

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

MOON YIK COMPANY LIMITED *Appellants*
XIPHO DEVELOPMENT COMPANY LIMITED - - *(Plaintiffs)*

AND

ATTORNEY GENERAL - - - - - *Respondent*
(Defendant)

RECORD OF PROCEEDINGS

JOHNSON STOKES & MASTER
Solicitors for the Appellants (Plaintiffs)

CROWN SOLICITOR
Solicitors for the Respondent (Defendant)

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(Defendant)

RECORD OF PROCEEDINGS

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Note :

* The Respondent objected to the inclusion of Documents as being unnecessary and irrelevant but as the Appellants have insisted on their inclusion they have been included and this note inserted in accordance with Rule 18 of the Judicial Committee Rules 1957.

** The Appellants objected to the inclusion of Documents as being unnecessary and irrelevant but as the Respondent has insisted on their inclusion they have been included and this note inserted in accordance with Rule 18 of the Judicial Committee Rules 1957.

LIST OF DOCUMENTS NOT PRINTED

Item No.	Description of Documents
J 1	Affirmation of Lo Yuk Sui dated 31st May 1979 and exhibit referred thereto.
K 1	Affidavit of Leung Chun Fat dated 29th May 1979 and exhibits referred thereto.
L 1	Affidavit of Ivor Leslie Stanton dated 4th July 1979 and exhibits referred thereto (save Exhibit E, please refer to Item. No. D 1 of Evidences and Exhibits).
M 1	Affidavit of John George Stean dated 4th July 1979 and exhibits referred thereto (save Exhibit A, please refer to Item. No. C 1 of Evidences and Exhibits).
N 1	Affidavit of Leung Chun Fat dated 15th August 1979 and exhibits referred thereto.
O 1	Affirmation of Lo Yuk Sui dated 17th October 1979 and exhibits referred thereto.
P 1	Affirmation of Lo Yuk Sui dated 18th October 1979 and exhibits referred thereto.
Q 1	70 cancelled Building Plans

**In the Supreme Court of
Hong Kong.**

Miscellaneous Proceedings

**(High Court Miscellaneous Proceedings
Action No. 314/1979).**

1979, No. 314

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

No. 1
Originating
Summons

IN THE MATTER of Inland Lot No. 8392

and

IN THE MATTER of the construction of
an Agreement and Conditions of Sale dated
13th September 1978, particularly Special
Conditions 13 and 20 thereof

10

and

IN THE MATTER of the construction of
Regulation 22 of the Building (Planning)
Regulations

BETWEEN :

MOON YIK COMPANY LIMITED and
XIPHO DEVELOPMENT COMPANY LIMITED *Plaintiffs*

and

THE ATTORNEY GENERAL *Defendant*

20 To the Attorney General of Legal Department, Government Office, Hong Kong.

Let the Defendant, within 8 days after service of this summons on him, inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the application of the Plaintiffs Moon Yick Company Limited whose registered address is at 7th Floor, Sanwa Building, 30-32, Connaught Road Central, Hong Kong and Xipho Development Company Limited whose registered address is at 22nd Floor, Connaught Centre, Hong Kong.

30 The Plaintiffs are purchasers of Inland Lot No. 8392 held under Agreement and Conditions of Grant dated 13th September 1978 made between the Plaintiffs of the one part and the Principal Government Land Agent representing the Crown of the other part.

By this Summons the Plaintiffs claim the following relief : —

- (1) A declaration that, on the true construction of the said Agreement and Conditions of Grant, compliance with Special Condition 13 thereof will constitute “dedication with the consent of the Government” for the purposes of Regulation 22 (1) of The Building (Planning) Regulations; 10
- (2) A declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations; 10
- (3) Further and/or alternatively a declaration that the Crown is estopped — by reason of the representation in Special Condition 20 of the said Agreement and Conditions of Grant that the parking spaces for members of the public to be provided by the Plaintiffs shall be taken into account in the calculation of the gross floor area for the purposes of the said Regulation 22 — from denying that compliance with Special Condition 13 will constitute a dedication “with the consent of the Crown” within the meaning of the said Regulation 22; 20
- (4) All such further or other relief as the Court thinks just;
- (5) Costs.

If the Defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the 31st day of May, 1979.

(*Sd.*) JOHNSON, STOKES & MASTER
Solicitors for the Plaintiffs.

Note : — This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court. 30

This summons was taken out by Messrs. Johnson, Stokes & Master of Rooms 403-413, Hongkong & Shanghai Bank Building, 1, Queen’s Road Central, Hong Kong, Solicitors for the Plaintiffs.

(*Sd.*) S. H. MAYO
Registrar.

AMENDMENTS TO DECLARATION.

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

(2) A declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations;

—
No. 2
Amendments to
Declaration

10 (2) (a) In the alternative to 2 a declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations, so long as the passage area provided pursuant to Special Condition 13 has no supports for the podium thereon;

Interlocutory Order dated 20th June 1979

No. 3
Interlocutory
Order
dated 20th June
1979

BEFORE MR. REGISTRAR O'DEA OF
SUPREME COURT IN CHAMBERS.

ORDER

Upon the application of the Plaintiffs by Originating Summons herein issued on the 31st day of May 1979 and upon hearing the Solicitors for the Plaintiffs and Counsel for the Defendant and upon reading the Affirmations of Anthony Lo Hong-Sui and Lo Yuk Sui and Walter Kwok Ping Sheung and the Affidavit of Leung Chun-Fat together with the exhibits therein referred to all filed herein on the 31st day May, 1979 IT IS ORDERED that :— **10**

1. The Defendant reply to the affidavits and affirmations sworn in support of the Originating Summons within 14 days with liberty within 14 days thereafter for the Plaintiff to file further affidavit evidence;
2. The Plaintiffs and the Defendant file lists of documents in their possession custody or power relating to the issues raised in the Originating Summons within 21 days hereof;
3. There be inspection of documents within 7 days after the filing of the lists; and
4. That the Originating Summons be adjourned for 28 days.

Dated the 20th day of June, 1979.

20

(Sd.) N. J. BARNETT (L.S.)
Registrar.

Interlocutory Order dated 18th July 1979

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

BEFORE MR. REGISTRAR BARRINGTON-JONES OF
SUPREME COURT IN CHAMBERS.

No. 4
Interlocutory
Order
dated 18th July
1979

ORDER

UPON hearing the Solicitors for the Plaintiffs and Counsel for the Defendant IT IS ORDERED that:—

1. The Originating Summons be adjourned to the first Wednesday chambers list after the long vacation;
2. Formal discovery by the Plaintiffs be dispensed with;
- 10 3. The Plaintiffs have a further 28 days to file affidavits in reply to those filed on behalf of the Defendants;
4. Costs in the cause.

Dated the 18th day of July, 1979.

(Sd.) N. J. BARNETT
Acting Registrar.

JUDGMENT OF HIGH COURT

In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings

No. 5
Judgment of
High Court

Coram : Zimmern, J.

Date : 26th October, 1979.

The Plaintiffs purchased from the Government at an auction held on 13th September 1978 Inland Lot No. 8392 for a term of 75 years with an option for a further term of 75 years at a premium of over \$400,000,000.

There is a dispute between the Plaintiffs and the Government as to the dimensions of the building which the Plaintiffs may erect on the site. Simply, and mercifully I do not have to go into details other than to say the Plaintiffs say, under the special conditions of the agreement they are entitled to erect a 38 storey building and the Government say only 35. The Plaintiffs by originating summons naming the Attorney General as Defendant have now applied to the Court to settle this dispute. Both parties have filed affidavits but the question is one of construction of certain of the special conditions of the agreement and ordinance. In this case no extrinsic evidence is required in aid and the arguments contained in the evidence are unnecessary.

10

I set out below special conditions (S/C) which are primarily in issue : —

“ (5) The purchaser shall develop that portion of the lot shown coloured pink and pink cross-hatched black on the plan annexed hereto by the erection thereon of a building or buildings complying with these Conditions and in all respects in accordance with the provisions of all Ordinances, By-laws and Regulations relating to building and sanitation which are or may at any time be in force in Hong Kong, such building or buildings to be completed and fit for occupation on or before the 30th day of September, 1982 and shall expand thereon a sum of not less than \$25,000,000 (such sum to exclude moneys spent on site formation, foundations, access roads and other ancillary works).

20

(11) (a) The purchaser shall at his own expense and to the satisfaction of the Director of Public Works erect over the areas shown coloured pink cross-hatched black, and purple on the plan annexed hereto at a level of 10.82 metres above the Hong Kong Principal Datum a podium (hereinafter referred to as “the said podium”) of such design and standards as the said Director shall approve including the provision and construction of any supports, access steps, stairways and ramps which the said Director in his sole discretion may require.

30

(b) The construction of the said podium together with such necessary supports, access steps and stairways and the foot-bridges referred to in Special Condition No. (3) (a) hereof shall be carried out in such sequence and in such manner as shall be approved in writing by the said Director.

10 (12) (a) Subject to (b) hereof, no building or buildings or part or parts thereof, other than supports for a building or buildings, shall be erected on or over the area shown coloured pink cross-hatched black on the plan annexed hereto at the deck level of the said podium. The design and disposition of such supports shall be subject to the special approval in writing of the Director of Public Works.

(b) A building or buildings or part or parts thereof may be erected over the area shown coloured pink cross-hatched black on the plan annexed hereto provided that there is a clear height extending upwards from the deck level of the said podium to a height of not less than 3.66 metres.

20 (13) (a) No building or structure other than the said podium and such structures including screening walls, foundations, flower beds and seats as may be approved in writing by the Director of Public Works shall be erected or constructed at or above ground level within the area shown coloured purple on the plan annexed hereto (hereinafter referred to as "the said passage area").

(b) The purchaser shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and respass —

(i) on foot over and along the said podium (including any access steps and stairways)

and (ii) on foot over and along the said passage area at ground level

30 as if the said podium (including access steps and stairways), and the said passage area were part or parts of a public street."

As can be seen S/C (11) (a) requires the Plaintiffs to erect over the areas shown coloured pink cross-hatched black and purple on the plan at a level of 10.82 metres above H.K.P.D. a podium, in simple words a raised platform.

S/C 12 prohibits building over the area shown coloured pink cross-hatched black save at a height of not less than 3.66 metres from the deck level of the podium.

S/C 13 (a) prohibits building or structure other than the podium to be erected over at or above ground level within the area shown coloured purple on the plan save structures as may be approved in writing by the Director of Public Works. S/C 13 (b) provides for a right of way for the public freely and without payment on foot to pass and repass over and along the podium and the passage area shown coloured purple on the plan.

I now describe the areas coloured (a) purple and (b) pink cross-hatched black. The site sold is rectangular in shape and bounded on two opposite sides by boundaries of 130.29 m each and the other two 46.49 m. It is common ground between the parties that each boundary abuts on to a street. The purple area shown on the plan is an area extending 6 m inwards from the four boundaries and the pink cross-hatched black another 4.5 m from the inner boundaries of the purple area. The intention is therefore clear that the passage way (the purple area) at ground level will be covered overhead all over by the podium at a height of 10.82 m from H.K.P.D. which I am told is over 6 m from ground level and the part of the podium over the pink cross-hatched black area will be covered, if at all, by the building at a minimum height of 3.66 m. **10**

On the above the Plaintiffs say they are entitled to the compensation or bonus provided by Regulation 22 (1) of the Building (Planning) Regulations made under the Buildings Ordinance. It reads: — **20**

“ Where, between ground level and a height of not less than 5 m or, where the Building Authority is satisfied that there will be no obstruction to vehicle traffic using the street, 3.3 m above ground level, a building on a class A, B or C site is set back from the boundary of the lot on which it is erected, being a boundary that abuts on a street, and with the consent of the Government, the part of the lot that is thereby not built upon is dedicated to the public for the purpose of passage”.

then follow the formulae for the calculation of the compensation or bonus which again mercifully I do not have to entertain. **30**

The Plaintiffs say the regulation applies for: —

- (1) Regulation 20 which provides for permitted site coverage is expressly stated to be subject to Regulation 22;
- (2) compliance with S/C 13 will satisfy the requirements of the said regulation; by reason whereof
- (3) the site is entitled to the compensation or bonus site coverage plot ratio conferred by the Regulation.

The Government say Regulation 22 does not apply for:—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

No. 5
Judgment of
High Court
(continued)

(a) There is no set back from the boundary of the lot by reason that the Plaintiffs have a right under S/C 11 (a) to build supports for the podium on the area coloured purple and the said Regulation expressly states “the part of the lot is thereby not built upon”.

10

(b) The language used in S/C 13 (b) amounts to no more than a contractual term to grant to the public a licence for a term of years to use the passage and cannot be construed as amounting to a dedication of the parts mentioned with the consent of the Government as a highway which is a requirement of the Regulation 22.

20

Mr. Widdicombe for the Plaintiffs joins issue with Mr. Graham for the Government and says if supports have that effect which they do not then the Plaintiffs can and will use cantilever for the podium and do away with the columns. Further the Plaintiffs’ right to build the supports are subject to the approval of the design of the podium and its supports by the Director of Public Works. I do not think Mr. Graham is right on this point. Under S/C 11 the Plaintiffs are bound to build a podium over the area I have set out “of such design and standards as the Director of Public Works shall approve including the provision and construction of any support . . . which the said Director in his sole discretion may require”. This imposes an obligation on the Plaintiffs before commencement of works not only to satisfy the Building Authority of their compliance with the Buildings Ordinance but must first satisfy the Director of Public Works, *inter alia*, of the design of and the supports for the podium. The intended use for the purple area is clear; as a footpath for the public. If the Director were to approve of supports for the podium on the footpath it seems to me Mr. Widdicombe is right when he says such approval shows the Director’s intention to secure the substance of a set back to create the footpath and supports or columns do not affect that intension, and he relies on two principles. First in the words of Hogan C.J. in The Club Lusitano v. Director of Public Works(1) wherein he said:—

30

“ Authorities for departing from a strict literal construction where the language can possibly be construed more efficaciously are not difficult to find. Indeed, counsel had directed attention to some of them. Craies (5th Edition) at p.80 quotes Lord Selborne in Caledonian Railway v. North British Railway as saying:—

40

‘ The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated.’ ”

Second he says the Plaintiffs as grantees for valuable consideration even as against the Crown is entitled to any doubt resolved in their favour should any arise in the construction of the grant. In my view the intention of Regulation 22 is to compensate an owner of land about to commence building works who sets back part of his land abutting on a street and undertakes to dedicate that part of the public for the purpose of passage. If to implement that purpose that part of the building over the intended way requires columns to be built onto the way for support and which columns do not affect the purpose which the way is intended to serve and are approved by the authorities then the mere literal construction of the Regulation ought not to prevail as it will be against the intention of the Legislature to compensate such an owner and so I hold.

10

I now turn to the second point raised by Mr. Graham. He says that the language used in S/C 13 is not that of dedication of a highway but merely that of a contract to grant a licence to the public for a term of years. There are no rights which the public can enforce. He relies on the chapter headed “Acts or conduct amounting to grant of mere licence or occupation way” in Pratt and Mackenzie’s Law of Highways (21st Ed.) at p. 31. He also relies on the side note to S/C 13 reading “Right of Way” as being more consistent with a licence than a dedication: On the other hand Mr. Widdicombe says first there is the contract then the act of dedication itself and it is not any the less an act of dedication because done in compliance with contract. Though the Plaintiffs as lessees are incapable of dedication without the consent of the holder in fee (and he reserves the right to argue it otherwise elsewhere if necessary) it is precisely why the Legislature has included the words “With the consent of the Government” in Regulation 22 as virtually there are no owners in fee in Hong Kong. But where the Government by contract requires the Plaintiffs as purchasers of a lease to build a pathway for the free use of the public then consent is presumed. He relies on the case of **Pryor v. Pryor**⁽²⁾ and says that if the Plaintiffs carry out their obligations under S/C 13 then the Plaintiffs would have dedicated under Regulation 22 (1). I think Mr. Widdicombe’s arguments are well founded otherwise why these words in S/C 13 (b) “as if the said podium and the said passage area were part or parts of a public street”? I think the answer to this is to be found in the words of Lord Asquith of Bishopstone in **East End Dwelling Co. Ltd., v. Finsbury Borough Council**⁽³⁾ wherein he said:—

20

30

“ If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from do so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.”

40

(2) (1872) 26 N.T. (M.S.) 758

(3) (1952) A.C. 109 132

Surely then upon performance of the obligations under the contract the consequences and incidents of the podium and passage area being part or parts of a public street could only have flowed from dedication. Accordingly, I find and hold in favour of the Plaintiffs. The Plaintiffs have argued in the alternative an issue on estoppel which I do not now have to consider in view of my finding. I do hereby adjudge that the Plaintiffs are entitled with costs to two of the declarations sought as amended in terms.

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*
No. 5
Judgment of
High Court
(continued)

10

- (1) A declaration that, on the true construction of the said Agreement and Conditions of Grant, compliance with Special Condition 13 thereof will constitute “dedication with the consent of the Government” for the purposes of Regulation 22 (1) of the Building (Planning) Regulations;
- (2) A declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations.

Widdicombe, Q.C. & R. Ribeiro (Johnson, Stokes & Master) for Plaintiffs
P. Graham for Defendant

**In the Supreme Court of
Hong Kong**

Appellate Jurisdiction

Civil Appeal No. 88 of 1979

**(on Appeal from High Court
Miscellaneous Proceedings
Action No. 314/1979)**

IN THE SUPREME COURT OF HONG KONG

Civil Appeal No. 88 of 1979

IN THE COURT OF APPEAL

(on appeal from High Court Miscellaneous Proceedings
Action No. 314 of 1979)

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 6
Notice of
Appeal

—————
BETWEEN :

ATTORNEY GENERAL

*Appellant
(Defendant)*

and

10 MOON YICK COMPANY LIMITED and *Respondents*
XIPHO DEVELOPMENT COMPANY LIMITED (*Plaintiffs*)

—————
NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved by Counsel for the above-named Appellant to hear an Appeal from a decision of the Honourable Mr. Justice Zimmern made on the 26th day of October 1979 whereby he granted the two declarations set out hereunder.

- 20**
- (1) A declaration that, on the true construction of the said Agreement and Conditions of Grant, compliance with Special Condition 13 thereof will constitute "dedication with the consent of the Government" for the purposes of Regulation 22 (1) of the Building (Planning) Regulations;
 - (2) A declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations.

And Further Take Notice that the Grounds of Appeal will be as follows:—

- 30**
- (1) The Learned Judge erred in fact and law in holding that if the Respondents build a building with columns supporting the podium spaced at intervals abutting the boundary of the site, that building would be "set back from a boundary of the lot on which it is erected"

within the meaning of Regulation 22 (1) of the Building (Planning) Regulations, made pursuant to the Buildings Ordinance, Chapter 123.

- (2) The Learned Judge misdirected himself in holding that the Director by approving the placement of support columns on the passage area would show the intention to secure “the substance of a setback” for the purposes of Regulation 22 (1).
- (3) The Learned Judge erred in fact and law in not finding that it would be possible to comply with Special Condition 13 and yet not set the building back from the boundary.
- (4) The Learned Judge erred in fact and law in holding that a literal construction of Regulation 22 (1) would oppose the apparent intentions of the Legislature and that the words “set back from the boundary” are sufficiently flexible to allow more than one meaning. **10**
- (5) The Learned Judge erred in fact and law in finding that the requirement of the Respondents as purchasers to permit the public the right of passage over the “passage area” for the term of the lease shows the intention of both parties that this was to be achieved by an act of dedication and therefore the creation of a public pedestrian highway.

Dated the 12th day of November, 1979.

20

(*Sd.*) S. P. GRAHAM
Counsel for the Appellant.

RESPONDENTS' NOTICE

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

—
No. 7
Respondents'
Notice

TAKE NOTICE that the Respondents, while seeking to uphold the judgment entered for the Respondents against the Defendant upon the trial of this action on the grounds on which such was in fact entered, desires to contend on the appeal that the said judgment should be affirmed on the following other ground, namely:—

- 10 That the learned Judge ought to have accepted the submission of the Respondents that the Crown is estopped, by reason of the representation in Special Condition 20 of the said Agreement and Conditions of Grant that the parking spaces for members of the public to be provided by the Respondents shall be taken into account in the calculation of the gross floor area for the purposes of the said Regulation 22, from denying that compliance with the said Special Condition 13 will constitute a dedication with the consent of the Crown within the meaning of the said Regulation 22.

- 20 AND FURTHER TAKE NOTICE that in the event of the appeal being allowed in whole or in part, the Respondents intend upon the hearing of the said appeal to contend that so much of the judgment of the Honourable Mr. Justice Zimmern as adjudged the Respondents entitled to the declarations in fact granted should be varied and that judgment be entered for the Respondents and a declaration be granted in the following terms, namely:—

A declaration that the building to be erected on Inland Lot No. 8392 pursuant to and in accordance with the said Agreement and Conditions of Grant is entitled to the increased site coverage and plot ratio provided by Regulation 22 (1) of the Building (Planning) Regulations, so long as the passage area provided pursuant to Special Condition 13 has no supports for the podium thereon.

Dated the 1st day of December, 1979.

(*Sd.*) ROBERT RIBEIRO
Counsel for the Respondents.

JUDGMENT OF COURT OF APPEAL

No. 8
Judgment of
Court of Appeal

Coram: Huggins, J.A., McMullin, J.A. and Yang, J.

Date : 14th March 1980.

JUDGMENT

Huggins, J.A. :

A dispute has arisen as to the construction of (1) the terms of a contract under which the Respondents purchased a building site on the Wan Chai Reclamation and (2) reg. 22 (1) of the Building (Planning) Regulations. The terms of the contract are contained in the Particulars and Conditions of a sale by public auction. If the construction contended for by the Appellant is right, the building to be erected on the site will not satisfy the conditions laid down in reg. 22 (1) and will be limited to a height of thirty-five storeys, whereas, if the Respondents are right, the building will satisfy the conditions and may be taken up to a height of thirty-eight storeys. When it is appreciated that the price paid for the site was \$415,000,000, the importance of the issue becomes apparent. **10**

One of the difficulties facing town planners in any area of intensive development, particularly where the development includes very high buildings, is to provide adequate accommodation for pedestrians, preferably well separated from vehicular traffic. With this in mind the Government inserted in the Conditions of Sale provisions requiring the purchasers to provide public walkways at two levels. The relevant provisions are in the form of Special Conditions :— **20**

“ (11) (a) The purchaser shall at his own expense and to the satisfaction of the Director of Public Works erect over the areas shown coloured pink cross-hatched black, and purple on the plan annexed hereto at a level of 10.82 metres above the Hong Kong Principal Datum a podium (hereinafter referred to as ‘the said podium’) of such design and standards as the said Director shall approve including the provision and construction of any supports, access steps, stairways and ramps which the said Director in his sole discretion may require.” **30**

“ (12) (a) Subject to (b) hereof, no building or buildings or part or parts thereof, other than supports for a building or buildings, shall be erected on or over the area shown coloured pink cross-hatched

black on the plan annexed hereto at the deck level of the said podium. The design and disposition of such supports shall be subject to the special approval in writing of the Director of Public Works.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

(b) A building or buildings or part or parts thereof may be erected over the area shown coloured pink cross-hatched black on the plan annexed hereto provided that there is a clear height extending upwards from the deck level of the said podium to a height of not less than 3.66 metres.

No. 8
Judgment of
Court of Appeal
(continued)

10 (13) (a) No building or structure other than the said podium and such structures including screening walls, foundations, flower beds and seats as may be approved in writing by the Director of Public Works shall be erected or constructed at or above ground level within the area shown coloured purple on the plan annexed hereto (hereinafter referred to as 'the said passage area').

(b) The purchaser shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and repass —

(i) on foot over and along the said podium (including any access steps and stairways) and

20 (ii) on foot over and along the said passage area at ground level as if the said podium (including access steps and stairways), and the said passage area were part or parts of a public street.

(c) The purchaser shall at his own expense maintain the said podium (including any access steps and stairways) in good order and repair to the satisfaction of the Director of Public Works and shall not carry out any works which may affect the said podium (including any access steps and stairways) on the surface of the passage area except with the prior written consent of the said Director.

30 (d) The purchaser shall not place or allow or suffer to be placed on or within the said passage area or the said podium (including any access steps and stairways) any merchandise or goods or stalls or carts or any other article of any nature whatsoever and in the event of any such merchandise or goods or carts or any other articles being placed on or within the said passage area or the said podium (including any access steps and stairways) without prejudice to any other rights which the Government may have under these Conditions it shall be lawful for the Government by the said Director or other persons deputed to act on his behalf to make arrangements for the immediate removal of such merchandise or goods or stalls or carts or other articles from the said passage area or the said podium (including any access steps and stairways) to such other place and by such means

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as to the Government or the said Director or such other persons shall seem appropriate and the purchaser shall on demand pay to the Government the cost as certified by the said Director of removing any merchandise goods stalls carts or other articles in manner aforesaid.”

I adopt the trial judge’s description of the land in question : —

“ The site sold is rectangular in shape and bounded on the opposite sides by boundaries of 130.29 m. each and the other two 46.49 m. It is common ground between the parties that each boundary abuts on to a street. The purple area shown on the plan is an area extending 6 m. inwards from the four boundaries and the pink cross-hatched black another 4.5 m. from the inner boundaries of the purple area. The intention is therefore clear that the passage way (the purple area) at ground level will be covered overhead all over by the podium at a height of 10.82 m. from H.K.P.D. which I am told is over 6 m. from ground level and the part of the podium over the pink cross-hatched black area will be covered, if at all, by the building at a minimum height of 3.66 m.” **10**

The Respondents’ plans show the podium resting on vertical columns 10.8 m. in height from its outer edge to ground level. At ground level those columns therefore line the outer edge of the purple area. **20**

This brings us to reg. 22 (1), the material part of which reads : —

“ Where, between ground level and a height of not less than 5 m. . . . , a building . . . is set back from a boundary of the lot on which it is erected, being a boundary that abuts on a street, and, with the consent of the Government, the part of the lot that is thereby not built upon is dedicated to the public for the purposes of passage — ”

and then follow the provisions which, in effect, permit the increase in height which the Respondents desire.

Three questions arise here : — **30**

- (i) Will the planned building be “set back from” the boundaries, having regard to the proposed line of columns standing on the purple area?
- (ii) If not, is it open to the Respondents to redesign the podium in such a way as to omit the line of columns and thus ensure that the building will be “set back” within the meaning of the regulation?

- (iii) Does the contract provide that the part of the lot not built upon by reason of the planned set back shall be “dedicated to the public for the purposes of passage”?

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(i) **The set back**

The learned judge says that it was argued before him on behalf of the Crown that reg. 22 did not apply

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- 10 “ for (a) There is no set back from the boundary of the lot by reason that the Plaintiffs have a right under S/C 11 (a) to build supports for the podium on the area coloured purple and the said Regulation expressly states ‘the part of the lot is thereby not built upon’.”

That is not quite how it was argued before us: I understand it to be said not so much that the Respondents have a right to build supports on the purple area as that their plans in fact require supports on that area. The argument is that the supports or columns are part of the building, that they are on the boundary and that, consequently, the building has not been set back from the boundary. The judge sought to avoid deciding whether the columns were part of the building by concentrating on the legislative purpose of reg. 22. He said:

- 20 “ In my view the intention of Regulation 22 is to compensate an owner of land about to commence building works who sets back part of his land abutting on a street and undertakes to dedicate that part to the public for the purpose of passage. If to implement that purpose that part of the building over the intended way requires columns to be built onto the way for support and which columns do not affect the purpose which the way is intended to serve and are approved by the authorities then the mere literal construction of the Regulation ought not to prevail as it will be against the intention of the Legislature to compensate such an owner and so I hold.”

