage contract which creates a legal relationship and binds each other legally. In mortgage default, while the bank has to protect himself and accountable to public interest for the money is basically from depositors, the mortgagor is concerned about the price difference he still requires to pay after the sale. The main objective of this section is to understand how provisions of residential mortgage contract serve as transaction governance to manage contractual hazard – mortgage default.

In Hong Kong, banking institutions⁷ are the major mortgage service providers in Hong Kong. Different banks adopt their own mortgage contracts as the transaction governance in the mortgage transaction. Terms and conditions of the mortgage contracts may vary from banks to banks. The existence of non-standard forms is a good evidence that the banks are always trying their best to economize transaction costs.

4.5.1 The Model Mortgage Deed

In this dissertation, we adopted the Model Mortgage Deed (2001)⁸, prepared by The Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong for reference. The standardization can help to reduce uncertainty in contract⁹ and economize transaction cost for the bank to draft the contract. The reasons for choosing the model mortgage deed are as follow:

Firstly, according to Hong Kong Mortgage Corporation (2001), one of the objectives of this standardization project is:

⁷ 'Banking institutions' collectively refer as 'banks' in this study.

⁸ A full Model Mortgage Document is in Appendix I.

⁹ At the time being, Hong Kong is developing and preparing for the issuance of mortgage-backed securities. With the standardization, it reduces the lead time and cost for investors and credit rating agencies need not conduct specific risk assessment on the mortgage origination documents.

- a. to develop a set of model documents that clearly prescribes balanced rights and obligations between the banks and the homebuyers and is easily understood by the contracting parties through the use of user-friendly language in drafting the documents;...

This Model Mortgage Deed aspires to be a set of model mortgage origination documents that represents the best market practice, in compliance with the Code of Banking Practice. As stated by Mr Tony Latter, Deputy Chief Executive of the Hong Kong Monetary Authority,

‘They [Model Mortgage Documents] will help to raise industry standard in mortgage origination as the documents reflect best market practice and are in compliance with the Code of Banking Practice. The unanimous endorsement of the Model Documents by the banking industry, the Consumer Council and the legal profession has also confirmed that the documents have fully ‘encapsulated best market

practice, are regarded as fair by both consumers and banks¹⁰, and are legally robust as binding contracts.’

Secondly, it would represent the view of related industries in the mortgage business. The Drafting Committee members consist of representatives from the major mortgagee banks, mortgage reinsurers and credit rating agencies such as the Law Society of Hong Kong (Law Society), the Hong Kong Bar Association (Bar Association) and the Law Faculty of the University of Hong Kong. These representatives can reflect a significant coverage of current terms and conditions included in the mortgage deed in reality.

Thirdly, this Model Mortgage Deed, up to November 2003, has been adopted by 14 major banks¹¹ in Hong Kong, which altogether account for about 84% of the residential mortgage market. It infers that most of the residential mortgage nowadays would make use of the Model Mortgage Deed as their mortgage documents and future disputes have to fall back on this document. As a result, using this Model Mortgage Deed for discussion, we not only can get the generalized coverage of the today’s

¹⁰ According to the Press release of Hong Kong Monetary Authority, Forum of Implementation of the Model Mortgage Origination, major amendments are deletion of ‘Repayment on Demand’, specification of ‘Default Interest Rate’.

¹¹ In May 2002, Dah Sing Bank, Limited, Hang Seng Bank Limited, Hang Seng Credit Limited, Hang Seng Finance Limited, The Hongkong and Shanghai Banking Corporation Limited, Orix Asia Limited, Standard Chartered Bank, has already adopted the model mortgage deed. However, the details of the remaining 7 banks have not yet been released.

mortgage deeds, we can also visualize and evaluate how well the transaction governance interacts with the existing institution environment in future. The discussion would be a proactive and generalized one.

Viewing the potential contract hazard, the banks protect self- and public- interest by endorsing themselves powerful contractual rights to sell the mortgaged property in case the mortgage default. As the mortgagor is acknowledged about the provisions, the mortgagor has to bear the consequence when he defaults the mortgage. Now, a detail look is made on how the mortgage contract addresses the possibility of mortgage default.

4.5.1.1 Event of Default

To protect banks' own benefit and make sure the mortgagor repay the mortgage, the clause 13 of the mortgage contract, it clearly identifies a list of situation for the Event of Default occurs:

- (a) you fail to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which you are party;

- (b) any of your representations or warranties made to us in the Facility Agreement or the Mortgage is breached or found to have been incorrect;
- (c) you fail to repay any debt due any payable;
- (d) you admit your inability to repay any debt due and payable;
- (e) any action is taken to enforce any security created by you;
- (f) any law, rule, regulation, judgment or order, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage.
- (g) any order, notice or proposal issued by any government authority or under any law or regulation, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (h) the property is destroyed or damaged;
- (i) any governmental or other authority re-enter or re-takes or expresses an intention or any proposal to re-enter or re-take possession of the property;
- (j) the Government Lease, so far as it relates to the Property, is terminated;

- (k) the Property is compulsorily purchased or acquired (whether or not any compensation is paid);
- (l) the Facilities Agreement or any other security provided to us becomes invalid or unenforceable or is terminated;
- (m) it becomes impossible to perform your obligation under the Facility Agreement or the Mortgage;
- (n) any third party applies for a court order in respect of the property;
- (o) any third parties occupies or take possession of the property without our (mortgagee) prior written consent;
- (p) you or any other security provider in respect of the Secured Liabilities enters into or proposes to enter into an arrangement in respect of your or his debts with or for the benefit of your or his creditors;
- (q) any necessary approval for the signing, execution or validity of the Mortgage or the Facilities Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement has not been obtained;
- (r) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other

security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities becomes ineffective

(s) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities is modified in a way which, in our reasonable opinion, might affect materially and adversely your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Secured Liabilities.

(t) any action taken or omission by you or any other security provider which in our reasonable opinion might materially and adversely affect your or the security provider's ability to perform your or the security provider's obligation under the Facility Agreement or the Mortgage or other security for the Secured Liabilities;

(Paragraph (u) below is applicable if you are an individual person.)

(u) a petition for your bankruptcy is presented to the court and is not discharged within 7 days;

(Paragraph (v) to (dd) below are applicable if you are a corporation or firm.)

(v) a receiver or similar officer is appointed over any part of your business or assets;

(w) creditors take possession of any part of your business or assets;

(x) a legal process is commenced against any part of your business or assets and is not discharged within 7 days of the commencement of that legal process;

(y) A petition is presented to the court, or a legal process commenced, or an order made, or a resolution passed, for your winding-up, administration , reorganization or dissolution;

(z) you dispose of, or express your intention to dispose of, any substantial part of your business or assets;

- (aa) any substantial part of your business or asset is compulsorily purchased or taken over or acquired (whether or not any compensation is paid);
- (bb) you cease, or express your intention to cease, to carry on any substantial part of your business.
- (cc) you make or express your intention to make, any significant change to the nature or scope of your business; and
- (dd) any material and adverse change in your business or financial condition which, in our reasonable opinion, might materially or adversely affect your ability to perform your obligations under the Facility Agreement or the Mortgage.'

Any of the events above-said happen shall default the mortgage, particularly, sub-clause c) and d) are concerned about mortgagor's failure to repay the mortgage, which is the usual events leading to mortgage default.

4.5.1.2 Enforcement of the Mortgage

Then, if the mortgage defaults, the bank can enforce the Mortgage and the banks shall be entitled to do the following things, as said in clause 14:

- (a) terminate all banking, credit or other facilities or accommodation provided to you so that our obligation under all those banking, credit or other facilities or accommodation or further advance money to you shall cease immediately;
- (b) require you to pay the Secured Liabilities
- (c) exercise all power given to us as mortgagee by law (including the Ordinance) (as varied or extended by the Mortgage); and
- (d) exercise all powers given to us by the Mortgage.

Powers under contractual and statutory to enforce the mortgage are given to the mortgagee at the same time in the clause 14, under sub-clause c) and d). While the statutory powers would be discussed in next chapter, the question comes here is what powers are exercisable by the mortgagee in the contract.

4.5.1.3 Bank's Contractual Power in Mortgage Default

When the mortgage is in default, the bank obtains certain contractual rights over the property. The powers of the bank are stipulated in clause 17:

- (a) to sell or otherwise dispose of or deal with the Property, in any manner, at any price (whether in cash or in any other form) and on any terms we (bank) think fit;
- (b) to assign the Property either in our name or in your name in exercise of our or the Receiver's power under the Mortgage;
- (c) to enter and take possession of the Property;
- (d) to receive any rent, deposit and profit in respect of the Property and request you to sign and execute an assignment of such rent or profit to us or the Receiver;
- (e) subject to any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property lawfully granted by you in accordance with our prior written consent, to grant any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property on any terms as we or the Receiver think fit;
- (f) to sign any document and do anything as we or the Receiver think fit for the sale, lease or tenancy of the Property or the granting of any other rights to occupy or possess the Property pursuant to the Mortgage;

- (g) to insure the Property, and to keep the Property insured, against fire and other risks that we may require, for the insured amount and on the terms as we or the Receiver think fit;
- (h) to carry out all repairs, renovations, alternation, improvements and developments to the Property as we or the Receiver think fit;
- (i) to appoint any agent, workman, professional or non-professional adviser or employee in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage for any remuneration and on any terms as we or the Receiver think fit;
- (j) to delegate any of our or the Receiver's powers and rights under the Mortgage to any person for any remuneration and on any terms as we or the Receiver think fit;
- (k) to incur reasonable cost and expenses in exercise of any of our or the Receiver's powers and rights under the Mortgage;
- (l) in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage, to raise money on any terms as we or the Receiver think fit, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage provided that:

- (i) the Receiver shall not exercise this power without our prior written consent and we shall not be liable for giving or refusing to give that consent in any way; and
- (ii) any person lending money to the Receiver as a result of the exercise of this power shall be entitled to assume that the Receiver is entitled to borrow that money and is borrowing that money in accordance with this sub-clause;
- (m) to institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;
- (n) to use your name in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage; and
- (o) to do any other lawful act as we or the Receiver consider necessary or incidental to the exercise of any of our or the receiver's powers and rights under the Mortgage.

Sub-clause a) and b) spell out one of the most essential power of the bank in mortgage default. That is, the bank's rights to sell the mortgaged property as he thinks fit. Furthermore, there exist provisions which facilitate the mortgagee to exercise his rights of sale smoothly. As in clause 17.4,

We [bank] shall not be liable for any loss arising from the exercise of any of our or the Receiver's powers and rights under the Mortgage unless the loss is caused by our or the Receiver's fraud or gross negligence; however, we and the Receiver shall each be liable only for loss caused by our respective fraud or gross negligence.

And in clause 18,

For any unauthorized, improper or irregular exercise of our or the Receiver's powers and rights under the Mortgage shall be in damages only.

Except fraud and gross negligence, the bank has no liability on the performance of sale. As long as the mortgagee is able to prove he has taken all reasonable steps to dispose the property, he would not be liable for any loss caused to the mortgagor. At the same, the clause 17.4 and 18 have an intention to remind the bank to act prudently and not to put mortgagor's benefit into disadvantage when exercise the power of sale. Otherwise, the bank needs to compensate for the loss in damages. However, clearly

there is no provision detailing the sale arrangement, i.e. how the foreclosed property is realized.

4.5.1.4 Application of Proceeds of Security Realization

After the foreclosed property is realized, the money realized shall be applied in the order of priority as in clause 19:

- (a) the Expenses;
- (b) in payment of the Secured Liabilities (with interest being paid first pursuant to the Mortgage; and
- (c) paying the remaining balance to you and any other person who is entitled to receive that money.’

In which, ‘the expenses’ shall mean

- (a) all reasonable costs and expenses (including legal costs) incurred by us or (as the case may be) the Receiver under or in connection with the Mortgage, for example, for the following purposes:
 - (i) preparing, negotiating, signing or registering the Mortgage;

- (ii) exercising any of our or the Receiver's powers under the Mortgage;
- (iii) recovering or attempting to recover the Securities Liabilities;
- (iv) protecting or enforcing any of our or (as the case may be) the Receiver's rights under the Mortgage;
- (v) preserving or attempting to preserve the Property;
- (vi) making any claim or defending any claim against us or the Receiver in respect of the Secured Liabilities, the Mortgage or the Property;
- (vii) preparing, signing or registering a release of the Mortgage
- (viii) certifying receipt of full payment of Secured Liabilities;
- (ix) (if your interest in the Property is an equitable interest) preparing, signing or registering all documents or doing all thing necessary to re-assign the Property to you upon full payment of the Secured Liabilities;
- (x) giving or refusing to give our consent under the Mortgage;
- (xi) (if you fail to perform your obligations under the Mortgage) performing your obligations under the Mortgage; or

- (xii) taking possession of or selling or leasing or granting other rights
 - to occupy or possess the Property pursuant to the Mortgage;
 - and
- (b) the Receiver's remuneration as reasonably agreed between the Receiver and ourselves; and
- (c) any amount which you are liable to pay us under clause 5.1

There is a priority flow of money realized. It is the last item for the money to paid the remaining loan. Before that, the money is paid for various expenditures associated with the mortgage and the foreclosed property transaction.

4.5.2 Discussion of Mortgage Contract as Transaction Governance

It is noted that, if the mortgage defaults, the bank obtains the rights to exercise the sale of foreclosed property as he thinks fit. This is an explicit provision which confers very wide selling rights on the bank's hand. Implicitly, it means that when the mortgage contract is signed, the mortgagor implicitly agrees to follow the mortgagee direction in selling the property once the mortgage default, with no need for the bank to fall within certain bounds or limit of power. The literal meaning of 'as we thinks fit' in the mortgage contract is that the bank can dispose the foreclosed property, no matter in any manner, at any price and on any terms, as long as the bank thinks it is

suitable, which is rather subjective and difficult to argue. Also, mortgagors have to accept any disadvantages brought to them by the bank during the sale of foreclosed property. The contract did not give any rights to mortgagor to express any opinion on the sale arrangement and there is even no relational contract stating the objective of the sale, this will put mortgagor's position at a disadvantage. As the mortgagor is acknowledged about the provision about mortgage default, the bank can easily claim that what he does is what was agreed, and that is no reneging is going on at all.

In mortgage default, it is the mortgagor who breaches the contract. It is reasonable to understand that the bank's incentive which is to protect their own and depositors' financial interest. However, under the existing transaction governance mechanism, there is a serious imbalance of power between the bank and mortgagor during default. However, it is worth to consider the rationale for not incorporating the sale arrangement provision.

According to Milgrom and Roberts (1992), there are usually four attributes for contract incompleteness and some of them can help to explain the reasons for not incorporating sale arrangement in the mortgage contract. They are bounded rationality, unforeseen circumstances, costly calculation and contracting and imprecision which three of them may apply to our case.

Although mortgage default is a contract hazard which can be reasonably foreseen by the bank. However, real people are not omniscient or perfectly far-sighted. They are bounded rational, acting in an intentionally rational manner and cannot solve problems exactly, and instantaneously. It seems hard to them to specify the sale arrangement of the mortgaged property in default as the suitable sale method chosen depends on the market situation. They just cannot predict how the market will be when the mortgage default, at the time of signing the mortgage contract. This unforeseen circumstance does matter in deciding whether to include the sale arrangement in the mortgage. Not incorporating sale arrangement in the contract theoretically allows flexibility. The bank can opt for a mode of sale and dispose the property at any price freely.

Costly calculation and contracting is the third matter to be considered. As bank has got a wide power on the sale arrangement in mortgage default and being neutral to the sale performance (it is the mortgagor responsibility to pay up the difference between the re-sale price and loan value), it appears that it is not worthwhile to describe them in details and to agree about what to do if they should arise. Furthermore, the imprecision of language makes it more difficult when the more it describes to guide and plan what to do. For example, the mode of sale is subject to variables such as

market atmosphere and time constraint. It is difficult to specify which sale method to be employed in each circumstance as there are so many possibilities. The statement describes this kind of reasonably complex situation must be somewhat ambiguous and transaction cost will be exceptionally high to draft the contingency provisions. For this reason, adding many detailed provisions to a contract can make dispute even more likely intense.

4.6 Conclusion

The mortgage contract has to meet legal formality under existing law, i.e. by deed, in writing and registration before enforcing as an transaction governance. The mortgage contract, acting as transaction governance mechanism in *ex post* transaction, settles the mortgage default by allowing the bank get the ownership of the foreclosed property and dispose the property at any price, manner and terms as long as he thinks fit. The transaction of foreclosed property, as part of the *ex post* transaction, is influenced by existing institutional arrangement. In the next chapter, we will investigate how it is.

Chapter 5

The Influence of Institutional Arrangement on Foreclosed Property Sale

5.1 Introduction

In Chapter 4, the way the mortgage contract deals with mortgage default is analyzed. However, mortgage contract does not constitute a closed universe, instead, it interplays with surrounding institutional environment, which directly affect its performance. In Hong Kong real estate market, individuals, develop formal and informal institutions (rule of the game) to enhance the predictability of human behaviour and so reduce transaction costs. The sale of foreclosed property, part of the *ex post* mortgage transaction is influenced by human interaction with the existing institutional arrangement. In this chapter, attention is paid on analyzing and understanding how the formal and informal institutions react with mortgage contract which act as transaction governance. Firstly, the influence of formal institutions on foreclosed property sale will be addressed and next come the influence of formal institutions. Thirdly, the agency problem between the mortgagor and the bank in the foreclosure sale will be discussed.

5.2 Influence of Formal Institutions on Foreclosed Property Sale

5.2.1 Introduction

According to Pejovich (1998), formal rules are constitutions, statutes, common laws, and other government regulation which are externally enforced. In Hong Kong residential mortgage market, the relevant formal institutions influencing the sale include existing legislations, The Rules of High Court (Cap. 4), Banking Ordinance (Cap. 155), Conveyancing and Property Ordinance (Cap. 219); and court cases. We are now to see how the formal institutions affect the mortgage default in *ex post* mortgage transaction.

