

# **MODEL THREE-PARTY MORTGAGE**

**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**



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

**Guidance Notes to the Three-party Mortgage**

1. **The Steering Committee of the Project, and each member of the Steering Committee, expressly disclaims any liability to the fullest extent possible for the contents of the Three-party Mortgage, or for any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with, or in reliance on, the whole or any part of the Three-party Mortgage. Any mortgage lender or any other person proposing to use the Three-party Mortgage must seek its own legal advice as to the suitability of the Three-party Mortgage for its intended purposes.**
2. The Steering Committee of the Project has prepared a Three-party Mortgage as a standard three-party form of mortgage.
3. The Three-party Mortgage is only a recommended form of mortgage. In deciding whether to adopt the Three-party Mortgage, the mortgage lender should consider whether the Three-party Mortgage is compatible with its operational procedures and the requirements of the loan transaction. The use of the Three-party Mortgage for any mortgage transaction is entirely voluntary by the mortgage lender, the mortgagor or the borrower.
4. Where any mortgage lender intends to use the Three-party Mortgage, it should adopt the Three-party Mortgage in whole without modification. Any modification or amendment made to the Three-party Mortgage should be drawn to the attention of the mortgagor and the borrower, and it should be made clear to the mortgagor and the borrower that the modified or amended form used is not the standard form of the Three-party Mortgage as approved by the Steering Committee.
5. The Three-party Mortgage creates an assignment of or a legal charge over (so far as the property involved is a legal estate) completed residential property to secure repayments of any type of banking facilities and loans granted to the borrower (where it is not the same person as the mortgagor) and performance of the obligations of the borrower and the mortgagor under the Three-party Mortgage. The Three-party Mortgage is not appropriate for use in connection with uncompleted properties, which require the use of a separate form of equitable mortgage deed. The Three-party Mortgage is in a three-party form which can be executed by an individual or corporate mortgagor and/or borrower.
6. The Three-party Mortgage consists of two parts: (a) the blank form Mortgage Deed and (b) the Mortgage Conditions (Three-party Version) (2003 Edition).
7. The **blank form Mortgage Deed** contains (a) a number of blank spaces for filling in the details of the mortgaged property, the mortgage lender, the mortgagor, the borrower, the interest rate and the default interest rate in connection with the mortgage and (b) a number of boxes for options relating to the liabilities secured under the Mortgage and the responsibility for costs associated with the production of certified copies. The parties should ensure that all details are correctly filled in as failure to provide any required information or to tick the boxes correctly may lead to additional costs for rectification or make the mortgage unenforceable.

8. The **Mortgage Conditions (Three-party Version) (2003 Edition)** contain the standard terms and conditions of the Mortgage. The mortgage lender, the borrower and the mortgagor should note the following:
- (a) the Three-party Mortgage does not contain a “**repayable on demand**” clause as this is not compatible with the concept of a term loan;
  - (b) the liability secured under the Three-party Mortgage is not “all-money” since, in compliance with the provisions of the Code of Banking Practice, the Mortgage Deed provides the mortgagor and the borrower with a choice as to the assumption of either loan specific or unlimited liability by the mortgagor. The mortgagor and borrower should be asked to initial or sign against their choice of the liabilities to be secured;
  - (c) the Three-party Mortgage secures (i) the liabilities of the borrower only and not those of the mortgagor; or (ii) where there is more than one borrower, only the joint liabilities of the co-borrowers. The Steering Committee is of the view that if the mortgage lender requires (i) the borrower to assume liability for the mortgagor’s debts; or (ii) a co-borrower to assume liability for the other co-borrower(s)’ debts other than the joint debt, this should be done in a transparent manner and specifically brought to the attention of the borrower so that it can make an informed consent;
  - (d) the attestation clause requires the witnessing solicitor to confirm whether it acts for (i) the mortgagor alone; (ii) the mortgagor and the borrower together; or (iii) both the mortgagor and the mortgage lender; and
  - (e) in relation to the obligation of the mortgagor to insure the Property in clause 7 of the Three-party Mortgage, the **Code of Banking Practice** recommends that the amount and the nature of the risks insured should be reasonable and should be a matter of mutual agreement between institutions and their customers. Institutions should provide an option for the customer to choose whether the insured amount should be based on the loan value or the cost of reinstating the Property.
9. In order to comply with the **Personal Data (Privacy) Ordinance** (Chapter 486 of the Laws of Hong Kong), the mortgage lender should (to the extent it has not already done so):
- (a) supply the mortgagor and the borrower with a leaflet containing the latest data privacy statement adopted by the mortgage lender before the mortgagor and the borrower sign the mortgage loan application form; **and**
  - (b)
    - (i) ensure that the mortgage loan application form contains a provision referring to the latest data privacy statement adopted by the mortgage lender and advise the mortgagor and the borrower to read through the data privacy statement before they sign the mortgage loan application form; **or**
    - (ii) take the mortgagor and the borrower through the latest data privacy statement adopted by the mortgage lender before they sign the mortgage loan application form.
10. Under the **Code of Banking Practice**, mortgage lenders should obtain the consent of the borrower to provide a surety with a copy or summary of the contract evidencing the obligations to be guaranteed or secured.

Nevertheless, provisions have been incorporated in the Mortgage Conditions (Three-party Version) (2003 Edition) authorizing the mortgage lender to disclose such information to the surety.

11. **Before the mortgagor and the borrower sign the Three-party Mortgage**, the mortgage lender or its solicitors should advise the mortgagor and the borrower to read through the Three-party Mortgage and the **Important Notices** on the first page of both the blank form Mortgage Deed and the Mortgage Conditions (Three-party Version) (2003 Edition). The mortgage lender should advise the mortgagor and the borrower that each of them is entitled to seek separate independent legal advice from solicitors of its choice if either wishes to understand the legal commitments which each will assume by signing the Three-party Mortgage.

The Steering Committee recommends that as a matter of best practice the mortgagor should be represented by a separate firm of solicitors to advise it on the liabilities and obligations that it will undertake by signing the mortgage, and that those solicitors should not also act for the mortgage lender in any capacity due to the inherent conflict of interest that would arise in such a situation. However, the Steering Committee accepts that considerations of time and cost may deter the mortgagor from instructing a separate firm of solicitors in many cases, but ultimately the decision as to whether or not to accept the risks of the conflict of interest inherent in a joint representation situation is a matter for the mortgage lender concerned.

12. The mortgagor and the borrower should sign the execution page of the English version of the completed blank form Mortgage Deed only, and not on the Chinese translation, which is only intended to provide the mortgagor and the borrower with a translation of the contents of the Three-party Mortgage.
13. To register the Three-party Mortgage with the Land Registry, the mortgage lender's solicitors should submit the signed and completed blank form Mortgage Deed with the Mortgage Conditions (Three-party Version) (2003 Edition) attached.