- 30 (I take it that the last part of this was intended to mean “as it will be against the intention of the Legislature, which is to compensate such an owner, and I so hold”.) Whilst I agree with the judge’s initial statement of the intention of reg. 22, I do not think the courts can properly assume that the Legislature necessarily intended to compensate an owner in the circumstances then predicated. We must construe the regulation as it stands and, as it seems to me, we could hold that this building has been set back either by adopting a definition of “building” different from that which the Legislature has provided or by applying to the columns the maxim *do minimis non curat lex*. Mr. Widdicombe submits that the judge, by referring to “the substance of a
40 set back” was applying the *de minimis maxim*. Furthermore, he says that

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was a proper application of the maxim. I think his first submission can be accepted, but the second requires careful scrutiny. It involves two separate matters, whether the maxim can have any application to reg. 22 and whether, on the evidence, the proposed columns can reasonably be regarded as a trifle. I see no reason why the maxim should not be applied and if instead of the columns there had been some slight projection on the exterior wall, such as a window sill or a drain pipe, I think that the calculations would properly ignore that projection. When it comes to deciding whether the columns can reasonably be regarded as a trifle, we must give full weight to the opinion of the learned judge, although we are in as good a position as he was to weigh the evidence. My immediate reaction was to hold that as they were substantial structures designed to take the whole weight of one side of the podium they could not be ignored. The judge was, however, impressed by the argument that whatever the size and importance of the columns qua structures they did not interfere substantially with the purpose of a dedication as contemplated by reg. 22, namely to provide a public way on the Respondents' land. It had, of course, to be conceded that they would interfere with vehicular access, but Special Condition (13) expressly limits access to pedestrians, and it is said that interference with persons passing and repassing on foot would be negligible. The judge having accepted that this was so, I would be slow to differ from him. Obviously it is a matter upon which there could be conflicting opinions, as was the nature of the earth moving operation in Coleshill and District Investment Co. Ltd. v. Minister of Housing and Local Government 1968 1 All E.R. 945, 947 D-F. I confess to considerable hesitation on this aspect of the case but am not prepared to say that the judge was wrong.

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(ii) Redesign

This only arises if I am wrong as to the first point. By their Respondents' Notice the Respondents seek a declaration that the building would be within reg. 22 (1) if the columns were omitted from the plans. No doubt the columns, although aesthetically and financially a desirable feature of the design, are not a structural necessity and the podium could be supported by cantilevers. If that were done, the hesitation I have just expressed would be dispelled: the building would then clearly be within the regulation, but a declaration to that effect would not assist the Respondents because the question would still remain whether the agreement permitted them to change the plans in this way. It is contended on behalf of the Crown that the Director of Public Works has, by virtue of Special Condition (11) (a), an absolute discretion to require the provision of such columns — and I think it is implicit in the argument that he will so exercise that discretion if it is lawful.

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As to the first part of the contention I think the Director does have an absolute discretion. Special Condition (11) (a) provides for approval by the Director of the design of the podium, but gives him a "sole discretion" as to

the provision and construction of any supports. In so far as the supports are, arguably, an integral part of the podium there may be an inconsistency here, but there can be no doubt as to the real intention of the parties: the Director, and the Director alone, decides what supports there shall be and, if the Director lawfully says “let there be columns”, columns there must be.

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The vital question would, therefore, be whether there was any bar to the erection of the columns. It is argued on behalf of the Respondents that the Director has no power to require columns because Special Condition (13) (a) forbids them. There is here an inconsistency in the Respondents’ stand, for their existing plans call for columns on the purple area and they have never suggested that they are bound to change the plans because the columns would constitute a breach of the Special Conditions. Nothing turns upon that. It is, I think, common ground that the columns would not fall within the term “foundations” in Special Condition (13) (a) and that they are forbidden unless they are either part of the “podium” or “structures approved by the Director of Public Works”. The Respondents say the columns are not part of the podium, because Special Condition (11) (a) draws a distinction between the podium and its supports, whilst they are not “structures”, because that is a term intended to include only such things as “screening walls, foundations, flower beds and seats”. For my part I do not think the distinction drawn in Special Condition (11) (a) between the podium and its supports for the purpose of allocating the rights to design necessarily requires that they be distinguished for all purposes. In truth I doubt whether the word “podium” is appropriate to a projection no part of which is in contact with the ground, though of course if the parties had agreed that this structure be supported by cantilevers at a level above ground it would have been impossible to maintain that the structure did not comply with Special Condition (11) (a). Nevertheless, according to the ordinary meaning of the word I think “podium” would include that part of the projecting structure which supports the deck and the fact that Special Condition (12) (a) refers to “the deck level of the said podium” shows that the parties recognised the existence of one or more other levels of the podium. The columns would therefore be included unless a contrary intention were indicated and I find no contraindication here. Even if that be wrong, I see no reason to limit the word “structures” in Special Condition (13) (a) in the manner proposed by the Respondents. Indeed, one of the meanings given by the Shorter Oxford English Dictionary is “supporting framework or whole of the essential parts of something”. There can be no doubt that the columns would be approved by the Director of Public Works in writing under Special Condition (13) (a) — if they have not already been so approved — and therefore they may be required by him under Special Condition (11) (a).

(iii) Dedication

That leaves the question whether there has been a dedication of the part of the lot not built upon. For the Respondents Mr. Widdicombe

submitted and that the absence of the word “dedicate” from the Particulars and Conditions of Sale did not indicate an intention not to dedicate. I accept that it means “give” — or more precisely “give up to” — and that, if an intention to give the land up to the public can be inferred from the words actually used, the absence of the term of art is immaterial. However, this begs the question whether the words actually used do indicate an intention to dedicate the land rather than to give a right of way over Respondents’ land. It is submitted on behalf of the Attorney General that the learned judge was wrong to infer such an intention from the terms of this contract. Counsel points to the marginal note to Special Condition (13) (b) and to that paragraph itself and submits that they are not consonant with a dedication of the land. I think there is force in this submission. Furthermore, the judge posed to himself the question “Why were the words ‘as if the said podium and the said passage area were part or parts of a public street’ inserted in Special Condition (13) (b)?” and found the answer in a quotation from the speech of Lord Asquith of Bishopstone in **East End Dwellings Co. Ltd. v. Finsbury Borough Council** 1952 A.C. 109 at p. 132. While I entirely accept the dictum of Lord Asquith, I think, with respect to the learned trial judge, that it does not here support the conclusion which he reached. I think Mr. Graham is right when he submits that the fact that the words of the contract require us to treat as real an imaginary state of affairs, namely that the podium and passage area are part or parts of a public street, is a clear indication of the very opposite intention. If the state of affairs predicated were in fact real — as it would be if there were a dedication — there would be no need to provide for it to be treated as if it were real. A number of other indications was relied upon, but there was only one which in my judgment might possibly be regarded as an indication one way or the other, and that is the fact that the Respondents are mere lessees for seventy-five years with an option to renew for another seventy-five years. It is submitted that as lessees they were unable to dedicate the land, for dedication must be in perpetuity: see per Byles J. in **Dawes v. Hawkins** (1860) 8 C.B. (N.S.) 848, 858. The validity of that submission is so open a question that I prefer not to answer it unless compelled to do so, and I do not think the circumstances of this case make it necessary: I am content to base my decision on the wording of Special Condition (13) (b).

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Estoppel

Finally, the Respondents rely upon an alleged estoppel: they contend that there is in Special Condition (20) a representation that reg. 22 of the Building (Planning) Regulations applied to this building, that in reliance upon that representation they bid a higher price than they would otherwise have done and that therefore the Crown is estopped from denying that reg. 22 applies. The material part of Special Condition (20) reads as follows:—

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“The purchaser shall erect, construct and maintain upon the lot to the satisfaction of the Director of Public Works adequate parking

spaces for members of the public for the parking of not less than 400 motor vehicles as defined in the Road Traffic Ordinance together with adequate means of access and circulation spaces. The spaces so provided shall be taken into account in the calculation of the gross floor area for the purposes of Regulations 20, 21, 22 or 23 (3) of the Building (Planning) Regulations and any amending legislation.”

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There are obvious difficulties in the interpretation of this condition, but I am not persuaded that it contains the representation alleged, whether it is read alone or in the context of the whole document. Nor would the position have been different if the plans of the required building had been included in the Conditions of Sale. At most it was a representation that if the building complied with the conditions of reg. 22 of the car parking spaces were to be taken into account in the calculation of the gross floor area.

For these reasons I think the appeal must succeed and I would enter judgment for the Defendant in the action.

JUDGMENT

McMullin, J.A. :

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This case turns upon the construction of documents. The respondents, at an auction held on the 13th of September 1978, purchased a plot of Crown land known as Inland Lot No. 8392 on lease for a term of 75 years with an option to renew for a further 75 years at a premium in the region of HK\$400,000,000. Condition 5 of the Special Conditions of Sale obliges the purchasers to develop the site by erecting a building or buildings thereon which will comply with the ordinances etc. relating to building and sanitation in force in Hong Kong. The buildings to be completed by the 30th of September 1982. It is the respondent company's intention to erect a multi-story building for commercial and office user. The site is rectangular in shape and each of the four sides abuts upon a public street. It was however the intention of the Government Authorities who drafted the Conditions of Sale that the entire site should not be occupied by the buildings to be erected thereon. A plan annexed to the Special Conditions shows by colour indications the scheme proposed for the building. The main body of the building is to be erected in the rectangular areas coloured pink and pink cross-hatched in black. Surrounding those areas is a further area coloured purple which in effect extends from the outer walls of the building on all four sides to the boundary site. It is with this purple area that we are concerned in the present dispute.

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Special Condition 11 (a) obliges the developer to construct a podium which is, in effect, a platform extending at right angles to the outer walls of the building to the boundary site all around the building at a height of about 6 metres from ground level. The design and construction of this podium is to be approved by the Director and may include such "supports, access steps, stairways and ramps which the said Director in his sole discretion may require".

Special Condition 13 is important, in particular sub-paragraphs (a) and (b) thereof. They are as follows:—

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" (a) No building or structure other than the podium and such structures including screening walls, foundations, flower beds and seats as may be approved in writing by the Directors of Public Works shall be erected or constructed at or above ground level within the area shown coloured purple on the plan annexed hereto (hereinafter referred to as 'the said passage area').

(b) The purchaser shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and re-pass —

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(i) on foot over and along the said podium (including any access steps and stairways) and

- (ii) on foot over and along the said passage area at ground level as if the said podium (including access steps and stairways), and the said passage area were part or parts of a public street.”

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It is evident that by ceding this purple area for public use the area available for commercial exploitation has thereby been reduced. It is the respondent company's case that in agreeing to this condition the company did so on the understanding and in the belief that it was common ground between itself and the Government Authorities that they were to have the benefit of provisions in the Building Regulations which would in effect permit them to build three storeys higher on the permitted plot coverage than would otherwise be permissible for a building on a site of that class. The relevant part of Regulation 22 of the Building (Planning) Regulations Cap. 123 is as follows :—

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“ 22 (1) Where, between ground level and a height of not less than 5 m. or, where the Building Authority is satisfied that there will be no obstruction to vehicular traffic using the street, 3.3 m. above ground level, a building on a class A, B or C site is set back from a boundary of the lot on which it is erected, being a boundary that abuts on a street, and, with the consent of the Government, the part of the lot that is thereby not built upon is dedicated to the public for the purposes of passage —”

There follows a complicated formulary which need not be reproduced but which has, for present purposes, the effect already stated in respect of this particular building.

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Mr. Widdicombe for the respondent company maintains that the provisions of Special Condition 13 (set out above) fulfil the requirements of Regulation 22 and he says that a proper reading of the contract document will disclose that such must have been the intention of the parties at the time of contracting. In particular he points to the requirements of Special Condition 20 which obliges the developer to make available car parking space for the public in the new building on a scale which would amount to the employment of some three floors for that purpose, floors which could otherwise be turned to revenue earning commercial development.

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In an affidavit sworn on the 29th of May 1979 Mr. Antony LO Hong-sui, a director of the respondent company, states that such a provision is unusual in contracts of this kind. Mr. Widdicombe enlists this opinion, which has not been controverted by the Attorney General, and he then points to the text of Special Condition 20 where, in relation to these public car park spaces, it is said :—

“ The spaces so provided shall be taken into account in the calculation of the gross floor area for the purposes of Regulations 20, 21, 22 or 23 (3) of the Building (Planning) Regulations and any amending legislation.”

Regulation 20 deals with permitted site coverage; Regulation 21 with permitted plot ratio. Counsel regards the express mention of Regulation 22 in Special Condition 20 as being a further and clear indication that what the parties had in mind was a kind of *quid pro quo* in the form of a dedication which would attract the bonus provided by Regulation 22.

Mr. Graham, for the Attorney General, argues to the contrary that the contract document even thus read in the light of the provisions in the Building Regulations yields no such clear intention. He presses a number of considerations drawn from the terms of the contract to support that view. Both counsel, however, agree that the preliminary and essential point to be decided is whether the building, in the form in which it is proposed to erect it according to the plans submitted, can be said to be setback from the site boundaries within the meaning of Regulation 22.

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It is common ground that the plans as presently displayed provide that the podium will be supported by pillars sited at intervals along the footpath to which the public will have access and which corresponds to the purple area upon the sketch annexed to the Conditions of Sale.

It is conceded that the podium itself is part of the building. It is difficult to see how it could be contended that any pillars attached to the podium for the purpose of supporting it are not also part of the building. Indeed, it has not been contended for the respondent company that they are not part of the building.

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The first argument put forward before Zimmern J. in the court below on this aspect of the case was that, even if required and approved by the Director, these pillars would not dislodge the intention to dedicate this area within the meaning of Regulation 22 because, it was said, the Director's intention that there should be such a setback was achieved in substance notwithstanding the presence of such pillars.

As to this Mr. Graham for the appellant contends that the question whether or not a building is setback from the boundary is a question of fact. This building with its extended podium includes substantial supporting pillars regularly spaced all around the boundary lines. Although the main body of the building is setback from the boundary this substantial extension of its fabric, counsel says, is not of such an inconsiderable nature that it can be regarded simply as a trifling embellishment of the whole. It cannot, he says, be disregarded by the application of the rule *de minimis non curat lex*.

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In my view this is right. A part of the building does extend to the boundary lines. That it is a very considerable part is made evident from the plans and from the pictures of the model of the completed building which we were shown. Indeed, the latter show the extended base of the building as rather more solid than might have been expected in as much as the spaces between the boundary pillars appear to be filled in by glass panels.

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That may not dispose of the argument however. Regulation 22 clearly envisages that a setback need not necessarily be a setback of the whole building. Provided that the lower portion of the building, to a height of either 5 metres or 3.3 metres (depending upon which consideration applies), is setback from the boundary, it is clear that the whole remaining bulk of the building could extend right out to that boundary, following the pattern of construction similar to that employed most familiarly and conspicuously in the Military and Naval Headquarters at Tamar on the waterfront of Hong Kong Island. It might, I think, reasonably be said of such a construction that it had achieved

10 “the substance of a setback”. I cannot find anything in the Regulations which would impede the Director from achieving the substance of a setback by any means which seemed to him to satisfy the requirements of Regulation 22 always provided that such was his intention.

The real issue therefore is what was the intention of the parties to this contract. If that is the proper way to look at the case it becomes unnecessary to consider the alternative suggestion that if these boundary pillars offend the idea of a setback the respondent company could construct the podium upon cantilever principles. The parties agree that this would be possible. But

20 the appellant points to Special Condition 11 (b) which entitles the Director to require the construction of supports to the podium and empowers him to direct that they shall be carried out in such sequence and such manner as he shall approve in writing. If this argument is open to the appellant I do not think Mr. Widdicombe’s rejoinder based upon the contrasting provision of Special Condition 13 would be a sufficient answer. He suggests that that provision means that only such structures as those which are mentioned in it may be erected within the purple area on approval in writing by the Director. Since the list does not include pillars or supports the Director would not, he says, be entitled to require or approve such supports. To my mind the words

30 “. . . .” are quite ample enough as they stand, or by the application of the *eiusdem generis* rule if necessary, to empower him to direct the erection and siting of such pillars.

What was the intention of the parties?

The argument for the appellant commences with the consideration that the contract does not itself spell out explicitly the respondent company’s entitlement under Regulation 22. Mr. Graham asks us to say that such an important feature of the arrangement between the parties would scarcely have been left at the mercy of inference. If Special Condition 13 had been intended to subserve the interests of Regulation 22 it is most unlikely, counsel says,

40 that that intention would not have been explicitly stated in the body of the contract. In this connection counsel referred us to a Crown lease granted to

a private developer in 1927 which had been modified by deed of variation in 1975 to permit maximum development on that lot (a parcel of ground in the Central District of Hong Kong Island known as Inland Lot 2317). The lease as varied provided for the benefit of excess site coverage and plot ratio under Regulation 22 (1) on condition that the lessee would execute a deed or deeds of dedication whereby certain areas of the site would be turned across to the public for the purpose of passage for the period during which the proposed building continued to be situated thereon.

Counsel next directs his attention to the terms of the agreement itself and he asks us to take particular note of four matters which, he says, strongly indicate that nothing in the nature of a dedication of a highway can have been intended by the grantor of the lease. 10

Firstly he says that the words used in paragraph (b) of Special Condition 13, "as if the said podium . . . were part or parts of a public street" show a clear distinction between the situation where a dedication of a street is positively intended and where a mere right of way is in prospect. He does not deny that a right of way may include a public right of way or that a public right of way include a highway (See Jowett's Dictionary: "Ways"). He enlists the reference to vehicular traffic in Regulation 22 (1) as an indication that the bonus conferred by the Regulation is specifically referable to the widening of the public street on which vehicles and pedestrians alike may pass. 20

Secondly, the same paragraph provides that the purchaser "shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and repass etc.". Counsel suggests that had the area been simply dedicated as a highway such words would be unnecessary. Counsel contrasts this provision with the provision made in Special Condition 3 for the areas coloured green and yellow on the sketch map the yellow areas which border the short ends of the rectangle will become footbridges and the green area is destined, as is agreed, to become a public thoroughfare. There is no dispute about these being in the nature of public highways. These areas are given into the management and care of the purchaser only for the duration of the development of the site and once completed in accordance with the plan they are to be handed back to the Government. It is suggested that the same arrangement would have been made in respect of the purple area had it been intended that that should be dedicated to the public as a public highway. 30

Thirdly, it is said that there is a further pointer in the direction of a limited right of passage being granted to the Government for the duration of the lease in the fact that paragraph (d) of Special Condition 13 prohibits the purchaser from placing goods or stalls or carts etc. on the purple areas it being further provided that the Director may see to the removal in such manner as he sees fit and may demand reimbursement from the purchaser for the expense of doing so. And, this is said to be incompatible with the idea of those areas being dedicated to the public as a street. 40

Fourthly, Mr. Graham points out that under General Condition 8 it is open to the purchaser to pull down the building which he proposes now to develop and to re-develop the site in such way as he wishes subject to the approval of the Director of Public Works. This it is said might involve a drastic interruption of the public's right to pass and repass in a manner which is not compatible with the idea of a dedication of the area to public use. This submission is associated with the further contention that the dedication of a highway must be in perpetuity.

10 It may be said at once that the law upon this matter does not appear to be well settled. Mr. Graham was content to put to his proposition no higher than saying that it is questionable whether it is possible to dedicate for a limited term. In A.G. v. Biophosphated Guano Company⁽¹⁾ James L.J. at page 335, in the course of the argument, puts the question "Can a termor dedicate?". Although the Court of Appeal found that a lessee had demonstrated sufficient animus dedicandi the decision in the case turned principally upon whether there had been sufficient user of the way by the public and the question of dedication for a limited period was not decided. In the later case of Corsellis v. London Country Council⁽²⁾ the court found
20 that there was not sufficient evidence of an intention to dedicate on the part either of the freeholder or of the lessee; there was also insufficient evidence of public user to support a presumed intention to dedicate. At page 713 Neville J., having earlier said that the point did not really arise for decision nevertheless went on to say obiter:—

"I have come to the conclusion that there is no such thing known to the law as a dedication of a way for a term."

Other authorities cited to us were Pratt & MacKenzie's Law of Highways 21st ed. page 29 where the point is said to be undecided while a somewhat similar statement appears in the 3rd Edition of Halsbury Vol. 19 at page 45 paragraph 66. Both these latter authorities would seem rather to lean towards
30 the possibility of a limited term of dedication to public use at least in the sense of a right of user enforceable on the basis of contract or estoppel.

Even if, however, it be not possible for the purchaser — the lessee — in the present case to dedicate part of the site leased to him as a public highway it is conceded between the parties that if dedication is in the picture at all it must be in the nature of a joint dedication by the owner of the fee *i.e.* the Hong Kong Government and the lessee as the proprietor of a limited term.

We come back thus once more to the intention of the parties. Mr. Graham put this argument on this point rather too high when he asked
40 us to say that there was no authority which allowed an intention to dedicate

(1) (1879) 11 Ch. D. 327.

(2) (1907) 1 Ch. D. 704.

to be presumed. It is difficult to see why this should be so and the passage he himself quoted from Pratt & MacKenzie (page 16) clearly states that an intention to dedicate may be expressed or presumed. Moreover Pryor v. Pryor⁽³⁾ and Simpson v. A.G.⁽⁴⁾, upon which Mr. Widdicombe relies, are plain authorities for the presuming of such an intention.

Mr. Widdicombe relies in the main upon the maxim verba fortius accipiuntur contra proferentem a principle forcefully expressed in Sheppard's Touchstone of Common Assurance 87 as follows:—

“ All the words of a deed shall be taken most strongly against him that doth speak them, and most in advantage of the other party.” 10

This principle, that a man's grant shall be taken most strongly against himself, applies to Condition of Sale which likewise are to be construed strictly against the vendor (Seaton v. Mapp⁽⁵⁾). Moreover, although this is a case of a Crown grant, the old rule that such grants are normally construed most favourably for the Crown is said to be relaxed in various circumstances (See Halsbury's Law of England 4th Ed. Vol. 8 para. 1050 where, on the authority of certain old decisions, it is plainly stated that if the grant is for valuable consideration it must be construed strictly in favour of the grantee, “for the honour of the Sovereign”.)

The difficulty inherent in Mr. Widdicombe's position is, of course, that in order to establish the dedication of a highway it is essential that he can show the intention of the grantor to combine with the lessee to do so. These proceedings make it very plain that the Crown is not now conceding that that was the intention of the Director at the time of the making of the contract. The contra proferentem rule only applies where there is ambiguity of some kind in the wording of the agreement between the parties. Mr. Graham maintains that there is no ambiguity here and I think that he is right. Where the grantor agrees with the grantee that a certain portion of the land being conveyed to the latter upon lease is to be reserved for the purpose of permitting the public to pass and repass “as if the said . . . area were part or parts of a public street” that, to my mind, indicates *prima facie* an intention to reserve that area for public user for so long only as the grantee continues to enjoy the grant. There is no dispute that a lessee may agree with the owner to create such a limited right and the form of words used here seems to me altogether more apt to cover such a situation than to imply a joint dedication in perpetuity of such a right to the public. 20 30

(3) (1872) L.T. New Series 758.

(4) (1904) A.C. 507.

(5) (1864) 2 Coll. 556

In the court below the learned judge, dealing with this point, relied upon the words of Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council⁽⁶⁾ where at page 132 he said:—

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

“ If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.”

No. 8
Judgment of
Court of Appeal
(continued)

10 With respect I doubt that those words are apt to cover more than the precise
circumstances to which they were directed, or that they can be applied as
a general principle other than to circumstances of a very similar character.
In the case cited the point at issue concerned the amount of compensation
payable in respect of the compulsory purchase of an interest in land by the
Council. The interest in question concerned a plot of land upon which
there had been a building which had been totally demolished by enemy
action during the last war. The Town and Country Planning Act 1947 made
provision for the service of a notice to treat upon the owner of the interest
which it was sought to acquire. Such a notice was served on the company.
Section 53 (1) of that Act provided that where the interest in land had sustained
20 war damage which at the date of the notice to treat had not been made
good then “the value of the interest for the purposes of compensation payable
in respect of a compulsory purchase shall be taken to be the value
which it would have if the whole of the damage had been made good before
the date of the notice to treat”.

The House of Lords, reversing the decision of the Court of Appeal,
held that in the case of a building which had been totally destroyed “making
good” the whole of the damage would have meant the construction of a
wholly new building. In that event the new building would have had a
different identity from the former building and therefore would not have
30 been subject to the Rent Restriction Acts so that the “value of the interest
for the purposes of compensation” under section 53 should be arrived at
upon that basis. The original building, had it not been destroyed, would have
been subject to the control of the Rent Restriction Acts and thus the value
of the interest would have been less and this fact would no doubt have been
reflected in the quantum of the compensation.

In that case the legislative provisions are grounded upon a hypothesis
which does not reflect the reality and is intended to replace it. In the present
case there are two possible views which might be taken of a single body of
factual data comprising the contractual terms, the regulations and possibly
40 the plans. Unless it be said that there is simply no difference between a

(6) (1952) A.G. 109.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*
—
No. 8
Judgment of
Court of Appeal
(continued)

restricted right of way for public user and a street dedicated to the public — and I do not think that that has been contended for — there are two quite distinct kinds of right either of which might have been in view and which share a number of features in common. Whichever one of these rights be said to exist it will give to the public a licence (a) to pass and re-pass upon the specified area, (b) to do so without let or hindrance by the lessee or Government, (c) to do so without payment of any fee or other premium for the enjoyment of that right, (d) to do so, even at the most restricted view, for a very considerable period of time. These may be said to be the major features of the intent which is manifestly common to the parties. What is not in common between them is a fully articulated and express agreement that this right accorded to the public is to earn the bonus under Regulation 22 (1). A right of way is certainly intended. What is the precise nature of the right? If it is of one kind the result will be momentous for the developer financially; if of the other it will secure for the Crown authorities a mode of development which those authorities regard as important.

10

The words used in the agreement are of paramount importance. In the circumstances thus described it seems to me that to say that the public are to have a right to use the passage area as though it were a public street is a strong indication that the parties, by the express terms of their agreement, were making a distinction between the right which might have been and that which actually was created. The other considerations urged upon us by Mr. Graham to which I have referred above, although of unequal value between themselves, seem to me to lend support to this interpretation.

20

As to the alleged estoppel (see the respondents' notice), leaving aside the vexed question whether such an estoppel is capable of founding a claim, I do not think that such an estoppel can arise on the facts as they appear.

It is said for the respondents that the terms of the agreement were closely studied by the officers of the company before entering into the Sale and Purchase Agreement. It is claimed that the reference to Regulation 22 in Condition 20 was such a clear indication that they were to have the bonus provided by Regulation 22 that the Director of Public Works cannot now be heard to deny them. I do not believe that a sensible reading of those provisions could have induced a belief to that effect other than one which was unrealistically optimistic.

30

Mr. Graham frankly admits to being baffled by the inclusion of the mention of Regulation 22 in Special Condition 20. So am I. It is of a piece with the reference to Regulation 23 (3) in the same condition. In relation to the latter regulation what Special Condition 20 seems to be saying is that the public car parking spaces provided by the developer shall be taken into account in the calculation of the gross floor area for the purposes of a regulation (Regulation 23 (3)) which says in plain terms that they shall not be taken

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into account. One would think that Special Condition 20 should have said that the spaces so provided should be taken into account **notwithstanding** the provisions of Regulation 23 (3).

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Again, the actual words used are that the spaces shall be taken into account “for the purposes of Regulations 20, 21, 22 or 23 (3) (emphasis added). It must be said that the intention is far from clear; the use of “or” suggests that the calculation of the gross floor area shall be subject to such of the named regulations as, in the circumstances of the parties’ agreement, may apply.

No. 8
Judgment of
Court of Appeal
(continued)

- 10 At all events the bare reference to Regulation 22 in that condition is sufficiently obscure to require of a prudent purchaser careful enquiry as to the intention behind it. It would be a rash purchaser who would rely on such an uncertain side wind to carry his expectations home. In the absence of clear words in Special Condition 13 showing that the parties were consenting to the dedication of a highway and that this was to attract the benefit of Regulation 22 I do not find it possible to infer such an intention from the reference to that regulation in Special Condition 20. I would allow the appeal.