5.2.2 Power of Sale

Bank obtains a statutory power of sale under paragraph 8 of Fourth Schedule of Conveyancing and Property Ordinance¹². Under this statutory power, the bank is entitled to ‘sell and assign the mortgaged land...’

To exercise the power of sale, one of the events of default specified in paragraph 11 of the Fourth Schedule of the Conveyancing and Property Ordinance has to happen, they are:

¹² Chapter 219, Laws of Hong Kong.

- a. Notice requiring payment of the mortgagee money has been served on the mortgagor and default has been made in payment of the mortgage money for one month after such service.
- b. Some interest under the mortgage is in arrears and unpaid for a month after becoming due.
- c. Some other breaches of a term of the mortgage.

Two of them are about time and monetary consideration in obtaining the power of sale. It gives lenience to the mortgagor who fails to repay mortgage in just short duration (1-2 months). From the above sub-clause a) and b), it can be inferred that the bank can only obtain power of sale after two months the mortgage become due.

5.2.3 Conduct of Sale

The mortgagee can conduct the sale according to the power of sale incurred from the Conveyancing and Property Ordinance. Under paragraph 8 of the Fourth Schedule of the Ordinance, the mortgagee is entitled to sell 'in such manner and subject to such lawful conditions as [he] think fit, with power to vary or rescind any contract for sale, buy in at any auction and to resell without being answerable to the mortgagor for loss occasioned.'

The law confers a wider power to the bank on the sale of foreclosed property, same as what the mortgage contract does. Similar to the incentive in mortgage contract, the Conveyance and Property Ordinance also helps to protect bank and its depositors' financial interest. However, the permission of buy-in and resell in auction by the banks without answerable to the mortgagor deserve is rather risky to the mortgagor. Mortgagor, who is to pay the difference between the sale price and loan value, may be put in disadvantage that the property cannot be sold at best price if the bank play tricks and corrupt/ collude with the new purchaser.

The legislation only covers the power of sale and conduct of sale, without any coverage of details on mode of sale. It is up to the bank to sell the foreclosed property in any manner, at any price and at any terms as long as he thinks fit.

5.2.4 Foreclosure Order

When the mortgagor is in default payment, the mortgagee has the rights to apply for foreclosure order. The rights of foreclosure order comes from common law equity system and is independent from the power of sale. This is the most draconian of the mortgagee's remedies, for it extinguishes the mortgagor's equity of redemption and transfers the property rights of the property from the mortgagor to the mortgagee. Due

the serious nature, the foreclosure order can be only exercised under the control of the court, under Order 88, Rules of High Court¹³.

The power does not arise until the legal date for repayment has passed. Notice must be served on the mortgagor requiring repayment of the mortgage money. If the mortgagor still fails to repay the mortgage money, the bank can apply to the court for foreclosure order. The grant of foreclosure order is a two-stage process. First, the court will order a foreclosure *nisi*. The order will direct accounts to be taken of the amount owned by the mortgagor to the bank, and provided that the amount is not repaid within time stipulated by the court, the order will be made absolute. The second stage follows if repayment is not made in accordance with the order *nisi* when the order becomes absolute. After that, the properties are then foreclosed and the bank becomes owner of the property. It gives certainty and authority to the banks to exercise their rights and dispose the property.

5.2.5 Court Case

It is clear that the bank cannot disregard the mortgagor's interests when he conducts his power of sale. It is because if the sale price is less than the amount owed to the bank, the mortgagor must make up the difference while, if it is more, the mortgagor

¹³ Chapter 4, Laws of Hong Kong.

will be entitled to the surplus. The court acts to protect the mortgagor's benefit by imposing rules on the bank when selling the foreclosed property.

In *The Hip On Insurance Exchange And Loan Co Ld* and *The Hong Kong And Manila Yuen Sheung Exchange And Trading Co Ld v Li Po Yung And Li Po Kam And Kowk Yik Ting* (1908), it is held that when the mortgagee exercise his power of sale, he must exercise it in *bona fide* for that purpose, without corruption or collusion with the purchaser. It is mortgagee's duty to exercise good faith in the conduct of sale, but the courts later have developed an objective element to this duty by requiring the mortgagee to also take reasonable steps to ensure that a proper price is obtained (*Downsview Nominees Ltd and Another v First City Corporation Ltd and Another* 1993).

In *Cuckmere Brick Co. Ltd v Mutual Fiance Ltd*, it is established that mortgagee is only responsible for the conduct of sale but not a trustee of the power of sale. He also owes a duty to take interest of mortgagor, subsequent encumbrances and surety which are directly affected by the result of the sale into account. The duty does not arise from the tort of negligence but is imposed by equity on the mortgagee because of the particular relationship between them. In addition, the property must be properly advertised or promoted as to the fact of sale and as the property itself.

For the mode of sale, the court has established that the mortgagee must obtain ‘the true market value’ for the foreclosed property. The mortgagee must take reasonable steps to discharge this duty. In *Tse Kwong Lam v Wong Chit Sen* (1983), it is held that there is no ‘hard and fast’ rule in determining the sale method of reselling the mortgaged properties. However, the bank has to obtain ‘the open market value’ for the foreclosed property. Furthermore, neither auction nor private treaty can prove the validity of the sale. It is not assumed that an auction would give the best price. Lord Templeman expresses that a sale by private treaty might produce a higher price for certain property or given certain market conditions. He also emphasizes that it is desirable to seek and follow the opinion of an expert, such as a qualified valuer or estate agent, on the mode of sale. His view is repeated in *American Express International Banking Corp v Hurley*, where the opinion of an expert is considered necessary to ensure the most advantageous sale of the subject item. Due to these court cases as precedent, the bank holding foreclosed property, very often, employs surveyors to do valuation for them so as to get rid of their legal liability.

Most importantly, this case gives insight to the timing of sale. In *Tse*, the short time between the advertisement and the sale, which gave prospective purchasers little time to make adequate enquiries about the property or its sale, was criticized. Again in Lord Denning MR in *Standard Chartered Bank Ltd v Walker*, it is suggested that in

the choice of the time for sale, the mortgagee should exercise a reasonable degree of care.

5.2.6 Time Constraint in Foreclosed Property Sale

Although it is held that a reasonable time should be allowed to advertise the property, there is time constraint in reselling the foreclosed property from the Banking Ordinance. In Section 88(5) of Banking Ordinance, it gives limitation on holding of interest in land by authorized institutions, stating that banking institutions incorporated in the HKSAR cannot hold interest in land in or outside of HKSAR in excess of 25% of its capital base. This provision does not extend to interests in land held as a result of defaulted mortgages, provided that the banking institutions dispose of the excess amount at the earliest opportunity, and no later than 18 months after it is acquired, unless the Hong Kong Monetary Authority permit extension of time limit in writing. After the Asia Financial Crisis, there has been a huge surge of foreclosed property in Hong Kong that Hong Kong real estate has never tackled. The 18 months limitation may affect the bank behaviour. The banks need to speed up the disposal process so as not to accumulate property up to 25% of capital base or risk condemnation by Hong Kong Monetary Authority.

5.2.7 Conclusion

For the formal institutions, in summary, the Conveyancing and Property Ordinance gives a wide power to the bank on the sale of foreclosed property. At the same time, court cases and Banking Ordinance add rules and require the bank to dispose the property by taking reasonable steps to obtain the true market value in 18 months unless Hong Kong Monetary Authority permits extension of time limit.

5.3 Influence of Informal Institutions on Foreclosed Property Sale

5.3.1 Introduction

Informal institutions (Pejovich 1998) have their origin in the experiences, traditional values, customs, religious beliefs, ethnicity and other factors that influence the subjective perception individuals form to interpret reality. They are part of the heritage or culture, transmitted from one generation to another via teaching and imitation. Due to this, informal rules are called the ethos, which is the observed pattern of behaviour that emerges from the interaction between the prevailing ethics and the conditions for survival as those are perceived by the community. There are established codes of practice by professional bodies, social norm, traditional value and experience acting as informal constraints on the mortgage transaction, their influence on foreclosed property sale will be discussed in this section.

5.3.2 Code of practice

It is, as mentioned in *Tse Kwong Lam v Wong Chit Sen* (1983), established that mortgagee has to obtain an 'open market value' for the foreclosed property. There is code of practice specifying circumstance to obtain an 'open market value'. They are set up by professional bodies that work out the criteria for achieving from their experience.

In Hong Kong Institution of Chartered Surveyor, 'open market value' means the best price at which a property might reasonably expects to be sold at the date of valuation assuming the following conditions:

- (a) a willing buyer;
- (b) there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale;
- (c) that values remain static during that period;
- (d) no account will be taken of any additional bid by a purchaser with a special interest';

- (e) both parties to the transaction had acted knowledgeably,
prudently and without compulsion.

It is claimed that an open market value will be obtained if the above conditions are met. The motivated seller and buyer, information symmetry and reasonable time allowed for action are the essence of achieving 'open market value'. However, together with the influence of social norm and traditional value, it is questionable whether the selling market of foreclosed property fulfills the conditions of getting an open market price.

5.3.3 Social Norm and Cultural Value

5.3.3.1 Bank's Perception

One of the major requirements of the obtaining an open market value is a willing buyer, who is a hypothetical owner, neither eager nor reluctant to sell the property at any time. As it is established in common law that the banks are under a duty to obtain the best price, the foreclosed property sale should be regarded generally as open market transaction if there has been proper marketing for a reasonable period and comply with the definition of open market value. However, when taking the reality into consideration, it is questionable whether an open market value can be achieved.

Firstly, the foreclosed property, in fact, poses extra holding cost on banks. For example, the time of holding incur expenditure in management fee and rates from the vacant foreclosed property. The longer the banks hold the property, the heavier the financial is foreseeable. Secondly, as the banks have to be accountable to their depositors, selling them out in shorter time also minimize the amount of bad debt and protect their financial health. They can have financial settlement of the foreclosed property at an earlier moment. It would not be good for banks to hold too many properties. In addition to the 18 months limit in disposing the foreclosed property by the bank, it is doubtful whether there is a reasonable time for proper marketing of property nature, characteristics and sale terms. Instead, the bank is generally eager to sell the foreclosed property as soon as possible.

5.3.3.2 Mortgagors' Perception

Under the lien theory of mortgage transaction in Hong Kong, when the mortgagee default his mortgage, the property rights will be transferred to mortgagee and mortgagor is not dare have a say on the sale by mortgagee arrangement. It is the social norm to accept that all powers in on the bank, without considering mortgagors' rights to obtain open market value under the court case established.

In addition, when an authentic homebuyer purchases a property and mortgaged with the bank, he will only do so after he checked that he is financially capable in the coming years to repay the mortgage. He does not expect that he will be unable to repay the mortgage in future at the very beginning. Usually the mortgagor only fails to repay the mortgage in the last resort when they are in serious financial difficulties. He feels shamed about the mortgage default and not dare raise objections even they notice that they will at disadvantage in the sale arrangement.

Even they understand that they have the rights, they are not strong enough to insist their rights. Self-motivation is an important element on whether the mortgagor can claim his rights. The mortgagor may have a low self-esteem and feel embarrassed to face the bank whose he owe money to. He will not insist their property rights, bargaining with the bank on the re-sale issues but blindly accept all the arrangement by the bank.

5.3.3.3 Prospective Buyer's Perception

The perception of those prospective buyers is crucial as they are the one who complete the transaction. The foreclosed property, in their mind, is always associated with bad feng-shui, which brings bad luck to the homeowner and resulting in his failure of to repay mortgage. This belief especially intensifies in Chinese society, as

feng-shui is important in Chinese tradition. Potential buyers will give discount when determining a price of a bad feng-shui property in their mind.

Furthermore, some buyers carried a special interest. They would like to take advantage by buying in the foreclosed properties in auction which have least bargaining time and enable buyers to deal with many property at one time. By making the property unassociated with undesirable labeling such as ‘foreclosed property’ and ‘mortgagee-in-possession property’, they will sell the property with or without further decoration work for a higher price. With this special interest, the potential buyers will have a discount on the property price in their mind so as to maximize their profits. With this intention, it is difficult for the auctioned foreclosed property to reach the best price.

In addition, people carry a general belief that property sold through auction is cheaper than those sold by private treaty. It constitutes a bias toward the price of the foreclosed property by auction in intuitions. With the expectation that they can buy the property at a cheaper price, they set a discount to the market value of the property in their mind and reluctant to accept a price at full market price. As lower prices are recorded, future buyers will, based on this experience, generally set the price lower in their minds.

Mostly importantly, in reality, auctioned foreclosed properties are associated with 'unfair clauses' (Estate Agents Authority 2000), such as it is the sole responsibilities of new homebuyers to bear the liability of any encumbrance on the land, management fee owed to the bank and lessen the attractiveness of the property. Only the mortgagor has a full picture of the total additional fee the new buyers need to pay while the buyers may not be informed. In contrary, this financial burden is subject to negotiation and usually shared among the bank and the new buyer in private treaty. Taking the risk of paying unforeseeable fee in auction, new buyers generally offer a lower price to auctioned foreclosed property.

5.3.3.4 Conclusion

Under the informal institutions, professional bodies set out the code of practice to achieve open market value. However, it is arguable whether the foreclosed property sale can fulfill the required conditions. The bank is not a neutral willing seller, but motivated to sell the foreclosed property at short time. Also, the long established culture and social norm accept a great power is granted to the bank when mortgage defaults. Mortgagors are generally unwilling and do not insist to bargain with bank to claim their rights under common law, or they are even ignorant about their rights. Most importantly, given that the public generally carry a negative and opportunistic

view, the foreclosed property sold through auction is strongly discriminated and being put at disadvantage.

5.4 Agency Problem

An agency relationship is created between the bank and mortgagor when the bank exercises his power of sale to conduct the foreclosed property sale. Although it is the fault of the mortgagor who breach the contract, the court has established that the bank has to take reasonable steps to ensure the foreclosed property sell at true market value due to the particular relationship between the two. Then, it is the bank's (agent) responsibility to act at the interest of the mortgagor (principle).

However, there is difference in preference (goal incongruity) between the bank and mortgagor. For the mortgagor (principal), it is to their objective for the property sells at best price as this will minimize the difference between the sale price and the loan value. For the bank (agent), the re-sale price do not affect the bank much as the mortgagee will pay for the difference between the sale price and loan value; even the there is surplus, the surplus money would not go into the banks' pocket but to the mortgagor. Nevertheless, the new buyer and mortgagor will finally pay the default loan. So, the bank is neutral in getting a proper and best price for the property. Instead, the bank is motivated to sell the property at short time, as there is an 18-

months time limit set by the Banking Ordinance. It is crucial for their work to comply with laws.

Given the goal incongruity, it comes to a conflict of interest to the bank. It may need to increase searching cost to look for a best price for mortgagor. In addition, moral hazard is highly likely to arise due to the fact that the sale arrangement is information asymmetric, the effort the bank has input to get the best market value for them is not easily observable by the mortgagor. Given that it is hard to argue and prove the sale price is not of 'open market value' as the sale performance also depends on market atmosphere. There are so many variables that are not under the bank's control and not observable to the mortgagor, the bank can feel free to dispose the property as he think fit.

The bonding and monitoring mechanism is rarely applied to check the performance of foreclosed property sale. It is not feasible for the mortgagor's to check bank's effort in selling the property as the bank will reject so, claiming that they have appoint real estate agents to do the sale for them.

In consequence, the bank may not have enough incentive to sell the foreclosed property at 'open market value'. There is possibility of moral hazard as the bank

action is not free observable; they take their interest of shorter time and reducing holding cost at the mortgagors' expense. In other words, the new homebuyer is buying the property at the defaulted mortgagor's expense, as mortgage will pay up the price difference.

5.5 Conclusion

This chapter analyzed that the existing institutional arrangement in Hong Kong real estate market with respect to mortgage default. Humans interact with the rule of the game and aim to maximize their own wealth when complying with the rules.

The performance of the foreclosed property sale is influenced by the institutional environment. The formal and informal institutions act as rights and also constraints to the players and affect the performance of sale. In reality, given those rules of the game, the banks can sell the property in whatever manner they think fit as long as they obtain a true market value under contractual and legal rights. They usually choose to sell the foreclosed property by auction or private treaty, as the two are the most popular sale method in the market.

Although the court has established that the banks owe a duty of care to mortgagee to sell the foreclosed property at best price, the influence of informal institutions is so strong that the sale performance in auction is subjectively discounted. Transaction

takes place when banks accept the price offered by the potential buyers, who carry a bias towards the property and have an incentive to buy the property at lower price. With the agency problem, the bank does not have strong incentive to achieve the best price for the foreclosed property. In consequence, it is difficult to achieve true market value. To protect their legal interest, the banks would appoint general practice surveyors to prepare valuation report. They also employ an auctioneer and real estate agent to conduct sale, claiming that they have tried different modes of sale. It helps them to get rid of liability by claiming that the selling price falls within the valuation range advised by the professionals.

Chapter 6

Conclusion

6.1 Introduction

As mentioned in Chapter 1, the objectives of this study are:

- 1) to determine whether auction or negotiation put foreclosed property at disadvantage
- 2) to study how institutional arrangement in Hong Kong residential real estate market influences operation efficiency

To achieve Objective 1, an empirical analysis was done in Chapter 3; to achieve Objective 2, a descriptive-analytical study was done on the transaction governance (mortgage contract) and surrounding institutional arrangement in Chapter 4 and 5 respectively. In the following sections, the findings will be firstly presented in summary. Then, the limitation and suggested further research will be discussed.

6.2 Summary of Findings

From this study, it is showed that the mortgage contract acts as transaction governance to manage mortgage default in the *ex post* transaction period. To manage

the mortgage default, the contract confers a wide power on the bank and entitled them to sell the foreclosed property at any price, any manner and any term.