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

**November 2003**

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## **THREE-PARTY MORTGAGE DEED**

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### **Important Notice**

This Mortgage is an important legal document. It is legally binding on you when signed.

The Mortgage Conditions form part of this Mortgage.

Before signing this Mortgage, you should obtain separate independent legal advice from your solicitors. If you sign this document, you will be liable for:

- (a) all amounts the Borrower owes us under the Facility Agreement or (where there is more than one Borrower) all amounts owed **jointly** by all the Borrowers to us under the Facility Agreement;
- (b) any unpaid interest;
- (c) the Expenses and other amounts payable by you under this Mortgage;
- (d) all other obligations assumed by you under this Mortgage.

### **IF YOU DO NOT KEEP UP PAYMENTS ON THIS MORTGAGE OR OTHER LOAN SECURED ON IT:**

- (1) WE MAY TAKE POSSESSION OF AND SELL THE MORTGAGED PROPERTY**  
  
**AND**
- (2) WE MAY CLAIM AND RECOVER FROM YOU ANY SHORTFALL BETWEEN THE AMOUNT OWING UNDER THIS MORTGAGE AND THE FACILITY AGREEMENT AND ANY AMOUNT WE MAY RECEIVE FROM THE SALE OF THE MORTGAGED PROPERTY**

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**THIS MORTGAGE** is made on [                    ]

**Section A: Parties**

**Mortgagor:** [Name of the mortgagor], holder of \*Hong Kong identity card number<sup>(1)</sup>/passport number<sup>(1)</sup>/ company number<sup>(2)</sup>: [                    ].

**Borrower:** [Name of the borrower], holder of \*Hong Kong identity card number<sup>(1)</sup>/passport number<sup>(1)</sup>/business registration number<sup>(2)</sup>/company number<sup>(2)</sup>: [                    ].

**we/us:** [Name of the mortgage lender].

**Section B: Interpretation**

(a) In this Mortgage, the words listed below have the meanings shown beside them:

**Amount Owing** All money, obligations and liabilities due, owing or incurred by the Borrower under the Facility Agreement or the Mortgage now or in the future including any unpaid interest or Expenses due and other amounts payable by the Mortgagor under this Mortgage.

**Expenses** Any costs and expenses which we or a Receiver reasonably incur in connection with this Mortgage and any Facility Agreement, including interest charged on the Expenses. We give examples of the Expenses in clause 20 of the Mortgage Conditions.

**Facility Agreement** **Tick the appropriate box**

[Initialled by the  
Mortgagor and the  
Borrower]

\_\_\_\_\_

\_\_\_\_\_

**For Mortgage securing Unlimited Amount**

All existing or future agreements, documents, arrangements or relationships (whether documented in writing or not) by which we make facilities available to the Borrower or under which the Borrower owes to us any money, obligation or liability (or if there is more than one person named as Borrower, only those facilities made available by us to, or money, obligation or liability owing to us by, those persons **jointly**).

**For Mortgage securing a Specific Amount only**

The agreement dated [                    ] by which we make facilities in a principal amount of not more than [amount] available to the Borrower and includes any modifications, supplements or replacements made to it with the Mortgagor's agreement in writing.

**Note:** To make sure that the choice of whether this Mortgage is to secure unlimited amount or specific loan amount is consistent in both the Facility Agreement and this Mortgage, the Mortgagor and the Borrower should be alerted of the relevant clauses in the Facility Agreement and be asked to initial against such clauses.

\* Delete as appropriate.

<sup>(1)</sup> Only applicable where the relevant party is an individual.

<sup>(2)</sup> Only applicable where the relevant party is a corporation.

**Mortgage Conditions** The Mortgage Conditions (Three-party Version) (2003 Edition) described in Section D of this Mortgage.

**Property** The property described in Section C of this Mortgage.

- (b) If more than one person is named as the Borrower or the Mortgagor, any reference to the Borrower or the Mortgagor includes reference to all those persons comprising the Borrower or the Mortgagor.
- (c) The meanings and rules of interpretation contained in clause 1 of the Mortgage Conditions apply to this Mortgage Deed.

**Section C: Property charged under this Mortgage**

The Property charged under this Mortgage:

[ ] equal undivided [ ] part or share of and in [Lot number and section in relation to the Property] together with the exclusive right and privilege to hold, use, occupy and enjoy [description of the flat] of [description of the building of the Property], which is shown on the plan annexed to an assignment registered at the Land Registry by Memorial Number [ ].

**Section D: Terms and conditions of this Mortgage**

The Mortgage Conditions (Three-party Version) (2003 Edition) form part of this Mortgage. The Borrower and the Mortgagor confirm that, before signing this Mortgage Deed, we have given them a copy of the Mortgage Conditions.

**Section E: Contact details of the parties**

Our contact details are:

Address: [ ]  
Fax number: [ ]

We may change our contact details at any time by giving written notice to the Mortgagor and the Borrower.

The Mortgagor’s contact details are:

Address: [ ]  
Fax number: [ ]

The Borrower’s contact details are:

Address: [ ]  
Fax number: [ ]

## **Section F: Charge over the Property**

The Mortgagor charges and assigns as beneficial owner all its interest in the Property to us to secure the Amount Owing and performance of the Borrower's and the Mortgagor's obligations under this Mortgage, subject to the Mortgagor's right of redemption. The charge created by this Mortgage is a legal charge in so far as the Property is a legal estate.

The Mortgagor assigns to us (and, if we reasonably require it, the Mortgagor will enter into one or more separate assignments in any form we may choose) the sale proceeds, rents or other amounts due now or in the future under any sale agreement, lease, tenancy or other agreement in respect of the whole or any part of the Mortgagor's interest in the Property together with power for us to take proceedings and give valid receipt of discharges for the above in the Mortgagor's name.

## **Section G: Default interest rate for any unpaid part of the Amount Owing**

The default interest rate for any unpaid part of the Amount Owing is:

- (a) in connection with the mortgage loan granted by us to the Borrower for which the Property is charged as security under this Mortgage, [                    ]; and
- (b) in connection with other money secured under this Mortgage (other than the mortgage loan mentioned in (a) above), the default interest rate stated in the terms and conditions of the applicable Facility Agreement.

## **Section H: Costs for production of certified copies**

When the Mortgagor sells the Property, if we have previously assigned or transferred our rights and interests in this Mortgage:

### **Tick the appropriate box**

- we will make available to the Mortgagor or its solicitors at no cost,
- the Mortgagor will at its cost obtain,

certified true copies of all the assignment and transfer documents executed by us or our assignee(s) and transferee(s) in order to enable the Mortgagor to prove good title.