JUDGMENT

Yang, J. :

I concurred with the decisions of my brother judges.

Graham & Nunn (Legal Dept.) for appellant.

Widdicombe, Q.C. & Ribeiro (Johnson, Stokes & Master) for respondents.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

NOTICE OF MOTION FOR LEAVE TO APPEAL

No. 9
Notice of
Motion for
leave to appeal

TAKE NOTICE that the Court of Appeal will be moved on Tuesday the 15th day of April 1980 at 10 o'clock in the fore-noon at the sitting of the Court or so soon thereafter as Counsel on behalf of the above-named Respondents can be heard for an order that conditional leave be granted to the Respondents to appeal to Her Majesty the Queen in Her Privy Council from the judgment of this Honourable Court pronounced by the Court on the 14th day of March 1980, the Respondents undertaking to comply with the provisions of the Rules and Instructions concerning Appeals to Her Majesty the Queen in her Privy Council.

10

Dated the 26th day of March 1980.

(*Sd.*) ROBERT RIBEIRO
Counsel for the Respondents.

BEFORE THE HONOURABLE MR. JUSTICE HUGGINS
AND MR. JUSTICE McMULLIN (IN COURT)

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 10
Order of the
Court of Appeal
granting leave to
Privy Council

ORDER

UPON hearing Counsel for the Appellant and Counsel for the Respondents IT IS ORDERED that: —

1. leave be granted to the Respondents to appeal to Her Majesty the Queen in Her Privy Council from the judgment of this Court pronounced on the 14th day of March 1980.
- 10 2. the Respondents do within seven days from the date hereof enter into good and sufficient security in the form of an undertaking, to the satisfaction of the Court, in the sum of \$30,000.00 for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Appellant in the event of the Respondents not obtaining an Order granting him final leave to appeal, or of the Appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Respondents to pay the Appellant's costs of the Appeal; and
3. the Record be prepared and dispatched to England within four months from the date hereof.

20 Dated the 15th day of April, 1980.

(*Sd.*) S. H. MAYO (L.S.)
Registrar.

EVIDENCES

and

EXHIBITS

Affirmation of Antony Lo Hong Sui
Dated 29th May 1979

Item.
No. A 1

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of Inland Lot No. 8392

and

10

IN THE MATTER of the construction of
an Agreement and Conditions of Sale dated
13th September 1978, particularly Special
Conditions 13 and 20 thereof

and

IN THE MATTER of the construction of
Regulation 22 of the Building (Planning)
Regulations

BETWEEN :

MOON YIK COMPANY LIMITED and

XIPHO DEVELOPMENT COMPANY LIMITED *Plaintiffs*

and

30

THE ATTORNEY GENERAL

Defendant

AFFIRMATION

I, ANTONY LO HONG-SUI of 100 Blue Pool Road, Third Floor,
Happy Valley, Hong Kong do solemnly sincerely and truly affirm and say as
follows : —

1. I am a director of Moon Yik Company Limited one of the Plaintiffs in
this action.

Item.
No. A 1
(continued)

2. On 13th September 1978 the Plaintiff companies purchased at public auction Inland Lot No. 8392. There is now produced and shown to me marked Exhibit No. 1 a true copy of the Agreement and Conditions of Grant in respect of that lot. The price paid was Hong Kong Dollars 415 million.

3. Before bidding at the sale on behalf of the Plaintiff companies I had carefully studied the Agreement and Conditions of Grant. I have had a good deal of experience of property development in Hong Kong and I regarded Special Condition 20, which requires the developer to provide public car parking on a substantial scale and to take it into account for calculation of gross floor area, as most unusual. I have not seen such a requirement before for a site in the urban area. It is a severe restriction, involving the loss of about three floors of valuable floor space. I was therefore specially interested to note the express reference in Special Condition 20 to Regulation 22 of the Building (Planning) Regulations (hereinafter referred to as "Regulation 22"). It seemed to me that provision of the public right of way on the purple or passage area on the plan annexed to the Agreement and Conditions of Grant would meet the requirements of Regulation 22 (1) and that the "bonus" site coverage and plot ratio provided by Regulation 22 would accrue to the site. This I regarded as compensating for the loss of floor space under Special Condition 20. My views in regard to the above were confirmed by our company's professional advisers. The Plaintiff's bid for the site took this into account. If we had thought that the "bonus" site coverage and plot ratio under Regulation 22 (1) would not be available for the site we would not have bid so much for the site.

4. The price paid by the Plaintiff companies works out at HK\$6,360 per square feet (HK\$68,459 per square metre), which is greatly in excess of the price paid for similar sites in the Wan Chai reclamation area. To the best of my knowledge and belief, the price paid for Inland Lot No. 8390 in November 1976 was HK\$120 million, which works out at HK\$2,569 per square feet (HK\$27,647 per square metre). To the best of my knowledge and belief the price paid for Inland Lot No. 8389 in May 1977 was HK\$140 million which works out at HK\$2,631 per square feet (HK\$28,323 per square metre). Both Inland Lots Nos. 8390 and 8389 are in the same Wanchai Reclamation area

as Inland Lot No. 8392. In my view the Crown could not possibly have obtained such a good price for Inland Lot No. 8392 without the “bonus” site coverage and plot ratio provided by Regulation 22. **Item. No. A 1**
(continued)

Affirmed at the offices of T. Y. Lee
& Co., Alexandra House, Hong
Kong this 29th day of May 1979.

(*Sd.*) ANTONY LO HONG SUI

(*Sd.*) LEE TIN YAU
Solicitor,
Hong Kong.

**Item.
No. A 2**

Agreement and Conditions of Grant of Inland Lot No. 8392

Date of Sale and Term of Lease

Particulars and Conditions of Sale by Public Auction to be held on the 13th day of September, 1978 at 2.30 p.m. in the Theatre of the City Hall, Hong Kong, by Order of His Excellency the Governor of one lot of Crown Land at the junction of Harbour Road and Fleming Road, Hong Kong for a term of 75 years commencing from the date of this Agreement at the rent specified in the Particulars of the Lot hereunder and with the option of renewal for a further term of 75 years at a Crown Rent to be fixed by the Director of Public Works as the fair and reasonable rental value of the land at the date of such renewal.

PARTICULARS OF THE LOT

No. of Sale	Registry No.	Location	Site	Area in square metres	Crown Rent
1	Inland Lot No. 8392	Junction of Harbour Road and Fleming Road, Hong Kong	As delineated and shown coloured purple, pink and pink cross-hatched black on the plan annexed hereto	6 062 (about)	1,000 per annum

GENERAL CONDITIONS

- Bidding** 1 Subject to General Condition No. 3, the highest bidder shall be the purchaser, and if any dispute arises between two or more bidders the lot shall be put up again at a former bidding.
- 2 The auctioneer shall regulate the bidding.
- Reserve price** 3 The lot is offered for sale subject to a reserve price and to the rights of Her Majesty the Queen to bid by any officer or other person or by the auctioneer and to withdraw every or any lot before it is sold.
- Completion of Sale** 4 (a) Immediately after the fall of the hammer, the purchaser of the lot shall sign the Memorandum of Agreement hereinafter contained for completing the purchase according to these Conditions and shall pay to the auctioneer in cash or by cheque which shall be certified by the Bank on which it is drawn which shall be a bank duly licensed by the Governor-in-Council under Section 5 of the Banking Ordinance the sum of \$5 million as a deposit and in part payment of the premium at which the lot shall have been purchased (hereinafter referred to as "the said premium") and shall, within one calendar month of the date of sale, (subject to the provisions of General Condition No. 4(b) hereof) pay to the Government of Hong Kong the balance of the said premium. The purchaser shall also sign the sale plan.
- Option to pay premium by instalments** (b) The purchaser shall be entitled to elect immediately after the fall of the hammer, but subject to Sub-condition (i) below and on payment of the deposit required in General Condition No. 4(a) above, to pay the balance of the said premium in the manner following, that is to say—
- (i) The purchaser shall within 5 days of the date of sale pay to the Government of Hong Kong a sum equivalent to the difference between the aforesaid deposit of \$5 million and a sum representing 20% of the price at which the lot shall have been purchased.
- (ii) The outstanding balance of premium after payment of the deposit of \$5 million referred to in General Condition No. 4(a) hereof and the sum required to be paid under General Condition No. 4(b)(i) above shall be paid to the Government of Hong Kong by 10 equal annual instalments together with interest at the rate of 10% per annum on the balance from time to time outstanding, it being agreed that the amount of each of the said 10 equal annual instalments (including interest) will be calculated by applying a factor of 0.14795036 to the said premium.
- (iii) The purchaser shall pay to the Government of Hong Kong within 5 days of the date of sale the first of the said 10 equal annual instalments. The second of the said annual instalments shall be paid by the purchaser to the Government of Hong Kong on the 13th day of September, 1979 and the remaining 8 such instalments shall be paid on the 13th day of September in each succeeding year up to and including the 13th day of September, 1987. The purchaser shall be entitled at any time, after giving and on the expiry of reasonable notice to the Director of Accounting Services of his intention so to do, to pay off in one lump sum the whole of the outstanding balance of the said premium together with interest accrued thereon at the said rate to the date of payment.

Outstanding balance of

- Failure to pay premium** 5 If the purchaser shall, on the fall of the hammer, fail to make the required payment to account of the said premium, as provided in General Condition No. 4(a) hereof, Her Majesty may enforce the sale or the auctioneer may declare the sale void and re-expose the lot for sale, but without prejudice to recourse against the defaulting purchaser should the lot on re-sale not realize the amount of such defaulting purchaser's highest bid. If the purchaser shall fail to pay the balance of the said premium as provided in General Condition No. 4(a) hereof, or if having elected to pay the said premium by annual instalments, he shall fail to pay the balance of the first annual instalment as provided in General Condition No. 4(b), Her Majesty may either enforce or cancel the sale. On cancellation the said payment to account of the said premium by the defaulting purchaser shall be wholly forfeited to Her Majesty, and Her Majesty shall be at liberty to resell the lot at such time and place and in such manner as to Her Majesty shall seem fit, and all expenses attending a resale or attempted resale and any deficiency which may result on a resale shall be made good and paid by the defaulting purchaser and be recoverable by Her Majesty as liquidated damages. Any increase of price on a resale shall belong to Her Majesty.
- Disclosure of principal** 6 The person who signs the Agreement as purchaser shall be deemed to be the principal unless at the time of signing the same he shall disclose the fact that he is acting as an agent only, in which case he shall at the same time disclose the name of his principal and insert the same in this Agreement. Where the purchaser signs as agent or attorney the Agreement shall within seven days of the sale be confirmed by the formal signature or execution thereof by the principal to the satisfaction of the Registrar General (Land Officer) unless such agent or attorney shall show to the satisfaction of the Registrar General (Land Officer) that he is legally authorized to act as agent or attorney for the principal. The purchaser shall not be given possession of the lot until the foregoing requirements have been fulfilled.
- Setting out** 7 The purchaser shall apply to the Director of Public Works for the lot to be set out on the ground and shall not commence any operations for building thereon until it shall have been so set out by the Director of Public Works. If the purchaser erects any building otherwise than in due accord with such setting out he shall, when called upon by the Director of Public Works so to do, demolish such building and shall rebuild as directed by him. If the purchaser fails to demolish any building as aforesaid it shall be lawful for the Director of Public Works to have such building demolished and the purchaser shall pay on demand the amount certified by the said Director to be the cost of such demolition.
- Maintain** 8 The purchaser of the lot shall throughout the tenancy maintain all buildings erected or which may at any time hereafter be erected on the lot in good and substantial repair and condition, and in such repair and condition deliver up the same at the expiration or sooner determination of the tenancy. In the event of the demolition at any time during the tenancy of any building then standing on the lot or any part thereof the purchaser shall replace the same either by sound and substantial buildings of the same type and of no less volume or by buildings of such type and value as shall be approved by the Director of Public Works. In the event of demolition as aforesaid the purchaser shall within one month of such demolition apply to the Director of Public Works for consent to carry out building works for the redevelopment of the lot and upon receiving such consent shall within three months thereof commence the necessary work of redevelopment and shall complete the same to the satisfaction of and within such time limit as is laid down by the Director of Public Works.
- Boundary stones** 9 The purchaser shall permit boundary stones properly cut and marked with the number of the lot to be fixed at each angle thereof and either in or on the land itself or in or on any building erected thereon as may be required by the Director of Public Works and shall pay the fees prescribed by him therefor as well as the prescribed fee for the refixing of such boundary stones which, through being lost, damaged or removed, need replacing.
- Private streets** 10 Any private streets, roads and lanes which are required to be formed shall be sited to the satisfaction of the Director of Public Works and included in or excluded from the area to be leased as may be determined by him and in either case shall be handed over to the Government free of cost if so required. Where taken over by the Government the surfacing, kerbing, drainage (both foul and storm-water sewers) and channelling shall be carried out by the Government at the cost of the purchaser and thereafter maintained at public expense but where remaining part of the area leased or to be leased, such streets, roads or lanes shall be surfaced, kerbed, drained, channelled and maintained by and at the expense of the purchaser to the satisfaction in all respects of the Director of Public Works.

Item.
No. A 2
(continued)

— 3 —

- Breach of lease conditions** 11 The fulfilment by the purchaser of his obligations under these General and Special Conditions shall be a condition precedent to the grant or continuance of the tenancy and in the event of any default by the purchaser in complying therewith such default shall be deemed to be a continuing breach and the subsequent acceptance by or on behalf of the Crown of any Crown Rent or Rates or other payment whatsoever shall not (except where the Crown has notice of such breach and has expressly acquiesced therein) be deemed to constitute any waiver or relinquishment or otherwise prejudice the enforcement of the Crown's right of re-entry for or on account of such default or any other rights, remedies or claims of the Crown in respect thereof under these Conditions which shall continue in force and shall apply also in respect of default by the purchaser in the fulfilment of his obligations under the General and Special Conditions within any extended or substituted period as if it had been the period originally provided.
- Re-entry** 12 (a) Upon any failure or neglect by the purchaser to observe or comply with any of the conditions of this Agreement the Crown shall be entitled to re-enter upon and take back possession of the lot or any part thereof and all or any buildings erections and works thereon or on such part and thereupon this Agreement and the rights of the purchaser hereunder shall absolutely cease and determine (in respect of such part if the re-entry is upon a part only) but without prejudice nevertheless to the rights, remedies and claims of the Crown in respect of any breach, non-observance or non-performance of the terms and conditions hereof.
- No refund of premium on re-entry** (b) In the event of re-entry by the Crown for or in respect of or arising out of the breach, non-observance or non-performance by the purchaser of the provisions of the General and Special Conditions, the purchaser shall not be entitled to any refund of the said premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the land or any buildings thereon or any amount expended by the purchaser in the preparation, formation or development of the lot or otherwise.
- Crown lease** 13 (a) When the conditions herein contained have been complied with to the satisfaction of the Director of Public Works and the Registrar General (Land Officer), the purchaser shall subject to approval of his title by the Registrar General (Land Officer) be entitled to a Lease of the lot as described in the Particulars of the Lot for the term stated in the preamble to these Conditions.
- (b) The purchaser shall take up the Crown Lease for the lot when called upon to do so by the Registrar General (Land Officer) and shall pay the prescribed fees therefor and an endorsement by the Registrar General (Land Officer) on these Conditions or on the Land Office Registers that plans of the lot or any specified part thereof are in the Land Office and that the Crown Lease thereof must be taken up before any further dealings with the lot or such specified part can be registered, shall have effect accordingly. In the event of more than one building being erected on the lot the purchaser may be required to take up a separate lease for the site of each separate building and shall pay the prescribed fees for every additional lease so required to be taken up.
- (c) Pending the issue of the Crown Lease the tenancy of the lot shall be deemed to be upon and subject to and such Crown Lease when issued shall be subject to and contain all exceptions, reservations, covenants, clauses and conditions as are now inserted in the Crown Leases of similar lots in Hong Kong as varied, modified or extended by the General and Special Conditions.
- Definitions** 14 (a) The expression "purchaser" shall in these General and Special Conditions include the person entering into and executing this Agreement and where the context so admits or requires his executors, administrators and assigns and in the case of a corporation its successors and assigns, and the expression "lot", except where the context otherwise refers, means the lot stated in the Particulars of the Lot hereof. Where the context so admits or requires, words importing the masculine gender shall be deemed to include females and corporations, and words in the singular shall be deemed to include the plural.
- (b) The foregoing General Conditions shall be read and construed as varied or modified by the Special Conditions hereinafter contained and the expression "these Conditions" whenever used shall mean and include the General and Special Conditions.

SPECIAL CONDITIONS

- Possession** (1) Subject to payment of the said premium as provided in General Condition No. 4(a) hereof or the first annual instalment thereof as provided in General Condition No. 4(b) hereof, and subject to the provisions of General Condition No. 6 hereof, possession of the lot shall be deemed to have been given to the purchaser on the date of this Agreement.
- Crown rent** (2) Crown rent for the lot shall commence from the date of this Agreement, shall be as specified in the Particulars of the Lot hereof and shall be payable by equal half yearly payments on the 24th day of June and the 25th day of December each year, the first half yearly rent or a due proportion thereof being payable on the next half yearly date following the date of this Agreement.
- Formation of green and yellow areas** (3) (a) The purchaser shall within 36 months from the date of this Agreement at his own expense and in all respects to the satisfaction of the Director of Public Works—
(i) lay, form, provide, construct and surface in such manner, with such materials and to such standards, alignment, levels and design as the said Director shall approve including the provision and construction of any drains, sewers, culverts, viaducts, pavements or such other structures as the said Director in his sole discretion may require so that building, vehicular and pedestrian traffic may be carried thereon the portion of future public road shown coloured green and the areas shown coloured yellow on the plan annexed hereto, and
(ii) construct in such manner, with such materials and to such standards, alignment, levels and design as the said Director shall approve on and over the areas shown coloured yellow on the plan annexed hereto such walkways and footbridges together with such access steps, stairways, rails and such other structures as the said Director may require so that pedestrian traffic may be carried thereon and thereover it being agreed that the column supports for the said walkways and footbridges shall be sited in such positions as the said Director shall require or approve.
- The purchaser shall thereafter maintain at his own expense the said areas shown coloured green and yellow and the structures referred to in (i) and (ii) above in good condition and to the satisfaction of the said Director until the lot has been developed in accordance with these Conditions. In the event of the non-fulfilment of the purchaser's obligations under this Special Condition, the Government may carry out any of the necessary works at the cost of the purchaser who shall pay to the Government on demand a sum equal to the cost thereof, such sum to be determined by the said Director whose determination shall be final and shall be binding upon the purchaser.
- Possession of green and yellow areas** (b) For the purpose only of carrying out the necessary works specified in Special Condition No. (3)(a) hereof, the purchaser shall, on the date of this Agreement, be granted possession of the areas shown coloured green and yellow on the plan annexed hereto. Possession of the said areas shall be re-delivered on demand and in any event shall be deemed to have been re-delivered to the Government by the purchaser on the date of a letter from the Director of Public Works indicating either that all necessary works specified in Special Condition No. (3)(a) hereof have been completed or that these Conditions have been complied with to his satisfaction. The purchaser shall at all reasonable times while he is in possession of the areas shown coloured green and yellow on the said plan allow free access over and along the said areas for all Government and public vehicular and pedestrian traffic.
- Restriction on use of green and yellow areas** (4) The purchaser shall not without the prior written consent of the Director of Public Works use the areas shown coloured green and yellow on the plan annexed hereto for the purpose of storage or for the erection of any temporary structure.
- Building covenant** (5) The purchaser shall develop that portion of the lot shown coloured pink and pink cross-hatched black on the plan annexed hereto by the erection thereon of a building or buildings complying with these Conditions and in all respects in accordance with the provisions of all Ordinances, By-laws and Regulations relating to building and sanitation which are or may at any time be in force in Hong Kong, such building or buildings to be completed and fit for occupation on or before the 30th day of September, 1982 and shall expend thereon a sum of not less than \$25,000,000 (such sum to exclude moneys spent on site formation, foundations, access roads and other ancillary works).
- User** (6) The lot or any part thereof or any building or buildings erected or to be erected thereon or any part of such building or buildings thereon shall not be used for any purpose other than non-industrial purposes.
- Design and disposition** (7) The design and disposition of any building to be erected on the lot shall be subject to the approval in writing of the Director of Public Works.

Item.
No. A 2
(continued)

— 5 —

Compliance with Buildings Ordinance	(8) (a) Subject to these Conditions, upon development or redevelopment of the lot or any part thereof, the building or buildings erected or to be erected thereon shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation.
Basement floor(s)	(b) Not more than two basement floors shall be provided in the building or buildings erected or to be erected on the lot. Such basement floor or floors may be constructed to extend over the areas shown coloured pink and pink cross-hatched black on the plan annexed hereto, and will not be taken into account for the purposes of calculating the permitted plot ratio as defined in the Building (Planning) Regulations and any amending legislation. Such basement floor or floors shall not be used for any purpose other than for the purposes of parking motor vehicles or housing building service plants (except transformers) or both.
Transformer room	(c) Any room or space or structure to be provided within the lot for housing a transformer or transformers shall be situated at ground level only with access direct from the open air and in such position as the Director of Public Works shall approve.
Height	(9) No part of any structure to be erected on the lot shall exceed a height of 180 metres above the Hong Kong Principal Datum.
Fire access	(10) (a) The purchaser shall at his own expense at all times throughout the said term of 75 years provide adequate access for fire appliances and fire personnel to all buildings and structures erected on the lot to the satisfaction of the Director of Fire Services.
Dangerous goods	(b) The purchaser shall comply with all lawful requirements of the Director of Fire Services made under the Dangerous Goods Ordinance, any regulations made thereunder and any amending legislation.
Erection of podium	(11) (a) The purchaser shall at his own expense and to the satisfaction of the Director of Public Works erect over the areas shown coloured pink cross-hatched black, and purple on the plan annexed hereto at a level of 10.82 metres above the Hong Kong Principal Datum a podium (hereinafter referred to as "the said podium") of such design and standards as the said Director shall approve including the provision and construction of any supports, access steps, stairways and ramps which the said Director in his sole discretion may require.
Sequence for construction of podium	(b) The construction of the said podium together with such necessary supports, access steps and stairways and the footbridges referred to in Special Condition No. (3)(a) hereof shall be carried out in such sequence and in such manner as shall be approved in writing by the said Director.
Pink cross-hatched black area	(12) (a) Subject to (b) hereof, no building or buildings or part or parts thereof, other than supports for a building or buildings, shall be erected on or over the area shown coloured pink cross-hatched black on the plan annexed hereto at the deck level of the said podium. The design and disposition of such supports shall be subject to the special approval in writing of the Director of Public Works. (b) A building or buildings or part or parts thereof may be erected over the area shown coloured pink cross-hatched black on the plan annexed hereto provided that there is a clear height extending upwards from the deck level of the said podium to a height of not less than 3.66 metres.
Purple area	(13) (a) No building or structure other than the said podium and such structures including screening walls, foundations, flower beds and seats as may be approved in writing by the Director of Public Works shall be erected or constructed at or above ground level within the area shown coloured purple on the plan annexed hereto (hereinafter referred to as "the said passage area").
Right of way	(b) The purchaser shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and repass— (i) on foot over and along the said podium (including any access steps and stairways) and (ii) on foot over and along the said passage area at ground level as if the said podium (including access steps and stairways), and the said passage area were part or parts of a public street.
Podium (maintenance)	(c) The purchaser shall at his own expense maintain the said podium (including any access steps and stairways) in good order and repair to the satisfaction of the Director of Public Works and shall not carry out any works which may affect the said podium (including any access steps and stairways) on the surface of the passage area except with the prior written consent of the said Director. (d) The purchaser shall not place or allow or suffer to be placed on or within the said passage area or the said podium (including any access steps and stairways) any merchandise or

goods or stalls or carts or any other article of any nature whatsoever and in the event of any such merchandise or goods or carts or any other articles being placed on or within the said passage area or the said podium (including any access steps and stairways) without prejudice to any other rights which the Government may have under these Conditions it shall be lawful for the Government by the said Director or other persons deputed to act on his behalf to make arrangements for the immediate removal of such merchandise or goods or stalls or carts or other articles from the said passage area or the said podium (including any access steps and stairways) to such other place and by such means as to the Government or the said Director or such other persons shall seem appropriate and the purchaser shall on demand pay to the Government the cost as certified by the said Director of removing any merchandise goods stalls carts or other articles in manner aforesaid.

Alienation (before compliance) (14) (a) The purchaser shall not except with the prior written consent of the Registrar General (Land Officer) and in conformity with any conditions imposed by him (including the payment of such fee as may be required by him)—

(i) assign, underlet or part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein, or enter into any agreement so to do, or

(ii) Mortgage or charge the lot or any part thereof or any interest therein except for the purpose of the development thereof and then only by way of a building mortgage in such form and containing such provisions as the Registrar General (Land Officer) shall approve or require, unless and until he has in all respects observed, complied with and fulfilled all of his obligations under these Conditions to the satisfaction of the Director of Public Works and the Registrar General (Land Officer) and then only subject to the provisions of Special Condition No. (15) hereof.

Restriction on alienation before settlement of premium (b) Notwithstanding the provisions of any other condition, in the event of the purchaser having elected to pay the said premium by instalments he shall not—

(i) assign (other than by way of a building mortgage approved under Special Condition No. (14)(a)(ii) hereof) the lot or any part thereof or any interest therein, or enter into any agreement so to do, or

(ii) except with the prior written consent of the Registrar General (Land Officer) and in conformity with any conditions imposed by him (including the payment of such fee as may be required by him), underlet, part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein for a term exceeding 5 years (including any renewal thereof) or enter into any agreement so to do—

until the whole amount of the said premium has been paid. The purchaser may, at any time hereafter, pay the balance of the said premium then outstanding in accordance with the provisions of General Condition No. 4(b)(ii) hereof.

Registration (c) Every assignment, mortgage, charge, underletting or other alienation of the lot or any part thereof or any interest therein shall be registered at the Land Office.

Restriction on partition (15) (a) The purchaser shall not partition the lot, nor assign, mortgage, charge, demise, underlet, part with the possession of or otherwise dispose of the lot except as a whole without having obtained the prior written consent of the Director of Public Works PROVIDED THAT without such consent the purchaser may dispose of and deal in undivided shares in the lot as a whole or underlet a part or parts of the building or buildings erected on the lot.

Registration of Deed of Mutual Covenant and Management Agreement (b) The purchaser shall not assign or otherwise dispose of any undivided shares in the lot together with the right to the exclusive use and occupation of individual floors or units of and in the building or buildings erected thereon unless he shall have first prepared and received the approval in writing of the Register General (Land Officer) for a Deed of Mutual Covenant and a Management Agreement to be entered into between the purchaser and assignees from him of such undivided shares. The said Deed of Mutual Covenant and Management Agreement shall be in such form and shall contain such provisions as the Registrar General (Land Officer) shall approve or require and shall be registered by memorial at the Land Office.

Definition (c) For the purpose only of Special Condition No. (15)(b) hereof the word "purchaser" shall exclude the purchaser's assigns other than an assignee of the lot as a whole.

arking, loading and unloading of service vehicles (16) Space for the parking, loading and unloading of service vehicles and facilities for the removal of garbage shall be provided within the lot below ground level to the satisfaction of the Director of Public Works. Such space and facilities shall not be provided at or above ground level and shall not be used for any other purpose.