Very often, the foreclosed property is sold through auction and private treaty. In the empirical finding, we have utilized Hedonic Price Model to prove if price difference exists between properties sold by the two methods. The results give concrete evidence that the price of auction property is 7.13% lower than that by private treaty, with floor area, age of building, floor level and green park view still play as significant factors in determining the price.

An Institutional Economics approach is then taken to analyze how the institutional arrangement affects the performance of sale. Institutional arrangement in Hong Kong real estate market is studied on how they impose rules of the game to the *ex post* mortgage transaction, in particular with foreclosed property sale. For the formal institutions¹⁴, it is established that the bank is required to dispose the foreclosed by taking reasonable step to achieve open market value in 18 months time. For the informal institutions¹⁵, it is found that people generally accept and support the great power the bank obtains in mortgage default. Most mortgagors would not complain for sale result as they recognized it is their fault to break the contract. Agency problem

¹⁴ Conveyancing and Property Ordinance, Banking Ordinance and Court cases.

¹⁵ Code of Practice, Mortgagee, Mortgagor and Prospective buyers' perceptions.

also occur when the bank sell the foreclosed property. The bank does not have adequate incentive to be a ‘willing seller’ as they are neutral on price outcome – they are not entitled to the surplus and the mortgagor will take up the remaining price difference between re-sale price and loan value. No matter how the performance is, the bank’s financial position will be restored by the new buyer or the mortgagor. Furthermore, the potential buyers also carry a belief that foreclosed property sold through auction is cheaper than that through private treaty. With all this factors combined, it is hard for the foreclosed property to have a level playing field to sell at best price through auction and private treaty.

The price difference illustrates that the influence of informal institution is greater than that of formal institution. That is, the open market value requirement urged by formal institutions cannot outweigh the discriminated discount from informal institutions. As price differential do exist between the two sale methods, the simultaneous existence of auction and private treaty incur unfair situation for the mortgagor. If the bank still insists to sell the foreclosed property in auction, this will put mortgagor’s interest into disadvantage undoubtedly.

To deal with the implicit problems brought by existing institutional arrangement, a change of institutions is suggested. While it takes long times to change informal

institutions such as norm and social value, it is preferable to have changes in formal institutions, especially for the sale method, whose change is instant and all market players are required to comply with them compulsorily.

6.3 Limitations

The major limitation of this study is the problem of collecting transaction record of foreclosed property sold through auction and private treaty. The record in Economic Property Research Centre did not specify the sale method. Furthermore, as the record is confidential information for each property agency company, this intensifies the difficulty of obtaining the transaction records. All practitioners, except Midland Surveyors Company Ltd and Chung Shing Auctioneers Co. Ltd., have rejected my invitation to provide data in this study after prolonged negotiation. In the database of the two companies, Kingswood Villas constitutes the largest number of foreclosed property transaction record. As a result, the sample data has been restricted to one location, Tin Shui Wai and by two companies, for empirical study. It is believed that the empirical results would be more reliable if more data from different location and practitioners are included.

6.4 Further Research

This dissertation has focused on the *ex post* mortgage transaction, on how the mortgage contract as transaction governance mechanism influenced by institutional arrangement. However, attention should be also paid on *ex ante* transaction. Institutional environment and agency problem also affect the contract drafting before transaction takes place. So, further research on understanding the drafting of mortgage contract is suggested. This will give a comprehensive insight on how institutional arrangement influences the whole mortgage transaction.

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Model Mortgage Deed

prepared by

**The Steering Committee of the Project on
Standardization of Mortgage Origination
documents in Hong Kong;**

convened by

The Hong Kong Mortgage Corporation Limited

MORTGAGE DEED

Important Notice:

This Mortgage is an important legal document. The Mortgage Conditions form part of this Mortgage. Before signing this Mortgage, you should read this Mortgage together with the Mortgage Conditions carefully. You have the right to seek independent legal advice from solicitors of your own choice to make sure that you understand the terms and conditions contained in the Mortgage Conditions, and your commitment and the full consequences of your signing this Mortgage.

If you sign this Mortgage, you will be legally bound by the terms and conditions (including the Mortgage Conditions) of this Mortgage. If more than one of you sign this Mortgage, the terms and conditions of this Mortgage will bind all of you jointly and also each of you on your own. Accordingly, the Secured Liabilities secured under this Mortgage will be payable by all of you jointly and also each of you on your own.

Your obligation to pay us the Secured Liabilities is not affected by this Mortgage. But, in addition to your obligation to repay, if you fail to pay us the Secured Liabilities in accordance with the terms and conditions of this Mortgage, our rights include the right to take possession of the Property, sell the Property and then use the sale proceeds to discharge any sum you owe us. If those sale proceeds are insufficient to discharge all the sums you owe us, we may claim against you for the balance.

You acknowledge that you have been provided with a copy of the Mortgage Conditions and any agreement in relation to the Secured Liabilities.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of this Mortgage Deed in its entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong expressly disclaim any liability to the fullest extent possible for the contents of this Mortgage Deed, any loss, damage or claim suffered or incurred by any mortgagee or any other person in connection with, arising from or in reliance on, the whole or any part of this Mortgage Deed. Any mortgagee or any other person proposing to use this Mortgage Deed must seek its own legal advice as to the suitability of this Mortgage Deed for its intended purposes.

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THIS MORTGAGE is made on []

Section A: Parties to this Mortgage

you: [Name of the mortgagor] with *home address⁽¹⁾/registered office in Hong Kong⁽²⁾/principal place of business in Hong Kong⁽²⁾ at [], holder of *Hong Kong identity card number⁽¹⁾/passport number⁽¹⁾/business registration number⁽²⁾/company number⁽²⁾: [].

we: [Name of the mortgagee bank] with *registered office in Hong Kong/principal place of business in Hong Kong at [].

Section B: Definitions

In this Mortgage, the following words or expressions shall have the following meanings:

Building means [Description of the building or development located on the Lot];

Deed of Mutual Covenant means [Description of any deed of mutual covenant or Sub-deed of mutual covenant in relation to the Property];

Expenses means such expenses as described in clause 21 of the Mortgage Conditions;

Government Lease means a *government lease/New Grant/Conditions of Sale/Conditions of Exchange/Conditions of Grant No. [] in relation to the Lot with the following particulars:

Date: []

Parties: []

Term: []

*Extension/Modification/Variation :

[]

Lot means [Lot number and section in relation to the Property];

Mortgage Conditions means Mortgage Conditions (2001 Edition) as described in Section D of this Mortgage;

Property means the property described in Section C of this Mortgage;

Secured Liabilities means all money, obligations and liabilities in any currency (together with any accrued interest) due, owing or incurred by you (or any one or more of you if there is more than one of you) to us now or in the future, actual or contingent, primary or secondary, on your own or jointly with any other person and includes any part of the Secured Liabilities;

we means the party denoted as “we” to the Mortgage and includes successors and assigns; and **us, our, ourselves** and **ours** shall be construed accordingly;

you means the party denoted as “you” to the Mortgage and includes successors and assigns; and **your, yours** and **yourself(ves)** shall be construed accordingly.

* Delete as appropriate

⁽¹⁾ Only applicable where the mortgagor is an individual person.

⁽²⁾ Only applicable where the mortgagor is a corporation or firm.

Section C: Property charged under this Mortgage

Property charged under this Mortgage subject to the following exceptions and reservations and together with the following easements and appurtenant rights is described below:

(a) Description and address:

[] equal undivided parts or shares of and in the Lot and the Building thereon together with the exclusive right and privilege to hold, use, occupy and enjoy [description of the flat] of the Building, which is *[more particularly] *(for the purposes of identification only) shown on the plan annexed to an assignment registered at [] Land Registry by Memorial No. [].

(b) Exceptions and reservations

[].

(c) Easements and other appurtenant rights

[].

Section D: Terms and conditions of this Mortgage

The Mortgage Conditions (2001 Edition) are incorporated into this Mortgage as the terms and conditions of this Mortgage.

Section E: Contact details of the parties to this Mortgage

Our contact details are set out below:

Address: []
Fax number: []

We may change our contact details at any time by giving you a notice in writing.

Your contact details are set out below:

Address: []
Fax number: []

You may change your contact details at any time by giving us a notice in writing.

Section F: Charge over the Property

Where your interest in the Property is a legal estate, you charge as beneficial owner your full interest in the Property to us by way of a first fixed legal charge subject to, and with the benefit of, the Government Lease and the Deed of Mutual Covenant to secure payment of the Secured Liabilities and performance of your obligations under this Mortgage.

Where your interest in the Property is an equitable interest, you assign as beneficial owner your full interest in the Property to us subject to, and with the benefit of, the Government Lease and the Deed of Mutual Covenant to secure payment of the Secured Liabilities and performance of your obligations under this Mortgage.

You assign to us (and agree to assign to us and will, if we require, execute a separate assignment(s) in the form and substance as we may require) the sale proceeds, the rents and other sums of money and deposits now or to become payable by virtue of any sale

* Delete as appropriate

agreement, lease, tenancy agreement or other agreement concluded now or in the future in respect of the whole or any part of your interest in the Property together with power to us to sue for recovery and give effectual discharges for the above in your name.

Section G: Default interest rate for the unpaid Expenses

Default interest rate for the unpaid Expenses referred to in clause 3.4 of the Mortgage Conditions is [].

Section H: Default interest rate for the unpaid Secured Liabilities

Default interest rate for the unpaid Secured Liabilities referred to in clause 15 of the Mortgage Conditions is as follows:

- (a) in relation to the mortgage loan granted by us to you in respect of the Property, [];
- (b) in relation to any credit or other banking facility (other than the mortgage loan mentioned in (a) above) granted by us to you, the default interest rate as specified in the applicable terms and conditions governing the grant of any such credit or other banking facility.

Your Declaration

You acknowledge that before signing this Mortgage, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on this Mortgage and the Mortgage Conditions before signing this Mortgage.

⁽³⁾SIGNED SEALED and DELIVERED by [name of the mortgagor] in the presence of a *witness/solicitor:

Your signature:

L.S.

Your name:

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate

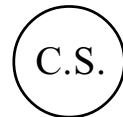
⁽³⁾ Only applicable where the mortgagor is an individual.

Your Declaration

You acknowledge that before signing this Mortgage, your attention has been drawn to the “Important Notice” on the front page and, in particular, to the statement that you should seek independent legal advice on this Mortgage and the Mortgage Conditions before signing this Mortgage.

⁽⁴⁾SEALED with the COMMON SEAL of [name of the mortgagor] AND SIGNED by [name(s) of the authorized signatory(ies) of the mortgagor] in the presence of a *witness/solicitor:

Signature of the authorized signatory(ies):



Name and title of the authorized signatory(ies):

*Witness's/Witnessing solicitor's signature:

*Witness's/Witnessing solicitor's name:

*Witness's/Witnessing solicitor's address:

* Delete as appropriate

⁽⁴⁾ Only applicable where the mortgagor is a corporation.

MORTGAGE CONDITIONS (2001 EDITION)

Important Notice:

These Mortgage Conditions are an important legal document. Once you have signed your Mortgage, these Mortgage Conditions will form part of, and apply to, your Mortgage, and will therefore be legally binding on you. If there is more than one of you, these Mortgage Conditions will bind all of you jointly and also each of you on your own.

Before signing your Mortgage, you should read carefully your Mortgage together with these Mortgage Conditions. You have the right to seek independent legal advice from solicitors of your own choice to make sure you understand the terms and conditions contained in these Mortgage Conditions, and your commitment and the full consequences of your signing the Mortgage.

The Hong Kong Mortgage Corporation Limited consents to the use, reproduction and distribution to the general public of these Mortgage Conditions in their entirety by any person on a not-for-profit basis. Sale or distribution otherwise than in accordance with the above conditions is strictly prohibited. The Hong Kong Mortgage Corporation Limited and each member of the Steering Committee of the Project on Standardization of Mortgage Origination Documents in Hong Kong expressly disclaim any liability to the fullest extent possible for the contents of these Mortgage Conditions, any loss, damage or claim suffered or incurred by any mortgagee or any other person in connection with, arising from or in reliance on, the whole or any part of these Mortgage Conditions. Any mortgagee or any other person proposing to use these Mortgage Conditions must seek its own legal advice as to the suitability of these Mortgage Conditions for its intended purposes.

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1. Definitions

1.1 In these Mortgage Conditions, the following words and expressions shall have the following meanings:

Building	means the Building described in the Mortgage;
Deed of Mutual Covenant	means the Deed of Mutual Covenant described in the Mortgage and includes any modification of the Deed of Mutual Covenant from time to time;
Event of Default	means any event set out in clause 13;
Expenses	means such expenses as described in clause 21;
Facility Agreement	means any existing or subsequent agreement(s) by which any banking, credit or other facilities or accommodation are made available by us to you and includes any modification, supplement or replacement of that/those Facility Agreement from time to time;
Government Lease	means the Government Lease described in the Mortgage and includes any modification, renewal or extension of the Government Lease from time to time;
Hong Kong	means the Hong Kong Special Administrative Region of the People's Republic of China;
Mortgage	means a mortgage or charge over the Property incorporating these Mortgage Conditions executed by you in our favour to secure repayment of the Secured Liabilities, and includes any modification, supplement or replacement of the Mortgage from time to time;
Ordinance	means the Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong) and includes any modification, supplement or re-enactment of the Ordinance from time to time;
person	means any individual, company, corporation, trust, partnership or firm and includes successors and assigns;
Property	means the Property described in the Mortgage and includes any part of the Property;
Receiver	means any person (including our officers or employees) we appoint in writing to be a receiver and/or a manager of the Property and includes any person substituting for the Receiver;
Secured Liabilities	means all money, obligations and liabilities in any currency (together with any accrued interest) due, owing or incurred by you (or any one or more of you if there is more than one of you) to us now or in the future, actual or contingent, primary or secondary, on your own or jointly with any other person and includes any part of the Secured Liabilities;
security	means any instrument or collateral given to secure payment/repayment of any debts, liabilities or obligations and includes, but is not limited to, any charge, mortgage, guarantee, pledge and lien;

we means the party denoted as “we” to the Mortgage and includes successors and assigns; and **us, our, ourselves** and **ours** shall be construed accordingly;

you means the party denoted as “you” to the Mortgage and includes successors and assigns; and **your, yours** and **yourself(ves)** shall be construed accordingly.

1.2 In these Mortgage Conditions:

- (a) “he” shall include “she” and “it”, and “his” shall include “her” and “its”;
- (b) the singular shall include the plural, and the plural shall include the singular;
- (c) headings shall be for ease of reference only and shall not form part of these Mortgage Conditions;
- (d) unless otherwise expressly stated, any reference to a numbered clause or schedule shall be a reference to the clause or the schedule with that number in these Mortgage Conditions;
- (e) all references to time and date shall be the time and date in Hong Kong;
- (f) all references to a document shall include that document as amended, supplemented or replaced from time to time; and
- (g) reference to any statutory provision shall be deemed also to refer to any modification, supplement or re-enactment of such statutory provision or to any statutory instrument, order or regulation made under any of them.

2. Forming part of the Mortgage

These Mortgage Conditions shall form part of the Mortgage and must be read together with the Mortgage.

3. Your agreement to pay

- 3.1 You agree to pay the Secured Liabilities when they have become due and payable under the relevant Facility Agreement.
- 3.2 You agree to pay the Expenses immediately on our written demand. Any unpaid Expenses shall be added to, and form part of, the Secured Liabilities.
- 3.3 You agree that before we demand payment of the Secured Liabilities or the Expenses from you, we do not need to demand payment from any other person first or to take any other action to obtain payment (such as selling the Property or any other security we hold).
- 3.4 If you fail to pay any Expenses on our written demand, you shall pay us default interest at the rate specified in the Mortgage on the unpaid amount from the date(s) on which the Expenses were incurred until the date of actual payment. You shall pay any default interest accrued under this clause 3.4 immediately on our written demand. Otherwise, any unpaid default interest so accrued shall be added to, and form part of, the Secured Liabilities.

4. Payment without deduction

- 4.1 Each payment made by you under the Mortgage shall be made without any deduction of any tax or similar charge unless you are obliged by law to make that deduction. If you need to make that deduction, you shall pay us any extra sum necessary to ensure that we receive the full amount due from you under the Mortgage.

4.2 Each payment made by you under the Mortgage shall be made without any deduction of any sum we owe you, and you shall pay us the amount of the Secured Liabilities as demanded by us from time to time.

5. Indemnity

5.1 You undertake with us (for ourselves and as agent for each of our directors, officers and employees, each an “**Indemnified Person**”) that you shall indemnify and keep indemnified each Indemnified Person from and against all liabilities, reasonable losses and damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) which may be brought against, suffered or incurred by, any Indemnified Person by reason of your breach of the Mortgage or any breach of your representations and warranties given under the Mortgage.

5.2 Any amount which you are liable to pay us under clause 5.1 shall be treated as, and form part of, the Expenses.

6. Release of the Mortgage

6.1 When the Secured Liabilities are fully repaid and you have performed all your obligations under the Mortgage, we shall, at your cost, execute a document in the usual form to:

- (a) acknowledge receipt of the full amount of the Secured Liabilities;
- (b) release or discharge the Mortgage; and
- (c) (if your interest in the Property is an equitable interest) re-assign the Property to you.

6.2 Release or discharge of the Mortgage, acknowledgement of receipt or re-assignment of the Property made pursuant to clause 6.1, shall be subject to the condition that no money we receive in repayment of the Secured Liabilities shall be subsequently returned or reduced pursuant to any law.

6.3 If we have released or discharged the Mortgage, acknowledged receipt of the full amount of the Secured Liabilities or re-assigned the Property to you pursuant to clause 6.1, and are later obliged under the law to return any money paid to us in repayment of the Secured Liabilities, you shall:

- (a) remain liable under the Mortgage as if we had never received that money; and
- (b) at your cost, execute any document and do any thing necessary to charge (if your interest in the Property is a legal estate) or assign (if your interest in the Property is an equitable interest) your full interest in the Property to us,

and subject to the rights acquired by any purchaser of the Property in good faith for valuable consideration without notice, we shall be entitled to enforce the Mortgage as if that release or discharge of the Mortgage, acknowledgement of receipt or re-assignment of the Property, had never occurred.