## **Section I: Rights of third parties**

For the purpose of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) ("CRTPO"), each of the Borrower, the Mortgagor and we agree:

- (a) that a person who is not a party to this Mortgage Deed ("Third Party") has no right under the CRTPO to enforce or to enjoy the benefit of any term of this Mortgage Deed but this does not affect any right or remedy of a Third Party, which exists or is available apart from the CRTPO;
- (b) that no right under any term of this Mortgage Deed enforceable by a Third Party under the



CRTPO shall be assigned by the Third Party to another person unless this Mortgage Deed expressly provides otherwise; and

- (c) that the Borrower, the Mortgagor and we shall be entitled to rescind or vary any term of this Mortgage Deed at any time as provided by this Mortgage Deed without the consent of a Third Party.

**Declaration by the Borrower and the Mortgagor**

The Borrower and the Mortgagor each confirms that before signing this Mortgage, its attention has been drawn to the “Important Notice” on the front page and, in particular, to the warning that separate independent legal advice should be obtained before entering into this Mortgage.

<sup>(3)</sup>SIGNED SEALED and DELIVERED by the Borrower and the Mortgagor in the presence of a \*witness/solicitor:

**The Borrower**



\_\_\_\_\_  
The Borrower's signature

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's name and address

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's signature

\* Delete as appropriate.

<sup>(3)</sup> Only applicable where the relevant party is an individual.

**The Mortgagor**



---

The Mortgagor's signature

---

\*Witness's/Witnessing solicitor's name and address

\*I, the above-named solicitor, declare that I have provided the Mortgagor with legal advice regarding the nature and effect of this Mortgage and have done so in the absence of the Borrower.

\*I confirm that I act for the Mortgagor alone.

\*I confirm that I act for the Mortgagor and the Borrower.

\*I confirm that I act for the Mortgagor and the mortgage lender.

---

\*Witness's/Witnessing solicitor's signature

---

\* Delete as appropriate.

**<sup>(4)</sup>SEALED with the COMMON SEAL of the Borrower and the Mortgagor AND SIGNED by the authorized signatory(ies) of the Borrower and the Mortgagor in the presence of a \*witness/solicitor:**

**The Borrower**



\_\_\_\_\_  
Signature of the authorized signatory(ies) of the Borrower

\_\_\_\_\_  
Name and title of the authorized signatory(ies)

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's name and address

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's signature

\* Delete as appropriate.

<sup>(4)</sup> Only applicable where the relevant party is a corporation.

**The Mortgagor**



\_\_\_\_\_  
Signature of the authorized signatory(ies) of the Mortgagor

\_\_\_\_\_  
Name and title of the authorized signatory(ies)

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's name and address

\_\_\_\_\_  
\*Witness's/Witnessing solicitor's signature

\* Delete as appropriate. \_\_\_\_\_

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# **MORTGAGE CONDITIONS (THREE-PARTY VERSION) (2003 EDITION)**

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## **Important Notice**

These Mortgage Conditions form an important legal document, and apply to the Mortgage Deed and are legally binding on you.

You should read these Mortgage Conditions carefully. If you do not understand them, the way in which they work or their consequences, you should obtain separate independent legal advice from your solicitors before signing the Mortgage Deed.

**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 disclaims any liability to the fullest extent possible for the contents of these Mortgage Conditions, any loss, damage or claim suffered or incurred by any mortgage lender or any other person in connection with or in reliance on, the whole or any part of these Mortgage Conditions. Any mortgage lender 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. Interpretation

1.1 In these Mortgage Conditions, the words listed below have the meanings shown beside them:

<b>Amount Owing</b>	The Amount Owing as defined in Section B of the Mortgage Deed.
<b>Borrower</b>	The person named as Borrower in Section A of the Mortgage Deed.
<b>Building</b>	The building of which the Property forms part.
<b>Deed of Mutual Covenant</b>	Any deed of mutual covenant or sub-deed of mutual covenant to which the Property is subject.
<b>Event of Default</b>	Any of the events set out in clause 12.
<b>Expenses</b>	The Expenses as defined in Section B of the Mortgage Deed.
<b>Facility Agreement</b>	The Facility Agreement chosen in Section B of the Mortgage Deed.
<b>Government Lease</b>	The Government lease or agreement for a Government lease which relates to the Property.
<b>Hong Kong</b>	The Hong Kong Special Administrative Region of the People's Republic of China.
<b>Mortgage</b>	The mortgage or charge over the Property which consists of (a) these Mortgage Conditions and (b) the Mortgage Deed.
<b>Mortgage Deed</b>	The deed executed by the Borrower and the Mortgagor which, together with the Mortgage Conditions, creates the Mortgage.
<b>Mortgagor</b>	The person named as the Mortgagor in Section A of the Mortgage Deed.
<b>Ordinance</b>	The Conveyancing and Property Ordinance (Chapter 219 of the Laws of Hong Kong).
<b>person</b>	Any individual, personal representative, company, incorporated or unincorporated body, juridical person, trust, partnership or firm and includes any successors and assigns.
<b>Property</b>	The property described in Section C of the Mortgage Deed and any part of it.
<b>Receiver</b>	Any person we appoint at any time to be a receiver or a manager of the Property.

**security** Any instrument or collateral given to secure payment or repayment of any debts, liabilities or obligations, and includes (but is not limited to) any charge, mortgage, guarantee, pledge or lien.

**we / us** The person so named in Section A of the Mortgage Deed.

1.2 In these Mortgage Conditions:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) headings are for ease of reference only and do not alter the meaning of these Mortgage Conditions;
- (c) references to any clause or schedule are references to clauses of or schedules to these Mortgage Conditions and include any changes to those clauses or schedules;
- (d) times and dates are Hong Kong times and dates;
- (e) references to a document include any changes made to that document or any documents which replace it; and
- (f) references to any statutory provision include any changes to those statutory provisions or to any statutory instrument, order or regulation made under any of them.

**2. Joint and several liability**

- 2.1 All representations warranties and obligations of the Borrower or the Mortgagor are made or undertaken by them together and by each of them on their own. This means that each of the Borrower and the Mortgagor can be held fully responsible for complying with this Mortgage even if the Mortgage cannot be enforced against the other of them.
- 2.2 If there is more than one person named as the Borrower or the Mortgagor in the Mortgage Deed, this Mortgage applies to them all together and to each of them on its own. This means that each of them can be held fully responsible for complying with the obligations contained in the Mortgage (to the extent the provisions apply to it) even if the Mortgage cannot be enforced against the other of them.
- 2.3 We may choose to enforce our rights against, discharge or reach an agreement with any person named as the Borrower or the Mortgagor without affecting our rights against any other persons named as the Borrower or the Mortgagor in the Mortgage Deed.

**3. Payment**

- 3.1 The Borrower and/or the Mortgagor must:
  - (a) pay or discharge the Amount Owing as and when it becomes due and payable; and
  - (b) pay the Expenses immediately when we demand payment of them.