**Item.
No. A 2**
(continued)

— 7 —

- Parking, loading and unloading spaces** (17) In addition to the requirement of Special Condition No. (16) hereof but not in substitution thereof—
- (a) In the event of the lot being used for non-industrial purposes but excluding hotel purposes, space shall be provided within the lot below ground level to the satisfaction of the Director of Public Works for the parking, loading and unloading of not less than 4 goods vehicles and the space so provided shall not be used for any other purpose. The space so provided shall be laid out in such manner that on entering or leaving the lot no reversing movement of vehicles from or onto Harbour Road will be necessary.
- Hotel purposes** (b) In the event of the lot being used (a) wholly for hotel purposes or (b) for non-industrial purposes including hotel purposes, the following conditions instead of Special Condition No. (17)(a) hereof shall apply:—
- (i) Space shall be provided within the lot below ground level only and to the satisfaction of the Director of Public Works for the simultaneous parking of not less than 5 taxis, 5 hire cars and 3 tour buses, and for the simultaneous parking, loading and unloading of not less than 2 goods vehicles; Provided that picking up and setting down of passengers only will be permitted at ground level if a loading bay measuring not less than 3.05 metres in depth and 24.38 metres in length is provided within the lot at ground level for such purposes. The space and any loading bay so provided shall not be used for any other purpose.
- (ii) The space and any loading bay so provided shall be laid out in such ~~manner~~ that on entering or leaving the lot no reversing movement of vehicles from or onto Harbour Road will be necessary.
- (iii) The disposition and layout of the hotel reception area and the access roads, arcades, passageways, escalators, lift entrances serving the hotel and linking to the public roads, footways, the said passage area shall be subject to the approval in writing of the Director of Public Works.
- Parking spaces for private motor vehicles** (18) Space for the parking of private motor vehicles may be provided within the lot below ground level to the satisfaction of the Director of Public Works. Such space (if provided) shall not be used for any purpose other than for the parking of private motor vehicles belonging to the occupiers of the building or buildings erected on the lot. Space for the parking of such private motor vehicles shall not be provided at or above ground level.
- Definition of ground level** (19) For the purpose only of Special Conditions Nos. (8)(c), (16), (17) and (18) hereinbefore contained, "ground level" shall be determined, in his absolute discretion, by the Director of Public Works whose determination shall be final and shall be binding upon the purchaser.
- Parking spaces for member of the public** (20) The purchaser shall erect, construct and maintain upon the lot to the satisfaction of the Director of Public Works adequate parking spaces for members of the public for the parking of not less than 400 motor vehicles as defined in the Road Traffic Ordinance together with adequate means of access and circulation spaces. The spaces so provided shall be taken into account in the calculation of the gross floor area for the purposes of Regulations 20, 21, 22 or 23(3) of the Building (Planning) Regulations and any amending legislation. Not less than 80% of the total number of parking spaces so provided under this Special Condition shall be available or in use at all times for the parking of private cars or goods vehicles each not exceeding an unladen weight of 40 cwt. as defined by the said Ordinance.
- Registration of layout plan** (21) A lay-out plan indicating the parking, loading and unloading spaces to be provided within the lot in accordance with Special Conditions Nos. (16), (17), (18) and (20) hereof and approved by the Building Authority, or a copy of such plan certified by an authorized person as defined in the Buildings Ordinance, shall be registered by the purchaser by memorial in the Land Office. No transaction affecting the lot or any part thereof or any building or part of any building erected or to be erected thereon shall be entered into prior to such registration. The parking, loading and unloading spaces indicated on the said approved plan shall not be used for any purpose other than the respective purposes set out in Special Conditions Nos. (16), (17), (18) and (20) hereof. The purchaser shall maintain the parking, loading and unloading spaces in accordance with the said approved plan and shall not alter the layout except with the prior written consent of the Director of Public Works.
- Vehicular access** (22) The purchaser shall have no right of ingress or egress to or from the lot for the passage of motor vehicles except between the points marked X and Y through Z on the plan annexed hereto.
- Set back** (23) The purchaser shall not cut away, remove or set back any land adjoining the lot except with the prior written consent of the Director of Public Works.

- Spoil or debris (24) In the event of spoil or debris from the lot or from other areas affected by any development of the lot being eroded and washed down on to public lanes or roads or into road-culverts, sewers, storm-water drains or nullahs or other Government properties, the purchaser shall be held responsible and shall pay to the Government on demand the cost of removal of the spoil and debris from or of damage to the public lanes or roads or road-culverts, sewers, storm-water drains or nullahs or other Government properties. The purchaser shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion and washing down.
- Dumping (Crown land) (25) No earth, debris, spoil of whatsoever nature, or building materials shall be dumped on any adjoining Crown land.
- Utility facilities (26) The purchaser shall take or cause to be taken all proper and adequate care, skill and precautions at all times and particularly during any construction, maintenance, renewal or repair work to avoid doing any damage to any Government or other existing drain, waterway or water-course (including water main), footpath, sewer, nullah, pipe, cable, wire, utility service or any other works or installations (all together hereinafter referred to as "the said works and services") being or running upon, over, under or adjacent to the lot or any part thereof, provided that the purchaser before carrying out any such work as aforesaid shall make or cause to be made such proper search and enquiry as may be necessary to ascertain the present position and levels of any of the said works and services, and shall submit his proposals for dealing with any of such said works and services in writing to the Director of Public Works for his approval in all respects, and shall not carry out any work whatsoever until the said Director shall have given his written approval to the works and to such proposals aforesaid, and shall comply with any requirement of the said Director in respect of the said works and services, and shall bear the cost of meeting such requirements including the cost of any necessary diversion, relaying or reinstatement, and shall at his own expense in all respects repair, make good and reinstate to the satisfaction of the said Director any damage or disturbance caused to the surface of the lot or any of the said works and services running on, over, under or adjacent to the lot in any manner arising out of any such construction, maintenance, renewal or repair work. If the purchaser fails to carry out any such necessary diversion, relaying, repairing, making good and reinstatement of the lot or any part thereof or of any of the said works and services to the satisfaction of the said Director he the said Director may carry out any such diversion, relaying, reinstatement or making good as he considers necessary and the purchaser shall pay to the Government on demand the cost of such works.
- Damage to public roads (27) The purchaser shall pay to the Government on demand any sum which the Director of Public Works shall certify to be the cost of making good any damage done to adjoining public roads by the purchaser, his contractors or sub-contractors or his or their workmen or vehicles or by any spoil from the lot.
- Dumping (public road) (28) No materials shall be dumped or stored, nor shall any work be carried out within the boundaries of a public road or way without the prior written consent of the Director of Public Works.
- Constructing drains and channels (29) The purchaser shall construct and maintain at his own expense and to the satisfaction of the Director of Public Works such drains and channels, whether within the boundaries of the lot or on Crown land, as the said Director may consider necessary to intercept and convey into the nearest stream-course, catchpit, channel or storm-water drain all storm-water or rain-water falling or flowing on to the lot, and the purchaser shall be solely liable for and shall indemnify the Government and its officers from and against all actions, claims and demands arising out of any damage or nuisance caused by such storm-water or rain-water.
- Damage to nullah etc. (30) Any damage or obstruction caused by the purchaser, his servants or agents to any nullah, sewer, storm-water drain, watermain or other Government properties within or adjoining the lot shall be made good by the Government at the cost of the purchaser, and the amount due in respect thereof shall be paid on demand to the Government by the purchaser.
- Connecting drains and sewers (31) The purchaser shall pay to the Government on demand the cost of connecting any drains and sewers from the lot to the Government storm-water drains and sewers. Such works shall be carried out by the Director of Public Works, who shall incur no liability to the purchaser in respect thereof.

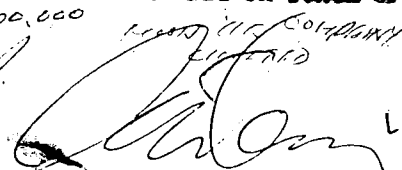
Item.
No. A 2
(continued)

- Foundations (32) Any foundations to be constructed near or adjoining any sewer, storm-water drain or nullah within or adjoining the lot shall comply with the requirements of the Director of Public Works.
- Removal of waste water (33) The purchaser shall not permit sewage or refuse water to flow from the lot on to any adjoining land or allow any decaying, noisome, noxious, excrementitious, or other refuse matter to be deposited on any portion of the lot and shall have all such matter removed from the lot or any building erected thereon in a proper manner.
- Filtered water supply (34) A filtered water supply from Government mains will be given on the usual terms and subject to the provisions of the Waterworks Ordinance or any enactment amending or replacing the same, but no guarantee is given that any water that is supplied will be continuously available.
- Salt water supply (35) A salt water supply from Government mains will be given for flushing purposes, and the purchaser will be required to accept this supply and to install plumbing capable of withstanding the corrosive effect of salt water. If a salt water supply is not available when required, a temporary mains water supply will be provided for flushing purposes. The temporary fresh water if required, and the ultimate salt water supply, will be given on the usual terms and subject to the provisions of the Waterworks Ordinance or any enactment amending or replacing it provided always that where the purchaser provides or agrees to provide at his own expense a private salt water supply for any heating, cooling or humidification purpose Government reserves the right to terminate the aforesaid salt water supply from Government mains (or temporary mains water supply as the case may be) for flushing purposes.
- Restriction on use of water supply (36) Except with the prior written consent of the Water Authority, no fresh or salt water from Government mains shall be used for any heating, cooling or humidification purpose.
- Supervisory and overhead charges (37) Wherever in these Conditions it is provided that the Government or the Director of Public Works shall or may carry out works of any description on the lot or any part thereof or outside the lot (whether on behalf of the purchaser or on the failure of the purchaser to carry out such works or otherwise) at the cost of the purchaser or that the purchaser shall pay or repay to the Government or to the said Director on demand the cost of such works, such cost shall include such supervisory and overhead charges as may be fixed by the said Director.
- Determination of boundaries and adjustment of premium (38) The boundaries of the lot shall be determined by the Director of Public Works (whose decision shall be final) before the issue of the Crown Lease. In the event that after the determination of the lot boundaries as aforesaid the purchaser is found to have encroached upon and to be occupying Crown land, he shall when called upon by the said Director so to do either pay to the Government such sum as the said Director shall fix as the premium in respect of such Crown land or demolish any building or part of any building standing on such Crown land and deliver vacant possession of the same to the Government. A certificate under the hand of the said Director shall be conclusive as to the extent of any such encroachment and as to the amount of the premium payable in respect thereof. Upon the payment of such premium the area of Crown land encroached upon shall be deemed in all respects to be part of the lot and shall be included in the Crown lease when issued.

MEMORANDUM OF AGREEMENT


Item.
No. A 2
(continued)


Between MOON YIK COMPANY LIMITED of 1/F, 117, Street 11, Causeway Bay, Hong Kong
 of XIPHO DEVELOPMENT COMPANY LIMITED of 22/F, Government Offices, 47, Queen's Road, Hong Kong
 (herein referred to as "the purchaser") of the one part and His Excellency the Governor of the other part
 Whereby It Is Agreed that the purchaser having been declared the highest bidder for the lot described in
 the foregoing Particulars of Sale at the premium herein specified and having paid the required deposit
 specified in General Condition No. 4(a) hereof (the receipt of which is hereby acknowledged) hereby agrees
 to pay the balance of the said premium in accordance with General Condition No. 4(a)(b) hereof and
 to become the Lessee of the said lot upon and subject to the foregoing Conditions and on his part to perform
 and abide by the said Conditions.

No. of Sale	Registry Number	Crown Rent	Amount of Premium at which Purchased	Signature of Purchaser
1	Inland Lot No. 8392	\$ 1,000 per annum	\$ 415,000.000	For and on behalf of <u>MOON YIK COMPANY LIMITED</u> 

NOTE: In the event of signature by an agent or attorney of the purchaser General Condition No. 6 must be observed.

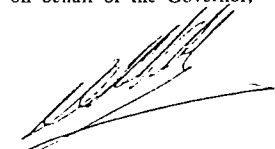
Dated this 13th day of September, 1978.
 (Antony Lo Hong Sui)
 Director of Moon Yik Company Limited
 Confirmed on 25th September, 1978.
 Witness to the signature of purchaser: Witnessed by:


 Kay O. H. Chan (Miss)
 Assistant Registrar,
 Registrar General's Department.

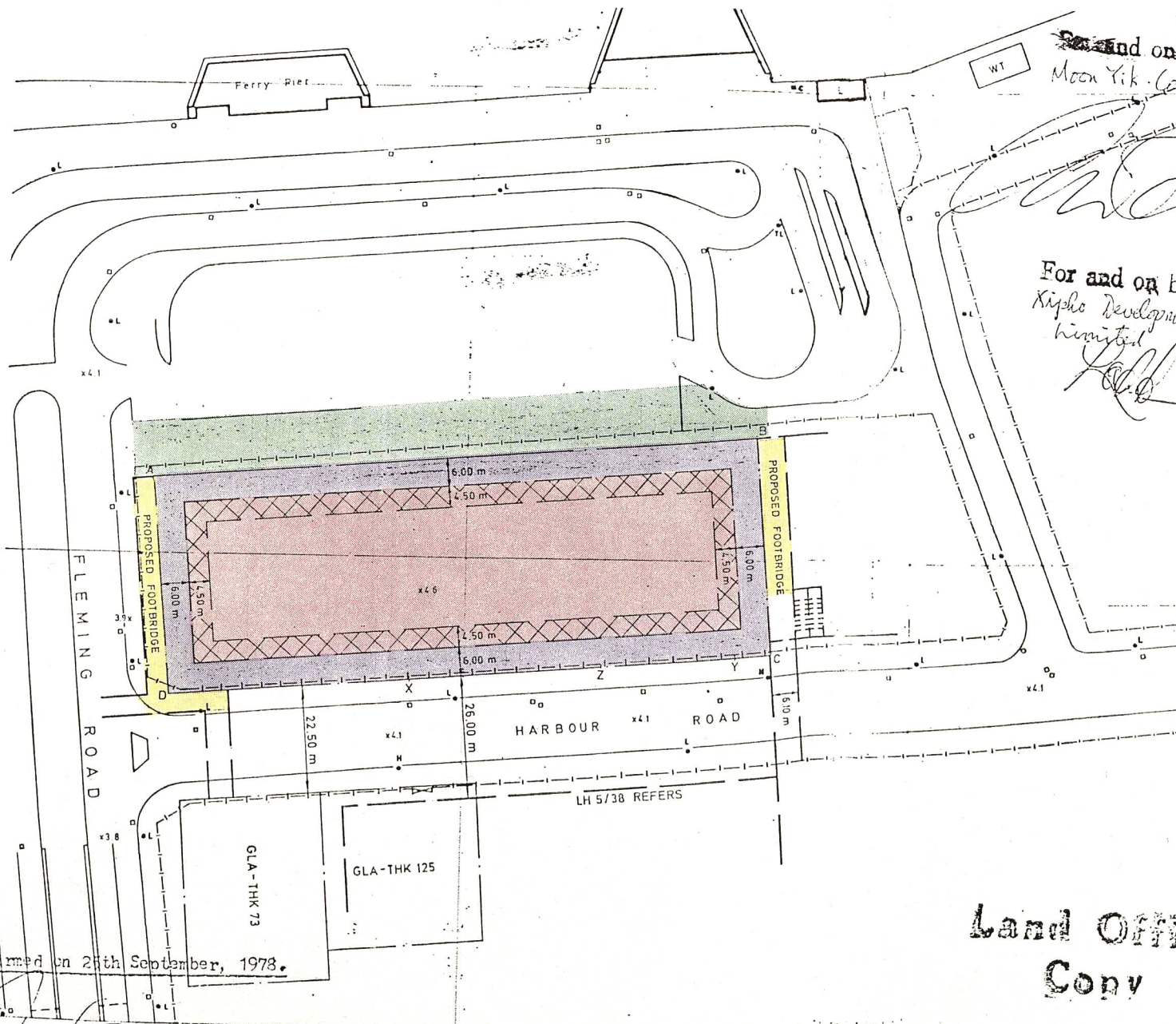
(Lu Lao Ewa)
 Director of Moon Yik Company Limited
 For and on behalf of
XIPHO DEVELOPMENT COMPANY LIMITED

 (Walter Kwok Ping Sheung)
 Director of Xipho Development Company Limited
 For and on behalf of the Governor.

Witness to the signature of
 Principal Government Land Agent:

 CHAN Yuan-lin
 Civil Servant,
 Public Works Department.


 D. H. A. Moore
 Principal Government Land Agent.

Item.
No. A 2
(continued)



[Handwritten Signature]
PURCHASER

[Handwritten Signature]

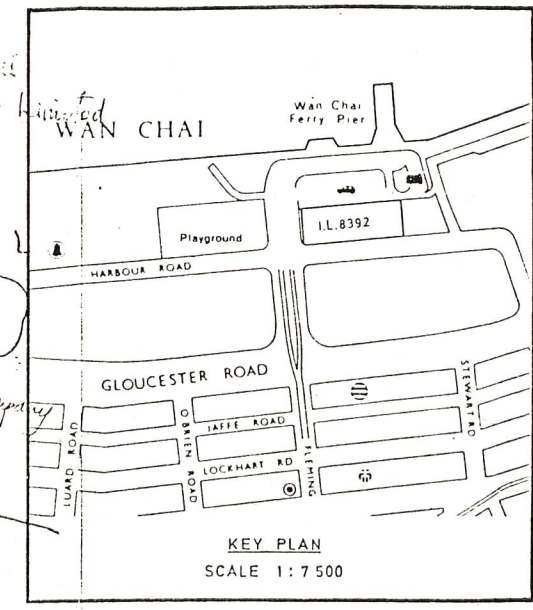
SCALE 1:1000

PLAN No. H 6500/SP

PLAN OF

INLAND LOT No. 8392

Item.
No. A 2
(continued)



x40 SPOT LEVEL (as at 25-5-78) to nearest 0.1 m

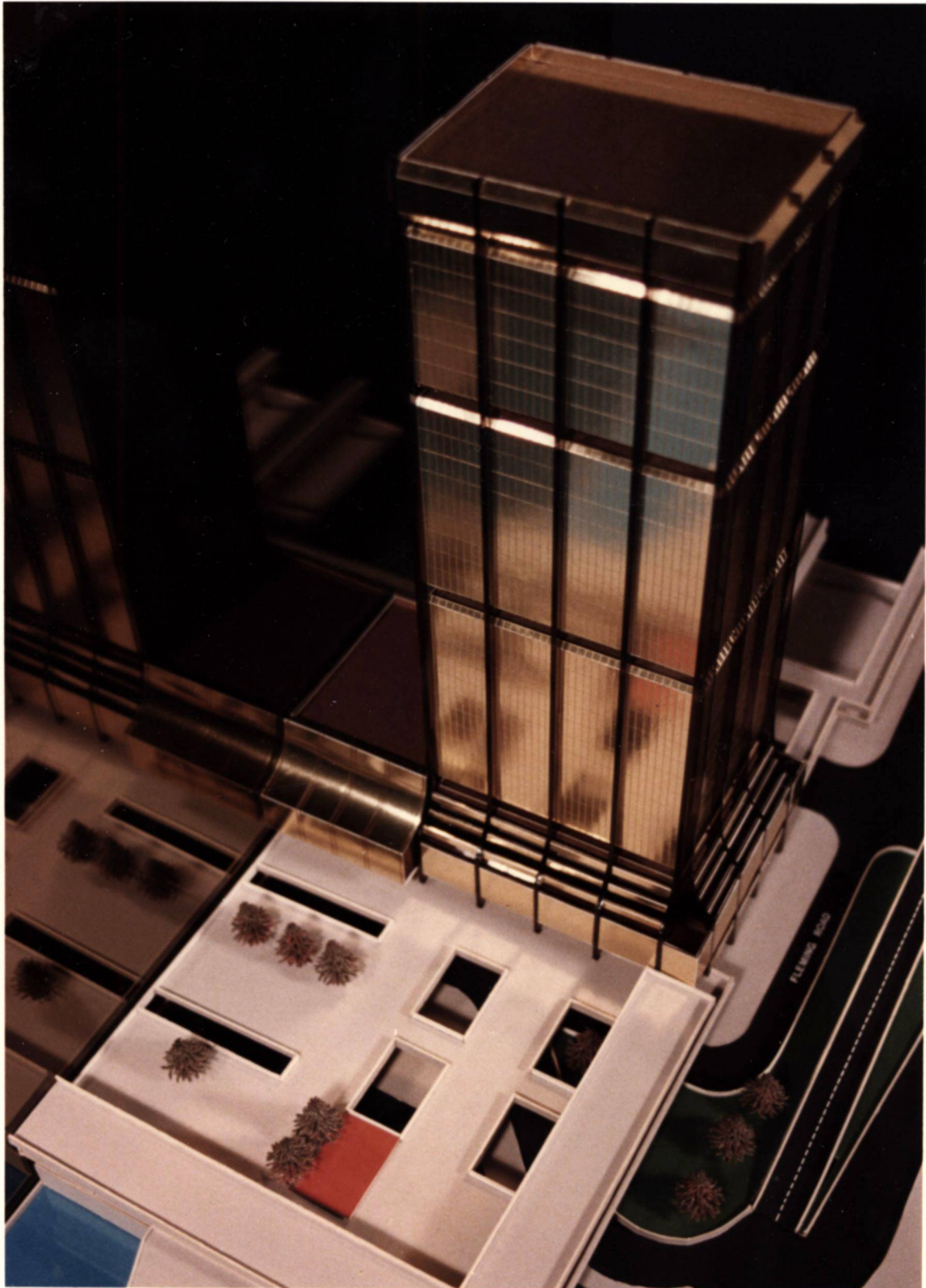
SIDE	DISTANCE IN METRES	BEARING ° ' "
AB	130.39	85 28 30
BC	46.49	175 28 30
CD	130.39	265 28 30
DA	46.49	355 28 30

COLOURED PINK, PINK CROSS HATCHED BLACK AND PURPLE AREA 6 062 SQUARE METRES (ABOUT)

COLOURED PURPLE AREA 1 979 SQUARE METRES (ABOUT)

[Handwritten Signature]
D. H. A. Moore
PRINCIPAL GOVERNMENT LAND AGENT

Date of Sale	13-9-1978
Survey Sheet No.	11-SW-10C
File Ref. No. () in L.S.O.	479/HPA/63
Survey Office	Hong Kong



Item.
No. E 1
(continued)

Item.
No. B 1

Affirmation of Walter Kwok Ping Sheung
Dated 29th May 1979

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of Inland Lot No. 8392

and

IN THE MATTER of the construction of an
Agreement and Conditions of Sale dated
13th September 1978, particularly Special **10**
Conditions 13 and 20 thereof

and

IN THE MATTER of the construction of
Regulation 22 of the Building (Planning)
Regulations

BETWEEN :

MOON YIK COMPANY LIMITED and

XIPHO DEVELOPMENT COMPANY LIMITED *Plaintiffs*

and

THE ATTORNEY GENERAL *Defendant* **20**

AFFIRMATION

I, WALTER KWOK PING SHEUNG, of No. 8 South Bay Road, Repulse Bay, Hong Kong, do solemnly sincerely and truly affirm and say as follows :—

1. I am a Director of Xipho Development Company Limited, one of the Plaintiffs in this action.
2. I have read the Affidavit of Antony Lo Hong-Sui affirmed herein on even date herewith and I confirm the truth of the facts stated in paragraphs 1, 2 and 4 thereof.

3. I am a Director of Sun Hung Kai Properties Limited one of the largest property development companies in Hong Kong and have had considerable experience with the property development business in the Colony. **Item. No. B 1** *(continued)*

4. Before bidding at the sale, the Agreement and Conditions of Grant relative to Inland Lot No. 8392 had been extensively studied and discussed with Antony Lo Hong-Sui and our company's professional advisers and I confirm that the bid for the site took into account our understanding of the position, namely that "Bonus" site coverage and plot ratio provided by Regulation 22 of the Building (Planning) Regulations would accrue to the site in respect of the area coloured purple on the plan attached to the Agreement and Conditions of Grant.

10

Affirmed at the offices of T. Y. Lee
& Co., Alexandra House, Hong
Kong this 29th day of May 1979. } (Sd.) WALTER KWOK PING SHEUNG

Before me,

(Sd.) LEE TIN YAU
Solicitor,
Hong Kong.

Item.
No. C 1

**Building Authority's Letter
Dated 18th December 1978**

18th December, 1978.

Mr. Charles K. F. Ming
1108 Manning House
Queen's Rd. Central
Hong Kong

Dear Sir,

I.L. 8392 at junction of
Harbour Road and Fleming Road

I refer to your letter dated the 24th November, 1978.

The setting back of the building at ground floor level is the result of lease condition No. 13 which prohibits building on the area referred to therein.

This is not the sort of case which was catered for in Building (Planning) Reg. 22 (1) where the bonus plot ratio was to be offered as compensation to an owner for voluntary giving up part of his ground floor area which was to be "dedicated to the public for the purpose of passage".

In this case there is no question of the owner giving up anything since he has to comply with sale conditions which were known to him at the time the site was auctioned.

I therefore refute your claim that the non building area referred to in Special Condition 13 is subject to bonus plot ratio under Building (Planning) Reg. 22 (1).

Yours faithfully,

(Sd.) H. J. POWELL
pro Building Authority.