6.4 If we agree to release, discharge or re-assign the Property at your request without receiving full payment of the Secured Liabilities, you shall remain liable for the remaining balance of the Secured Liabilities.

7. Your representations and warranties

You represent and warrant to us that at the date of the Mortgage:

- (a) you are the sole beneficial owner of the Property and have a good and marketable title to the Property;
- (b) no encumbrance or security exists over the Property and the Property is not subject to any tenancy or licence to occupy (except as already disclosed to and acknowledged by us in writing) in favour of any other person;
- (c) you have not breached any law, rule, regulation, judgment, order, agreement, authorization or obligation applicable to or binding on you by signing the Mortgage;
- (d) the particulars of the Property set out in the Mortgage are true, accurate and complete;
- (e) each of the Government Lease and the Deed of Mutual Covenant is valid and in force, and has not been amended so far as it relates to the Property and no circumstances exist which entitle the government of Hong Kong to terminate the Government Lease;
- (f) you have fully and punctually paid the premium, rent and other money payable in respect of the Property under the Government Lease or the Deed of Mutual Covenant, and have observed the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they affect the Property;
- (g) you have fully and punctually paid the management fees, rates, taxes and other outgoings and money payable in respect of the Property;
- (h) no litigation, arbitration or administrative proceedings in relation to the Property are currently taking place or threatened;
- (i) no Event of Default, or any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed, has happened;
- (j) all the information (including your personal data and financial information) you supplied to us in connection with the Mortgage, the Secured Liabilities and the Property is true, accurate and complete;
- (k) you have not omitted to disclose to us in writing any information which, if disclosed to us, may affect our decision as to whether to advance any money to you or the amount to be advanced to you;
- (l) you have the necessary power, capacity and legal right to sign or execute the Mortgage and to perform your obligations under the Mortgage;
- (m) you have obtained all necessary approvals for the signing or execution of and the validity of the Mortgage and the performance of your obligations under the Mortgage, and those approvals shall remain in force so long as the Mortgage is in force; and
- (n) (if you are a corporation) you are duly incorporated and are validly existing under the laws of the place of your incorporation, and have duly authorized your officer(s) to sign or execute the Mortgage and have the power to perform all your obligations under the Mortgage.

8. Your obligation to take out insurance policy for the Property

- 8.1 You shall insure and keep the Property insured at your cost so long as the Mortgage is in force against losses and damage caused by fire and other related perils as we may require, for the insured amount and with an insurance company as we require and on the terms and conditions as we approve. If you fail to perform your obligations under this clause 8.1, we may do so at your cost.
- 8.2 You shall provide us with the original or a copy (as required by us) of any insurance policy taken out for the Property for our records.
- 8.3 You shall ensure that our interest is noted by endorsement in the form we require on the insurance policy for the Property. If so requested by us, you shall take out the insurance policy for the Property in the joint names of you and us, or assign to us your benefit and interest in the insurance policy for the Property.
- 8.4 You shall punctually pay the premium or other money payable under the insurance policy for the Property, and shall provide us with the original or a copy (as required by us) of the receipt for that payment.
- 8.5 You agree that the insurance policy for the Property shall contain provisions to the effect that any payment of claims made under that insurance policy will be paid directly to us. If you receive payment of any claim under any insurance policy for the Property, you shall hold any money so received on trust for us.
- 8.6 You shall notify us immediately if you wish to make a claim under any insurance policy for the Property.
- 8.7 We shall be entitled to act for you to settle or adjust any claim you may have under any insurance policy for the Property. If we decide to do so, you shall sign all necessary documents and do all necessary things to enable us to do so.
- 8.8 If any money is paid out as a settlement or compensation for a claim under any insurance policy for the Property, we shall be entitled to choose to use that money either to repay or reduce the Secured Liabilities or to repair or rebuild the Property.
- 8.9 If we decide that money paid out in clause 8.8 shall be used to repair or rebuild the Property, you shall use the money for that purpose only and at your own expense make up any deficiency so as to make sure that the repair or rebuilding is done to a standard comparable to that before the damage occurred.
- 8.10 You shall not do, or cause or allow to be done, anything which may:
- (a) reduce the scope of insurance cover or the insured amount for the Property;
 - (b) increase the premium of any insurance policy for the Property;
 - (c) prevent or hinder any claim being settled in full under any insurance policy for the Property;
 - (d) cancel, end or invalidate any insurance policy for the Property; or
 - (e) adversely affect any insurance policy for the Property.

9. Your positive obligations

Unless we otherwise agree in writing, you undertake to do the following things at your cost so long as the Mortgage is in force:

- (a) to remain the sole beneficial owner of the Property and to hold a good and marketable title to the Property;
- (b) to inform us promptly of the existence of any circumstances which entitle the government of Hong Kong to terminate the Government Lease so far as it relates to the Property;
- (c) to keep the Government Lease valid and in force so far as it relates to the Property;
- (d) to pay fully and punctually all premiums, rents, management fees, rates, taxes and other outgoings and money payable in respect of the Property or under the Government Lease or the Deed of Mutual Covenant and to provide us promptly with reasonable evidence of that payment on our demand;
- (e) to observe the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they relate to the Property;
- (f) to keep the Property in good repair and condition;
- (g) to allow ourselves, our workmen, the Receiver and the Receiver's workmen to enter the Property to do any necessary repairs if you fail to keep the Property in good repair and condition;
- (h) to allow ourselves, our appointed representative, the Receiver and the Receiver's appointed representative to inspect the Property at all reasonable times upon giving reasonable notice and those persons shall not be treated as having taken possession of the Property by that inspection;
- (i) to send us, within 7 days of your receipt, a copy of any notice served on you or the Property demanding any overdue payments in respect of the Property or threatening any litigation, arbitration or administrative proceedings in respect of the Property;
- (j) to inform us promptly of any dispute or complaint concerning the Property and the outcome of that dispute or complaint, and to send us, within 7 days of your receipt, a copy of all notices or papers sent to or by you or your representative in relation to that dispute or complaint;
- (k) to comply with all laws, rules, regulations, judgments, orders, agreements and authorizations in relation to the Property;
- (l) to send us, within 7 days of your receipt, a copy of any judgment or order in respect of the Property and all the orders, notices and proposals issued in respect of the Property by any governmental authority or manager of the Building and affecting the validity of the Mortgage;
- (m) to comply with any order, notice or proposal issued in respect of the Property by any governmental authority or manager of the Building;
- (n) at our request, to make or join us in making a claim, a defence or a response in accordance with our instructions in any litigation, arbitration or administrative proceedings in respect of the Property;

- (o) at our request, to make or join with us in making an objection, appeal or a response in accordance with our instructions in relation to any judgment, order, notice or proposal issued in respect of the Property by any court, governmental authority or manager of the Building, or any dispute or complaint concerning the Property;
- (p) to observe the terms and conditions of the Facility Agreement;
- (q) to keep us informed promptly of any change and any incorrect, inaccurate or incomplete information in the particulars of the Property set out in the Mortgage, and to correct promptly that incorrect, inaccurate or incomplete information;
- (r) to provide us promptly with any information about yourself or the Property as we may request from time to time for any of the following purposes:
 - (i) enforcement of the Mortgage;
 - (ii) preservation of the Property; or
 - (iii) recovery of the Secured Liabilities;
- (s) to inform us promptly of any change in the information (including your personal data and financial information) you supplied to us in respect of the Mortgage, the Secured Liabilities or the Property;
- (t) to deliver to us all documents of title relating to the Property for our custody;
- (u) to inform us promptly of the happening of any Event of Default or any event which may become an Event of Default if any notice is given or any condition is satisfied or any period of time has lapsed;
- (v) to pay us all costs and expenses reasonably incurred by us in the production of photocopies, certified copies or originals of any document in relation to the Property or the Mortgage at the request of yourselves or your solicitors;
- (w) to keep the Mortgage and the Facility Agreement valid and in force, to maintain the value of the Property and to enable us and the Receiver to exercise the respective rights and powers of ourselves and the Receiver under the Mortgage;
- (x) to obtain all necessary approvals for the validity of the Mortgage and the Facility Agreement and the performance of your obligations under them;
- (y) to sign any document and to do any thing necessary to keep valid and in force all the approvals obtained for the signing or the validity of the Mortgage and the Facility Agreement or the performance of your obligations under them;
- (z) if at any time the power of sale contained in the Mortgage becomes exercisable by us, upon notice by us, to immediately quit and deliver up vacant possession of the Property to us or whomever we may nominate or direct;
- (aa) to do everything required by the Mortgage at your own cost;
- (bb) at our request at any time sign and execute all documents (including a legal charge if your equitable interest in the Property becomes a legal interest (if applicable)) and do all acts and things as we may reasonably require for perfecting the security intended to be created under the Mortgage;

(Paragraphs (cc) and (dd) below are applicable only if you are a corporation or firm.)

- (cc) to keep proper accounting records in respect of your business; and
- (dd) to engage a firm of qualified auditors to audit and certify your financial statements, and to provide those audited and certified financial statements to us within such period as set out in the relevant Facility Agreement.

10. Your negative obligations

You agree not to do, or cause or allow to be done, the following things without our prior written consent so long as the Mortgage is in force:

- (a) to sell, transfer, sub-divide or dispose of the Property;
- (b) to create any rights or interests or to impose obligations (including any security) in favour of any other person over the Property;
- (c) to use the Property for unlawful or immoral uses or any use not permitted under the Deed of Mutual Covenant or the Government Lease;
- (d) to pull down or to make any structural alterations or additions to the Property unless required by law, the Government Lease or the Deed of Mutual Covenant, or to make any illegal structures to the Property;
- (e) to do anything which may decrease the value of the Property or prejudice the security created under the Mortgage;
- (f) to apply for any planning permission, building consent or any grant for improvements or repairs in respect of the Property; or
- (g) to vary or give up any term or right contained in the Government Lease or the Deed of Mutual Covenant.

11. Occupying the Property

11.1 Without our prior written consent, you shall not do the following things:

- (a) enter into any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (b) vary or give up any term of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (c) accept early termination of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement; or
- (d) terminate or do anything to terminate any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property in case of any breach by the other party to that lease, tenancy or agreement.

11.2 Subject to clause 11.1, you shall do the following things at your cost:

- (a) send us certified copies of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property and any of its subsequent variation or modification within 14 days from the date of that lease, tenancy or agreement or its variation or modification, or if any such lease, tenancy or agreement has been stamped or adjudicated, a certified copy with stamping or adjudication;
- (b) perform all your obligations under any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property;
- (c) do your best in good faith to ensure the performance of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement;
- (d) inform us promptly of any breach of any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement;
- (e) inform us promptly of any request to extend or vary any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property by the other party to that lease, tenancy or agreement; and
- (f) inform us promptly of any modification to any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property.

12. Renewal, extension and re-grant of the Government Lease

12.1 If the government of Hong Kong offers a renewal, extension or re-grant of the Government Lease, you shall:

- (a) forthwith accept that offer;
- (b) satisfy promptly all the conditions of that offer and pay promptly any premium and other consideration as demanded;
- (c) upon completion of renewal, extension or re-grant of the Government Lease, at your own cost execute a mortgage of the Property under the renewed, extended or re-granted Government Lease in our favour in the same form as the Mortgage with those consequential amendments as the circumstances may require; and
- (d) pending the signing of the mortgage pursuant to clause 12.1(c), hold your interest in the Property under the renewed, extended or re-granted Government Lease on trust for us.

12.2 Upon expiry of the Government Lease, if you fail to obtain a renewal, extension, re-grant or new grant of the Government Lease, you shall provide additional security as we require for the Secured Liabilities.

13. Events of Default

Each of the following events shall be an Event of Default:

- (a) you fail to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which you are party;
- (b) any of your representations or warranties made to us in the Facility Agreement or the Mortgage is breached or found to have been incorrect;

- (c) you fail to repay any debt due and payable;
- (d) you admit your inability to repay any debt due and payable;
- (e) any action is taken to enforce any security created by you;
- (f) any law, rule, regulation, judgment or order, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (g) any order, notice or proposal issued by any governmental authority or under any law or regulation, suspends, varies, terminates or excuses your obligations under the Facility Agreement or the Mortgage;
- (h) the Property is destroyed or damaged;
- (i) any governmental or other authority re-enters or re-takes or expresses an intention or any proposal to re-enter or re-take possession of the Property;
- (j) the Government Lease, so far as it relates to the Property, is terminated;
- (k) the Property is compulsorily purchased or acquired (whether or not any compensation is paid);
- (l) the Facility Agreement or any other security provided to us becomes invalid or unenforceable or is terminated;
- (m) it becomes impossible to perform your obligations under the Facility Agreement or the Mortgage;
- (n) any third party applies for a court order in respect of the Property;
- (o) any third party occupies or takes possession of the Property without our prior written consent;
- (p) you or any other security provider in respect of the Secured Liabilities enters into or proposes to enter into an arrangement in respect of your or his debts with or for the benefit of your or his creditors;
- (q) any necessary approval for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement has not been obtained;
- (r) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities becomes ineffective;
- (s) any necessary approval granted for the signing, execution or validity of the Mortgage or the Facility Agreement or other security for the Secured Liabilities or the performance of your or any other security provider's obligations under the Mortgage or the Facility Agreement or other security for the Secured Liabilities is modified in a way which, in our reasonable opinion, might affect materially and adversely your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Secured Liabilities;

- (t) any action taken or omission by you or any other security provider which in our reasonable opinion might materially and adversely affect your or the security provider's ability to perform your or the security provider's obligations under the Facility Agreement or the Mortgage or other security for the Secured Liabilities;

(Paragraph (u) below is applicable if you are an individual person.)

- (u) a petition for your bankruptcy is presented to the court and is not discharged within 7 days;

(Paragraphs (v) to (dd) below are applicable if you are a corporation or firm.)

- (v) a receiver or similar officer is appointed over any part of your business or assets;
- (w) creditors take possession of any part of your business or assets;
- (x) a legal process is commenced against any part of your business or assets and is not discharged within 7 days of the commencement of that legal process;
- (y) a petition is presented to the court, or a legal process commenced, or an order made, or a resolution passed, for your winding-up, administration, reorganization or dissolution;
- (z) you dispose of, or express your intention to dispose of, any substantial part of your business or assets;
- (aa) any substantial part of your business or assets is compulsorily purchased or taken over or acquired (whether or not any compensation is paid);
- (bb) you cease, or express your intention to cease, to carry on any substantial part of your business;
- (cc) you make or express your intention to make, any significant change to the nature or scope of your business; and
- (dd) any material and adverse change in your business or financial condition which, in our reasonable opinion, might materially or adversely affect your ability to perform your obligations under the Facility Agreement or the Mortgage.

References to "you" in paragraphs (u) to (dd) above include a security provider for the Secured Liabilities.

14. Enforcement of the Mortgage

If an Event of Default happens, the Mortgage shall become enforceable; the Secured Liabilities shall become immediately due and payable; and we shall be entitled to do the following things:

- (a) terminate all banking, credit or other facilities or accommodation provided to you so that our obligations under all those banking, credit or other facilities or accommodation to further advance money to you shall cease immediately;
- (b) require you to pay the Secured Liabilities;
- (c) exercise all powers given to us as mortgagee by law (including the Ordinance) (as varied or extended by the Mortgage); and
- (d) exercise all powers given to us by the Mortgage.

15. Default interest rate and charges

If you fail to pay the Secured Liabilities (except for the unpaid Expenses) in accordance with clause 14(b) or as otherwise required under the Facility Agreement, you shall pay us default interest, late charges and/or other handling fees on the unpaid amount at any rate and upon any terms as specified in the relevant Facility Agreement.

16. Appointment of the Receiver

16.1 If an Event of Default happens, we shall be entitled to appoint the Receiver without giving further notice to you or obtaining your prior consent.

16.2 Subject to clause 17.2, you and we agree that section 50 of the Ordinance shall apply to the appointment of the Receiver.

16.3 The Receiver shall have:

- (a) all powers given to the Receiver as a receiver by law (including the Ordinance) (as varied or extended by these Mortgage Conditions); and
- (b) all powers given to the Receiver by the Mortgage.