- 3.2 The Borrower and the Mortgagor each agrees that we are not obliged to demand payment of the Amount Owing from any other person or take any action to obtain payment (such as selling the Property or any other security we hold) before demanding payment of the Amount Owing from the Borrower and the Mortgagor or either of them.
- 3.3 If we do not receive full payment of any Expenses we demand, we may charge default interest on any unpaid Expenses at the rate set out in the relevant Facility Agreement from the date on which the Expenses were incurred until the date of payment. Default interest is payable on demand.
- 3.4 All payments under the Mortgage must be paid in full. If a deduction on account of tax or a similar charge is required by law, the Borrower or the Mortgagor must make up the payment so that we receive the full amount due under the Mortgage.
- 3.5 Neither the Borrower nor the Mortgagor may deduct any sums owed by us to either of them from any payments made by either of them under the Mortgage, and must pay the full amount of the Amount Owing as demanded by us at any time.

#### **4. Indemnity**

- 4.1 The Borrower and the Mortgagor each agrees to indemnify us (for ourselves and as agent for each of our directors, officers and employees, each an “**Indemnified Person**”) against all liabilities, reasonable losses and damages, actions, proceedings, demands, claims and reasonable costs and expenses (including legal costs) which any Indemnified Person may suffer as a result of any breach of the Mortgage or any misrepresentation in connection with the Mortgage.
- 4.2 Any amounts which the Borrower or the Mortgagor must pay us under clause 4.1 will be added to the Expenses.

#### **5. Release of the Mortgage**

- 5.1 When the Amount Owing has been fully paid and all obligations under the Mortgage have been performed, we will at the Mortgagor's cost execute a document to:
- (a) acknowledge full receipt of the Amount Owing; and
  - (b)
    - (i) release or discharge the Mortgage; or
    - (ii) (if the Mortgagor’s interest in the Property is an equitable interest) re-assign the Property to the Mortgagor.
- 5.2 Any action we take under clause 5.1 is subject to the condition that no money we receive in payment of the Amount Owing will subsequently be returned or reduced under any law.
- 5.3 If we take any action under clause 5.1 and are later obliged under law to return any money paid to us in payment of the Amount Owing, the Borrower and the Mortgagor will:
- (a) remain liable under the Mortgage as if we had never received that money; and
  - (b) at their cost, execute any document and do any thing necessary to charge (if the Mortgagor’s interest in the Property is a legal estate) or assign (if the Mortgagor’s interest in the Property is an equitable interest) all the Mortgagor’s interest in the

Property to us, and we will be entitled to enforce the Mortgage as if none of the matters set out in clause 5.1 had occurred.

- 5.4 If we agree to release, discharge or re-assign the Property without receiving full payment of the Amount Owing, the Borrower and the Mortgagor will remain liable for any remaining balance.

**6. Representations and warranties of the Borrower and the Mortgagor**

6.1 The Borrower and the Mortgagor each represents and warrants to us that at the date of the Mortgage:

- (a) the Mortgagor is the sole beneficial owner of the Property and has 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) by signing the Mortgage, it has not breached any law, rule, regulation, judgment, order, agreement, authorization or obligation applicable to or binding on it;
- (d) the particulars of the Property set out in the Mortgage Deed are true, accurate and complete;
- (e) each of the Government Lease and the Deed of Mutual Covenant is valid and in force and no circumstances exist which entitle the Government of Hong Kong to terminate the Government Lease;
- (f) the premium, rent and other money payable in respect of the Property under the Government Lease or the Deed of Mutual Covenant have been fully paid, and the terms and conditions of the Government Lease and the Deed of Mutual Covenant so far as they affect the Property have been observed;
- (g) the management fees, rates, taxes and other outgoings and money payable in respect of the Property have been fully paid;
- (h) no litigation, arbitration or administrative proceedings in connection with the Property are currently taking place or threatened;
- (i) no Event of Default and no 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 personal data and financial information) supplied to us in connection with the Mortgage, the Amount Owing and the Property is true, accurate and complete;
- (k) all information relevant to our decision to lend any money or the amount to be lent to the Borrower has been given to us;
- (l) each of them has the necessary power, capacity and legal right to sign or execute the Mortgage and to perform its obligations under the Mortgage;

- (m) each of them has obtained all necessary approvals for the signing or execution of the Mortgage and the performance of its obligations under the Mortgage, and that those approvals will remain in force so long as the Mortgage is in force; and
- (n) (if applicable) it is duly incorporated and is validly existing under the laws of the place of its incorporation, and has duly authorized its officer(s) to sign or execute the Mortgage and has the power to perform all its obligations under the Mortgage.

## **7. Insurance Obligations of the Mortgagor**

7.1 The Mortgagor must insure the Property at all times. The following terms apply to any insurance:

- (a) we have the right to approve the choice of insurer and the terms of the insurance policy;
- (b) our interest in the Property must be noted on the insurance policy, or the insurance must be in the joint names of the Mortgagor and ourselves, or we may ask for the Mortgagor's interest in the policy to be assigned to us;
- (c) the insurance policy must:
  - (i) cover all risks which we reasonably specify; and
  - (ii) be for an amount as agreed by the Mortgagor and us;
- (d) if we require, the original or a copy of the insurance policy must be given to us for our records; and
- (e) the Mortgagor must punctually pay the insurance premium and must give us the original or a copy of the receipt for such payment.

7.2 If the Mortgagor does not insure the Property under clause 7.1 or if the Mortgagor does not keep to the terms of clause 7.1, then we may insure the Property. If we insure the Property, the following terms apply:

- (a) we will insure the Property at the Mortgagor's cost and we will be entitled to add that cost to the Expenses; and
- (b) we will choose:
  - (i) the insurer;
  - (ii) the amount of the insurance;
  - (iii) whether the insurance is to be in our name alone, or in the joint names of the Mortgagor and us; and
  - (iv) the risks to be covered.

7.3 The Mortgagor agrees that the insurance policy for the Property is to provide that the proceeds of any claims made under the policy will be paid directly to us. To the extent

that any part of the Amount Owing remains outstanding, the Mortgagor will hold the proceeds paid under any insurance policy on trust for us.

- 7.4 If the Mortgagor wishes to make a claim under any insurance policy for the Property, it must notify us immediately.
- 7.5 We have the right to act for the Mortgagor to settle or adjust any claim the Mortgagor may have under the insurance policy for the Property. If we decide to do so, the Mortgagor must sign all documents and do all things we reasonably ask.
- 7.6 If any money is paid out as a settlement or compensation for a claim under any insurance policy for the Property, we have the right to choose to use that money either to pay or reduce the Amount Owing or to repair or rebuild the Property.
- 7.7 If we choose to use the money paid out under clause 7.6 to repair or rebuild the Property, the money must be used for that purpose only, and the Mortgagor must make up any shortfall so as to make sure that the repair or rebuilding is done to the same standard as before the damage.
- 7.8 The Mortgagor must not do, 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.