This Indenture, made the *Twenty Eighth* day of *February* — One thousand Nine hundred and *twenty seven* Between Our SOVEREIGN LORD GEORGE V by the GRACE or GOD King of the United Kingdom of GREAT BRITAIN and IRELAND and of the BRITISH Dominions beyond the Seas, Defender of the Faith, Emperor of INDIA, of the one part, and *The Chinese Estates Limited of Victoria in the Colony of Hong Kong a Company incorporated under the Companies Ordinance of the said Colony and having their registered office at Victoria aforesaid hereinafter referred to as "the said lessees"* — of the other part. **Whereas** Sir *Bevil Clements Knight* Commander of the Most Distinguished Order of Saint Michael and Saint George is now the duly constituted and appointed Governor and Commander-in-Chief of the said Colony of Hongkong and its Dependencies; and is duly authorized to enter into these presents in the name and on behalf of His said Majesty; **Now This Indenture witnesseth,** that in consideration of the sum of *six hundred and fifty one thousand eight hundred and eighty dollars* — current money of the said Colony of Hongkong, paid into the Treasury of the said Colony for the use of His said Majesty by the said *lessees* — (the receipt whereof is hereby acknowledged) and in consideration of the yearly rent, covenants and stipulations hereinafter reserved and contained by and on the part and behalf of the said *lessees their successors* — and Assigns, to be paid, done and performed; His said MAJESTY KING GEORGE **Doth** hereby grant and demise, unto the said *lessees their successors* —

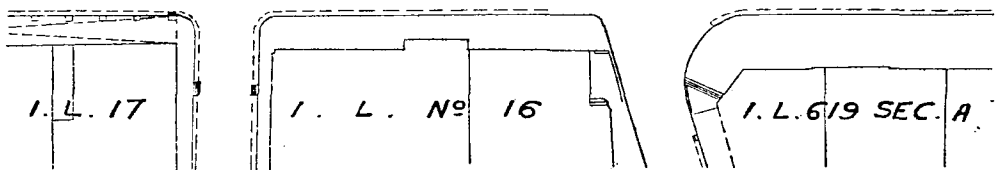
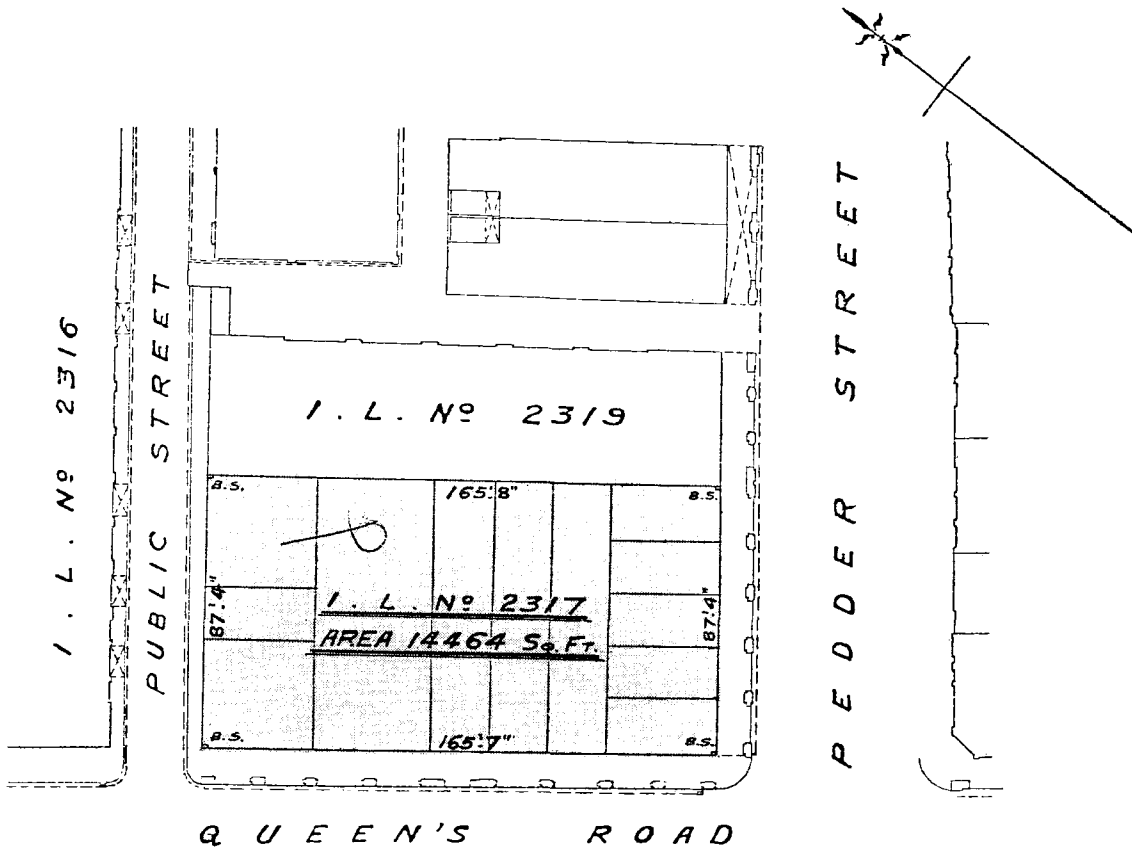
Item.
No. D 1
(continued)

and Assigns, All that piece or parcel of Ground situate, lying and being at Victoria aforesaid abutting on the North East side thereof on Inland Lot No. 2319 and measuring thereon one hundred and sixty five feet and eight inches on the South West side thereof on Queen's Road and measuring thereon one hundred and sixty five feet and seven inches on the North West side thereof on a Public Street and measuring thereon eighty seven feet and four inches and on the South East side thereof on Pedder Street and measuring thereon eighty seven feet and four inches which said piece or parcel of ground expressed to be hereby demised contains in the whole by admeasurement fourteen thousand four hundred and sixty four square feet and is more particularly delineated on the plan annexed hereto and thereon coloured pink and is registered in the Land Office as Inland Lot No. 2317 —

And all the easements and appurtenances whatsoever to the said demised premises belonging, or in any-wise appertaining. EXCEPT AND RESERVED unto His said Majesty, His Heirs, Successors and Assigns, all Mines, Minerals, Mineral Oils and Quarries of Stone in, under and upon the said premises, and all such Earth, Soil, Marl, Clay, Chalk, Brick-earth, Gravel, Sand, Stone and Stones, and other Earths or Materials, which now are or hereafter during the continuance of this demise, shall be under or upon the said premises, or any part or parts thereof, as His said Majesty, His Heirs, Successors and Assigns may require for the Roads, Public Buildings, or other Public Purposes of the said Colony of Hongkong; with full liberty of Ingress, Egress and Regress, to and for His said Majesty, His Heirs, Successors and Assigns, and His and their Agents, servants and workmen, at reasonable times in the day during the continuance of this demise, with or without horses, carts, carriages and all other necessary things into, upon, from and out of all or any part or parts of the premises hereby expressed to be demised, to view, dig for, convert, and carry away, the said excepted Minerals, Stone, Earths and other things respectively, or any part or parts thereof respectively, thereby doing as little damage as possible to the said lessees their successors —

INLAND LOT N^o 2317

Item.
No. D 1
(continued)



Harold J. Pursey

DIRECTOR OF PUBLIC WORKS

SCALE 50 FT = 1 INCH



Item.
No. D 1
(continued)

~~Executors, Administrators or Assigns~~; AND ALSO SAVE AND EXCEPT full power to His said Majesty, His Heirs, Successors and Assigns to make and conduct in through and under the said premises, all and any public or common sewers, drains or watercourses. **To have and to hold** the said piece or parcel of ground and premises hereby expressed to be demised, with their and every of their appurtenances, unto the said *lessee their successors* _____

~~Executors, Administrators and Assigns~~, from the *eleventh* — day of *October* — One thousand nine hundred and *twenty one* for and during and unto the full end and term of Seventy-five Years from thence next ensuing and fully to be complete and ended; with such right or renewal for one further term of Seventy-five Years as is hereinafter provided. **Yielding AND PAYING** therefor yearly and every year during the said term of seventy-five years the sum of — *nine hundred and ninety six dollars* _____ in Current Money of the said Colony of Hongkong, by equal half-yearly payments, on the Twenty-fourth day of June and the Twenty-fifth day of December, in every Year, free and clear of and from all Taxes, Rates, Charges, Assessments and Deductions whatsoever, charged upon or in respect of the said premises or any part thereof, the first half-yearly payment of the said Rent becoming due and to be made on the *twenty fourth* day of *June* —, One thousand nine hundred and *twenty seven* And the said *lessee* _____

for *themselves their successors* ~~Executors, Administrators and Assigns~~ doth hereby covenant with His said Majesty, His Heirs, Successors and Assigns by these presents, in manner following, that is to say, that *they* the said *lessee their successors* _____

~~Executors, Administrators or Assigns~~ shall and will yearly, and every year, during the said term hereby granted, well and truly pay or cause to be paid to His said Majesty, His Heirs, Successors and Assigns, the said yearly Rent of *nine hundred and ninety six dollars*

clear of all deductions as aforesaid on the several days and times and in the manner hereinbefore reserved and made payable; AND ALSO that *they* the said *lessee their successors* —

~~Executors, Administrators and Assigns~~ shall and will during all the said term hereby granted, bear, pay and discharge all taxes, rates, charges and assessments whatsoever, which now are or shall be

hereafter assessed or charged upon, or in respect of the said premises hereby expressed to be demised or any part thereof. AND ALSO that the said *lessee their successors* —————

Executors, Administrators or Assigns, shall and will, before the expiration of *forty eight calendar months* ——— of the term hereby granted, at his and their own ^{power} costs and charges, erect, build and completely finish fit for use, in a good, substantial and workmanlike manner and with the best materials of their respective kinds, one or more good substantial and safe brick or stone messuage or tenement, messuages or tenements, upon some part of the ground hereby demised, with proper fences, walls, sewers, drains and all other usual or necessary appurtenances, and shall and will before the expiration of the said *forty eight calendar months* lay out and expend thereon the Sum of *two hundred and sixteen thousand*

dollars at the least, which said messuage or tenement, messuages or tenements, shall be of the same rate of building, elevation, character and description, and shall front and range in a uniform manner with the building (if any) immediately adjoining in the same Street, and the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors or Assigns, (now the Director of Public Works) AND ALSO that the said *lessee their successors or assigns shall erect no buildings on the piece or parcel of ground hereby demised exceeding one hundred and twenty five feet in height. And also that the said lessee their successors* ——— Executors, Administrators and Assigns, shall and will, from time to times, and at all times hereafter, when, where, and as often as need or occasion shall be and require, at his and their own proper costs and charges, well and sufficiently Repair, Uphold, Support, Maintain, Pave, Purge, Scour, Cleanse, Empty, Amend and keep the messuage or tenement, messuages or tenements, and all other erections and buildings, now or at any time hereafter standing upon the said piece or parcel of ground hereby expressed to be demised, and all the Walls, Banks, Cuttings, Hedges, Ditches, Rails, Lights, Pavements, Privies, Sinks, Drains and Watercourses thereunto belonging, and which shall in any-wise belong or appertain unto the same, in, by and with all and all manner of needful and necessary reparations, cleansings and amendments whatsoever, the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors, or Assigns; AND THE SAID messuage or tenement, messuages or tenements, erections, buildings and premises, so being well and sufficiently repaired, sustained and amended, at the end, or sooner determination of the said term hereby granted, shall and will peaceably and quietly deliver up to His said Majesty, His Heirs, Successors or Assigns; AND ALSO that the said *lessee their successors* —————

Executors, Administrators and Assigns shall and will during the term hereby granted, as often as need shall require, bear, pay and allow a reasonable share and proportion for and towards the costs and charges of making, building, repairing, and amending, all or any roads, pavements, channels, fences and party-walls, draughts, private or public sewers and drains, requisite for, or in, or belonging to the said premises hereby expressed to be demised or any part thereof, in common with other premises near or adjoining thereto, and that such proportion shall be fixed and ascertained by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns, and shall be recoverable in the nature of rent in arrear;

*For verification,
see Deed of Variation
dtd. 17. 5. 1778 attached
(Mem. 1146453).
J.C.C.
J.S. 25*

Item.
No. D 1
(continued)

AND FURTHER that it shall and may be lawful to and for His said Majesty, His Heirs, Successors, or Assigns, by His or their Surveyor, or other persons deputed to act for Him or them, twice or oftener in every year during the said term, at all reasonable times in the day, to enter and come into and upon the said premises hereby expressed to be demised, to view, search and see the condition of the same, and of all decays, defects and wants of reparation and amendment, which upon every such view or views shall be found, to give or leave notice or warning, in writing, at or upon the said premises, or some part thereof, unto or for the said *lessee their successors* _____

~~Executors, Administrators, or Assigns, to repair and amend the same within Three Calendar Months then next following, within which said time or space of Three Calendar Months, after every such notice or warning shall be so given, or left as aforesaid, the said~~ *lessee their successors* _____

~~Executors, Administrators, or Assigns will repair and amend the same accordingly; AND FURTHER that the said~~ *lessee their successors* _____

~~Executors, Administrators, or Assigns, or any other person or persons, shall not nor will, during the continuance of this demise, use, exercise or follow, in or upon the said premises or any part thereof, the trade or business of a Brazier, Slaughterman, Soap-maker, Sugar-baker, Fellmonger, Melter of tallow, Oilman, Butcher, Distiller, Victualler, or Tavern-keeper, Blacksmith, Nightman, Scavenger, or any other noisy, noisome or offensive trade or business whatever, without the previous licence of His said Majesty, His Heirs, Successors, or Assigns, signified in writing by the Governor of the said Colony of Hongkong, or other person duly authorized in that behalf; AND ALSO that~~ *they* the said *lessee their successors* _____

~~Executors, Administrators, or Assigns, shall not nor will, let, underlet, mortgage, assign, or otherwise part with, all or any part of the said premises hereby expressed to be demised, for all or any part of the said term of Seventy-five years, without at the same time registering such alienation in the Land Office, or in such other Office as may hereafter be instituted for the purposes of Registration in the said Colony of Hongkong, and paying all reasonable fees and other expenses thereon.~~ **Provided Always,** and it is hereby agreed and declared, that in case the said yearly rent of *nine hundred and ninety six dollars* _____ hereinbefore reserved, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next over, or after any or either of the said days whereon the same ought to be paid as aforesaid, (whether lawfully demanded or not), or in case of the breach or non-performance of any or either of the covenants and conditions herein contained, and by or on the part and behalf of the said *lessee their successors* _____

~~Executors, Administrators, or Assigns, to be kept, done and performed, then, and in either of the said cases, it shall and may be lawful to and for His said Majesty, His Heirs, Successors, or Assigns, by~~

the Governor of Hongkong, or other person duly authorised in that behalf, into and upon the said premises, hereby expressed to be demised, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as in His or their first or former estate, as if these presents has not been made; and the said *lessees their successors* _____

~~Executors, Administrators~~ and Assigns, and all other occupiers of the said premises thereout and thence utterly to expel, put out and amove, this Indenture or anything contained herein to the contrary notwithstanding. **Provided** also, and it is hereby further agreed and declared that His said Majesty, His Heirs, Successors and Assigns, shall have full power to resume, enter into, and re-take possession of all or any part of the premises hereby expressed to be demised, if required for the improvement of the said Colony of Hongkong or for any other public purpose whatsoever, three Calendar Months' notice being given to the said *lessees their successors* _____

~~Executors, Administrators~~, and Assigns of its being so required, and a full and fair Compensation for the said Land and the Buildings thereon, being paid to the said *lessees their successors* _____

~~Executors, Administrators~~, or Assigns, at a valuation, to be fairly and impartially made by the Surveyor of His said Majesty His Heirs, Successors, or Assigns, and upon the exercise of such power the term and estate hereby created shall respectively cease, determine and be void. **Provided** also, and it is hereby further agreed and declared that the said *lessees their successors* _____

~~Executor, Administrators~~, or Assigns shall on the expiration of the term hereby granted, be entitled to a renewed Lease of the premises hereby expressed to be demised for a further term of Seventy-five Years without payment of any Fine or Premium therefor and at the Rent hereinafter mentioned; **And** His said Majesty, His Heirs, Successors, or Assigns shall and will at the request and cost of the said

lessees their successors _____

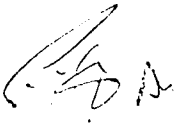
~~Executors, Administrators~~, or Assigns grant unto him or them on the expiration of the term hereby granted a new Lease of the said premises for the term of Seventy-five Years at such Rent as shall be fairly and impartially fixed by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns at the fair and reasonable rental value of the ground at the date of such renewal. And in all other respects such new Lease shall be granted upon the same terms and under and subject to the same reservations, covenants, stipulations provisoes and declarations as are contained in this present Lease with the exception of this proviso for renewal which shall not be contained in such new Lease.

In Witness whereof the said parties to these presents have hereunto set their hands and seals



the Lessee (the Purchaser) of the other part and registered in the Land Office by Memorial No.1173793 the said Lot was assigned unto the Lessee for the residue of the said term with such right of renewal as aforesaid;

- (d) by a Deed of Variation dated the 17th day of March 1975 made between Her said Majesty of the one part and The Chinese Estates Limited of the other part and registered in the Land Office by Memorial No.1146453 the said Crown Lease was modified so as to permit maximum development in respect of the said Lot;
- (e) by a Mortgage dated the 16th day of June 1975 made between the Lessee (the Mortgagor) of the one part and the Mortgagee of the other part and registered in the Land Office by Memorial No.1173799 the said Lot was assigned by the Lessee to the Mortgagee by way of Mortgage to secure the repayment to the Mortgagee of the sum of \$45,000,000 and interest thereon;
- (f) by an Agreement for Sale and Purchase dated the 22nd day of April 1977 made between the said Lessee of one part and the Mortgagee of the other part and registered in the Land Office by Memorial No.1571751 the said Lessee agreed to sell to the Mortgagee all those 1518 equal undivided 6206th parts or shares of and in the said Lot together with the exclusive possession of all those portions of the building or buildings to be erected on the said Lot more particularly described therein and shown on the plans annexed thereto;
- (g) the said Crown Lease as varied and modified as aforesaid contains inter alia the following covenants by the Lessee :-
"AND the said lessees covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will when



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(continued)

required by Her said Majesty's Registrar General (Land Officer) so to do execute a Deed or Deeds of Dedication in such form or forms as shall be approved by and in all other respects to the satisfaction of Her said Majesty's Registrar General (Land Officer) whereby the said lessees will in consideration of the benefit of excess site coverage and plot ratio under Regulation 22(1) of the Building (Planning) Regulations to be secured by the said lessees in respect of the said piece or parcel of ground DEDICATE from the date of the Deed or Deeds of Dedication hereinbefore mentioned ALL THOSE areas more particularly described in the Schedule hereinafter contained unto the public for the purposes of passage for the period during which the multi-storey building or buildings to be erected on said piece or parcel of ground shall be situated thereon

SCHEDULE ABOVE REFERRED TO

- (1) A 165 feet 7 inches x 4 feet 4 inches strip of land along the south western boundary of the said piece or parcel of ground fronting Queen's Road Central at ground floor level up to a clear height of 16 feet 9 inches.
- (2) a 83 feet x 6 feet 7 inches strip of land along the north western boundary of the said piece or parcel of ground fronting Theatre Lane at ground floor level up to a clear height of 16 feet 9 inches.
- (3) A 9 feet x 9 feet splay at the southern corner of the said piece or parcel of ground (which said southern corner is situate at the junction of Queen's Road Central and Pedder Street) at ground floor level up to a clear height of 16 feet 9 inches.

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[Handwritten mark]

(4) Areas within the said piece or parcel of ground required for the provision of two staircases on both the ground and first floors of the building or buildings to be erected on the said piece or parcel of ground and an approach to one of the said staircases at first floor level together with an enclosed canopy at first floor level projecting over Crown land along the south western boundary of the said piece or parcel of ground fronting Queen's Road Central and along the south eastern boundary of the said piece or parcel of ground fronting Pedder Street; the exact positions, location, dimensions, disposition, height and design of the said staircases, approach and enclosed canopy shall all be subject to the prior approval in writing of Her said Majesty's Director of Public Works.

AND the said lessees further covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will at their own expense and to the satisfaction of Her said Majesty's Director of Public Works provide and construct the said staircases said approach and the said enclosed canopy referred to in the Schedule hereinbefore contained";

(h) the Lessee and the Mortgagee have requested that the said covenants referred to in Recital (g) immediately hereinbefore written should be modified in the manner hereinafter appearing; and

(i) in consideration of the Lessee and the Mortgagee entering into these presents in manner hereinafter appearing and in consideration of an additional premium of \$4,000 having been paid by the Lessee to Her said Majesty (the receipt whereof is hereby acknowledged)

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No. D 1
(continued)

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Her said Majesty has agreed to modify the said covenants hereinbefore referred to in Recital (g) in manner hereinafter appearing;

AND THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises and of the payment as hereinbefore recited it is hereby mutually agreed between the parties hereto to the intent that this agreement shall be binding on and enforceable against the parties hereto and their respective successors in title to the said Lot or any part thereof as follows :-

- (1) As from the date of these presents the said Lessee's covenants set forth in Recital (g) hereinbefore written shall be deemed to be and shall be void and of no effect; and the said Crown Lease as varied and modified as aforesaid shall as from the date hereof be deemed to include and be read and construed as if there were included therein in lieu of the said covenants set forth in Recital (g) the following covenants by the Lessee :-
"AND the said lessees covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will when required by Her said Majesty's Registrar General (Land Officer) so to do execute a Deed or Deeds of Dedication in such form or forms as shall be approved by and in all other respects to the satisfaction of Her said Majesty's Registrar General (Land Officer) whereby the said lessees will in consideration of the benefit of excess site coverage and plot ratio under Regulation 22(1) of the Building (Planning) Regulations to be secured by the said lessees in respect of the said piece or parcel of ground DEDICATE from the date of the Deed or Deeds of Dedication hereinbefore mentioned ALL THESE areas more particularly described in the Schedule hereinafter contained

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unto the public for the purposes of passage for the period during which the multi-storey building or buildings to be erected on said piece or parcel of ground shall be situated thereon

SCHEDULE ABOVE REFERRED TO

- (1) All those portions of the said piece or parcel of ground at the ground floor level of the building or buildings to be erected on the said piece or parcel of ground the measurements of the said portions being indicated on the plan annexed hereto and marked "Ground Floor Plan" (hereinafter referred to as "the Ground Floor Plan") and for identification purpose only the said portions are shown coloured pink on the Ground Floor Plan and thereon marked by the letters 'G' 'F' 'C' 'B' 'D' and 'H' respectively up to a clear height of 16 feet 9 inches in respect of those portions shown coloured pink and respectively marked 'G', 'F' and 'C' on the Ground Floor Plan and up to a clear height of 15 feet 9 inches in respect of those portions shown coloured pink and respectively marked 'B', 'D' and 'H' on the Ground Floor Plan.
- (2) All those portions of the said piece or parcel of ground at the mezzanine floor level of the building or buildings to be erected on the said piece or parcel of ground required for the provision of an enclosed public walkway the measurements of the said portions being indicated on the plan annexed hereto and marked "Mezzanine Floor Plan" (hereinafter referred to as "the Mezzanine Floor Plan") and for identification purpose only the said portions are shown

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(continued)

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coloured pink on the Mezzanine Floor Plan and thereon marked by the letters 'F', 'E', 'C' and 'B' respectively (it being agreed and declared that the said portions marked by the letters 'F' and 'E' on the Mezzanine Floor Plan shall project over Crown land).

- (3) All those portions of the said piece or parcel of ground at the ground floor level and at the mezzanine floor level of the building or buildings to be erected on the said piece or parcel of ground required for the provision of two sets of escalatorsthe measurements of the said portions being indicated on the Ground Floor Plan and the Mezzanine Floor Plan and for identification purpose only the said portions are shown coloured pink on the Ground Floor Plan and the Mezzanine Floor Plan and marked on the Ground Floor Plan by the letters 'A' and 'E' respectively and marked on the Mezzanine Floor Plan by the letters 'A' and 'D' respectively.

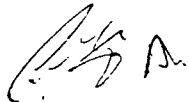
AND the said lessees hereby further covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will at their own expense and to the satisfaction of Her said Majesty's Director of Public Works provide construct and install the enclosed public walkway and the two sets of escalatorsreferred to in the Schedule hereinbefore contained (it being agreed and declared that the dimensions design disposition and height of the said enclosed public walkway and the two sets of escalatorshall be subject to the prior approval in writing of the said Director) AND the said lessees hereby further covenant with Her said Majesty by these presents that upon the completion of the construction

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No. D 1
(continued)

and installation of the said enclosed public walkway and the two sets of escalator^{said} the lessees will at their own expense maintain repair and upkeep the said enclosed public walkway and operate service maintain replace and keep in good repair the two sets of escalators all to be done to the satisfaction of the said Director".

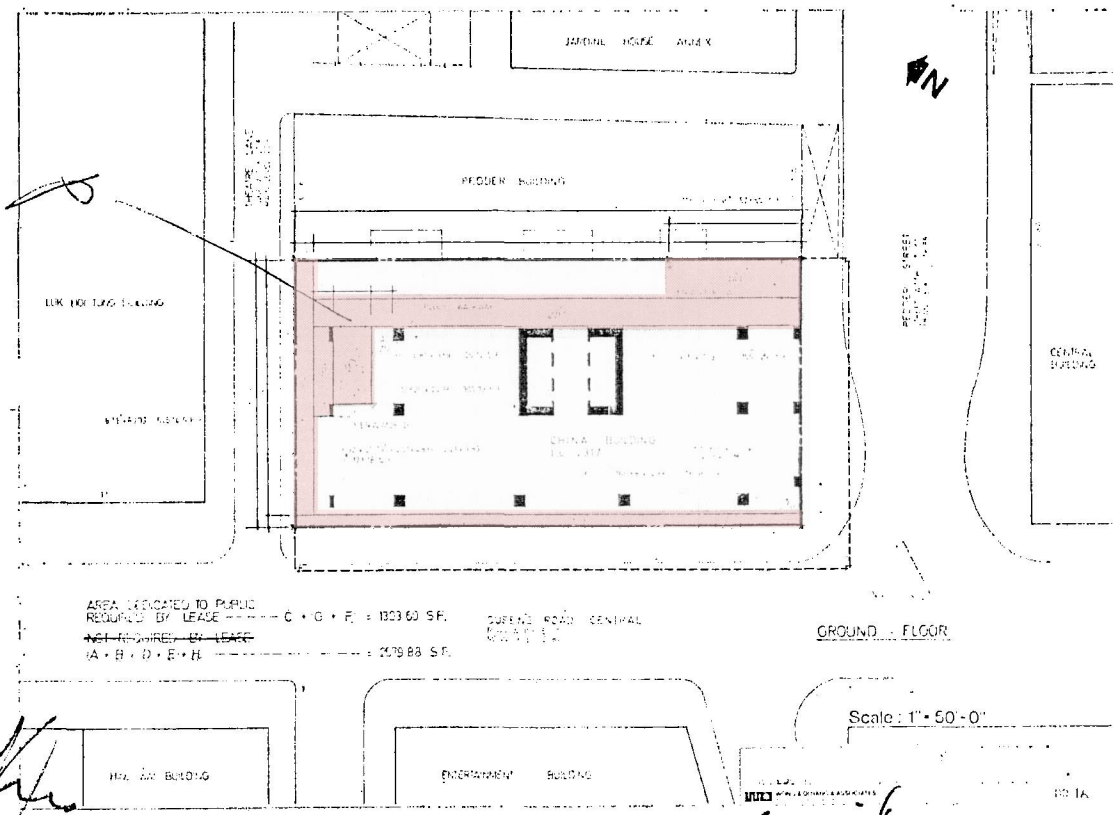
- (2) The plans annexed hereto and thereon respectively marked "Ground Floor Plan" and "Mezzanine Floor Plan" and referred to in the Lessee's covenants set forth in Clause (1) hereof shall as from the date of these presents be deemed to have been annexed to and to form part of the said Crown Lease as varied and modified as aforesaid.
- (3) Except as hereby modified all the provisions covenants stipulations exceptions reservations powers and conditions contained in the said Crown Lease as varied and modified as aforesaid shall remain in full force and effect;
- (4) The proviso for re-entry on the breach or non-performance of any covenant contained in the said Crown Lease as varied and modified as aforesaid shall extend to the breach or non-performance of the substituted covenants hereinbefore written at Clause (1) hereof or any of them.

IN WITNESS WHEREOF the Assistant Registrar General being duly authorized by the Governor so to do has executed these presents for and on behalf of the Governor by setting his hand and seal hereunto and the Lessee and the Mortgagee have caused their respective Common Seals to be hereunto affixed the day and year first above written.



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No. D 1
(continued)

Ground Floor Plan

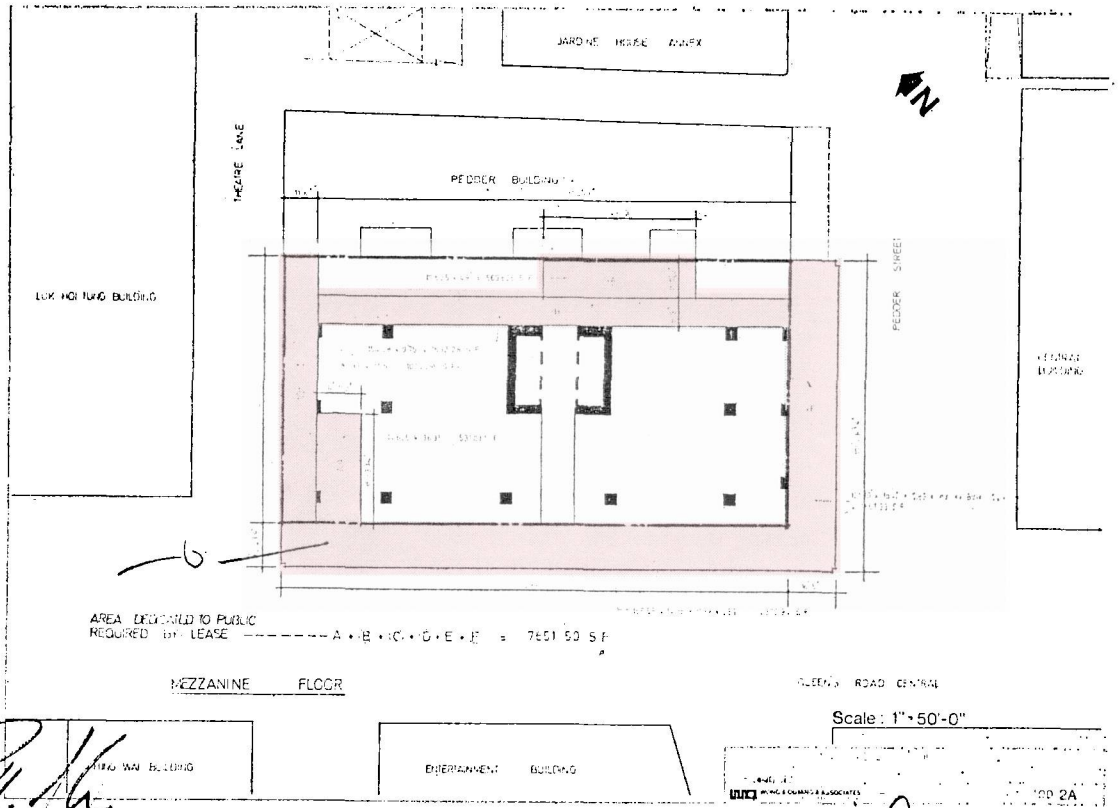


(Signature)
 (Noel M. Gleeson)
 Assistant Registrar General

(Signature)
 8/9/27

Item.
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(continued)

Mezzanine Floor Plan

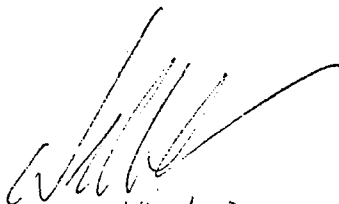


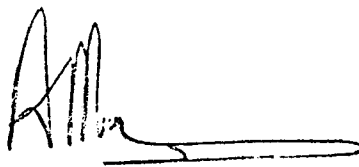

(Signature)
(Noel M. Gleeson)
Assistant Registrar General

(Signature)
8/18/17

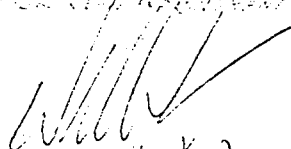
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(continued)


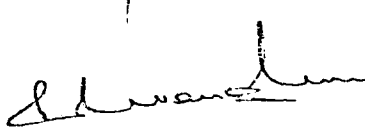
Sealed with the Common Seal of)
Woodhall Company Limited and)
signed by P.D.H.G. Mosley and Li Ka)
shing two of its directors)
in the presence of :-


(William Kwai)
Secretary,
Hong Kong.