17. Our powers and those of the Receiver

17.1 If an Event of Default happens, each of ourselves and the Receiver shall have the power:

- (a) to sell or otherwise dispose of or deal with the Property, in any manner, at any price (whether in cash or in any other form) and on any terms as we or the Receiver think fit;
- (b) to assign the Property either in our name or in your name in exercise of our or the Receiver's power under the Mortgage;
- (c) to enter and take possession of the Property;
- (d) to receive any rent, deposit and profit in respect of the Property and request you to sign and execute an assignment of such rent or profit to us or the Receiver;
- (e) subject to any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property lawfully granted by you in accordance with our prior written consent, to grant any lease, tenancy or any agreement whereby any person is allowed to occupy or possess the Property on any terms as we or the Receiver think fit;
- (f) to sign any document and do anything as we or the Receiver think fit for the sale, lease or tenancy of the Property or the granting of any other right to occupy or possess the Property pursuant to the Mortgage;
- (g) to insure the Property, and to keep the Property insured, against fire and other risks that we may require, for the insured amount and on the terms as we or the Receiver think fit;
- (h) to carry out all repairs, renovations, alterations, improvements and developments to the Property as we or the Receiver think fit;
- (i) to appoint any agent, workman, professional or non-professional adviser or employee in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage for any remuneration and on any terms as we or the Receiver think fit;
- (j) to delegate any of our or the Receiver's powers and rights under the Mortgage to any person for any remuneration and on any terms as we or the Receiver think fit;

- (k) to incur reasonable costs and expenses in exercise of any of our or the Receiver's powers and rights under the Mortgage;
 - (l) in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage, to raise money on any terms as we or the Receiver think fit, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage **provided that**:
 - (i) the Receiver shall not exercise this power without our prior written consent and we shall not be liable for giving or refusing to give that consent in any way; and
 - (ii) any person lending money to the Receiver as a result of the exercise of this power shall be entitled to assume that the Receiver is entitled to borrow that money and is borrowing that money in accordance with this sub-clause;
 - (m) to institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;
 - (n) to use your name in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage; and
 - (o) to do any other lawful act as we or the Receiver consider necessary or incidental to the exercise of any of our or the Receiver's powers and rights under the Mortgage.
- 17.2 To the extent permitted by any statute, any restriction on the exercise of our or the Receiver's power to sell the Property under the Mortgage including those in the Ordinance shall not apply.
- 17.3 In exercise of our powers and rights under the Mortgage, we shall not be liable to account for any money except for the money we have actually received.
- 17.4 We and the Receiver shall not be liable for any loss arising from the exercise of any of our or the Receiver's powers and rights under the Mortgage unless the loss is caused by our or the Receiver's fraud or gross negligence; however, we and the Receiver shall each be liable only for loss caused by our respective fraud or gross negligence.
- 17.5 Any person dealing with ourselves or the Receiver shall be entitled to assume that:
- (a) we and the Receiver are entitled to exercise all or any of our or the Receiver's powers and rights under the Mortgage;
 - (b) we and the Receiver exercise all or any of our or the Receiver's powers and rights in accordance with the Mortgage;
 - (c) we and the Receiver use all or any of the money received in exercise of our or the Receiver's powers and rights in accordance with the Mortgage; and
 - (d) our or the Receiver's receipt for all or any of the money paid to us or the Receiver shall be a good and sufficient discharge of any person paying that money.

All references in this clause 17 to "we or the Receiver" shall mean either we or (as the case may be) the Receiver.

18. Your remedy

Your remedy for any unauthorized, improper or irregular exercise of our or the Receiver's powers and rights under the Mortgage shall be in damages only.

19. Application of proceeds of security realization

Subject to applicable law, we and the Receiver shall apply any money we or the Receiver receive under the Mortgage in the following order of priority:

- (a) the Expenses;
- (b) in payment of the Secured Liabilities (with interest being paid first) pursuant to the Mortgage; and
- (c) paying the remaining balance to you or any other person who is entitled to receive that money.

20. Effects of bankruptcy or insolvency laws

- 20.1 If we receive any payment or security from you or any other person for the Secured Liabilities, and are later obliged under any bankruptcy or insolvency laws to restore our position to what it would have been if that payment or security had not been received, then you shall be liable under the Mortgage as if we had never received that payment or security.
- 20.2 We shall be entitled, before any order under those bankruptcy or insolvency laws is made against us, to agree or settle any claim arising under those laws on any terms as we think fit without your prior consent.
- 20.3 If we do agree or settle a claim pursuant to clause 20.2, you shall be liable under the Mortgage as if a court order had been made containing the terms we have agreed in relation to that claim.
- 20.4 If we have given a release, discharge or re-assignment of any security (including the Mortgage) given by you in our favour in return for any payment or security from you or any other person, then that release or discharge shall be conditional upon no claims being made against us under the bankruptcy or insolvency laws in relation to that payment or security.

21. The Expenses

The Expenses shall mean:

- (a) all reasonable costs and expenses (including legal costs) incurred by us or (as the case may be) the Receiver under or in connection with the Mortgage, for example, for the following purposes:
 - (i) preparing, negotiating, signing or registering the Mortgage;
 - (ii) exercising any of our or the Receiver's powers under the Mortgage;
 - (iii) recovering or attempting to recover the Secured Liabilities;
 - (iv) protecting or enforcing any of our or (as the case may be) the Receiver's rights under the Mortgage;
 - (v) preserving or attempting to preserve the Property;
 - (vi) making any claim or defending any claim against us or the Receiver in respect of the Secured Liabilities, the Mortgage or the Property;

- (vii) preparing, signing or registering a release of the Mortgage;
 - (viii) certifying receipt of full payment of the Secured Liabilities;
 - (ix) (if your interest in the Property is an equitable interest) preparing, signing or registering all documents or doing all things necessary to re-assign the Property to you upon full payment of the Secured Liabilities;
 - (x) giving or refusing to give our consent under the Mortgage;
 - (xi) (if you fail to perform your obligations under the Mortgage) performing your obligations under the Mortgage; or
 - (xii) taking possession of or selling or leasing or granting other rights to occupy or possess the Property pursuant to the Mortgage; and
- (b) the Receiver's remuneration as reasonably agreed between the Receiver and ourselves; and
 - (c) any amount which you are liable to pay us under clause 5.1.

22. Deductions from other credit balances and lien

You agree that if you fail to pay any part of the Secured Liabilities due and payable under the Mortgage, we shall be entitled to do the following things without giving prior notice to you or any other person:

- (a) use any credit balance in any of your accounts (whether in your own name or in joint names with other persons) with us to pay that unpaid sum to us;
- (b) off set that unpaid sum by any debt or liability we owe you now or in the future;
- (c) have a lien on all of your assets or property held by us; and
- (d) sell any of your assets or property held by us at such price and in such manner at our sole discretion, and use the proceeds to pay such unpaid sum.

23. Payment in other currencies

23.1 The Secured Liabilities shall not be treated as fully paid unless they are fully paid in the currency in which they were incurred.

23.2 If the Secured Liabilities are not paid in a currency in which they were incurred (the "**Original Currency**"), we shall be entitled to convert that currency into the Original Currency within a reasonable period at an exchange rate as we reasonably determine. If there is any shortfall between the Original Currency and the currency in which the Secured Liabilities are actually paid (whether the currency conversion takes place or not), you shall remain liable under the Mortgage for the amount of the shortfall calculated as at the date of currency conversion, or if there is no such currency conversion, as at the date of actual payment.

24. Appointment as your attorney

24.1 By this Mortgage, you appoint, as a separate appointment, each of ourselves, the Receiver, the successors and the assigns of our or the Receiver's rights and powers under the Mortgage, to act as your attorney on his own or jointly with the others. This appointment is given by way of security and is irrevocable so long as the Mortgage is in force.

- 24.2 Your attorneys appointed under clause 24.1 shall have full power to appoint another person as your attorney in replacement for themselves.
- 24.3 Your attorneys appointed under clause 24.1 shall have full power to, in your name or on your behalf, sign, seal and deliver all documents and do all things as they think fit for:
- (a) performing any of your obligations (which you fail to perform) under the Mortgage;
 - (b) exercising any power or right given to us or the Receiver under the Mortgage; or
 - (c) giving to us the full benefits of the Mortgage.
- 24.4 You agree to and hereby ratify and confirm any document signed or anything done from time to time by your attorneys appointed under clause 24.1.

25. Evidence of the Secured Liabilities

A certificate duly signed by our officer as to the amount of the Secured Liabilities, the Expenses, any interest, default interest, late charge or handling fee is conclusive evidence against you for all purposes in the absence of obvious error or fraud.

26. Suspense account

- 26.1 On the happening of an Event of Default and until the Secured Liabilities have been paid in full, we shall be entitled to hold any money we receive under the Mortgage (other than an amount as shall wholly satisfy the Secured Liabilities) in a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Secured Liabilities.
- 26.2 If we have not already done so pursuant to clause 26.1, all money we receive under the Mortgage shall be treated as having been credited to a suspense account in order to preserve the full amount of our claims against you or any other security provider for the Secured Liabilities, and shall not operate to reduce the amount of the Secured Liabilities.
- 26.3 Amounts standing to the credit of a suspense account pursuant to clause 26.1 or a deemed suspense account pursuant to clause 26.2 shall bear interest at our prevailing rate for deposit accounts with a similar credit balance from time to time.

27. Continuing security

- 27.1 The Mortgage shall be a continuing security securing the Secured Liabilities due, owing or incurred by you to us from time to time. Your liabilities and obligations under the Mortgage shall continue until full payment of the Secured Liabilities, and accordingly shall not be affected or discharged by the happening of any of the following events:
- (a) your death, mental incapacity, bankruptcy, insolvency or liquidation (where applicable) or change of name;
 - (b) any change in the name or constitution of ourselves or our successors or assigns;

- (c) (if you are a partnership or any other organization) any change in the name or membership or constitution of the partnership or organization (in that case, the Mortgage shall continue to bind those persons who make up the partnership or the organization as so constituted for the time being);
- (d) the takeover of yourselves by, your absorption of or your merger with, any other person;
- (e) the takeover of ourselves by, our absorption of or our merger with, any other bank or institution;
- (f) the appointment of a receiver over your business or assets;
- (g) your entry into any arrangement with your creditors to repay your debts or other liabilities; and
- (h) any assignment of the Secured Liabilities, any transfer of the Mortgage or any declaration of trust or other acts affecting our rights in respect of the Secured Liabilities or the Mortgage.

27.2 From time to time, we or the Receiver may:

- (a) give any other security provider for the Secured Liabilities more time to pay money due and payable;
- (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of any other security provider for the Secured Liabilities;
- (c) make any other arrangement, compromise or settlement with any other security provider for the Secured Liabilities;
- (d) take or deal with any other security or legal commitment for the Secured Liabilities;
- (e) fail to take any other security or legal commitment for the Secured Liabilities; or
- (f) neglect, release, enforce or choose not to enforce any of our rights under the Mortgage or any other security or legal commitment for the Secured Liabilities.

If we or the Receiver carry out any of the above acts in this clause 27.2 or do or fail to do anything else, this shall not affect our rights or your liabilities under the Mortgage even if it would have done so had this clause 27.2 not existed.

27.3 Your liabilities under the Mortgage shall not be affected by any of the following matters:

- (a) the invalidity of any other security or legal commitment for the Secured Liabilities;
- (b) the invalidity of or irregularity in entering into the Facility Agreement or the Mortgage;
- (c) lack of power by you to enter into, or perform any of your obligations under, the Facility Agreement or the Mortgage; or

- (d) any act, omission, event or circumstance which may operate to prejudice, adversely affect or discharge the Mortgage had this clause 27.3 not existed.

28. Other general matters

- 28.1 Exercising or failing to exercise a right under the Mortgage shall not prevent us or the Receiver from exercising any other right under the Mortgage.
- 28.2 Our or the Receiver's rights under the Mortgage may be exercised as often as we or (as the case may be) the Receiver think fit.
- 28.3 Exercising part of a right under the Mortgage shall not prevent us or the Receiver from subsequently exercising that right to the fullest extent.
- 28.4 A delay in exercising a right or the non-exercise of a right under the Mortgage shall not prevent us or the Receiver from exercising that right subsequently.
- 28.5 Our rights under the Mortgage shall be in addition to any other rights which we may have under the law.
- 28.6 We shall be entitled to employ debt collecting agent(s) to collect any sum due but unpaid by you under the Mortgage.

29. Severability

If at any time, any provision of the Mortgage is or becomes invalid, illegal or unenforceable under the law of any jurisdiction, this shall not affect its validity, legality or enforceability under the law of any other jurisdiction nor the validity, legality or enforceability of any other provision of the Mortgage.

30. Amendments

Any amendment of any provision of the Mortgage shall be in writing and signed by you and us.

31. Further security

If in our reasonable opinion from time to time, the Property is not a sufficient security for the Secured Liabilities, we shall be entitled to request you to provide further security for the Secured Liabilities and you shall provide promptly on our written demand further security to our satisfaction.

32. Assignment or transfer of rights and obligations

- 32.1 We shall be entitled to assign or transfer at any time all or any of our rights or obligations under the Mortgage to any person without your consent.
- 32.2 You shall not assign or transfer any of your rights or obligations under the Mortgage without our prior written consent.
- 32.3 You shall sign any document and do any thing as we require for effecting any assignment or transfer of our rights or obligations under the Mortgage.
- 32.4 Once the assignment or transfer of our rights or obligations under the Mortgage has become effective, any person who takes over our rights or (as the case may be) obligations under the Mortgage shall have exactly the same rights or (as the case may be) obligations as we had under the Mortgage before that assignment or transfer and we shall be released from those rights or (as the case may be) obligations.

33. Disclosure of your information

- 33.1 You agree to allow us to disclose your information subject, in the case of personal information, to the provisions of Personal Data (Privacy) Ordinance Cap.486 to those persons or for those purposes as expressly stated in our data privacy statement published from time to time relating to the above ordinance, a copy of which has been made available to you.
- 33.2 You agree to allow us to provide to any other security provider for the Secured Liabilities a copy of the Mortgage, these Mortgage Conditions, the Facility Agreement and any agreement in relation to the Secured Liabilities.

34. The Mortgage independent of any other guarantee or security

- 34.1 The Mortgage shall be independent of, and in addition to, any other guarantee or security which we presently have or may in the future have in relation to the Secured Liabilities.
- 34.2 If we have any other security for the Secured Liabilities, we shall be entitled to choose which security we will enforce or the order of enforcement.
- 34.3 We shall not be obliged to enforce any other security for the Secured Liabilities or to take any steps or proceedings before we enforce the Mortgage.

35. No right to our security

You agree that you shall not be entitled to receive any money from the sale or other dealing of any security (including the Property) which we presently hold or may acquire in the future in respect of the Secured Liabilities, or to share in any other money received by us to reduce the Secured Liabilities until all the Secured Liabilities have been paid in full.

36. Postponement of your rights

- 36.1 Until the Secured Liabilities have been paid in full, you shall not be entitled to do any of the following things without our prior written consent:
- (a) exercise or enforce any right (including any right of set-off) against any other security provider for the Secured Liabilities; or
 - (b) pursue any claim against any other security provider for the Secured Liabilities; or
 - (c) make a claim in competition with us in the bankruptcy or insolvency of any other security provider for the Secured Liabilities; or
 - (d) receive the benefit of any payment or distribution or security from any other security provider for the Secured Liabilities.
- 36.2 You shall give us the benefit of each claim and pay us of all money you receive in breach of clause 36.1 and in the meantime shall hold them on trust for us.
- 36.3 If you take any security referred to in clause 36.1(d), (whether with or without our consent), you shall hold that security on trust for us and shall pay us all money you receive in respect of that security.

37. Joint and several liability

- 37.1 If there is more than one of you, the Mortgage shall bind all of you jointly and each of you. We shall be entitled to discharge or come to an arrangement with any one of you on any terms as we may agree without affecting our rights and remedies against the others.
- 37.2 If there is more than one of you, the Mortgage will bind each of you separately even if it is unenforceable against all or any of you.

38. Notices and demands

- 38.1 Any notice or demand to be given under the Mortgage shall be in writing and shall be given to the relevant party in any one or more of the following ways:
- (a) by serving the notice or demand in a way which is prescribed by law;
 - (b) by sending the notice or demand by post to the address of the relevant party set out in the Mortgage (or the last address provided to the sender). In this case, the notice or demand shall be treated as given on the second business day after the posting date;
 - (c) by delivering the notice or demand by hand to the address of the relevant party set out in the Mortgage (or the last address provided to the sender). In this case, the notice or demand shall be treated as given at the time of delivery; or
 - (d) by sending the notice or demand by fax to the fax number of the relevant party set out in the Mortgage (or the last fax number provided to the sender). In this case, the notice or demand shall be treated as given at the time of dispatch.
- 38.2 If there is more than one of you, a notice or demand served by us on any one of you shall be a sufficient notice or demand on all of you.
- 38.3 If you are an individual person, any notice or demand served after your death in accordance with this clause 38 shall be deemed to be a sufficient notice or demand to your personal representative(s).

39. Governing law and jurisdiction

- 39.1 The Mortgage shall be governed by, and construed in accordance with, Hong Kong law.
- 39.2 You agree that any proceedings relating to the Mortgage shall only be brought by you in a court of competent jurisdiction in Hong Kong. However, we shall be entitled to take legal proceedings against you under the Mortgage in any country where you or your assets may be located.

40. Language

The Mortgage (including these Mortgage Conditions) is written in English and accompanied by its Chinese translation. The Chinese translation is for reference purposes and only the English version is intended to have legal effect.