## **8. Obligations of the Mortgagor relating to the Property**

- 8.1 Unless we otherwise agree in writing, the Mortgagor agrees at all times and at its own cost:
  - (a) to ensure that it remains the sole beneficial owner of the Property and holds 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;
  - (c) to keep the Government Lease valid and in force;
  - (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;

- (f) to keep the Property in good repair and condition and to allow us and people we appoint to enter the Property to do any necessary repairs if it fails to do so;
- (g) to allow our or the Receiver's representatives to inspect the Property at all reasonable times on giving reasonable notice (and those persons will not be treated as having taken possession of the Property by that inspection);
- (h) to send us, within 7 days of receipt, a copy of any notice received or left at the Property demanding any overdue payments in respect of the Property or threatening any litigation, arbitration or administrative proceedings in respect of the Property;
- (i) 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 receipt, a copy of all notices or papers sent to or by the Mortgagor in connection with that dispute or complaint;
- (j) to comply with all laws, rules, regulations, judgments, orders, agreements and authorizations in connection with the Property;
- (k) to send to us, within 7 days of receipt, a copy of any judgment or order in respect of the Property and all orders, notices and proposals issued in respect of the Property by any governmental authority or manager of the Building;
- (l) to comply with any order, notice or proposal issued in respect of the Property by any governmental authority or manager of the Building;
- (m) at our request, to make or join with 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;
- (n) at our request, to make or join with us in making an objection, appeal or a response in accordance with our instructions in connection with 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;
- (o) 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;
- (p) to deliver to us all documents of title relating to the Property for our custody;
- (q) if at any time we become entitled to exercise the power of sale contained in the Mortgage, at our written request, to immediately give vacant possession of the Property to us or anyone we nominate; and
- (r) at our request at any time to sign and execute all documents (including a legal charge if the Mortgagor's equitable interest in the Property becomes a legal interest) and do whatever we may reasonably require for perfecting the security intended to be created under the Mortgage.

## **Other Obligations of the Borrower and the Mortgagor**

8.2 Unless we otherwise agree in writing, the Borrower and the Mortgagor each agrees at all times and at its own cost:

- (a) to observe the terms and conditions of the Facility Agreement;
- (b) to provide us promptly with any information about each of them or the Property we may ask at any time for:
  - (i) enforcing the Mortgage;
  - (ii) preserving the Property; or
  - (iii) recovering the Amount Owing;
- (c) to inform us promptly of any change in the information (including personal data and financial information) each of them has previously given us in respect of the Mortgage, the Property or the Amount Owing;
- (d) to inform us promptly of the happening of any Event of Default, or of 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;
- (e) to pay us all costs and expenses we reasonably incur in complying with requests from the Borrower, the Mortgagor or their solicitors, for photocopies, certified copies or originals of any document in connection with the Property or the Mortgage;
- (f) 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 rights and powers under the Mortgage;
- (g) to maintain all necessary approvals for the validity of the Mortgage and the Facility Agreement and the performance of the obligations under them;
- (h) 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 the obligations under them;

**(Paragraphs (i) and (j) below apply to the Borrower or the Mortgagor only if it is a corporation or firm.)**

- (i) to keep proper accounting records in respect of its business; and
- (j) to engage a firm of qualified auditors to audit and certify its financial statements, and to provide those audited and certified financial statements to us within the period we require.

## **9. Things the Mortgagor agrees not to do**

Without our prior written consent, the Mortgagor agrees not to do any of the things listed below:



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

## **10. Occupying the Property**

10.1 Without our prior written consent, the Mortgagor must not at any time:

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

10.2 Subject to clause 10.1, the Mortgagor must at its own cost or at the cost of the Borrower:

- (a) send us certified copies of any lease, tenancy or licence agreement in connection with the Property and any subsequent variation within 14 days from the date of that lease, tenancy or licence agreement or variation; and, if any such lease, tenancy or licence agreement has been stamped or adjudicated, a certified copy with stamping or adjudication;
- (b) perform all the Mortgagor's obligations under any lease, tenancy or licence agreement in connection with the Property;
- (c) do its best in good faith to ensure the performance of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement;

- (d) inform us promptly of any breach of any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement; and
- (e) inform us promptly of any request to extend or vary any lease, tenancy or licence agreement in connection with the Property by the other party to that lease, tenancy or licence agreement or any modification to any such lease tenancy or licence agreement.

## **11. Renewal, extension and re-grant of the Government Lease**

11.1 If the Government of Hong Kong offers a renewal, extension or re-grant of the Government Lease, the Mortgagor must:

- (a) immediately accept that offer;
- (b) satisfy promptly all the conditions of that offer and pay promptly any premium and other consideration as demanded;
- (c) on completion of the renewal, extension or re-grant, at its 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 any necessary changes required; and
- (d) pending the signing of the mortgage under clause 11.1(c), hold its interest in the Property under the renewed, extended or re-granted Government Lease on trust for us.

11.2 On expiry of the Government Lease, if the Mortgagor fails to obtain a renewal, extension or re-grant of the Government Lease, the Borrower and the Mortgagor must provide any additional security we require for the Amount Owning.

## **12. Events of Default**

Each of the events listed below in relation to either the Borrower or the Mortgagor is an Event of Default:

- (a) any failure to observe any term of the Facility Agreement or the Mortgage or any other loan agreement to which it is a party;
- (b) any of the representations or warranties made to us in the Facility Agreement, the Mortgage or any other documents based on which we have made available the facilities under the Facility Agreement is breached or found to have been incorrect;
- (c) any failure to repay any debt due and payable;
- (d) any admission of inability to repay any debt due and payable;
- (e) any action is taken to enforce any security created by either of them;
- (f) any law, rule, regulation, judgment, order, notice or proposal issued by any governmental authority, suspends, varies, terminates or excuses any obligations under the Facility Agreement or the Mortgage;

- (g) the Property is destroyed or damaged;
- (h) 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;
- (i) the Government Lease is terminated;
- (j) the Property is resumed or acquired (whether or not any compensation is paid);
- (k) the Facility Agreement, the Mortgage or any other security provided to us becomes invalid or unenforceable or is terminated or in default;
- (l) any obligation under the Facility Agreement or the Mortgage becomes impossible to perform;
- (m) any third party applies for a court order in respect of the Property;
- (n) any third party occupies or takes possession of the Property without our written consent;
- (o) the Borrower, the Mortgagor or any other security provider in respect of the Amount Owing enters into or proposes to enter into an arrangement in respect of its debts with or for the benefit of its creditors or that security provider;
- (p) any action taken or omission by it or any other security provider which in our reasonable opinion might materially and adversely affect its or the security provider's ability to perform their respective obligations under the Facility Agreement or the Mortgage or other security for the Amount Owing;
- (q) a petition for its bankruptcy is presented to the court and is not discharged within 7 days;