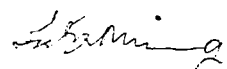



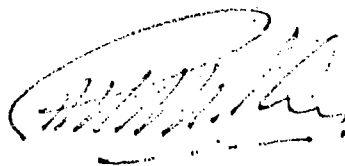
Sealed with the Common Seal of)
The Hongkong and Shanghai)
Banking Corporation and signed)
by John Boyer its director and Peter John)
Wrightson its Chief accountant)
in the presence of :-


John Boyer
Peter John Wrightson

(William Kwai)
Secretary,
Hong Kong.

Signed Sealed and Delivered by)
Noel M. Gleeson, Assistant)
Registrar General, in the)
presence of :-


NOEL MA MING
Assistant Registrar,
Registrar General's Department,
Hong Kong.





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[Signature]

**Item.
No. D 1**
(continued)

THIS INDENTURE made the _____ day of _____ One thousand
nine hundred and seventy-five BETWEEN Our Sovereign Lady ELIZABETH II by
the Grace of God of the United Kingdom of Great Britain and Northern
Ireland and of Her other Realms and Territories Queen Head of the Common-
wealth Defender of the Faith (hereinafter referred to as "Her said
Majesty") of the one part and THE CHEUNG ESTATES LIMITED a company
incorporated in Hong Kong under the Companies Ordinance and having its
registered office situate at China Building Queen's Road Central Victoria
Hong Kong (hereinafter referred to as "the Lessees") of the other part
WHEREAS -

- (a) the Governor and Commander-in-Chief of Hong Kong (who and whose successors in office and the Acting Governor for the time being are hereinafter referred to as "the Governor") is duly authorized to enter into these presents in the name and on behalf of Her said Majesty;
- (b) by a Crown Lease (hereinafter referred to as "the said Crown Lease") dated the 23th day of February 1927 made between His late Majesty King George V of the one part and the Lessees of the other part ALL that piece or parcel of ground known and registered in the Land Office as Inland Lot No.2517 (hereinafter referred to as "the said Lot") was demised unto the Lessees for a term of 75 years from the 11th day of October 1921 (with a right of renewal for one further term of 75 years) subject to the rent and covenants therein reserved and contained;

(c) the said Crown Lease contains inter alia the following covenants
by the Lessees :-
which said message or tenement, messages or tenements,
shall be of the same rate of building, elevation, character
and description, and shall front and range in a uniform

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Item.
No. D 1
(continued)

manner with the building (if any) immediately adjoining in the same Street, and the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors or Assigns, (now the Director of Public Works) AND ALSO that the said lessees their successors or assigns shall erect no buildings on the piece or parcel of ground hereby demised exceeding one hundred and twenty five feet in height";

- (d) the Lessees have requested that the said covenants referred to in Recital (c) immediately hereinbefore written should be modified so as to permit maximum development in respect of the said Lot; and
- (e) in consideration of the Lessees entering into these presents in manner hereinafter appearing and in consideration of an additional premium of \$6,000,000 having been paid by the Lessees to Her said Majesty (the receipt whereof is hereby acknowledged) Her said Majesty has agreed to modify the said covenants hereinbefore referred to in Recital (c) in manner hereinafter appearing;

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the premises and of the payment as hereinbefore recited it is hereby mutually agreed between the parties hereto to the intent that this agreement shall be binding on and enforceable against the parties hereto and their respective successors in title to the said Lot or any part thereof as follows :-

- (1) As from the date of these presents the Lessees' covenants set forth in Recital (c) hereinbefore written shall be deemed to be and shall be void and of no effect; and the said Crown Lease shall as from the date hereof be deemed to include and be read and construed as if there were included therein in



Item.
No. D 1
(continued)

liou of the said covenants set forth in Recital (c) the following covenants by the Lessees :-

X For modification,
see Deed of Variation
dated 9.1.1978 (Mem.
No. 1482822) attached.

Jerry
P.L.O.
10/4/78

"AND ALSO that the said lessees their successors or assigns shall not erect or permit or suffer to be erected on the said piece or parcel of ground or any part thereof any building or buildings other than a building or buildings which shall in all respects comply with the Buildings Ordinance any regulations made thereunder and any amending legislation AND shall not use or allow or suffer to be used the said piece or parcel of ground or any part thereof or any building or buildings erected or to be erected thereon or any part or parts of such building or buildings for any purpose other than for non-industrial purposes AND shall not use or allow or suffer to be used the said piece or parcel of ground or any part thereof or any building or buildings erected or to be erected thereon or any part or parts of such building or buildings for the purposes of an hotel AND the said lessees covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will when required by Her said Majesty's Registrar General (Land Officer) so to do execute a Deed or Deeds of Dedication in such form or forms as shall be approved by and in all other respects to the satisfaction of Her said Majesty's Registrar General (Land Officer) whereby the said lessees will in consideration of the benefit of excess site coverage and plot ratio under Regulation 22(1) of the Building (Planning) Regulations to be secured by the said lessees in respect of the said piece or parcel of ground DEDICATE from the date of the Deed or Deeds of Dedication

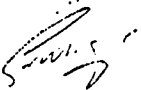
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No. D 1
(continued)

hereinbefore mentioned ALL THOSE areas more particularly described in the Schedule hereinafter contained unto the public for the purposes of passage for the period during which the multi-storey building or buildings to be erected on said piece or parcel of ground shall be situated thereon

SCHEDULE ABOVE REFERRED TO

- (1) A 165 feet 7 inches x 4 feet 4 inches strip of land along the south western boundary of the said piece or parcel of ground fronting Queen's Road Central at ground floor level up to a clear height of 16 feet 9 inches.
- (2) A 83 feet x 6 feet 7 inches strip of land along the north western boundary of the said piece or parcel of ground fronting Theatre Lane at ground floor level up to a clear height of 16 feet 9 inches.
- (3) A 9 feet x 9 feet splay at the southern corner of the said piece or parcel of ground (which said southern corner is situate at the junction of Queen's Road Central and Pedder Street) at ground floor level up to a clear height of 16 feet 9 inches.
- (4) Areas within the said piece or parcel of ground required for the provision of two staircases on both the ground and first floors of the building or buildings to be erected on the said piece or parcel of ground and an approach to one of the said staircases at first floor level together with an enclosed canopy at first floor level projecting over Crown land along the south western boundary of the said piece or parcel of ground fronting Queen's Road Central and along the south eastern boundary of the said piece or parcel of ground fronting Pedder Street; the exact positions, —————

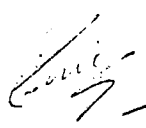


location, dimensions, disposition, height and design of the said staircases, approach and enclosed canopy shall all be subject to the prior approval in writing of Her said Majesty's Director of Public Works.

AND the said lessees further covenant with Her said Majesty by these presents that upon redevelopment of the said piece or parcel of ground or any part thereof the said lessees will at their own expense and to the satisfaction of Her said Majesty's Director of Public Works provide and construct the said staircases said approach and the said enclosed canopy referred to in the Schedule hereinbefore contained";

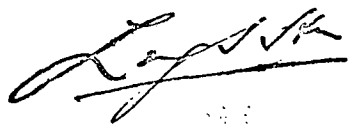
- (2) Except as hereby modified all the provisions covenants stipulations exceptions reservations powers and conditions contained in the said Crown Lease shall remain in full force and effect;
- (3) The proviso for re-entry on the breach or non-performance of any covenant contained in the said Crown Lease shall extend to the breach or non-performance of the substituted covenants hereinbefore written at Clause (1) hereof or any of them.

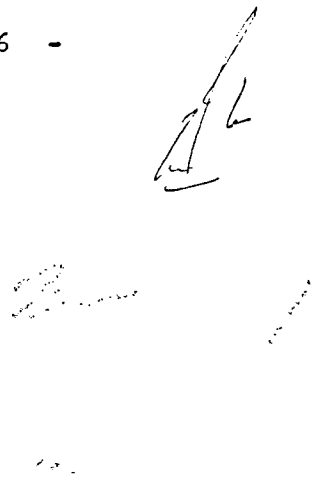
IN WITNESS WHEREOF the Assistant Registrar General being duly authorized by the Governor so to do has executed these presents for and on behalf of the Governor by setting his hand and seal hereunto and the Lessees have caused their Common Seal to be hereunto affixed the day and year first above written. _____



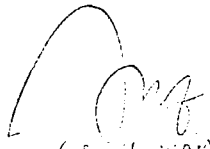
Item.
No. D 1
(continued)

Sealed with the Common Seal of)
The Chinese Estates Limited)
and signed by Sir Kenneth)
FUNG PING FAN one of)
its Directors and Mak Hing)
Sun its secretary)
in the presence of :-)

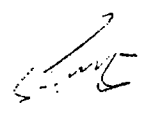

Leung Si Hing,
Secretary,
Hong Kong



Signed Sealed and Delivered by)
Noel M. Gleeson, Assistant)
Registrar General, in the)
presence of :-)


(S. H. WONG)
Assistant Registrar,)
Registrar General's Department,)
Hong Kong.)







the day and year first above written.

Signed, sealed and delivered by the above

named

in the presence of

**Item.
No. D 1**
(continued)

Sealed with the Common Seal of the
Chinese Estates Limited in the presence
of Li Yen Chuen and their
Directors and signed by the said
Li Yen Chuen and countersigned
by Henry Lowcock their Secretary
in the presence of

H. H. H. H.
S. N. H. H.
H. H. H. H.

李君
Director

Henry Lowcock
Secretary

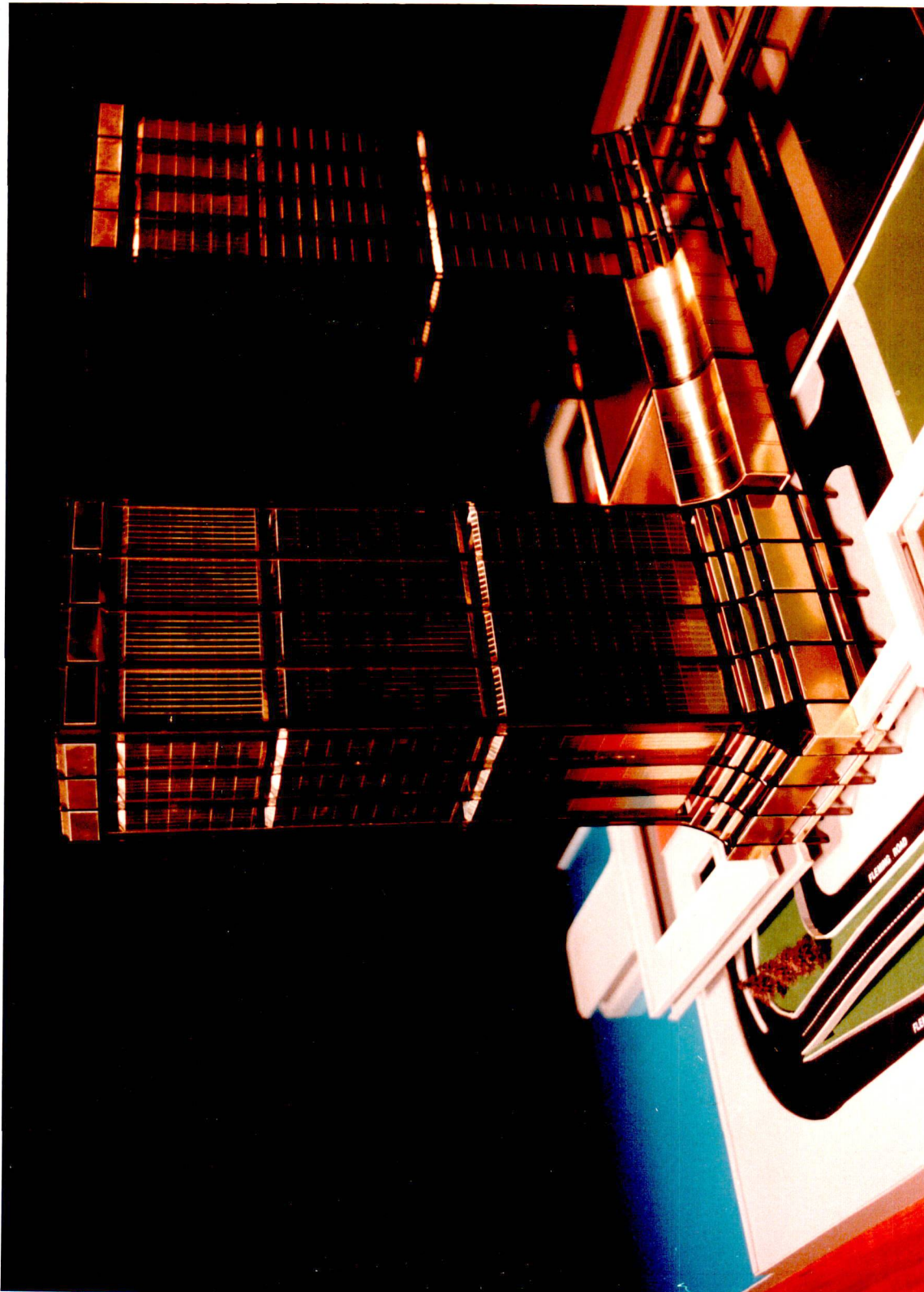
Registered,

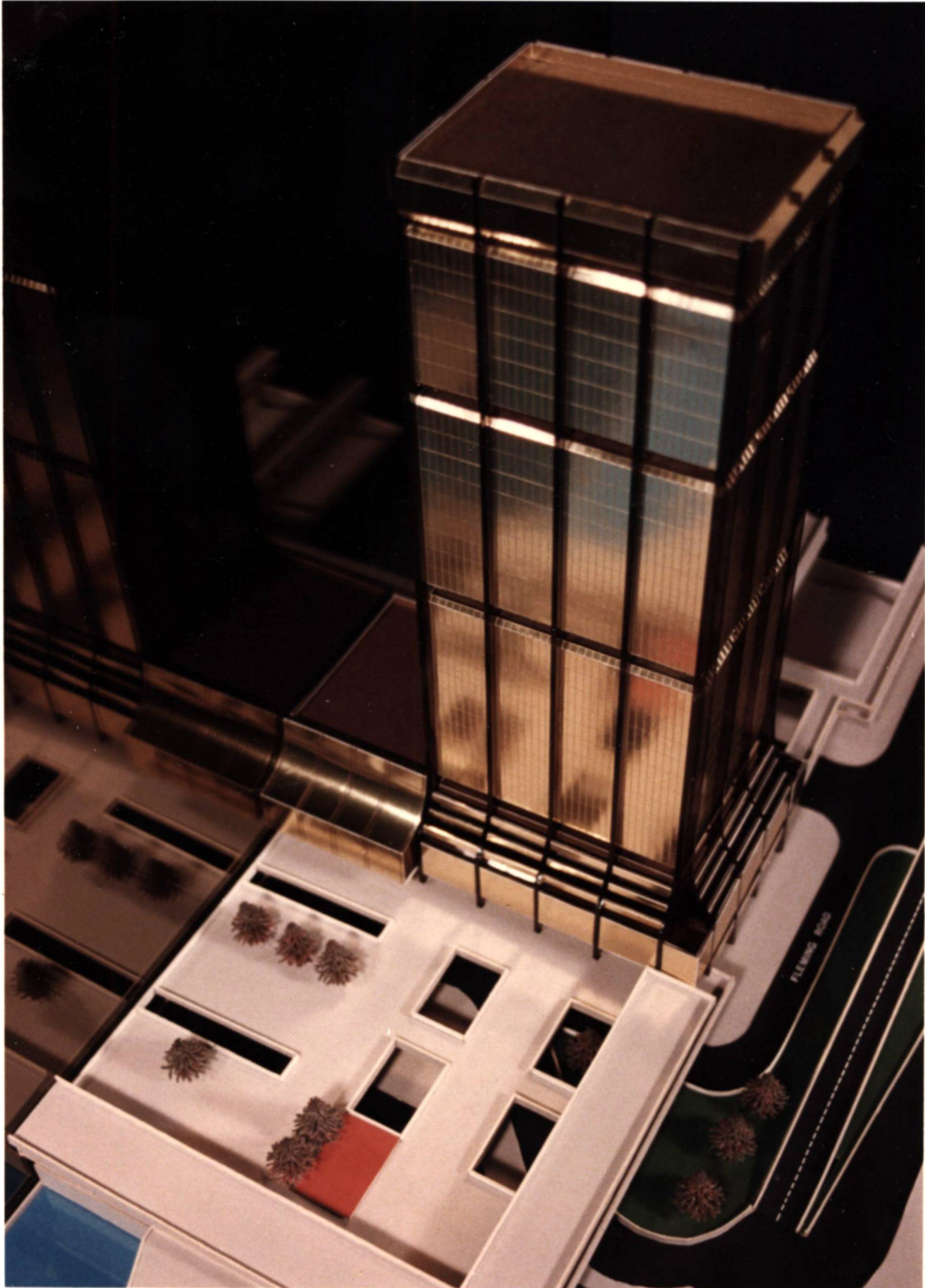
[Signature]
London Officer.

[Signature]

Item.
No. E 1

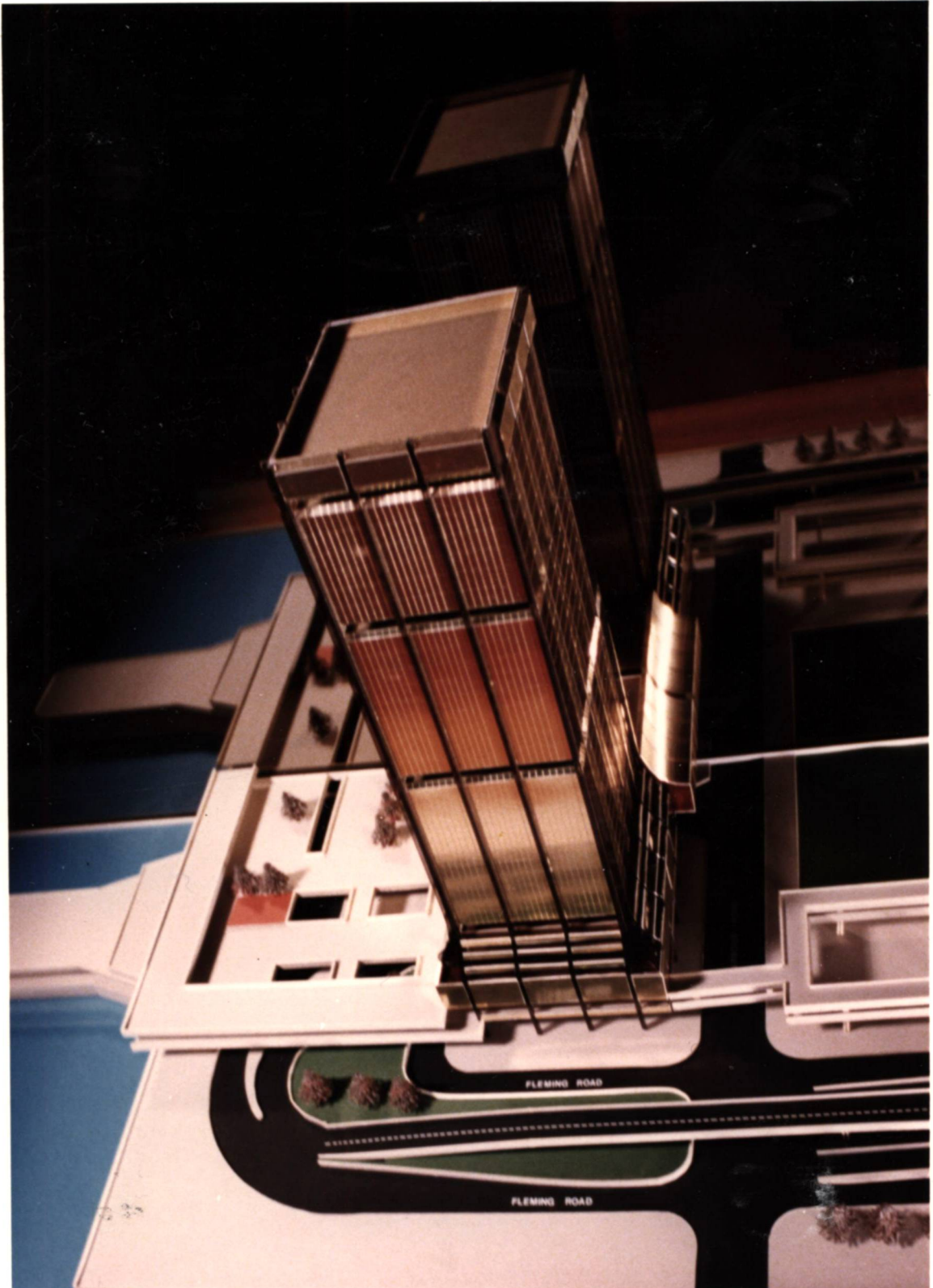
Three photos of the model of the proposed building.





Item.
No. E 1
(continued)

Item.
No. E 1
(continued)



Buildings Ordinance Office Conference Minutes

Dated 12th December 1978

**Item.
No. F 1**

BOC I 49/78
12.12.78

Lease Matters &
B (P) Reg. 22 (1)

J/O Harbour Road & Fleming Road

Hong Kong

I.L. 8392

2/1180/78

H.K.C.

C.B.S. P.H.H.

10 Enquiry

24.11.78

Recommendation That the area reserved in the Conditions of Sale to all members of the public to pass and repass be NOT regarded as being “dedicated to the public for the purposes of passage” within the context of B (P) Reg. 22 (1) and therefore the claim for additional plot ratio and site coverage under this Regulation be NOT entertained.

Problem A claim has been put in for the B (P) Reg. 22 (1) concessions in respect of the “passage area” referred to in Special Condition 13 (a) of the Conditions of Sale.

Power B (P) Reg. 22 (1) and lease conditions.

20 Background/Argument

(a) An enquiry has been received from the developers’ architectural consultant as to the possibility of granting, by the Building Authority with the consent of the Government, of additional plot ratio (and possibly site coverage) under B (P) Reg. 22 (1) which should apply in a case where an area within a private lot is dedicated to the public for the purposes of passage. The architectural consultant claims that this Regulation should apply to the above site which was recently sold at a public auction and in support of his claim, the following arguments, in effect, have been advanced: —

- 30**
- (i) The “passage area of 1979 sq.m. referred to in Special Condition 13 (a) is private land and is allowed expressly under the lease conditions to count for plot ratio and site coverage calculations.
 - (ii) The area in question, being at ground level and having a clear height of over 5 m., is clearly designated as a “passage area” and, to quote, “the whole situation fits into B (P) Reg. 22 (1) ready-made”.

Item.
No. F 1
(continued)

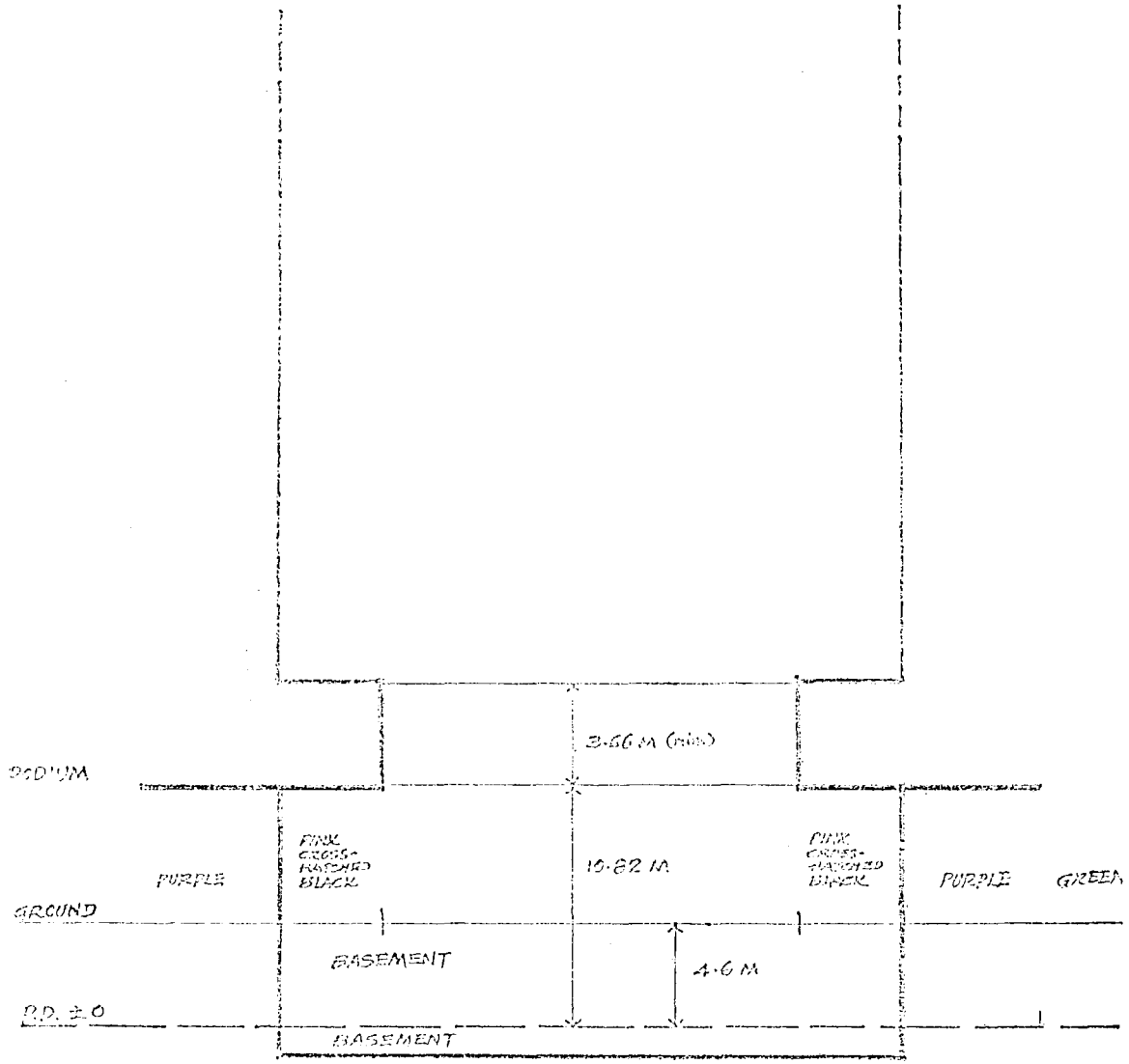
- (iii) The silence of the lease on the point at issue should be taken to mean consent. Having regard for the specificness as to allowance or prohibition in respect of a number of other matters, e.g. carparks, the enquirer opines that the general rule of interpretation should apply: "EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS" — The express mention of something is to the exclusion of other things
 - (iv) It has also been asserted that this lot should be equated to the adjacent lot I.L. 8469, Queensway where arising from the obligation under the lease to provide a bus terminus, a plot ratio of 18 has been permitted under the lease conditions. **10**
 - (v) Because of the requirement of the lease that 400 public parking spaces are to be provided and to count as gross floor area, there is no question of excessive plot ratio as the eventual plot ratio of the development, with the B (P) Reg. 22 (1) concessions added but the parking space gross floor area subtracted, would only amount to 14.68 which is less than the permissible figure of 15.
 - (vi) It has also hinted that to avoid unnecessary litigation and its undesirable consequences, the Government should not "refuse something which is allowed under the Buildings Ordinance and not prohibited under the Lease Conditions". **20**
- (b) The recommendation of this paper is based on an argument which, it is submitted, outweighs the enquirer's representations. Conference is requested to take cognizance of the margin against Special Condition 13 (a) & (b) on page 5 of the Conditions of Sale wherein the words "Right of way" are printed. It is felt that the enquirer has failed to accord due significance to these words which should have served, beyond reasonable doubt, as an indication to all bidders at the time of the public auction for the sale of this site that the "passage area" is a right of way in favour of the public. It is further submitted that in the eye of the law, the "passage area" should be construed as an area reserved to the Crown and the land owner has no right whatsoever to dedicate it. **30**

Plans Lease plan will be tabled.