標準按揭契據

由香港按揭文件標準化計劃統籌委員會制定

由香港按揭證券有限公司召集



香港按揭文件標準化計劃

統籌委員會會員

召集人

香港按揭證券有限公司

代表人

彭醒棠先生
總裁(統籌委員會主席)

張秀芬律師
首席法律顧問及公司秘書

李詠賢律師
法律顧問(統籌委員會秘書)

會員

美國運通銀行

周秉樑先生
零售信貸業務總監

美國亞洲銀行

冼超風先生
副總裁

中國銀行

錢麗顏女士
放款部經理

東亞銀行

張經瑜律師
法律顧問

浙江第一銀行

鄭景開律師
副總經理兼首席法律顧問

道亨銀行

沈銘誠先生
法律部高級經理

第一太平銀行

蔡承業先生
高級副總裁

惠譽國際評級有限公司

Mr. Ben McCarthy
董事

恒生保險有限公司

曾婉儀女士
高級經理

香港大律師公會

湯家驊大律師
資深大律師

香港上海滙豐銀行有限公司

侯瑞芸律師
法律顧問

香港大學法律系

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前副教授

香港律師會

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的近律師行合夥人

穆迪亞太有限公司

葉敏先生
結構融資部董事總經理

渣打銀行

馬卓筠律師
法律及監察顧問

United Guaranty Mortgage Indemnity
Company

關綺蕙女士
Associate Director of Insurance Operations

草擬副委員會會員

香港按揭證券有限公司

第一太平銀行

香港大律師公會

香港上海滙豐銀行有限公司

香港大學法律系

香港律師會

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前副教授

夏向能律師
的近律師行合夥人

馬卓筠律師
法律及監察顧問

謹此鳴謝下列各人士及機構對按揭契據及擔保及彌償保證契據(下稱「標準文件」)所付出的重大努力和寶貴時間：

烈顯倫法官，GBM，對標準文件提出寶貴意見。

律政司法律草擬科及其代表嚴元浩先生，SBS，JP(法律草擬專員)，對標準文件的中文譯本作出詳細審閱。

高偉紳律師行及其代表鄧鳳雯律師(合夥人)，提供協助草擬標準文件的中文譯本。

我們亦感謝下列諮詢機構對標準文件提出寶貴意見和建議：

消費者委員會

律政司

香港銀行公會

香港有限牌照銀行及接受存款公司公會

香港大律師公會

香港金融管理局

土地註冊處

香港大學法律系

香港律師會

規劃地政局

香港按揭文件標準化計劃統籌委員會

2001年7月

香港按揭文件標準化計劃 (下稱「計劃」)

按揭契據指導說明

1. 本按揭契據是由計劃統籌委員會制定的按揭契據的標準格式文書。
2. 計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除對本按揭契據的內容以及對任何承按人或其他人因與本按揭契據之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭契據的承按人或其他人必須就本按揭契據對其擬採用的目的的合適性自己尋求法律意見。
3. 本按揭契據僅為一份按揭契據的建議格式。承按人和按揭人採用此按揭契據與否屬自願性，而非硬性規定的。在決定是否採用本按揭契據時，承按人應考慮本按揭契據是否與承按人本身之運作程序及貸款交易之複雜性配合。
4. 如有任何承按人希望採用本按揭契據，應予完整採用。對本按揭契據所作的任何變動或修改，均應促使按揭人注意，並應向按揭人清楚說明，所使用的經變動或修改的格式文本，並非由統籌委員會通過的本按揭契據的標準格式文本。
5. 本按揭契據對已建竣的住宅物業設置法定押記，以抵押按揭人償還向其授予之任何銀行融資和貸款及履行按揭人根據按揭契據下之責任。本按揭契據是一份由兩方訂立的格式文書，可由個人按揭人簽立，亦可由法團按揭人簽立。
6. 按揭契據由兩部分組成：(a)空白表格部分和(b)按揭條件(2001年版)。
7. 空白表格部分中包含若干空格，用於填寫按揭物業、承按人、按揭人及與按揭有關的息率和違約利息息率的詳情。
8. 按揭條件(2001年版)包含各項按揭的標準條款和條件。承按人應注意現時草擬的按揭契據並非「應要求」即須作出償還的按揭，而承按人為符合第3條款和第8條款可能須對其現行的相關運作程序作出變更，故此應特別注意這兩條條款。
9. 為了遵守《個人資料(私隱)條例》的規定，承按人如未作以下安排，則應該：
 - (a) 在按揭人簽署按揭申請表之前，向按揭人提供一份為承按人所採用的最新資料私隱聲明小冊子；
 - (b) 確保按揭申請表中有條款提及承按人所採用的最新資料私隱聲明，並務請按揭人在簽署按揭申請表之前先通讀此資料私隱聲明；或
 - (c) 在按揭人簽署按揭申請表之前，先向按揭人通讀承按人所採用的最新資料私隱聲明。

10. 當按揭人出售物業時，若承按人已事前將其於按揭契據的權利和利益轉讓予其受讓人，則承按人應向按揭人或他／她的代表律師提供所有承按人惠及其受讓人簽立的轉讓文件的核證副本，以供按揭人履行其需證明妥善業權的責任，而承按人不應就該等核證副本收取費用。
11. **按揭人簽署按揭契據之前**，承按人或其代表律師應務請按揭人通讀本按揭契據、空白表格部份的封面上之**重要通告**，及按揭條件(2001年版)封面上之**重要通告**。承按人應告知按揭人，假若他／她希望了解簽署按揭契據後須承擔的各項法律承諾，他／她有權向其自己選定的律師徵詢獨立法律意見。
12. 按揭人只應在按揭契據經填妥的英文版空白表格部分的簽名頁上簽署姓名，而不應簽署在其中文譯本上。中文譯本並非用作簽署的文件，乃是用作向按揭人提供按揭契據條款和內容的翻譯。
13. 向土地註冊處辦理按揭契據註冊時，應連同按揭條件(2001年版)，向土地註冊處提交經填妥並簽署的空白表格部分，以辦理註冊。

香港按揭文件標準化計劃統籌委員會

2001年7月

按揭契據

重要通知：

本按揭是一份重要的法律文件。按揭條件構成本按揭的一部分。在簽署本按揭之前，務請你小心閱讀本按揭和按揭條件。你有權向你自己選定的律師徵詢獨立的法律意見，以確保你明白按揭條件內所載的條款和條件、你所作的承諾和你簽署本按揭的全部後果。

你簽署本按揭後，在法律上即受本按揭的條款和條件（包括按揭條件）的約束。如你們多於一人簽署本按揭，本按揭的條款和條件將對你們一起具有共同約束力，亦對你們每人有各別約束力。因此，你們一起須共同負責而你們每人亦須各別負責繳付本按揭所抵押的有抵押債務。

你向我們繳付有抵押債務的責任不受本按揭所影響。除還款的責任外，如你不按照本按揭的條款和條件向我們繳付有抵押債務，我們有權取得物業的管有權、出售物業和以出售物業所得利益清償你欠我們的任何款項。如出售物業所得利益不足夠清償你欠我們的款項，我們可以向 you 申索餘額。

你確認你已獲得按揭條件及任何關乎有抵押債務的協議之文本。

香港按揭證券有限公司同意任何人以不牟利性質使用、複製及向公眾分發本按揭契據的全文。任何人絕對不得違反以上條件出售或分發本按揭契據。香港按揭證券有限公司及香港按揭文件標準化計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除任何對本按揭契據的內容以及對任何承按人或任何其他人士因與本按揭契據之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭契據的承按人或任何其他人士必須就本按揭契據對其擬採用的目的的合適性自己尋求法律意見。

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本按揭於〔 〕年〔 〕月〔 〕日訂立

A部： 本按揭的簽署各方

你： 〔按揭人姓名或名稱〕，*住址⁽¹⁾／在香港的註冊辦事處⁽²⁾／在香港的主要營業地點⁽²⁾位於〔 〕，*香港身份證⁽¹⁾／護照⁽¹⁾／商業登記⁽²⁾／公司⁽²⁾號碼〔 〕。

我們： 〔承按人銀行名稱〕，*在香港的註冊辦事處／在香港的主要營業地點位於〔 〕。

B部： 定義

在本按揭中，下列詞語具有下列涵義：

- 樓宇** 指〔位於地段之上的樓宇或發展項目的描述〕；
- 公契** 指〔關乎物業的任何公契或分公契的描述〕；
- 開支** 指按揭條件第21條所述的各項開支；
- 政府租契** 指關乎地段的*政府租契／新批租約／賣地條件／換地條件／批地條件（編號〔 〕），當中載有下列詳情：
- 日期：〔 〕
簽署方：〔 〕
年期：〔 〕
*續期／修訂／更改：〔 〕
- 地段** 指〔關乎物業的地段編號及段數〕；
- 按揭條件** 指本按揭D部所述的按揭條件（2001年版）；
- 物業** 指本按揭C部所述的物業；
- 有抵押債務** 指你（如你們多於一人，則指你們其中一人或多於一人）到期未付、欠下或招致我們以任何貨幣計算的一切的款項、責任和法律責任（連同任何累算的利息），不論該款項、責任和法律責任是現時或將來的、實際的、或有的、基本或間接的，亦不論是你自己或與任何其他共同欠下的款項、責任和法律責任，並包括有抵押債務的任何部分；
- 我們** 指按揭中用「**我們**」表明的一方，並包括繼承人和受讓人；
- 你** 指按揭中用「**你**」或「**你們**」表明的一方，並包括繼承人和受讓人。

* 刪去不適用者

⁽¹⁾ 只適用於屬個人的按揭人。

⁽²⁾ 只適用於屬法團或商行的按揭人。

C部： 藉本按揭押記的物業

根據本按揭押記的物業受下述原權益保留條款和新權益保留條款所規限，以及附帶下述地役權和從屬權，該物業的詳情如下：

(a) 說明及地址：

地段的〔 〕份相等的分割部分或份數和位於其上的樓宇，連同持有、使用、佔用和享用該樓宇〔住宅單位之說明〕的權利和特權，亦為在〔 〕土地註冊處登記的轉讓契約（編號〔 〕）所附的圖則內*（僅為識別目的）*〔更詳盡地〕顯示的樓宇。

(b) 原權益保留條款及新權益保留條款

〔 〕。

(c) 地役權和其他從屬權

〔 〕。

D部： 本按揭的條款和條件

本按揭收納按揭條件（2001年版）為本按揭的條款和條件。

E部： 本按揭簽署各方的聯絡詳情

我們的聯絡詳情如下：

地址：〔 〕
傳真號碼：〔 〕

我們可以隨時向你發出書面通知更改我們的聯絡詳情。

你的聯絡詳情如下：

地址：〔 〕
傳真號碼：〔 〕

你可以隨時向我們發出書面通知更改你的聯絡詳情。

F部： 物業押記

凡你在物業中的權益為法定產業權，你即以實益擁有人的身分以第一法定押記形式將你在物業中的全部權益押記予我們，作為繳付有抵押債務及履行你根據本按揭的責任的抵押品，該押記受制和受惠於政府租契和公契。

凡你在物業中的權益為衡平法權益，你即以實益擁有人的身分將你在物業中的全部權益轉讓予我們，作為繳付有抵押債務及履行你根據本按揭的責任的抵押品，該轉讓受制和受惠於政府租契和公契。

你轉讓給我們（和同意轉讓給我們，並會應我們要求的格式和內容另外簽立轉讓書）根據現在或將來為你的物業的權益之全部或任何一部分訂

立的任何銷售協議、租約、租賃合約或其他協議應當繳付的所有現在和將來的各項銷售收益、租金、其它款項和按金，連同我們以你的名義興訟追討上述款項和將其有效解除的權力。

G部：未付開支的違約利息息率

按揭條件第3.4條所述的就未繳付開支徵收的違約利息息率為〔 〕。

H部：未付有抵押債務的違約利息息率

按揭條件第15條所述的就未繳付的有抵押債務徵收的違約利息息率如下：

- (a) 對於我們提供給你關乎物業的按揭貸款，息率為〔 〕；
- (b) 對於我們提供給你的任何信貸或其它銀行融資(上述(a)段中提到的按揭貸款除外)，息率為管轄任何此類信貸或其它銀行融資的適用條款和條件中指明的違約利息息率。

你的聲明

你確認在簽署本按揭之前，你已留意到首頁的「重要通知」並特別留意到建議你就本按揭和按揭條件徵詢獨立法律意見的陳述。

〔此乃中文譯本，請簽署在英文本上〕

按揭條件(2001年版)

重要通知：

本按揭條件是一份重要的法律文件。你一旦簽署按揭，本按揭條件將構成你所簽署的按揭的一部分並適用於該按揭，因而在法律上對你具有約束力。如你們多於一人，則本按揭條件對你們一起有共同的約束力並對你們每人有各別的約束力。

你在簽署該按揭之前，應該小心閱讀按揭和本按揭條件。你有權向你自己選定的律師徵詢獨立法律意見，以確保你明白本按揭條件內所載的條款和條件、你的承諾和你所簽署的按揭的全部後果。

香港按揭證券有限公司同意任何人以不牟利性質使用、複製及向公眾分發本按揭條件的全文。任何人絕對不得違反以上條件出售或分發本按揭條件。香港按揭證券有限公司及香港按揭文件標準化計劃統籌委員會的每一位成員在可能的範圍內最大程度地明確排除任何對本按揭條件的內容以及對任何承按人或任何其他人士因與本按揭條件之全部或任何一部分有關的、因其產生的或因以其為依據而蒙受或招致的任何損失、損害或申索的任何責任。任何意圖使用本按揭條件的承按人或任何其他人士必須就本按揭條件對其擬採用的目的的合適性自己尋求法律意見。

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1. 定義

1.1 在本按揭條件中，下列詞語具有下列涵義：

樓宇	指按揭中所述的樓宇；
公契	指按揭中所述的公契，並包括不時對該公契作出的任何修訂；
違約事件	指第13條所列的任何事件；
開支	指第21條所述的各項開支；
融資協議	指我們向你提供任何銀行融資、信貸安排或其他融資或通融所依據的現有或將來的協議，並包括不時對該(等)融資協議作出的變更、補充或取代；
政府租契	指按揭中所述的政府租契，並包括不時對政府租契作出的變更、續期或延期；
香港	指中華人民共和國香港特別行政區；
按揭	指收納本按揭條件、並由你所簽立的以我們為受惠人和用以抵押償還有抵押債務的物業按揭或押記，並包括不時對按揭作出的變更、補充或取代；
條例	指《物業轉易及財產條例》(香港法例第219章)，並包括不時對條例作出的變更、補充或重新制定；
人	指個人、公司、法團、信託、合夥或商號，並包括其繼承人和受讓人；
物業	指按揭所述的物業，並包括物業的任何部分；
接管人	指我們書面委託作為物業接管人和／或管理人的的人(包括我們的人員或僱員)並包括取代接管人的任何人；
有抵押債務	指你(如你們多過一人，則指你們其中一人或多於一人)到期未付、欠下或招致我們以任何貨幣計算的一切的款項、責任和法律責任(連同任何率累算的利息)，不論該款項、責任和法律責任債務是現時或將來的、實際的、或有的、基本或間接的，亦不論是你自己或與任何其他共同欠下的款項、責任和法律責任，並包括有抵押債務的任何部分；
抵押品	指為抵押繳付／償還任何債項、法律責任或責任而作出的文據或抵押品，並包括但不限於押記、按揭、擔保、質押和留置權；

我們	指按揭中用「我們」表明的一方，並包括繼承人和受讓人；
你	指按揭中用「你」或「你們」表明的一方，並包括繼承人和受讓人。

1.2 在本按揭條件中，

- (a) 「他」包括「她」和「它」，而「他的」亦包括「她的」和「它的」；
- (b) 所有詞語同時具有單數詞和複數詞的涵義；
- (c) 標題僅為方便參考而設，不得作為本按揭條件的一部分；
- (d) 除非明文另有所指，否則凡以編號提述某條或附表，即指本按揭條件中標上該編號的條或附表；
- (e) 凡提述時間及日期，即指香港時間及日期；
- (f) 凡提述某份文件，即包括提述對該文件不時作出的修訂、補充或取代；和
- (g) 凡提述任何法定條文時，應視為也提述該等法定條文的修改、補充或重新制訂，以及根據該等法定條文的修改、補充或重新制訂而制訂的任何從屬法例、命令或規例。

2. 構成按揭的一部分

本按揭條件構成按揭的一部分並必須與按揭一併理解。

3. 你同意繳付的協議

- 3.1 你同意在有抵押債務根據有關的融資協議到期應付時繳付有抵押債務。
- 3.2 你同意應我們的書面要求立即繳付開支。任何未付開支須加入有抵押債務，並構成有抵押債務的一部分。
- 3.3 你同意我們要求你繳付有抵押債務或開支前，毋須先要求其他人付款或採取其他行動取得付款（例如出售物業或出售我們持有的其他抵押品）。
- 3.4 如你沒有應我們的書面要求繳付任何開支，你須就未付款項按照按揭指明的息率向我們繳付自開支招致日期起至實際付款日期止期間的違約利息。你須應我們的書面要求立即繳付根據本第3.4條累算的違約利息。否則，任何累算而未付的違約利息須加入有抵押債務，構成有抵押債務的一部分。

4. 不得從付款中扣減款項

- 4.1 你根據按揭作出的每筆付款均不得從中扣減任何稅款或類似的收費，但如根據法律你有責任作出該扣減則除外。如你需作出該扣減，你須向我們繳付額外款項，以確保我們收到根據按揭你應繳付的全部款項。

4.2 你根據按揭作出的每筆付款均不得從中扣減任何我們欠下你的款項，你須向我們繳付根據按揭不時要求你繳付的該筆有抵押債務。

5. 彌償

5.1 你向我們承諾（我們代表我們自己，也作為我們的每位董事、高級職員和普通僱員的代理人，每位皆為一「受彌償人」）你得對每位受彌償人因你違反按揭，或任何違反你根據按揭所作的陳述和保證，致使任何一位受彌償人遭提出的，或其蒙受的或招致的所有法律責任、合理的損失和損害、訴訟、司法程序、要求、申索和合理的費用和支出（包括律師費），向其作出彌償。

5.2 你根據第5.1條有法律責任繳付給我們的任何款項須視作開支處理，並構成開支的一部分。

6. 按揭的解除

6.1 當有抵押債務已全部償還，而你已根據按揭履行所有責任，我們須按通常格式簽立一份文件，以便進行下列事項，而費用由你承擔：

- (a) 確認收到全部有抵押債務；
- (b) 解除或撤銷按揭；和
- (c) （如你在物業中的權益為衡平法權益）將物業再轉讓予你。

6.2 依據第6.1條解除或撤銷按揭、確認收到全部有抵押債務或再轉讓物業須受下述條件規限，即我們就償還有抵押債務所收到的款項其後不得依據任何法律予以退回或減少。

6.3 在我們依據第6.1條解除或撤銷按揭、確認收到全部有抵押債務或再轉讓物業予你後，如根據法律我們有責任退回任何就償還有抵押債務所繳付予我們的款項，則你須：

- (a) 仍然根據按揭承擔法律責任，猶如我們未曾收到該筆款項一樣；和
- (b) 簽立所需的任何文件和作出所需的事情，以將你在物業中的全部權益押記（如你在物業中的權益是法定產業權）或轉讓（如你在物業中的權益是衡平法權益）予我們，而費用由你承擔，