**(Paragraphs (r) to (z) below apply to the Borrower or the Mortgagor only if it is a corporation or firm.)**

- (r) a receiver or similar officer is appointed over any part of its business or assets;
- (s) creditors take possession of any part of its business or assets;
- (t) a legal action is commenced against any part of its business or assets and is not discharged within 7 days of the commencement;
- (u) a petition is presented to the court, or a legal action commenced, or an order made, or a resolution passed, for its winding-up, administration, reorganization or dissolution;
- (v) it disposes of, or expresses an intention to dispose of, any substantial part of its business or assets;
- (w) a substantial part of its business or assets are compulsorily purchased or taken over or acquired (whether or not any compensation is paid);

- (x) it ceases, or expresses an intention to cease, to carry on any substantial part of its business;
- (y) it makes or expresses an intention to make, any significant change to the nature or scope of its business; and
- (z) any material and adverse change in its business or financial condition which, in our reasonable opinion, might materially or adversely affect the ability to perform its obligations under the Facility Agreement or the Mortgage.

**(References to the Borrower or the Mortgagor in paragraphs (q) to (z) above include a security provider for the Amount Owing.)**

### **13. Enforcement of the Mortgage**

On the happening of an Event of Default, the Mortgage becomes enforceable, the Amount Owing becomes immediately due and payable, and we are entitled to:

- (a) terminate the Facility Agreement and all banking, credit or other facilities or accommodation provided to the Borrower under the Facility Agreement so that our obligations under all of them cease immediately;
- (b) demand payment of the Amount Owing;
- (c) exercise all powers given to us as mortgagee by law (including those under the Ordinance); and
- (d) exercise all powers given to us by the Mortgage.

### **14. Default interest rate and charges**

If either the Borrower or the Mortgagor fails to pay the Amount Owing (except for the unpaid Expenses) in accordance with clause 13(b) or as required under the Facility Agreement, each of them on its own and together will be liable to pay us default interest in accordance with Section G of the Mortgage Deed, together with late charges and other handling fees on the unpaid amount at the rate and on the terms specified in the Facility Agreement.

### **15. Appointment of a Receiver**

- 15.1 If an Event of Default occurs, we may appoint a Receiver without giving notice to the Borrower or the Mortgagor.
- 15.2 Subject to clause 16.2, the parties agree that section 50 of the Ordinance applies to the appointment of a Receiver.

### **16. Our powers and those of a Receiver**

- 16.1 If an Event of Default happens, we or the Receiver may:
  - (a) 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 consider appropriate;

- (b) assign the Property either in our name or in the Mortgagor's name in exercise of our power under the Mortgage;
- (c) take possession of the Property;
- (d) receive any rent, deposit and profit in respect of the Property, and require the Mortgagor to execute, at the cost of the Borrower or the Mortgagor, an assignment of the rent or profit to us or the Receiver;
- (e) grant any lease, tenancy or licence agreement in connection with the Property on any terms as we or the Receiver consider appropriate;
- (f) sign any document and do anything that we or the Receiver consider appropriate for the sale, lease or tenancy of the Property or the granting of any other right to occupy or possess the Property;
- (g) insure the Property, and to keep the Property insured, against fire and other risks that we or the Receiver may require, for the amount and on the terms that we or the Receiver consider appropriate;
- (h) carry out any repairs, renovations, alterations, improvements and developments to the Property as we or the Receiver consider appropriate;
- (i) appoint any person 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 consider appropriate;
- (j) 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 consider appropriate;
- (k) incur reasonable costs and expenses in the 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 consider appropriate, including on terms providing the Property as security either in priority to the Mortgage or subject to the Mortgage. However:
  - (i) the Receiver will not exercise this power without our prior written consent and we are not liable for giving or refusing to give that consent; and
  - (ii) any person lending money to the Receiver as a result of the exercise of this power is entitled to assume that the Receiver has power to borrow that money and is borrowing that money in accordance with this sub-clause;
- (m) institute or defend any litigation, arbitration or administrative proceedings in respect of the Property;
- (n) use the Borrower's or the Mortgagor's name in connection with the exercise of any of our or the Receiver's powers and rights under the Mortgage; and
- (o) 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.

- 16.2 To the extent permitted by any law, any restriction on the exercise of our or the Receiver's power to sell the Property under the Mortgage, including those in the Ordinance do not apply.
- 16.3 In the exercise of our or the Receiver's powers and rights under the Mortgage, we or the Receiver will be liable to account only for money we or the Receiver have actually received.
- 16.4 We or the Receiver are not 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.
- 16.5 Any person dealing with us or the Receiver is entitled to assume that:
- (a) we or the Receiver are entitled to exercise all or any of our powers and rights under the Mortgage;
  - (b) we or the Receiver exercise all or any of our powers and rights in accordance with the Mortgage;
  - (c) we or the Receiver use all money received in the exercise of our powers and rights in accordance with the Mortgage; and
  - (d) a receipt for all or any of the money paid to us or the Receiver is a good and sufficient discharge to any person paying that money.

**17. Remedy of the Mortgagor or the Borrower**

Unless we or the Receiver have acted fraudulently or have been grossly negligent, the Borrower and the Mortgagor each agrees that its remedy for the unauthorized, improper or irregular exercise by us or the Receiver of our or the Receiver's powers and rights under the Mortgage is in damages only.

**18. Application of proceeds of security realization**

Subject to applicable law, we or the Receiver will apply any money we or the Receiver receive under the Mortgage in the following order:

- (a) payment of the Expenses;
- (b) payment of the Amount Owing (other than the Expenses, and with accrued interest being paid first); and
- (c) payment of any remaining balance to the Mortgagor or any other person who is entitled to receive that money.

**19. Effects of bankruptcy or insolvency laws**

- 19.1 If we receive any payment or security from the Borrower or the Mortgagor or any other person for the Amount Owing, 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 the Borrower and the Mortgagor shall be liable under the Mortgage as if we had never received that payment or security.

- 19.2 We will 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 consider appropriate without the prior consent of the Borrower or the Mortgagor.
- 19.3 If we agree or settle a claim under clause 19.2, the Borrower and the Mortgagor will be liable under the Mortgage as if a court order had been made containing the terms we have agreed in connection with that claim.
- 19.4 If we have given a release, discharge or re-assignment of any security (including the Mortgage) given by the Borrower or the Mortgagor in our favour in return for any payment or security from either the Borrower, the Mortgagor or any other person, then that release or discharge will be conditional on no claims being made against us under the bankruptcy or insolvency laws in connection with that payment or security.