DECISION Conference

Sketch Section of the proposed Building

Item.
No. G 1



MR. WIDDICOMBE'S SKETCH SECTION OF
BUILDING ON I.L. 8392 (NOT TO SCALE)

**Item.
No. H 1**

**Affidavit of Vincent Paul Probert
dated 17th October 1979.**

I, VINCENT PAUL PROBERT of Flat 38, Chater Hall, 1 Conduit Road, Hong Kong make oath and say as follows:—

1. I am employed by the Hong Kong Government as a Building Surveyor in the Buildings Ordinance Office.
2. On the 4th April 1979, Lo Yuk Siu of Y. S. Lo & Associates, Architects and Engineers, submitted to the Building Authority an application for approval of Building Plans for an office/commercial building on Inland Lot 8392. There is now produced and shown to me marked "Exhibit A" a bundle of Building Plans, Drawing Numbers 2-02 to 2-72 inclusive, which are the Building Plans submitted. **10**
3. Accompanying the said Building Plans were photographs P. 1 - P. 3 inclusive of a schematic model of the proposed building. There is now produced and shown to me marked "Exhibit B" a bundle of the said photographs numbered P. 1 - P. 3 inclusive which are the photographs submitted.
4. On the 1st June 1979 a letter was sent by the Building Authority to Lo Yuk Siu refusing the application. There is now produced and shown to me marked "Exhibit C" a copy of the said letter.
5. I am familiar with the building erected on Inland Lot 8390. I have examined the photographs annexed to the affidavit of Ma Yuk Piu and am able to say that the supports to the podium seen in those photographs abut the boundary of the Lot. **20**
6. There is now produced and shown to me marked "Exhibit D" a true copy of the Lease Conditions of Inland Lot 8390.

SWORN at C.D.O. (Central & Western) Hong Kong, this 17th day of October 1979.

before me,

DEBORAH TENG (MRS.)
Commissioner for Oaths.
C.O.D. (Central & Western)

**Building Authority's Letter
dated 1st June 1979.**

**Item.
No. H 2**

BOO 2/1180/78

Mr. LO Yuk-sui,
22nd Floor,
Chow Tai Fook Commercial Building,
121 Des Voeux Road Central,
Hong Kong.

Office of the Building Authority,
Public Works Department,
Murray Building, 8-10th floors,
Garden Road,
Hong Kong.

Tel. No. 5-2670-2356

/ June 1979

Dear Sir,

Junction of Harbour Road & Fleming Road
I.L. 8392

I refer to your application submitted on 4th April 1979 for approval of proposals.

It is the usual practice in the Buildings Ordinance Office for all submissions to be checked carefully to ensure that contraventions of the Buildings Ordinance and Regulations are not present and that from other aspects where the public interest is involved, the proposals are viable. However, the pressure of work in the Buildings Ordinance Office is such that this usual practice cannot be followed without most serious delay continuing to affect all submissions to the B.O.O. Therefore, your application has been checked on the basis of certain elementary checks only but this elementary checking has disclosed that

(Please see overleaf)

and your proposal therefore is disapproved.

This curtailment of the usual range of checks emphasizes your duties and responsibilities as Authorised Person and I must stress the importance the Building Authority attaches to the proper assumption of responsibility by Authorised Persons. It is self-evident that any alteration to a building during erection or on completion, costs money and causes delays. Where the Building Authority is of the opinion that an Authorised Person has failed in his duty appropriate action will be taken.

Please ensure, therefore, that a re-submission complies fully with the Buildings Ordinance and Regulations, and that all relevant information is attached.

VPP/vc

Yours faithfully,

V. P. PROBERT
pro Building Authority.

Item.
No. H 2
(continued)

2. (a) The canopy over the future road to the north contravenes Buildings Ordinance Section 31 (1).
- (b) The public carparking at 4th, 5th and 6th floors has not been included in your lot ratio and site coverage calculations (Building (Planning) Regulations 20, 21 and 23).
- (c) The bay windows have not been included in your calculations for site coverage (Building (Planning) Regulations 20 and 23).
- (d) Concessions in accordance with Building (Planning) Regulation 22 (1) for the "passage area" will not be granted (Building (Planning) Regulations 20 and 21). **10**
- (e) All void areas apart from those at 1st floor adjacent to the escalators and the circular ramp must be included in gross floor area calculations. Building (Planning) Regulations 20, 21 and 23. Your attention is drawn to P.N. 1974.13 to Authorised Persons and Registered Structural Engineers.
- (f) The architectural projections contravene Buildings Ordinance Section 31 (1).
- (g) The street shadow area over the 22.5 mm width of Harbour Road contravenes Building (Planning) Regulation 16. You are advised to submit Form 29 to regularise this aspect. **20**
- (h) At least one exist from the basement storeys must discharge directly to the street (Building (Planning) Regulation 41 (1) and Fire Code Para. 25 (3)).
- (i) Only one in three of the staircases may discharge through fire resisting self closing doors to an unprotected lobby, hall on shopping arcade (Building (Planning) Regulation 41 (1) and Fire Code Para. 15 (1) (b)).
- (j) The refuse hoppers must not be sited in the staircase enclosure (Building (Planning) Regulation 41 (1) and Fire Code Para. 14).
5. The Chief Engineer, Highways/Hong Kong has commented as follows:— **30**
- (a) The circular ramps to the carparks at 4-6/F., is considered too tight and an alternative is shown on the attached transparency which preserves the run-in/run-out arrangement.
- (b) The dimensions of the carparking spaces should be shown:—
- (i) parallel to circulation route: 5.05 m × 2.3 m with 1.5 m gap between pairs; and
- (ii) perpendicular to circulation route: 5.05 m × 2.45 m.

(c) The design of the junction between exit ramps for the upper floors and basement floors should be such that sufficient sight distance is provided between two approaching vehicles. **Item. No. H 2**
(continued)

(d) A ticket office should be shown to ensure that sufficient waiting space are provided for incoming vehicles; and

(e) Details of the 2 proposed footbridge should be submitted in due course.

6. The Director of Urban Services, with regard to refuse collection has commented as follows :—

10 (a) It is apparently impossible for the Refuse Container Vehicle (R.C.V.) to gain access to the refuse stores at 2nd basement level due to insufficient headroom.

(b) A more suitable refuse store could be provided at 1st basement level.

(c) Because the R.C.V. will have to go against the direction of flow of the traffic, assistance will have to be obtained from the management.

(d) It is considered that the following criteria should be adopted to permit access to the basement —

(i) headroom 3.7 m; and

(ii) floor loading of 15.5 tonnes; and

20 (e) The characteristics of the present R.C.V. are :—

height :— 3.35 m

length :— 7.92 m

width :— 2.59 m

gross weight :— 15.50 tonnes

turning circle :— 14.94 m

ground clearance :— 0.28 m

bin hoisting height :— 4.60 m

7. It is noted that curtain walling is to be used and you should submit details of :—

30 (a) cladding materials;

(b) framing;

(c) method of fixing and support; and

Item.
No. H 2
(continued)

(d) consider differential movement between the cladding and the structure. These details and supporting calculation should be submitted in due course.

8. Under Special Condition 3 (a) (ii) of the Conditions of Sale you are required to construct two footbridges, the details of which should be submitted for approval in due course.

9. With regard to Special Conditions 7, 11 (b), 12 (a) and 13 (a) of the Conditions of Sale, which require the Special Approval in writing of the Director of Public Works, these items are being dealt with as a separate item, and your attention is drawn to Buildings Ordinance Section 14 (2). 10

10. It is noted that a number of street signs and lamp posts may be affected during redevelopment of this site and you are advised to consult the Chief Engineer, Highways/Hong Kong, in this respect. Your plans are returned herewith together with the comments of the Director of Fire Services. On resubmission 6 sets of plans should be submitted.

Agreement and Conditions of Sale of Inland Lot No. 8390

Item.
No. H3

註冊總署
田土註冊處
香港政府合署西座十二樓



THE LAND OFFICE,
REGISTRAR GENERAL'S DEPARTMENT,
CENTRAL GOVERNMENT OFFICES,
(WEST WING) 11TH FLOOR,
HONG KONG.

BY RECORDED DELIVERY

覆函請註明本處檔號

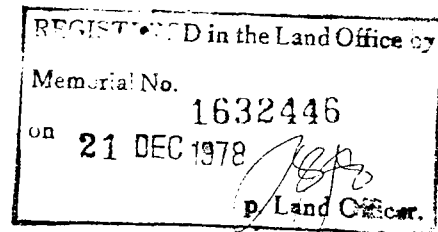
IN REPLY PLEASE QUOTE THIS REF.: L.O. 4/501/73 L/M

9 OCT 1978

來函檔號 YOUR REF.:

電話 TEL.: 5-95536

E. Ming Cheung Realty Limited,
Aik Ming Realty Limited and
Inland Holdings Limited,
c/o Messrs Kiton S. Y. Chow & Associates,
Architects and Consulting Engineers,
1001 Advance Building,
34-38 Des Voeux Road C.,
Hong Kong.



Dear sirs,

Inland Lot No. 8390 - Harbour Road

With reference to your application addressed to the Director of Public Works, I have to inform you that in consideration of your payment to Government of an additional premium amounting to \$40,000 (the receipt whereof is hereby acknowledged), Government has approved a modification of Conditions of Sale No. 10974 (hereinafter referred to as "the said Conditions"), under which the above-mentioned lot is held, so as to permit the construction of a transformer room at the basement level of the building to be erected on the lot, subject to the following conditions and to the acceptance thereof by you and your under-mentioned mortgagee in the manner stated in paragraph 2 hereof :-

- (1) With effect from the date of this letter, Special Condition No.(11) of the said Conditions shall be deleted and the following shall be substituted therefor:

"(11)(a) Upon development or redevelopment of the lot or any part thereof, any building or buildings to be erected thereon shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation.

Correspondence should be addressed to "The Land Officer", and not to individual officers.
來函請註明田土註冊處處長收

(b) Not more than two basement floors shall be provided in the building or buildings erected or to be erected on the lot. Such basement floor or floors may be constructed to extend over the areas shown coloured pink, pink cross-hatched black, purple and purple cross-hatched green on the plan annexed hereto, and will not be taken into account for the purposes of calculating the permitted plot ratio as defined in the Building (Planning) Regulations and any amending legislation. Such basement floor or floors shall not be used for any purpose other than for the purposes of parking motor vehicles or housing building service plants (including transformers) or both.

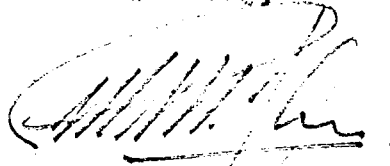
(c) Any room or space or structure to be provided within the lot for housing a transformer or transformers shall be situated at basement level only and at such position as the Director of Public Works shall approve and shall be directly accessible from the ground floor level."

- (2) Except as hereby modified, all the terms and conditions contained in the said Conditions shall remain in full force and effect.
- (3) You shall, if required by the Land Officer so to do, execute a formal Agreement incorporating all the conditions herein contained in such form as the Land Officer may require.
- (4) The condition of re-entry on the breach, non-observance or non-performance of any of the conditions contained in the said Conditions shall extend to the breach, non-observance or non-performance of any of the foregoing conditions.

Item.
No. H 3
(continued)

2. If the foregoing conditions are acceptable to you, I shall be glad if you will signify your acceptance by executing, under seal in accordance with your respective Articles of Association, the dockets on both copies of this letter, and also arrange for Banque Belge Pour L'Étranger Société Anonyme, the mortgagee under Building Mortgage Memorial No. 1505833, to signify its acceptance by executing, under seal in accordance with its Articles of Association, the last docket provided hereon. After execution, please return to me both copies of this letter together with certified true copies of the resolutions of your Boards of Directors whereby authority is given to the affixing of your Common Seals to this letter, whereupon the modification will be recorded by an appropriate endorsement on the copy of the said Conditions retained in this office and this letter will be registered by memorial. On completion the original of this letter will be returned to you for retention. You may attach it for record purpose to the other land documents in your possession.

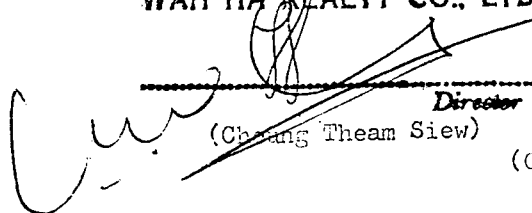
Yours faithfully,



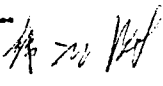
(Noel M. Gleeson)
Assistant Registrar General.

Item.
No. H 3
(continued)

We hereby agree to and accept the foregoing conditions.
WAH HA REALTY CO., LTD.



Director
(Cheung Theam Siew)



Director
(Cheung Kung Hai)

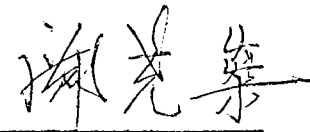
Witness: (Wong Kam Kwan)

(Signature and name
in block letters.)

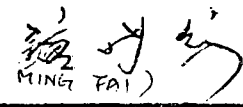
(Seal of M. King Cheung Realty
Limited and signatures and
names in block letters of its
attesting officers and
description of their offices.)

Address: c/o 97 New Henry House
10 Ice House St., Hong Kong.

Occupation: Secretary



Witness (Signature and name
in block letters.)
(KONG YAO SUN)



(CHUNG MING FAI)
(DIRECTOR) Seal of Aik Ming Realty Limited
and signatures and names in
block letters of its attesting
officers and description of
their offices.)

Address: 2401-G Melbourne Plaza,
33. Queen's Road Central, H.K.

Occupation: SECRETARY

Item.
No. H 3
(continued)

Witness:

Keith Hon Keung Lam
(Signature and name
in block letters.)

Seal of Inland Holdings Limited
and signatures and names in
block letters of its attesting
officers and description of
their offices.)

Director
C. M. Chung

Address: Yip Fung Building
Room 701-8
D'Aguilar Street,
Hong Kong

Occupation: Managing Clerk to
Messrs. M. K. Lam & Co.,
Solicitors, Hong Kong

I hereby verify the signature of Keith Hon Keung Lam

SIU LOON WONG
Solicitor
HONG KONG

By two of its lawful attorneys.

LAI MAN YIU
c/o Banque Belge pour
l'Etranger S.A.,
HONG KONG.

RUTH CHOW LEE R.A. CANTERS
(Mrs)

Witness:

Lai Man Yiu
(Signature and name
in block letters.)

Seal of Banque Belge Pour
L'Etranger Societe Anonyme
and signatures and names in
block letters of its attesting
officers and description of
their offices.)

Address: C/O Banque Belge Pour
L'Etranger S. A.
Hong Kong
Edinburgh House
Hong Kong

Occupation: Banker

Land Office

Copy

Item.
No. H 3
(continued)

Particulars and Conditions of Sale by Public Auction to be held on the 30th day of November, 1976 at 2.30 p.m. in the Theatre of the City Hall, Hong Kong, by Order of His Excellency the Governor of one Lot of Crown land between Gloucester Road and Harbour Road in Hong Kong for a term of 75 years commencing from the date of this Agreement at the rent specified in the Particulars of the Lot and with the option of renewal for a further term of 75 years at a Crown rent to be fixed by the Director of Public Works as the fair and reasonable rental value of the land at the date of such renewal.

PARTICULARS OF THE LOT

No. of Sale	Registry No.	Location	Site	Area in square metres	Crown Rent
1	Inland Lot No. 8390	Between Gloucester Road and Harbour Road, Hong Kong	As delineated and shown coloured purple, purple cross-hatched green, pink and pink cross-hatched black on the plan annexed hereto	4 340.4	\$ 1,000 per annum

General and Special Conditions complied with with Copy of D.C.S. Memo 9 25-6-77 attached herewith.

GENERAL CONDITIONS

1. Subject to General Condition No. 3, the highest bidder shall be the purchaser, and if any dispute arises between two or more bidders the lot shall be put up again at a former bidding.

2. The auctioneer shall regulate the bidding.

3. The lot is offered for sale subject to a reserve price and to the rights of Her Majesty the Queen to bid by any officer or other person or by the auctioneer and to withdraw every or any lot before it is sold.

4. (a) Immediately after the fall of the hammer, the purchaser of the lot shall sign the Memorandum of Agreement hereinafter contained for completing the purchase according to these Conditions and the Special Conditions attached and shall pay to the auctioneer in cash or by cheque which shall be certified by the bank on which it is drawn which shall be a bank duly licensed by the Governor-in-Council under Section 5 of the Banking Ordinance the sum of \$1,000,000 as a deposit and in part payment of the premium at which the lot shall have been purchased (hereinafter referred to as "the said premium") and shall, within one calendar month of the day of sale, (subject to the provisions of General Condition No. 4(b)), pay to the Government of Hong Kong the balance of the said premium. The purchaser shall also sign the sale plan.

(b) (i) The purchaser shall be entitled to elect immediately after the fall of the hammer to pay the said premium by 10 equal annual instalments together with interest at the rate of 10% per annum on the balance from time to time outstanding, it being agreed that the amount of each of the said 10 equal annual instalments (including interest) will be calculated by applying a factor of 0.14795036 to the said premium.

(ii) In the event of the purchaser so electing, he shall pay to the Government of Hong Kong within five days of the date of sale the first of the said 10 equal annual instalments less the deposit paid under General Condition 4(a) hereof. The second of the said annual instalments shall be paid by the purchaser to the Government of Hong Kong on the 30th day of November 1977 and the remaining eight such instalments shall be paid on the 30th day of November in each succeeding year up to and including the 30th day of November 1985. The purchaser shall be entitled at any time, after giving and on the expiry of reasonable notice to the Director of Accounting Services of his intention so to do, to pay off in one lump sum the whole of the outstanding balance of the said premium together with interest accrued thereon at the said rate to the date of payment.

5. If the purchaser shall, on the fall of the hammer, fail to make the required payment to account of the said premium, as provided in General Condition No. 4(a) hereof, Her Majesty may enforce the sale or the auctioneer may declare the sale void and re-expose the lot for sale, but

The balance of the 1st of 10 equal annual instalments of premium amounting to \$14,754,043.20 paid on 4.12.76

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*Final paid
17-3-78*

without prejudice to recourse against the defaulting purchaser should the lot on re-sale not realize the amount of such defaulting purchaser's highest bid. If the purchaser shall fail to pay the balance of the said premium as provided in General Condition No. 4(a), or if having elected to pay the said premium by annual instalments, he shall fail to pay the balance of the first annual instalment as provided in General Condition No. 4(b), Her Majesty may either enforce or cancel the sale. On cancellation the said payment to account of the said premium by the defaulting purchaser shall be wholly forfeited to Her Majesty, and Her Majesty shall be at liberty to resell the lot at such time and place and in such manner as to Her Majesty shall seem fit, and all expenses attending a resale or attempted resale and any deficiency which may result on a resale shall be made good and paid by the defaulting purchaser and be recoverable by Her Majesty as liquidated damages. Any increase of price on a resale shall belong to Her Majesty.

**Item.
No. H 3
(continued)**

6. The person who signs the Agreement as purchaser shall be deemed to be the principal unless at the time of signing the same he shall disclose the fact that he is acting as an agent only, in which case he shall at the same time disclose the name of his principal and insert the same in this Agreement. Where the purchaser signs as agent or attorney the Agreement shall within seven days of the sale be confirmed by the formal signature or execution thereof by the principal to the satisfaction of the Land Officer unless such agent or attorney shall show to the satisfaction of the Land Officer that he is legally authorized to act as agent or attorney for the principal. The purchaser shall not be given possession of the lot until the foregoing requirements have been fulfilled.

7. The purchaser shall apply to the Director of Public Works for the lot to be set out on the ground and shall not commence any operations for building thereon until it shall have been so set out by the Director of Public Works. If the purchaser erects any building otherwise than in due accord with such setting out he shall, when called upon by the Director of Public Works so to do, demolish such building and shall rebuild as directed by him. If the purchaser fails to demolish any building as aforesaid it shall be lawful for the Director of Public Works to have such building demolished and the purchaser shall pay on demand the amount certified by the said Director to be the cost of such demolition.

8. The purchaser of the lot shall throughout the tenancy maintain all buildings erected or which may at any time hereafter be erected on the lot in good and substantial repair and condition, and in such repair and condition deliver up the same at the expiration or sooner determination of the tenancy. In the event of the demolition at any time during the tenancy of any building then standing on the lot or any part thereof the purchaser shall replace the same either by sound and substantial buildings of the same type and of no less volume or by buildings of such type and value as shall be approved by the Director of Public Works. In the event of demolition as aforesaid the purchaser shall within one month of such demolition apply to the Director of Public Works for consent to carry out building works for the redevelopment of the lot and upon receiving such consent shall within three months thereof commence the necessary work of redevelopment and shall complete the same to the satisfaction of and within such time limit as is laid down by the Director of Public Works.

9. (a) The boundaries of the lot shall be determined by the Director of Public Works (whose decision shall be final) before the issue of the Crown lease. In the event of any excess or deficiency in area being found to exist as compared with the area specified in the Particulars of the Lot the amount to be paid by or to be refunded to the purchaser in respect of such excess or deficiency will be calculated at the rate per square metre at which the lot is sold.

(b) The purchaser shall permit boundary stones properly cut and marked with the number of the lot to be fixed at each angle thereof and either in or on the land itself or in or on any building erected thereon as may be required by the Director of Public Works and shall pay the fees prescribed by him therefor as well as the prescribed fee for the refixing of such boundary stones which, through being lost, damaged or removed, need replacing.

10. Any private streets, roads and lanes which are required to be formed shall be sited to the satisfaction of the Director of Public Works and included in or excluded from the area to be leased as may be determined by him and in either case shall be handed over to the Government free of cost if so required. Where taken over by the Government the surfacing, kerbing, drainage (both foul and storm-water sewers) and channelling shall be carried out by the Government at the cost of the purchaser and thereafter maintained at public expense but where remaining part of the area leased or to be leased, such streets, roads or lanes shall be surfaced, kerbed, drained, channelled and maintained by and at the expense of the purchaser to the satisfaction in all respects of the Director of Public Works.

Item.
No. H 3
(continued)

11. The fulfilment by the purchaser of his obligations under these General and Special Conditions shall be a condition precedent to the grant or continuance of the tenancy and in the event of any default by the purchaser in complying therewith such default shall be deemed to be a continuing breach and the subsequent acceptance by or on behalf of the Crown of any Crown rent or rates or other payment whatsoever shall not (except where the Crown has notice of such breach and has expressly acquiesced therein) be deemed to constitute any waiver or relinquishment or otherwise prejudice the enforcement of the Crown's right of re-entry for or on account of such default or any other rights, remedies or claims of the Crown in respect thereof under these Conditions which shall continue in force and shall apply also in respect of default by the purchaser in the fulfilment of his obligations under the General and Special Conditions within any extended or substituted period as if it had been the period originally provided.

12. (a) Upon any failure or neglect by the purchaser to observe or comply with any of the conditions of this Agreement the Crown shall be entitled to re-enter and take back possession of the lot and all buildings, erections and works thereon and thereupon this Agreement and the rights of the purchaser hereunder shall absolutely cease and determine but without prejudice nevertheless to the rights, remedies and claims of the Crown in respect of any breach, non-observance or non-performance of the terms and conditions hereof.

(b) In the event of re-entry by the Crown for or in respect of or arising out of the breach, non-observance or non-performance by the purchaser of the provisions of the General and Special Conditions, the purchaser shall not be entitled to any refund of the said premium paid by him or any part thereof or to any payment or compensation whatsoever whether in respect of the value of the land or any buildings thereon or any amount expended by the purchaser in the preparation, formation or development of the lot or otherwise.

13. (a) When the conditions herein contained have been complied with to the satisfaction of the Director of Public Works and the Land Officer, the purchaser shall subject to approval of his title by the Land Officer be entitled to a lease of the lot as described in the Particulars of the lot for the term stated in the preamble to these Conditions and containing the option of renewal therein specified.

(b) The purchaser shall take up the Crown lease for the lot when called upon to do so by the Land Officer and shall pay the prescribed fees therefore and an endorsement by the Land Officer on these Conditions or on the Land Office Registers that plans of the lot or any Specified part thereof are in the Land Office and that the Crown lease thereof must be taken up before any further dealings with the lot or such specified part can be registered, shall have effect accordingly. In the event of more than one building being erected on the lot the purchaser may be required to take up a separate lease for the site of each separate building and shall pay the prescribed fees for every additional lease so required to be taken up.

(c) Pending the issue of the Crown lease the tenancy of the lot shall be deemed to be upon and subject to and such Crown lease when issued shall be subject to and contain all exceptions, reservations, covenants, clauses and conditions as are now inserted in the Crown leases of similar lots in Hong Kong as varied, modified or extended by the General and Special Conditions.

14. The expression "purchaser" shall in these General and Special Conditions include the person entering into and executing this Agreement and where the context so admits or requires his executors, administrators and assigns and in the case of a corporation its successors and assigns, and the expression "lot", except where the context otherwise refers, means the lot stated in the Particulars of the lot hereof. Where the context so admits or requires, words importing the masculine gender shall be deemed to include females and corporations, and words in the singular shall be deemed to include the plural.

15. The foregoing General Conditions shall be read and construed as varied or modified by the Special Conditions hereinafter contained and the expression "these Conditions" whenever used shall mean and include the General and Special Conditions.

Explanatory Note

This note does not form part of the Conditions of Sale but is purely for guidance of prospective purchasers as to the implication of Special Condition No. (11)(a).

It is confirmed that if the lot is used either wholly or in part for the purpose of a hotel the Building Authority will not be prepared to permit modification of the Building (Planning) Regulations.

SPECIAL CONDITIONS

Item.
No. H 3
(continued)

(1) Subject to payment of the said premium as provided in General Condition No. 4(a) hereof or the first annual instalments thereof as provided in General Condition No. 4(b) hereof, and subject to the provisions of General Condition No. 6, hereof, possession of the lot shall be deemed to have been given to the purchaser on the date of this Agreement.

(2) Crown rent for the lot shall commence from the date of this Agreement, shall be as specified in the Particulars of the Lot hereto and shall be payable by equal half yearly payments on the 24th day of June and the 25th day of December each year the first half yearly rent or a due proportion thereof being payable on the next half yearly date following the date of this Agreement.