並且受限於在不知悉情況下為物業付出價值的任何真誠購買人所獲得的權利，我們有權強制執行按揭，猶如按揭的解除或撤銷、收取款項的確認或物業的再轉讓從未發生一樣。

6.4 如我們同意應你的要求未收到全部有抵押債務的情況下解除、撤銷或再轉讓物業，則你仍須就有抵押債務的餘款承擔法律責任。

7. 你的陳述和保證

你向我們陳述和保證在訂立按揭的當日：

- (a) 你是物業的唯一實益擁有人，並擁有物業的妥善和有價的業權；
- (b) 物業並未被設置任何產權負擔或抵押品，且物業不受惠及他人的租賃或佔用許可(以書面已向我們披露並獲我們確認者除外)的限制；
- (c) 你簽署按揭並沒有違反適用於你或對你具有約束力的任何法律、規則、規例、判決、命令、協議、授權或責任；
- (d) 按揭中所列物業的詳情全屬真實準確和完整；
- (e) 政府租契和公契均有效並在實施中，且不曾對該租契和公契作出關乎物業的修改，亦不存在香港政府有權終止政府租契的情況；
- (f) 你已根據政府租契或公契全數並準時繳付就物業須予繳付的地價、地稅和其他款項，並已遵守政府租契及公契中涉及物業的條款和條件；
- (g) 你已全數並準時繳付就物業須予繳付的管理費、差餉、稅項和其他支出及款項；
- (h) 現時並沒有關乎物業的訴訟、仲裁或行政程序正在進行，亦沒有人威脅要提出該等訴訟、仲裁或行政程序；
- (i) 沒有違約事件發生，亦沒有任何因發出通知或符合任何條件或期限屆滿而可能成為違約事件的事件發生；
- (j) 你就按揭、有抵押債務及物業向我們提供的所有資料(包括你的個人資料和財務資料)全屬真實準確和完整；
- (k) 你沒有遺漏向我們書面披露任何可能會影響我們是否向你放貸任何款項或向你放貸款項的款額的決定的資料；
- (l) 你具有簽署或簽立按揭和根據按揭履行責任所需的權力、行為能力和法律權利；
- (m) 你已取得簽署或簽立按揭和使按揭具有法律效力所需的所有批准以及根據按揭履行責任所需的所有批准，而該等批准在按揭有效期間仍然有效；和
- (n) (如你是一法團)你是根據你的法團成立地的法律正式成立、並有效存在的法團，你亦已正式授權你的人員簽署或簽立按揭並有權履行你根據按揭須履行的所有責任。

8. 你投購物業保險的責任

- 8.1 在按揭生效期間，你須就物業因火災和其他我們要求的相關的嚴重危險而造成的損毀向我們規定的保險公司，並按我們批准的條款及條件和我們規定的投保金額自費投購保險。如你不根據本第8.1條履行你的責任，我們可代辦，但費用由你承擔。
- 8.2 你須向我們提供我們所要求的物業保險單的正本或其副本，以茲記錄。
- 8.3 你須確保物業保險單上有應我們要求的格式註明我們的利益。你須應我們要求，以你和我們的共同名義投購物業保險或將你在物業保險單中的利益和權益轉讓給我們。
- 8.4 你須準時繳付根據物業保險單須予繳付的保費金或其他款項，並須向我們提供我們所要求的付款收據的正本或副本。
- 8.5 你同意物業保險單須載有條文規定申索款項須直接支付予我們。如你收取根據該保險單支付給你的申索款項，你須以信託形式為我們持有。
- 8.6 如你欲根據物業保險單提出申索，你必須立即通知我們。
- 8.7 我們有權代表你就物業保險單所提出的申索達成和解或作出調整。在此情況下，你須簽署所有所需的文件並作出所有所需的事情，以使我們能達成上述和解或作出上述調整。
- 8.8 如有和解或賠償的款項就根據物業保險單所作的申索支付，則我們有權選擇將該筆款項用於償還或減少有抵押債務或用於修葺或重建物業。
- 8.9 如我們決定將根據第8.8條支付的款項用於修葺或重建物業，則你須將該筆款項只作此用途，並自資補足欠缺款額，以確保該項修葺或重建工程達到與損壞發生前相若的水平。
- 8.10 你不得作出任何引致下列後果的事情，亦不得安排或容許有任何引致下列後果的事情作出：
 - (a) 縮窄物業保險投保範圍或減少保險金額；
 - (b) 增加物業保險單的保費；
 - (c) 阻止或妨礙任何申索根據物業保險單達成完全和解；
 - (d) 取消或終止物業保險單或使其無效；或
 - (e) 對物業保險單造成不利影響。

9. 你的積極責任

除非得到我們的書面同意，你承諾在按揭生效期間自費作出以下事項：

- (a) 繼續作為物業的唯一實益擁有人並持有物業的妥善和有價業權；
- (b) 凡有任何使香港政府有權終止關乎物業的政府租契的情況出現，盡快將該等情況通知我們；
- (c) 維持關乎物業的政府租契的效力；
- (d) 準時繳付就物業所須繳付或根據政府租契或公契所須繳付的所有地價、地稅、管理費、差餉、稅項及其他支出和款項之全數，並應我們的要求立即向我們提供已付款的合理證據；
- (e) 遵守政府租契和公契中關乎物業的條款及條件；
- (f) 保持物業維修妥善和狀況良好；
- (g) (如你不保持物業維修妥善和狀況良好)容許我們、我們所僱用的工人、接管人和接管人所僱用的工人進入物業進行所需的維修；
- (h) 容許我們、我們所委任的代表、接管人及其所委派的代表在發出合理通知後於合理的時間視察物業，而該等人士不得因進行該項視察而被視作取得物業的管有權；
- (i) 將送達於你或物業的關乎物業的逾期欠款通知的文本或威脅可能就物業提出訴訟、仲裁或行政程序的通知文本，於收到後7日內送交我們；
- (j) 你或你的代表盡快通知我們任何關乎物業的爭議或投訴以及其結果，並在收到關乎該爭議或投訴的通知後7日內，將所有通知的文本送交我們；
- (k) 遵守所有關乎物業的法律、規則、規例、判決、命令、協議和授權；
- (l) 在你收到關乎物業的任何判決或命令，及由政府當局或樓宇管理人所發出關乎物業並影響按揭有效性的全部命令、通知及建議後7日內，將其文本送交我們；
- (m) 遵守政府當局或樓宇管理人所發出的關乎物業的命令、通知及建議；
- (n) 應我們的要求並按照我們的指示，就關乎物業的訴訟、仲裁或行政程序，提出申索、抗辯或作出回應或與我們共同提出申索、抗辯或作出回應；

- (o) 應我們的要求並按照我們的指示，就法庭、政府當局或樓宇管理人所發出的任何關乎物業的判決、命令、通知或建議、或涉及物業的爭議或投訴，提出反對、上訴或作出回應或與我們共同提出反對、上訴或作出回應；
- (p) 遵守融資協議的條款和條件；
- (q) 凡按揭內所列的物業詳情有任何更改、不正確、不準確或不完整，須盡快通知我們並對其作出糾正；
- (r) 應我們不時為下列目的而作出的要求，盡快提供有關你或物業的資料：
 - (i) 強制執行按揭；
 - (ii) 保存物業；或
 - (iii) 追討有抵押債務；
- (s) 如你向我們提供的關乎按揭、有抵押債務或物業的資料(包括你的個人資料和財務資料)有任何更改，須盡快通知我們；
- (t) 將所有關乎物業的所有權的文件送交我們保管；
- (u) 如發生任何違約事件，或因發出通知、符合任何條件或期限屆滿而可能成為違約事件的事情，須盡快通知我們；
- (v) 繳付我們按照你或你的律師的要求所提供關乎物業或按揭的文件的影印本、核證副本或正本而招致的所有合理費用和支出；
- (w) 維持按揭和融資協議的效力、保持物業的價值，並使我們和接管人可根據按揭行使各自的權利和權力；
- (x) 取得使按揭及融資協議具有法律效力之批准以及履行你根據按揭及融資協議所須履行的責任所需之批准；
- (y) 凡你已取得簽署按揭及融資協議之批准或已取得使按揭及融資協議具有法律效力之批准或已取得履行你根據按揭及融資協議所須履行的責任之批准，則你須簽署所需文件和作出所需事情以確保所有的批准繼續有效；
- (z) 如我們可行使根據按揭所具有的出售權力，則你應在收到我們的通知後，立即遷出物業並將物業的空置管有權交給我們或我們指定的人；
- (aa) 你須自費辦理按揭要求你辦理的一切事項；
- (bb) 不時應我們要求簽署和簽立所有文件(如你在物業中的權益由衡平法權益轉為法定權益(如適用)，則包括法定押記)和應我們合理要求作出所需事情，致使按揭所意圖設立的抵押得以完備；

(如你是法團或商行，則以下(cc)和(dd)段適用。)

- (cc) 妥善保存你業務的會計記錄；和
- (dd) 聘請合資格的核數師行審計和核證你的財務報表，並於有關的融資協議中所列的時段內向我們提供該等經審計和核證的財務報表。

10. 你的消極責任

你同意在按揭生效期間，未經我們書面同意，不會作出下列事情，亦不會安排或容許有下列事情作出：

- (a) 出售、轉讓、再拆分或處置物業；
- (b) 在物業上設定任何權利或利益或施加責任（包括任何抵押品）以惠及任何其他人士；
- (c) 利用物業作不合法或不道德用途或作公契或政府租契不允許的用途；
- (d) 拆卸物業或對物業作出結構性改動或加建，但法律、政府租契或公契要求作出者除外，或加建非法僭建物；
- (e) 作出任何可能會降低物業的價值或損害根據按揭所設立的抵押品的事情；
- (f) 就物業申請任何規劃許可、建築同意或改善或修葺工程授權；或
- (g) 更改或放棄政府租契或公契所載的任何條款或權利。

11. 佔用物業

11.1 未經我們事先書面同意，你不得作出下列事情：

- (a) 訂立任何租約、租賃或使任何人因此獲准佔用或管有物業的任何協議；
- (b) 更改或放棄任何租約、租賃或使任何人因此獲准佔用或管有物業的任何協議中的任何條款；
- (c) 接受提前終止租約、租賃或使任何人因此獲准佔用或管有物業的任何協議；或
- (d) 在租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方違約的情況下終止或作出任何事情終止該租約、租賃或該等協議。

11.2 在第11.1條規限下，你必須自費作出下列的事情：

- (a) 在訂立租約、租賃或使任何人因此獲准佔用或管有物業的任何協議或其後之修改的日期後14日內，向我們送交該租約、租賃或協議，及其後之修改的核證副本。如該等租約、租賃或協議是加蓋印花或經裁決的，則應向我們送交該帶有印花或經裁決的租約或租賃或協議的核證副本；
- (b) 履行你根據租約、租賃或使任何人因此獲准佔用或管有物業的任何協議你須履行的責任；
- (c) 竭力真誠確保租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方履行該租約、租賃或協議；
- (d) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方違反該租約、租賃或協議，盡快通知我們；
- (e) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議的另一方要求延續或更改該租約、租賃或協議，盡快通知我們；和
- (f) 如租約、租賃或使任何人因此獲准佔用或管有物業的任何協議有所變更，盡快通知我們。

12. 政府租契的續期、延期和重批

12.1 如香港政府提出政府租契續期、延期或重批的建議，你必須：

- (a) 立即接受該建議；
- (b) 盡快履行該建議的所有條件並應要求盡快支付地價和其他代價；
- (c) 在完成政府租契續期、延期或重批後，根據已續期、延期或重批後的政府租契簽立一份惠及我們的物業按揭（費用由你支付），除按情況作出必要的相應修訂外，該按揭的格式須與現有按揭相同；和
- (d) 在依據第12.1(c)條簽訂另一按揭之前，以受託人身分為我們持有你根據獲續期、延期或重批的政府租契而具有的物業權益。

12.2 在政府租契屆滿後，如你沒有取得政府租契的續期、延期、重批或新批，則你須按照我們的要求就有抵押債務提供額外抵押品。

13. 違約事件

下列每一項事件均為違約事件：

- (a) 你沒有遵守融資協議或按揭或任何有你作為立約方的其他貸款協議中的條款；
- (b) 你違反在融資協議或按揭內向我們作出的任何陳述或保證，或任何該等陳述或保證被發現為不正確；

- (c) 你沒有償還到期應付的任何債項；
- (d) 你承認無力償還到期應付的任何債項；
- (e) 有強制執行行動針對你所設立的抵押品提出；
- (f) 你根據融資協議或按揭須承擔的責任因任何法律、規則、規例、判決或命令而被暫停執行、更改、終止或豁免；
- (g) 你根據融資協議或按揭須承擔的責任因任何政府當局發出的，或根據任何法律或規例發出的命令、通告或建議而被暫停執行、更改、終止或豁免；
- (h) 物業被毀壞或損壞；
- (i) 任何政府當局或其他機構重收物業或重新取得物業的管有權或它們表示有意或提出任何建議要重收物業或重新取得物業的管有權；
- (j) 政府租契(在與物業有關的程度上)終止；
- (k) 物業被強制購買或收購(不論有否支付任何補償金)；
- (l) 融資協議或向我們提供的任何其他抵押品變成無效或不可強制執行或被終止；
- (m) 你變得不可能根據融資協議或按揭履行責任；
- (n) 任何第三方就物業向法庭申請命令；
- (o) 任何第三方未經我們事先書面同意而佔用物業或取得物業的管有權；
- (p) 你或任何其他就有抵押債務提供抵押品的人與你或他的債權人就你或他的債項而訂立安排或建議訂立安排，或為你或他的債權人的利益，就該債項訂立安排或建議訂立安排；
- (q) 沒有取得簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所需的批准，或沒有取得根據按揭或融資協議履行你的或任何提供抵押品的人的責任所需的任何批准；
- (r) 就簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所取得的批准變成無效，或根據按揭或融資協議或有抵押債務的其他抵押品履行你的或任何其他提供抵押品的人的責任所取得的批准變成無效；
- (s) 就簽署或簽立按揭、融資協議或有抵押債務的其他抵押品或使其具有法律效力所需取得的批准，或根據按揭或融資協議或有抵押債務的其他抵押品履行你的或任何其他提供抵押品的人的責任所需取得的批准被修改，而我們合理地認為該修改可能會重大和不利地影響你或提供抵押品的人根據融資協議或按揭或就有抵押債務的其他抵押品履行責任的能力；

- (t) 我們合理地認為你或任何其他提供抵押品的人所作出的任何行動或不作為，會重大和不利地影響你或提供抵押品的人根據融資協議或按揭或有抵押債務的其他抵押品履行你的或提供抵押品的人的責任的能力；

(如你是個人，則下文(u)段適用。)

- (u) 有人向法庭提出針對你的破產呈請，且該呈請在呈交法庭後7日內仍未被撤消；

(如你是法團或商行，則下文(v)至(dd)段適用。)

- (v) 有接管人或類似的人員被委任接管你的業務或資產中任何部分；
- (w) 債權人取得你的業務或資產中任何部分的管有權；
- (x) 有法律程序針對你的業務或資產的任何部分而展開，該法律程序在展開後7日內未被撤消；
- (y) 有人向法庭提出針對你的清盤、破產管理、重組或解散的呈請或法律程序，或有命令就此頒布或有決議就此通過；
- (z) 你處置或表示有意處置你的業務或資產的任何重大部分；
- (aa) 你的業務或資產的任何重大部分被強制購買、接管或收購（不論有否支付任何補償金）；
- (bb) 你停止或表示有意停止經營你的業務的重大部分；
- (cc) 你對你的業務性質或範圍作出重大變更或表示有意對其作出重大變更；和
- (dd) 你的業務或財務狀況發生任何重大和不利的變更，而我們合理地認為這變更可能重大和不利地影響你根據融資協議或按揭履行責任的能力。

上述第(u)至(dd)段中提述「你」時，也包括就有抵押債務提供抵押品的人。

14. 按揭的強制執行

如發生違約事件，按揭即可強制執行；有抵押債務立即成為到期應付，而我們有權作出下列事情：

- (a) 終止已提供予你的所有銀行融資、信貸安排和其他信貸服務或通融，以立即終止我們按照該等銀行融資、信貸安排和其他信貸服務或通融向你進一步放貸的責任；
- (b) 要求你繳付有抵押債務；
- (c) 行使法律（包括條例）賦予我們作為承按人的所有權力（按照按揭有所更改或擴展）；和
- (d) 行使按揭賦予我們的所有權利。

15. 違約利息息率和各項收費

如你沒有依據第 14(b)條或融資協議的要求繳付有抵押債務（未付開支除外），你必須按有關融資協議內指明的任何息率和條款就該筆未付款項向我們繳付違約利息、逾期付款收費和／或手續費。

16. 接管人的委任

16.1 如發生違約事件，我們有權不給你進一步通知或未經你事先同意而委任接管人。

16.2 在第 17.2 條之規限下，你我雙方同意條例第 50 條適用於接管人的委任。

16.3 接管人擁有：

- (a) 法律（包括條例）賦予其作為接管人的所有權力（按照本按揭條件有所更改或擴展）；和
- (b) 按揭賦予接管人的所有權力。

17. 我們的權力和接管人的權力

17.1 如發生違約事件，我們和接管人各自具有下列權力：

- (a) 按我們或接管人認為合適的任何方式，以任何價格（不論是現金或其他形式）和條款出售、處置或處理物業；
- (b) 在根據按揭行使我們或接管人的權力之時，以我們或你的名義轉讓物業；
- (c) 進入物業和取得物業的管有權；
- (d) 就物業收取任何租金、按金和利潤，及要求你簽署和簽立將此租金或利潤轉讓給我們或接管人的轉讓書；
- (e) 按照我們或接管人認為合適的條款授予租約、租賃或使任何人因此獲准佔用或管有物業的任何協議，惟此權力須受遵照我們事先的書面同意合法地授權的物業租約、租賃或使任何人因此獲准佔用或管有物業的任何協議所規限；
- (f) 為根據按揭所具有出售、出租物業或物業任何一部分或給予其他佔用或管有物業的權利而簽署我們或接管人認為合適的文件和作出我們或接管人認為合適的事情；
- (g) 按照我們或接管人認為合適的投保金額和條款為物業投保火險和我們要求投保的其他各項風險；
- (h) 對物業進行我們或接管人認為合適的所有修葺、翻新、改建、改善和發展；
- (i) 在與行使我們或接管人根據按揭所具有的權利和權力有關連的情況下，按照我們或接管人認為合適的報酬和條款，委聘代理人、工人、專業或非專業顧問或僱員；
- (j) 按照我們或接管人認為合適的報酬和條款，將我們或接管人根據按揭所具有的權力和權利轉授予任何人；