## **20. The Expenses**

Examples of the Expenses are:

- (a) all reasonable costs and expenses (including legal costs) incurred by us or the Receiver in connection with the Mortgage 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 Amount Owing;
  - (iv) protecting or enforcing any of our or 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 Amount Owing, the Mortgage or the Property;
  - (vii) preparing, signing or registering a release of the Mortgage;
  - (viii) certifying receipt of full payment of the Amount Owing;
  - (ix) (if the Mortgagor's interest in the Property is an equitable interest), preparing, signing or registering all documents and doing everything necessary to re-assign the Property to the Mortgagor upon full payment of the Amount Owing;
  - (x) giving or refusing to give any consent under the Mortgage;
  - (xi) (if the Borrower or the Mortgagor fails to perform any obligations under the Mortgage), performing those obligations; or
  - (xii) taking possession of, or selling or leasing or granting other rights to occupy or possess the Property under the Mortgage;
- (b) the Receiver's fees as reasonably agreed between the Receiver and us; and

- (c) any amounts which the Borrower and the Mortgagor are liable to pay us under clause 4.1.

## **21. Deductions from other credit balances and lien**

21.1 The Borrower and the Mortgagor each agrees that if it fails to pay any part of the Amount Owing due under the Mortgage, we may without giving prior notice to it or any other person:

- (a) use any credit balance in any of its accounts (whether in its own name or in their joint names 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 them now or in the future;
- (c) exercise a lien on all of its assets or property we hold; and
- (d) sell any of the assets or property we hold at a price and in a manner we decide, and use the proceeds to pay the unpaid sum.

21.2 The Borrower and the Mortgagor each agrees to waive all rights to set off against the Amount Owing any debt or liability we owe it or them now or in the future.

## **22. Payment in other currencies**

22.1 Unless we otherwise agree in writing, the Amount Owing must be paid in the currency in which it was incurred (“**Original Currency**”).

22.2 If the Amount Owing is not paid in the Original Currency, we will be entitled to convert the amount paid into the Original Currency within a reasonable period at the best exchange rate reasonably available. If there is any shortfall between the converted amount and the Amount Owing, the Borrower and the Mortgagor each remains liable for the shortfall.

## **23. Appointment as attorney**

23.1 The Borrower and the Mortgagor each appoints us and (as a separate appointment) the Receiver to act as its attorney either individually or jointly with others to do the following things in its name and on its behalf:

- (a) to sign, seal and deliver all documents; and
- (b) to do all things we or the Receiver consider appropriate to:
  - (i) perform any obligations which the Borrower or the Mortgagor fails to perform under the Mortgage;
  - (ii) exercise any power or right given to us or the Receiver under the Mortgage; or
  - (iii) give us the full benefit of the Mortgage; and
- (c) to appoint another person as attorney for the Mortgagor in replacement for ourselves or the Receiver.



23.2 The Borrower and the Mortgagor each agrees to confirm and ratify any document signed or anything done at any time by us or the Receiver or any other person appointed as attorney under clause 23.1.

23.3 This appointment is given by way of security and is irrevocable so long as the Mortgage is in force.

#### **24. Evidence of the Amount Owing**

Unless there is an obvious mistake or fraud, a certificate signed by our officer as to the amount of the Amount Owing, the Expenses, any interest, default interest, late charge or handling fee is conclusive evidence against the Borrower and the Mortgagor for all purposes.

#### **25. Suspense account**

25.1 If an Event of Default occurs and until the Amount Owing has been paid in full, we may hold any money we receive under the Mortgage (unless the amount wholly satisfies the Amount Owing) in a suspense account in order to preserve the full amount of our claims against the Borrower, the Mortgagor or any other security provider for the Amount Owing.

25.2 If we have not already done so under clause 25.1, we may treat all money we receive under the Mortgage as having been credited to a suspense account in order to preserve the full amount of our claims against the Borrower, the Mortgagor or any other security provider for the Amount Owing, and not in reduction of the amount of the Amount Owing.

25.3 Amounts standing to the credit of a suspense account under clause 25.1, or a deemed suspense account under clause 25.2, will bear interest at our prevailing rate(s) for deposit accounts with a similar credit balance.

#### **26. Continuing security**

26.1 The Mortgage is a continuing security securing the Amount Owing due at any time by the Borrower or the Mortgagor to us. The Borrower's and the Mortgagor's liabilities and obligations under the Mortgage continue until full payment of the Amount Owing, and are not affected by any of the following events:

- (a) the death, mental incapacity, bankruptcy, insolvency, liquidation or change of name of the Borrower or the Mortgagor;
- (b) any change in our name or constitution;
- (c) (if either or both of the Borrower or the Mortgagor is a partnership or any other organization), any change in its name or membership or constitution of the partnership or organization (in that case, the Mortgage continues to bind those persons who make up the partnership or the organization as so constituted for the time being);
- (d) the Borrower or the Mortgagor being taken over, absorbed by, or merging with any other person;
- (e) us being taken over, absorbed by, or merging with any other bank or institution;

- (f) the appointment of a receiver over the business or assets of the Borrower or the Mortgagor;
  - (g) the entry by the Borrower or the Mortgagor into any arrangement with its creditors to repay its debts or other liabilities; and
  - (h) any assignment of the Amount Owing, any transfer of the Mortgage or any declaration of trust or other acts affecting our rights in respect of the Amount Owing or the Mortgage.
- 26.2 Without affecting any of our or the Receiver's rights under the Mortgage, we or the Receiver may, at any time:
- (a) give the Borrower, the Mortgagor or any other security provider for the Amount Owing more time to pay money due and payable;
  - (b) vary, extend, release, reduce, exchange, increase, accelerate, renew or discharge any obligations or liabilities of the Borrower or the Mortgagor or any other security provider for the Amount Owing;
  - (c) make any other arrangement, compromise or settlement with the Borrower, the Mortgagor any other security provider for the Amount Owing;
  - (d) take or deal with any other security or legal commitment for the Amount Owing;
  - (e) fail to take any other security or legal commitment for the Amount Owing; 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 Amount Owing.
- 26.3 The Borrower's and the Mortgagor's liabilities under the Mortgage are not and will not be affected by:
- (a) the invalidity of, or irregularity in, entering into the Facility Agreement or the Mortgage;
  - (b) the invalidity of any other security or legal commitment for the Amount Owing;
  - (c) any lack of power to enter into, or perform any of the Borrower's or the Mortgagor's 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 26.3 not existed.

**27. Other general matters**

- 27.1 Our or the Receiver's rights under these Mortgage Conditions are not lost or limited:
- (a) by any earlier exercise of them;
  - (b) by any failure to exercise them;
  - (c) by any delay in exercising them; and/or

(d) by exercising them in part only.