- (k) 在我們或接管人根據按揭行使權力和權利時招致合理的費用和支出；
 - (l) 在與行使我們或接管人根據按揭所具有的權力和權利有關的情況下，按照我們或接管人認為合適的條款，包括以物業作抵押品（不論是較按揭優先或受按揭管限）的條款，而籌集資金，**但是**：
 - (i) 接管人未經我們事先書面同意不得行使此權力，我們亦毋須就是否給予該項同意而承擔任何法律責任；和
 - (ii) 如有任何人因接管人行使此權力而向接管人貸款，則該人有權假設接管人有權借取該筆款項，並且是按照本條借取該筆款項；
 - (m) 提出或抗辯關乎物業的任何訴訟、仲裁或行政程序；
 - (n) 在與行使我們或接管人根據按揭所具有的權力和權利有關連的情況下，使用你的名義；和
 - (o) 作出我們或接管人認為為行使我們或接管人的權力和權利的任何其他合法行為或附帶於上述權力和權利的其他合法行為。
- 17.2 在法例許可的範圍內，任何對我們或接管人行使根據按揭所具有出售物業的權力的限制（包括條例中的那些限制）並不適用。
- 17.3 在行使我們根據按揭所具有的權力和權利時，除我們實際已收取的款項外，我們毋須就任何其他款項作出交代。
- 17.4 我們和接管人毋須就行使我們或接管人根據按揭所具有的任何權力和權利所引致的任何損失承擔法律責任，除非該損失是因我們或接管人的詐騙行為或疏忽所引致則除外；但是，我們和接管人將只對我們和接管人各自本身的詐騙行為或疏忽而招致的損失負上法律責任。
- 17.5 任何與我們或接管人交易的人均有權假設：
- (a) 我們和接管人均有權行使根據按揭所具有的全部或任何權力和權利；
 - (b) 我們和接管人是按照按揭行使我們或接管人的全部或任何權力和權利；
 - (c) 我們和接管人使用收取的款項的全部或任何一部分均是按照按揭行使我們或接管人的權力和權利；和
 - (d) 我們或接管人就收取向我們或接管人繳付的全部或任何一部分款項而發出的收據即為充分撤銷繳付該款項的人的付款責任。

在本第17條中，凡述及「我們或接管人」即指我們或（視屬何情況而定）接管人。

18. 你的補救方法

就未經授權、不正當或不妥當行使我們或接管人根據按揭所具有的權力和權利，你的補救方法僅限於損害賠償。

19. 抵押品變現所得收益的運用

以符合適用法律為前提，我們和接管人根據按揭收到的任何款項須按以下順序運用：

- (a) 開支；
- (b) 依據按揭支付有抵押債務（須先支付利息）；和
- (c) 將餘款支付給你或有權收取該款項的任何其他人。

20. 破產或無力償債法律的影響

- 20.1 如我們收到你或任何其他的人就有抵押債務的付款或抵押品之後，根據任何破產或無力償債法律規定我們有責任回復到猶如我們未收到該付款或抵押品的狀況，則你必須根據按揭承擔法律責任，猶如我們並未收到該付款或抵押品一樣。
- 20.2 在尚未有命令根據該等破產或無力償債法律針對我們作出之前，我們有權未經你事先同意而按照我們認為合適的條款，同意就根據該等法律引起的申索達成協議或和解。
- 20.3 如我們依據第20.2條就上述申索達成協議或和解，你須根據按揭承擔法律責任，猶如法庭已作出一項載有我們就該申索同意的條款的命令一樣。
- 20.4 如我們已解除、撤銷或再轉讓你所作出的惠及我們的任何抵押品（包括按揭）以交換你或其他的人所作出的任何付款或抵押品，則該項解除或撤銷的附帶條件為任何人不得根據破產或無力償債法律而就該筆付款或該項抵押品向我們提出申索。

21. 開支

開支指：

- (a) 我們或接管人根據按揭或在與按揭相關的情況下而為下列目的所招致的所有合理開支（包括法律費用），舉例說：
 - (i) 擬備、洽談、簽署或登記按揭；
 - (ii) 行使我們或接管人根據按揭所具有的權力；
 - (iii) 追討或企圖追討有抵押債務；
 - (iv) 保護或強制執行我們或接管人（視屬何情況而定）根據按揭所具有的權利；
 - (v) 保存或企圖保存物業；
 - (vi) 就有抵押債務、按揭或物業提出申索，或就關乎有抵押債務、按揭或物業而針對我們或接管人提出的申索進行抗辯；

- (vii) 擬備、簽署或登記解除按揭的文件；
 - (viii) 核證全數收到有抵押債務；
 - (ix) (如你在物業中的權益為衡平法權益)於全數收到有抵押債務後，擬備、簽署或登記為將物業再轉讓予你所需的所有文件，或作出為此目的所有必須的事情；
 - (x) 根據按揭給予或拒絕給予同意；
 - (xi) (如你沒有履行根據按揭所承擔的責任)履行你根據按揭須履行的責任；或
 - (xii) 依據按揭取得物業的管有權或出售或出租物業，或給予其他佔用或管有物業的權利；和
- (b) 接管人與我們合理議定的接管人報酬；和
- (c) 根據第5.1條你須承擔法律責任而向我們繳付的款項。

22. 自其他貸方餘額扣減款項和留置權

你同意如你沒有根據按揭繳付到期應付的有抵押債務，我們有權在不給予你或其他人事先通知而作出下列事情：

- (a) 使用你在我們處開設的帳戶(不論是以你個人名義或與其他人以共同名義開設)的貸方餘額繳付該筆未付的款項；
- (b) 以我們現在或將來欠你的任何債項或法律責任抵銷該筆未付的款項；
- (c) 對我們持有的你的全部資產或財產具有留置權；和
- (d) 以我們絕對酌情權決定的價格和方式出售我們持有屬於你的任何資產或財產，並將所得利益用以支付該等未付的款項。

23. 以其他貨幣付款

- 23.1 有抵押債務必須全數以招致有抵押債務的貨幣(「原貨幣」)繳付，否則不得被視作已全數繳付。
- 23.2 如不以原貨幣繳付有抵押債務，我們有權在合理時段內將繳付有抵押債務的貨幣按照我們合理地釐定的滙率轉換為原貨幣。如原貨幣與實際繳付有抵押債務所使用的貨幣(不論有否進行貨幣轉換)出現差額，你仍然須根據按揭就貨幣轉換當日或(如無貨幣轉換)實際繳款當日計算出的差額承擔法律責任。

24. 獲委任為你的受權人

- 24.1 作為一項獨立委任，你藉本按揭委任我們每一人、接管人、繼承和受讓我們或接管人根據按揭所具有的權利和權力的人，單獨或與他人共同作為你的受權人。此項委任是以提供抵押品的方式作出且在按揭有效期間為不可撤銷的。

- 24.2 你根據第24.1條所委任的受權人，具有全權委任另一人代其出任你的受權人。
- 24.3 你根據第24.1條所委任的受權人具有全權以你的名義或代表你為下列目的就所有我們認為適當的文件作出簽署、蓋章和交付，並作出所有我們認為適當的事情：
- (a) 在你沒有根據按揭履行責任的情況下，根據按揭履行你的責任；
 - (b) 行使任何根據按揭賦予我們或接管人的權力或權利；或
 - (c) 給予我們按揭的全部利益。
- 24.4 你同意並在此對你根據第24.1條委任的受權人不時所簽署的任何文件或作出的任何事情作出追認和確認。

25. 有抵押債務的證據

我們的人員就有抵押債務、開支、任何利息、違約利息、逾期付款收費或手續費的款額所妥為簽署的證明書，在沒有明顯錯誤或詐騙的情況下，須為針對你在各方面而言的不可推翻的證據。

26. 臨時帳戶

- 26.1 當有違約事件發生，我們有權將我們就按揭所收到的任何款項（足以全數抵償有抵押債務的款項除外）保存在一個臨時帳戶中，以保留向你們其中任何人或任何其他就有抵押債務提供抵押品的人提出全數申索的權利，直至有抵押債務全數繳付為止。
- 26.2 如我們並未依據第26.1條行事，我們根據按揭收到的所有款項必須視作已貸記存入一個臨時帳戶，以保留對你們其中任何人或任何其他提供抵押品的人提出全數申索的權利，而該筆款項不得用作扣減有抵押債務的款額。
- 26.3 依據第26.1條貸記存入臨時帳戶的款項或依據第26.2條當作貸記存入推定臨時帳戶的款項，須按照我們不時提供給予有相同貸方餘額的存款帳戶通行利率衍生利息。

27. 持續抵押品

- 27.1 按揭須為一項持續抵押品，藉以抵押你不時到期未付、欠下或招致我們的有抵押債務。你根據按揭須承擔的法律責任和責任將持續直至完全繳付有抵押債務為止，因此，該等法律責任和責任不得因發生任何下列事件而受到影響或被撤銷：
- (a) 你去世、精神上無行為能力、破產、無力償債或遭清盤（如適用的話）或名稱發生變更；
 - (b) 我們或我們的繼承人或受讓人改名或改組；

- (c) (若你屬合夥或任何其他組織)合夥或組織的名稱或成員或組成有任何更改(在該情況下,按揭繼續對當時組成該合夥或組織的人具有約束力);
- (d) 其他人收購你們、或你們吸納其他人或你們與其他人合併;
- (e) 其他銀行或機構收購我們、我們吸納其他銀行或機構或我們與其他銀行或機構合併;
- (f) 有接管人被委任接管你的業務或資產;
- (g) 你與你的債權人就償還債項或其他法律責任達成安排;和
- (h) 任何有抵押債務的轉讓、按揭的轉讓或有任何信託聲明的設立或有影響我們在抵押債務或按揭方面的權利的其他作為。

27.2 我們或接管人可不時:

- (a) 給予任何其他就有抵押債務提供抵押品的人更長時間繳付到期應付的款項;
- (b) 更改、擴展、解除、減少、交換、增加、加速、重訂或撤銷任何其他就有抵押債務提供抵押品的人的責任或法律責任;
- (c) 與任何其他就有抵押債務提供抵押品的人達成任何安排、妥協或和解;
- (d) 接受或處理任何其他就有抵押債務提供的抵押品或法律承諾;
- (e) 不接受其他任何就有抵押債務提供的抵押品或法律承諾;或
- (f) 忽略、解除、強制執行或選擇不強制執行根據按揭所具有的權利或根據就有抵押債務提供的任何抵押品或法律承諾所具有的權利。

我們或接管人作出本第27.2條所述的任何作為或作出或不作出其他事情,並不影響我們根據按揭所具有的權利或你須承擔的法律責任,儘管設若本第27.2條不存在則將會產生上述影響亦然。

27.3 你根據按揭須承擔的法律責任並不受任何下列事宜影響:

- (a) 任何其他就有抵押債務提供的抵押品或法律承諾的無效;
- (b) 按揭或融資協議的訂立是無效或不符合規定的;
- (c) 你無權訂立融資協議或按揭,或無權履行你根據按揭或融資協議須承擔的責任;或

- (d) 如本第27.3條不存在，任何可能會損害、不利地影響或撤銷按揭的作為、不作為、事件或情況。

28. 其他一般事項

- 28.1 行使或沒有行使根據按揭所具有的一項權利，並不妨礙我們或接管人行使根據按揭所具有的其他權利。
- 28.2 我們或接管人可在我們或接管人（視屬何情況而定）認為適當時行使根據按揭所具有的權利。
- 28.3 局部行使根據按揭所具有的任何權利並不妨礙我們或接管人其後完全行使該項權利。
- 28.4 延誤行使或不行使根據按揭所具有的任何權利並不妨礙我們或接管人其後行使該項權利。
- 28.5 我們根據按揭所具有的權利是附加於我們根據法律而具有的任何權利之上。
- 28.6 我們有權僱用收債代理人追收你根據按揭到期未付的任何款項。

29. 可劃分性

如在任何時間按揭的任何條文根據任何司法管轄區的法律是為無效、不合法或不可強制執行或成為無效、不合法或不強制可執行，並不影響該條文根據其他司法管轄區的法律的效力、合法性或可強制執行性，亦不影響按揭任何其他條文的效力、合法性或可強制執行性。

30. 修訂

按揭的任何條文如有修訂，必須經你及我們書面簽署同意。

31. 進一步的抵押品

如我們不時合理地認為物業不足夠作為有抵押債務的抵押品，我們有權要求你為有抵押債務提供進一步的抵押品，而你應在我們提出書面要求後立即提供令我們滿意的進一步抵押品。

32. 權利和責任的轉讓

- 32.1 我們有權未經你同意隨時將我們根據按揭所具有或須承擔的全部或任何權利或責任轉讓給任何人。
- 32.2 未經我們事先書面同意，你不得轉讓你根據按揭所具有或須承擔的任何權利或責任。
- 32.3 你必須簽署我們所要求的任何文件和作出我們所要求的任何事情，以完成我們根據按揭所具有或須承擔的權利或責任的任何轉讓。
- 32.4 一旦我們根據按揭所具有或須承擔的權利或責任的轉讓生效後，任何接收該等權利或責任的人則具有或須承擔我們在轉讓前根據按揭所具有或須承擔的相同權利或責任（視屬何情況而定），而我們所具有或須承擔的該等權利或責任（視屬何情況而定）則予以解除。

33. 你的資料的披露

- 33.1 你同意容許我們披露你的資料。對於你的個人資料，你同意容許我們在《個人資料(私隱)條例》(第486章)的規限下向我們就上述條例不時公佈的資料私隱聲明(我們已向你提供其文本)中所提及的人或目的披露你的資料。
- 33.2 你同意容許我們向其他就有抵押債務提供抵押品的人提供按揭、本按揭條件、融資協議和關乎有抵押債務的任何協議的副本。

34. 按揭獨立於任何其他擔保或抵押品

- 34.1 按揭是獨立於和附加於我們現時或將來可能就有抵押債務獲得的任何其他擔保或抵押品。
- 34.2 當我們就有抵押債務獲得任何其他抵押品時，我們有權選擇強制執行哪一項抵押品或強制執行的先後次序。
- 34.3 在強制執行按揭之前，我們毋須就有抵押債務強制執行其他抵押品或採取任何步驟，亦毋須提出任何法律程序。

35. 你無權過問我們的抵押品

你同意在全數繳付有抵押債務之前，你無權收取自出售或以其它方式處置我們現時所持有或將來可能取得的任何抵押品(包括物業)所得的任何關乎有抵押債務的款項，亦無權分享我們所收取的任何其他用以減低有抵押債務的款項。

36. 你的權利的延後

- 36.1 在全數繳付有抵押債務之前，未經我們事先書面同意，你無權作出任何下列事情：
- (a) 針對任何其他就有抵押債務提供抵押品的人行使或強制執行任何權利(包括任何抵銷權利)；
 - (b) 向任何其他就有抵押債務提供抵押品的人提出申索；
 - (c) 在任何其他就有抵押債務提供抵押品的人破產或無力償債的情況下提出與我們對立的申索；或
 - (d) 自任何其他就有抵押債務提供抵押品的人收取任何付款或利益分發或抵押品從而得益。
- 36.2 你必須將你在違反第36.1條的情況下獲得的每筆申索得益和收取的所有款項支付給我們，並在此期間以信託形式為我們持有該等得益和款項。
- 36.3 如你收取第36.1(d)條所述的任何抵押品(不論有否經我們同意)，則你須以信託形式為我們持有此抵押品，並須將你收到的有關該抵押品的全部款項繳付給我們。

37. 共同及各別法律責任

- 37.1 如你們多於一人，則按揭對你們一起具有共同約束力亦對你們每人有約束力。我們有權按照我們同意的任何條款撤銷你們任何一人的法律責任，或與你們任何一人達成安排，而不影響我們對其他人所具有的權利和補救方法。
- 37.2 如你們多於一人，則按揭將分別對你們每一人具有約束力，儘管按揭不能針對你們所有人或任何一人強制執行亦然。

38. 通知和要求

- 38.1 根據按揭發出的任何通知或要求必須採用書面形式，並以下列任何一種或多於一種方式給予有關一方：
- (a) 以法律訂明的方式送達通知或要求；
 - (b) 以郵寄方式將通知或要求送交至有關一方列於按揭的地址（或向發件方提供的最新地址）。在這情況下，通知或要求即被視作於郵寄當日後第二個營業日送達；
 - (c) 以專人親自將通知或要求送交至有關一方列於按揭的地址（或向發件方提供的最新地址）。在這情況下，通知或要求即被視作於送交時送達；或
 - (d) 以傳真方式將通知或要求送交至有關一方列於按揭的傳真號碼（或向發件方提供的最新傳真號碼）。在這情況下，通知或要求即被視作於發件時送達。
- 38.2 如你們多於一人，我們向你們其中一人送達的通知或要求即成為給予你們各人的充分通知或要求。
- 38.3 如你是個人，於你去世後根據本第38條送達的任何通知或要求即被視作給予你的遺產代理人的充分通知或要求。

39. 管轄法律和司法管轄區

- 39.1 按揭受香港法律管限並按照香港法律詮釋。
- 39.2 你同意與按揭有關的任何司法程序只能由你向具有司法管轄權的香港法院提出。然而，我們有權根據按揭在你或你的資產所在的任何國家提出法律程序。

40. 語言

按揭（包括按揭條件）以英文書寫並附上中文譯本。中文譯本僅作參考之用，只有英文本擬有法律效力。