27.2 Our or the Receiver's rights under the Mortgage are in addition to any other rights which we or the Receiver may have under the law.

27.3 We are entitled to employ debt collecting agent(s) to collect any sum due under the Mortgage.

**28. Unenforceability of certain terms of the Mortgage**

If any term of the Mortgage is or becomes unenforceable under the laws of any place, this will not affect its enforceability under the laws of any other place nor the enforceability of the remaining terms of the Mortgage.

**29. Amendments and consents to be in writing**

29.1 No change to any term of the Mortgage is binding unless it is in writing and signed by us, the Borrower and the Mortgagor.

29.2 No consent we give will bind us unless it is given in writing and signed by our authorized officer.

**30. Further security**

We are entitled to require the Borrower and the Mortgagor to provide further security if, in our reasonable opinion at any time, the Property is not a sufficient security for the Amount Owed. The Borrower and the Mortgagor each agrees to provide promptly further security to our satisfaction if we demand it.

**31. Our power to assign or transfer our rights and obligations**

31.1 The Borrower and the Mortgagor each agrees that we may assign or transfer, or agree to assign or transfer, the Facility Agreement, the Mortgage and any other documents based on which we have made available the facilities under the Facility Agreement and any of our rights or obligations under them to any person at any time.

31.2 For the purpose of any assignment or transfer under clause 31.1, each of the Borrower and the Mortgagor agrees to sign any document or do any thing as we reasonably require.

31.3 On any assignment or transfer under clause 31.1, the assignee or transferee, or its successors and assigns, will be able to enforce the Mortgage and Facility Agreement against the Borrower or the Mortgagor in the same way and to the same extent that we could enforce them before the assignment or transfer.

31.4 Each of the Borrower and/or the Mortgagor may not assign or transfer its rights or obligations under the Facility Agreement or the Mortgage without our prior written consent.

**32. Disclosure of information**

32.1 The Borrower and the Mortgagor each confirms that it has received, read, understood and agreed to the contents of the data privacy statement which we issue to customers and prospective customers. The Borrower and the Mortgagor each agrees to allow us to

disclose its personal and credit information (including credit reports), subject to the provisions of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), to the persons and for the purposes stated in our data privacy statement.

- 32.2 The Borrower agrees to allow us to disclose or provide to the Mortgagor or any security provider at any time all information regarding the Mortgage, the Facility Agreement and the Amount Owing (including but not limited to the amount of the current outstanding debts which the Borrower owes us and the purpose, amount and terms of each of the banking/credit facilities or additional banking/credit facilities which we have granted to the Borrower as secured or to be secured under the Mortgage).
- 32.3 The Borrower and the Mortgagor each agrees to allow us to provide to each other or any security provider for the Amount Owing a copy of the Mortgage, the Facility Agreement and any agreement in connection with the Amount Owing.

**33. The Mortgage independent of any other guarantee or security**

- 33.1 The Mortgage is independent of, and is in addition to, any other guarantee or security which we presently have or may have in the future in connection with the Amount Owing.
- 33.2 If we have any other security for the Amount Owing, we may choose which security we will enforce and the order of enforcement.
- 33.3 We are not obliged to enforce any other security for the Amount Owing or to take any steps or proceedings before we enforce the Mortgage.

**34. No right to our security**

Neither the Borrower nor the Mortgagor is 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 Amount Owing, or to share in any other money received by us to reduce the Amount Owing, until the full Amount Owing has been paid or discharged.

**35. Postponement of the Borrower's and the Mortgagor's rights**

- 35.1 Until the Amount Owing has been paid or discharged in full, the Borrower and the Mortgagor must not without our written consent:
- (a) exercise or enforce any right (including any right of set-off) against each other or any other security provider for the Amount Owing;
  - (b) pursue any claim against each other or any other security provider for the Amount Owing;
  - (c) make a claim in competition with us in the bankruptcy or insolvency of each other or any other security provider for the Amount Owing; or
  - (d) receive the benefit of any payment or distribution or security from each other or any other security provider for the Amount Owing.

35.2 The Borrower and the Mortgagor each agrees to give us the benefit of each claim and pay us all money received in breach of clause 35.1 and in the meantime hold them on trust for us.

35.3 If the Borrower or the Mortgagor takes any security referred to in clause 35.1(d), (whether with or without our consent), it holds that security on trust for us and must pay us all money it receives in respect of that security.

### **36. Notices and demands**

36.1 All notices or demands given under the Mortgage must be in writing and may be given in any of the following ways:

- (a) by serving the notice or demand in a way which is required by law;
- (b) by post to the address of the relevant party set out in Section E of the Mortgage Deed (or the last address known to the sender). In this case, the notice or demand is treated as given on the second business day after the posting date;
- (c) by hand to the address of the relevant party set out in Section E of the Mortgage Deed (or the last address known to the sender). In this case, the notice or demand is treated as given at the time of delivery; or
- (d) by fax to the fax number of the relevant party set out in Section E of the Mortgage Deed (or the last fax number known to the sender). In this case, the notice or demand is treated as given at the time of dispatch.

36.2 If more than one person is named as the Borrower in the Mortgage Deed, service on any one of them is sufficient service on all of them.

36.3 If more than one person is named as the Mortgagor in the Mortgage Deed, service on any one of them is sufficient service on all of them.

36.4 Service after the death of the Borrower or the Mortgagor in accordance with this clause 36 is sufficient service on its personal representative.

36.5 The Borrower and the Mortgagor must notify us in writing of its new contact information within 7 days from any change.

### **37. Governing law and jurisdiction**

37.1 Hong Kong law governs this Mortgage.

37.2 The Borrower or the Mortgagor each agrees to take any legal action in connection with the Mortgage only in Hong Kong. However, we may take legal action against the Borrower or the Mortgagor under the Mortgage in any place where its assets may be located.

### **38. Language**

The Mortgage (including these Mortgage Conditions) is written in English with a Chinese translation. The Chinese translation is for reference purposes only. The English version alone is intended to have legal effect.

### 39. Rights of third parties

- 39.1 For the purpose of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (“**CRTPO**”), each of the Borrower, the Mortgagor and we agree:
- (a) that a person who is not a party to the Mortgage (“**Third Party**”) has no right under the CRTPO to enforce or to enjoy the benefit of any term of the Mortgage but this does not affect any right or remedy of a Third Party, which exists or is available apart from the CRTPO;
  - (b) that no right under any term of the Mortgage enforceable by a Third Party under the CRTPO shall be assigned by the Third Party to another person unless the Mortgage expressly provides otherwise; and
  - (c) that the Borrower, the Mortgagor and we shall be entitled to rescind or vary any term of the Mortgage at any time as provided by the Mortgage without the consent of a Third Party.