(3) (a) The purchaser shall, within 36 months from the date of this Agreement at his own expense and in all respects to the satisfaction of the Director of Public Works carry out and complete the necessary works more particularly specified in Special Condition No. (14) hereof on or within the areas delineated and shown coloured green and yellow on the plan annexed hereto. In the event of the non-fulfilment of the purchaser's obligations under this Special Condition or under Special Condition No. (14) hereof within the prescribed period aforesaid, the Government may carry out the necessary works at the cost of the purchaser who shall pay to the Government on demand a sum equal to the cost thereof, such sum to be determined by the said Director whose determination shall be final and shall be binding upon the purchaser.

(b) For the purpose only of carrying out the necessary works specified in Special Condition No. (14) hereof only, the purchaser shall, on the date of this Agreement, be granted possession of the areas shown coloured green and yellow on the plan annexed hereto. Possession of the said areas shall be re-delivered on demand and in any event shall be deemed to have been re-delivered to the Government by the purchaser on the date of a letter from the Director of Public Works indicating either that all necessary works specified in Special Condition No. (14) hereof have been completed or that the General and Special Conditions herein contained have been complied with to his satisfaction. The purchaser shall at all reasonable times while he is in possession of the areas shown coloured green and yellow on the said plan allow free access over and along the said areas for all Government and public vehicular and pedestrian traffic.

(4) The purchaser shall not without the prior written consent of the Director of Public Works use the areas shown coloured green and yellow on the plan annexed hereto for the purpose of storage or for the erection of any temporary structure.

(5) The purchaser shall not cut away, remove or set back any land adjoining the lot except with the prior written consent of the Director of Public Works.

(6) In the event of spoil or debris from the lot or from other areas affected by any development of the lot being eroded and washed down on to public lanes or roads or into road-culverts, sewers, storm-water drains, nullahs or other Government properties, the purchaser shall be held responsible and shall pay to the Government on demand the cost of removal of the spoil and debris from or of damage to the public lanes or roads or road-culverts, sewers, storm-water drains, nullahs or other Government properties. The purchaser shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion and washing down.

(7) No earth, debris, spoil of whatsoever nature, or building materials shall be dumped on any adjoining Crown land.

(8) The purchaser shall take or cause to be taken all proper and adequate care, skill and precautions at all times and particularly during any construction, maintenance, renewal or repair work to avoid doing any damage to any Government or other existing drain, waterway or water-course (including water main), footpath, sewer, nullah, pipe, cable, wire, utility service or any other works or installations (all together hereinafter referred to as "the said works and services") being or running upon, over, under or adjacent to the lot or any part thereof, provided that the purchaser before carrying out any such work as aforesaid shall make or cause to be made such proper search and enquiry as may be necessary to ascertain the present position and levels of any of the said works and services, and shall submit his proposals for dealing with any of such said works and services in writing to the Director of Public Works for his approval in all respects,

For modification,
see Modification Letter dated 9.10.75
(Mem. No. 1632446) attached.

[Signature]
6.2.79
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and shall not carry out any work whatsoever until the said Director shall have given his written approval to the works and to such proposals aforesaid, and shall comply with any requirement of the said Director in respect of the said works and services, and shall bear the cost of meeting such requirements including the cost of any necessary diversion, relaying or reinstatement, and shall at his own expense in all respects repair, make good and reinstate to the satisfaction of the said Director any damage or disturbance caused to the surface of the lot or any of the said works and services running on, over, under or adjacent to the lot in any manner arising out of any such construction, maintenance, renewal or repair work. If the purchaser fails to carry out any such necessary diversion, relaying, repairing, making good and reinstatement of the lot or any part thereof or of any of the said works and services to the satisfaction of the said Director he the said Director may carry out any such diversion, relaying, reinstatement or making good as he considers necessary and the purchaser shall pay to the Government on demand the cost of such works.

**Item.
No. H 3**
(continued)

(9) The purchaser shall develop that portion of the lot shown coloured pink and pink cross-hatched black on the plan annexed hereto by the erection thereon of a building or buildings complying with these Conditions and in all respects in accordance with the provisions of all Ordinances, By-laws and Regulations relating to building and sanitation which are or may at any time be in force in Hong Kong, such building or buildings to be completed and fit for occupation on or before the 31st day of December, 1981 and shall expend thereon a sum of not less than \$27,250,000 (such sum to exclude moneys spent on site formation, foundations, access roads and other ancillary works).

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(10) The design and disposition of the building to be erected on the lot shall be subject to the approval in writing of the Director of Public Works.

(11) (a) Upon development or redevelopment of the lot or any part thereof, any building or buildings to be erected thereon shall in all respects comply with the Buildings Ordinance, any regulations made thereunder and any amending legislation.

(b) Not more than two basement floors shall be provided in the building or buildings erected or to be erected on the lot. Such basement floor or floors may be constructed to extend over the areas shown coloured pink, pink cross-hatched black, purple and purple cross-hatched green on the plan annexed hereto, and will not be taken into account for the purposes of calculating the permitted plot ratio as defined in the Building (Planning) Regulations and any amending legislation. Such basement floor or floors shall not be used for any purpose other than for the purposes of parking motor vehicles or housing building service plants (except transformers) or both.

(c) Any room or space or structure to be provided within the lot for housing a transformer or transformers shall be situated at ground level only with access direct from the open air and such position as the Director of Public Works shall approve.

(12) The purchaser shall at his own expense and to the satisfaction of the Director of Public Works erect over the areas shown coloured pink cross-hatched black, purple and purple cross-hatched green on the plan annexed hereto at a level of 10.82 metres above the Hong Kong Principal Datum a podium (hereinafter referred to as "the said podium") of such design and standards as the said Director shall approve including the provision and construction of any supports, access steps and stairways which the said Director in his sole discretion may require. The construction of the said podium together with such necessary supports, access steps and stairways and the footbridges referred to in Special Condition No. (14) hereof shall be carried out in such sequence and in such manner as shall be approved in writing by the said Director.

(13) (a) No building or buildings or part or parts thereof, other than supports for a building or buildings, shall be erected on or over the area shown coloured pink cross-hatched black on the plan annexed hereto at the deck level of the said podium. The design and disposition of such supports shall be subject to the special approval in writing of the Director of Public Works.

(b) Building or buildings or part or parts thereof may be erected over the said area shown coloured pink cross-hatched black on the said plan provided that there is a clear height extending upwards from the deck level of the said podium to a height of not less than 3.66 metres.

(14) (a) The purchaser shall at his own expense and to the satisfaction of the Director of Public Works—

For modification
ple Modification
letter dated
11.6.79 (Mem.
No. 1718376)
attached.

Item.
No. H 3
(continued)

4/7/79

- (i) lay, form, provide, construct and surface in such manner, with such materials and to such standards, alignment, levels and design as the said Director shall approve including the provision and construction of any drains, sewers, culverts, viaducts, pavements or such other structures as the said Director in his sole discretion may require so that building, vehicular and pedestrian traffic may be carried thereon the portion of future public road shown coloured green on the plan annexed hereto, and
- * (ii) construct in such manner, with such materials and to such standards, alignment, levels and design as the said Director shall approve on and over the areas shown coloured yellow such walkways and footbridges together with such access steps, stairways, rails and such other structures as the said Director may require so that pedestrian traffic may be carried thereon and thereover.

The purchaser shall thereafter maintain at his own expense the said areas shown coloured green and yellow and the structures referred to in (i) and (ii) above in good condition and to the satisfaction of the said Director until the lot has been developed in accordance with these Conditions. In the event of the non-fulfilment of the purchaser's obligations under this Special Condition, the Government may carry out any of the necessary works at the cost of the purchaser who shall pay to the Government on demand a sum equal to the cost thereof, such sum to be determined by the said Director whose determination shall be final and shall be binding upon the purchaser.

(b) The column supports for the walk ways and footbridges referred to in Special Condition No. (14)(a)(ii) hereof shall be sited in such positions as the said Director shall require and approve.

(15) (a) (i) No structure or support for any structure shall be erected at or within 5.041 metres above ground level on or over the areas shown coloured purple cross-hatched green on the plan annexed hereto.

(ii) Subject to (i) above no building or structure, other than the said podium and such structures including screening walls, fountains, flower-beds and seats as may be approved in writing by the Director of Public Works, shall be erected at or above ground level within the areas shown coloured purple and purple cross-hatched green on the plan annexed hereto (hereinafter referred to as "the said passage area").

(b) the purchaser shall permit all members of the public at all times and for all lawful purposes freely and without payment of any nature whatsoever to pass and repass—

- (i) on foot over and along the said podium and
- (ii) on foot or in motor vehicles over and along the said passage area at ground level

in the same manner as if the said podium and the said passage area were part or parts of a public street, provided that ingress or egress to or from the said passage area for the passage of motor vehicles shall only be obtained between the points X and Z through Y shown and marked on the plan annexed hereto.

(c) The purchaser shall at his own expense maintain the said passage area and the said podium in good order and repair to the satisfaction of Director of Public Works and shall not carry out any works which may affect the said podium or the surface of the said passage area except with the prior written consent of the said Director.

(d) The purchaser shall not place or allow or suffer to be placed on or within the said passage area or the said podium any merchandise or goods or stalls or carts or any other article of any nature whatsoever and in the event of any such merchandise or goods or carts or any other articles being placed on or within the said passage area or the said podium then and without prejudice to any other rights which the Government may have under these Conditions it shall be lawful for the Government by the said Director or other persons deputed to act on his behalf to make arrangements for the immediate removal of such merchandise or goods or stalls or carts or other articles from the said passage area or the said podium to such other place and by such means as to the Government or the said Director or such other persons shall seem appropriate and the purchaser shall on demand pay to the Government the cost as certified by the said Director of removing any merchandise goods stalls carts or other articles in manner aforesaid.

(16) No part of any structure to be erected on the lot shall exceed a height of 182.88 metres above the Hong Kong Principal Datum.

(17) The lot or any part thereof or any building or buildings or part of such building or buildings erected or to be erected thereon shall not be used for any purpose other than non-industrial purposes.

Item.
No. H 3
(continued)

(18) Space for the parking, loading and unloading of service vehicles and facilities for the removal of garbage shall be provided within the lot below ground level to the satisfaction of the Director of Public Works. Such space and facilities shall not be provided at or above ground level.

(19) In addition to the requirement of Special Condition No. (18) hereof but not in substitution therefor—

(a) In the event of the lot being used for non-industrial purposes but excluding hotel purposes, space shall be provided within the lot below ground level to the satisfaction of the Director of Public Works for the parking, loading and unloading of not less than 4 goods vehicles and the space so provided shall not be used for any other purpose. The space so provided shall be laid out in such manner that on entering or leaving the lot no reversing movement of vehicles from or onto the proposed road fronting the eastern boundary of the lot will be necessary.

(b) In the event of the lot being used (a) wholly for hotel purposes or (b) for non-industrial purposes including hotel purposes, the following conditions instead of Special Condition No. (19)(a) hereof shall apply:—

(i) Space shall be provided within the lot and below ground level only to the satisfaction of the Director of Public Works for the simultaneous parking of not less than 5 taxis, 5 hire cars and 3 tour buses, and for the simultaneous parking, loading and unloading of not less than 2 goods vehicles; Provided that picking up and setting down of passengers only will be permitted at ground level if a loading bay measuring not less than 3.05 metres in depth and 24.38 metres in length is provided within the lot at ground level for such purposes. The space and any loading bay so provided shall not be used for any other purpose.

(ii) The space and any loading bay so provided shall be laid out in such manner that on entering or leaving the lot no reversing movement of vehicles from or onto the proposed road fronting the eastern boundary of the lot will be necessary.

(iii) The disposition and layout of the hotel reception area and the access roads, arcades, passageways, escalators, lift entrances serving the hotel and linking to the public roads, footways, the said passage area and the said podium shall be subject to the approval in writing of the Director of Public Works.

(20) Space for the parking of private motor vehicles may be provided within the lot below ground level to the satisfaction of the Director of Public Works. Such space (if provided) shall not be used for any purpose other than for the parking of private vehicles belonging to the occupiers of the building erected on the lot. Space for the parking of private motor vehicles shall not be provided at or above ground level.

(21) A lay-out plan indicating the parking, loading and unloading spaces to be provided within the lot in accordance with Special Conditions Nos. (18), (19) and (20) (if provided) hereof and approved by the Building Authority, or a copy of such plan certified by an authorized person as defined in the Buildings Ordinance, shall be registered by the purchaser by memorial in the Land Office. No transaction affecting the lot or any part thereof or any building or part of any building erected or to be erected thereon shall be entered into prior to such registration. The parking, loading and unloading spaces indicated on the said approved plan shall not be used for any purpose other than the respective purposes set out in Special Conditions Nos. (18), (19) and (20) hereof. The purchaser shall maintain the parking, loading and unloading spaces in accordance with the said approved plan and shall not alter the layout except with the prior written consent of the Director of Public Works.

(22) The purchaser shall have no right of ingress or egress to or from the lot except between the points marked X and Z through Y on the plan annexed hereto for the passage of motor vehicles.

Item.
No. H 3
(continued)

(23) (a) The purchaser shall not except with the prior consent of the Land Officer and in conformity with any conditions imposed by him (including the payment of such fee as may be required by him)—

- (i) assign, underlet or part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein, or enter into any agreement so to do, or
- (ii) mortgage or charge the lot or any part thereof or any interest therein except for the purpose of the development thereof and then only by way of a building mortgage in such form and containing such provisions as the Land Officer shall approve or require,

unless and until he has in all respects observed and complied with these General and Special Conditions to the satisfaction of the Director of Public Works and the Land Officer and then only subject to the provisions of Special Conditions Nos. (24) and (25). Every assignment, mortgage, charge, underletting or other alienation of the lot or any part thereof or any interest therein shall be registered at the Land Office.

(b) Notwithstanding the provisions of any other condition, in the event of the purchaser having elected to pay the said premium by instalments he shall not—

- (i) assign (other than by way of a building mortgage approved under Special Condition No. (23)(a)(ii) hereof) the lot or any part thereof or any interest therein, or enter into any agreement so to do, or
- (ii) except with the prior consent of the Land Officer and in conformity with any conditions imposed by him (including the payment of such fee as may be required by him), underlet, part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein for a term exceeding 5 years (including any renewal thereof) or enter into any agreement so to do—

until the whole amount of the said premium has been paid. The purchaser may, at any time hereafter, pay the balance of the said premium then outstanding in accordance with the provision of General Condition No. 4(b)(ii) hereof.

* for modification *
see Modification
letter dated
15.6.1979
(Mem. No.
1718376)
attached

(24) (a) The purchaser shall not partition the lot, nor assign, mortgage, charge, demise, underlet, part with the possession of or otherwise dispose of the lot except as a whole without having obtained the prior written consent of the Director of Public Works PROVIDED THAT nothing in this Special Condition contained shall prevent the assignment, mortgage, charge or underletting of undivided shares in the whole of the lot together with the right to the exclusive use and occupation of individual floors or units of and in any building or buildings erected thereon.

(b) The purchaser shall not assign or otherwise dispose of any undivided shares in the lot together with the right to the exclusive use and occupation of individual floors or units of and in the building or buildings erected thereon unless he shall have first prepared and received the approval in writing of the Land Officer for a Deed of Mutual Covenant and a Management Agreement to be entered into between the purchaser and assignees from him of such undivided shares. The said Deed of Mutual Covenant and Management Agreement shall be in such form and shall contain such provisions as the Land Officer shall approve or require and shall be registered by memorial at the Land Office.

(c) For the purpose only of this Special Condition No. (24)(b) the word "purchaser" shall exclude the purchaser's assigns other than an assignee of the lot as a whole.]

* [(25) (a) The purchaser, to the intent that this obligation shall be binding upon him personally during the whole of the term of the lease hereby agreed to be granted as well as on his successors and assigns of those undivided shares in the whole of the lot which the purchaser is permitted under these Conditions to assign or otherwise dispose of shall at his own proper costs and charges including such costs and charges recoverable under the said Deed of Mutual Covenant throughout the term of the said lease, and notwithstanding that he has assigned, mortgaged, underlet, parted with the possession of or otherwise disposed of the lot or some interest therein, well and sufficiently manage, repair, uphold, support, maintain, pave, purge, scour, cleanse, empty amend and keep the lot and all buildings and structures erected or to be erected thereon and all walls, banks, cuttings, hedges, ditches, rails, lights, pavements, privies, sinks, drains, channels, water-courses, roads, paths, gardens, lawns and recreational and other facilities thereunto belonging and which

shall in any-wise belong or appertain to the lot in, by and with all and all manner of needful and necessary reparations, cleansings and amendments whatsoever the whole to be done to the satisfaction of the Director of Public Works.

**Item.
No. H 3
(continued)**

(b) Any breach of or failure to observe Special Condition No. (25)(a) shall, notwithstanding that such breach of failure is in respect of some part of the lot or some building or part of some building thereon to which the purchaser does not have the right to the exclusive use and occupation, be deemed to be a breach of or failure to observe or comply with a covenant, condition or stipulation in a Crown lease or tenancy in respect of the purchaser's relevant interest in the lot (as well as in respect of the premises and relevant interest to which such breach or failure in fact relates) for the purposes of section 7 of the Crown Rights (Re-entry and Vesting Remedies) Ordinance so as to enable such relevant interest to be vested, in the event of any such breach or failure occurring, in The Colonial Treasurer Incorporated. The words "relevant interest" shall mean a relevant interest as defined in section 2 of the said Ordinance.

(c) For the purpose only of this Special Condition No. (25), the word "purchaser" shall exclude the purchaser's assigns other than an assignee of the lot as a whole.]

(26) The purchaser shall pay to the Government on demand any sum which the Director of Public Works shall certify to be the cost of making good any damage done to adjoining public roads by the purchaser, his contractors or sub-contractors or his or their workmen or vehicles or by any spoil from the lot.

(27) No materials shall be dumped or stored, nor shall any work be carried out within the boundaries of a public road or way without the prior written consent of the Director of Public Works.

(28) The purchaser shall construct and maintain at his own expense and to the satisfaction of the Director of Public Works such drains and channels, whether within the boundaries of the lot or on Crown land, as the said Director may consider necessary to intercept and convey into the nearest stream-course, catch-pit, channel, storm-water drain or sea all storm-water or rain-water falling or flowing on to the lot, and the purchaser shall be solely liable for and shall indemnify the Government and its officers from and against all actions, claims and demands arising out of any damage or nuisance caused by such storm-water or rain-water.

(29) Any damage or obstruction caused by the purchaser, his servants or agents to any nullah, sewer, storm-water drain, watermain or other Government properties within or adjoining the lot shall be made good by the Government at the cost of the purchaser, and the amount due in respect thereof shall be paid on demand to the Government by the purchaser.

(30) The purchaser shall pay to the Government on demand the cost of connecting any drains and sewers from the lot to the Government storm-water drains and sewers when laid. Such works shall be carried out by the Director of Public Works, who shall incur no liability to the purchaser in respect thereof.

(31) Any foundations to be constructed near or adjoining any sewer, storm-water drain or nullah within or adjoining the lot shall comply with the requirements of the Director of Public Works.

(32) The purchaser shall not permit sewage or refuse water to flow from the lot on to any adjoining land or allow any decaying, noisome, noxious, excrementitious, or other refuse matter to be deposited on any portion of the lot and shall see that all such matter is removed from the lot or any building erected thereon in a proper manner.

(33) A filtered water supply from Government mains will be given on the usual terms and subject to the provisions of the Waterworks Ordinance, or any enactment amending or replacing the same, but no guarantee is given that any water that is supplied will be continuously available.

(34) A salt water supply from Government mains will be given for flushing purposes, and the purchaser will be required to accept this supply and to install plumbing capable of withstanding the corrosive effect of salt water. If a salt water supply is not available when required, a temporary mains water supply will be provided for flushing purposes. The temporary fresh water if required, and the ultimate salt water supply, will be given on the usual terms and subject to the provisions of the Waterworks Ordinance, or any enactment amending or replacing it.

Item.
No. H 3
(continued)

(35) Except with the prior written consent of the Water Authority, no fresh or salt water from Government mains shall be used for any air-conditioning purpose.

(36) For the purpose only of Special Conditions Nos. (11)(c), (16), (18), (19) and (20) hereinbefore contained, "ground level" shall be determined, in his absolute discretion, by the Director of Public Works whose determination shall be final and shall be binding upon the purchaser.

(37) (a) & (b) - For additional conditions, see
Modification Letter dated 15.6.79
(Mem. No. 1718376) attached.


4/7/79

MEMORANDUM OF AGREEMENT

**Item.
No. H 3
(continued)**

Between E. HING CHEUNG REALTY LIMITED of Room 97 New Henry House Hong Kong,
AIK MING REALTY LIMITED of 2401-6 Melbourne Plaza Hong Kong and
INLAND HOLDINGS LIMITED of King Ling Bank Bldg., 7th floor Hong Kong
(Tenants in Common in Equal Shares)
(herein referred to as "the purchaser") of the one part and His Excellency the Governor of the

other part Whereby It is Agreed that the purchaser having been declared the highest bidder for the lot described in the foregoing Particulars of Sale at the premium herein specified and having paid the required deposit specified in General Condition No. 4(a) (the receipt of which is hereby acknowledged) hereby agrees to pay the balance of the said premium in accordance with General Condition No. 4(a)(b) in annual instalments and to become the Lessee of the said lot upon and subject to the foregoing Conditions and on his part to perform and abide by the said Conditions.

No. of Sale	Registry Number	Crown Rent	Amount of Premium at which Purchased	Signature of Purchaser
1	Inland Lot No. 8390	\$ 1,000 per annum	\$ 120,000,000 <i>KK.</i>	For and on behalf of E. HING CHEUNG REALTY LIMITED <i>[Signature]</i> AIK MING REALTY LIMITED <i>[Signature]</i> INLAND HOLDINGS LIMITED <i>[Signature]</i>

NOTE: In the event of signature by an agent or attorney of the purchaser General Condition No. 6 must be observed.
Confirmed on 15th December 1976.

Dated this 30th day of November, 1976.

Witness to the signature of purchaser: *[Signature]* (Cheung Kung Hai) Director
[Signature] (Wong Kam Kwan) Secretary
[Signature] (Chung Ming Fai) Director

[Signature]
Brenda C. W. TSANG (Miss)
Assistant Registrar,
Registrar General's Department.

Witness
[Signature]
Brenda C. W. TSANG (Miss)
Assistant Registrar,
Registrar General's Department

[Signature]
(Chung Ching Man)
Director

Witness to the signature of
Principal Government Land Agent:
[Signature]
.....
Civil Servant,
Public Works Department.

For and on behalf of the Governor,
[Signature]
D. H. A Moore
Principal Government Land Agent.

Item.
No. H 3
(continued)

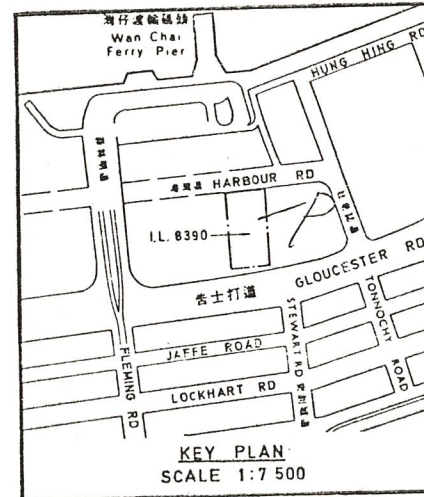
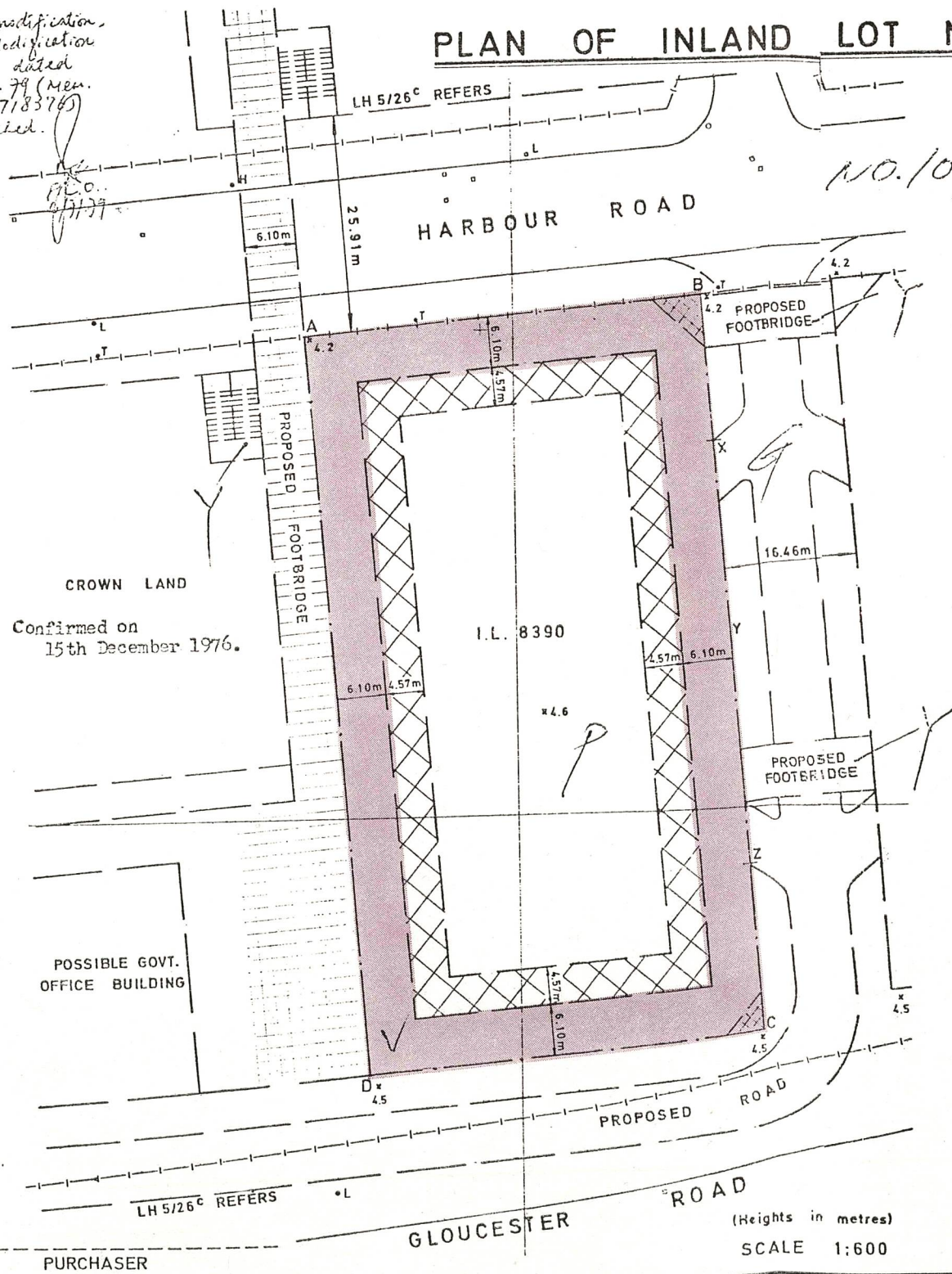
Item.
No. H 3
(continued)

For modification,
see Modification
Letter dated
15.6.79 (Mem.
No. 1718374)
attached.

PLAN OF INLAND LOT No. 8390

For and on behalf of
E. Hing Chung Realty Limited
Ark Ming Realty Limited
Inland Holdings Limited

NO. 10974



--- PROPOSED LAYOUT
x 4.6 SPOT LEVEL (as at 21-9-1976) to nearest 0.1m

SIDE	DISTANCE IN METRES	BEARING ° ' "	Pt.
AB	48.83	65 28 30	A
BC	88.88	175 28 30	B
CD	48.83	265 28 30	C
DA	88.88	355 28 30	D

COLOURED PURPLE, PURPLE CROSS-HATCHED GREEN,
PINK AND PINK CROSS-HATCHED BLACK AREA
4 340.4 SQUARE METRES (ABOUT)

D. H. A. Moore
D. H. A. Moore
PRINCIPAL GOVERNMENT LAND AGENT

SURVEY SHEET No 196-SE-10
PLAN No H6101/SP

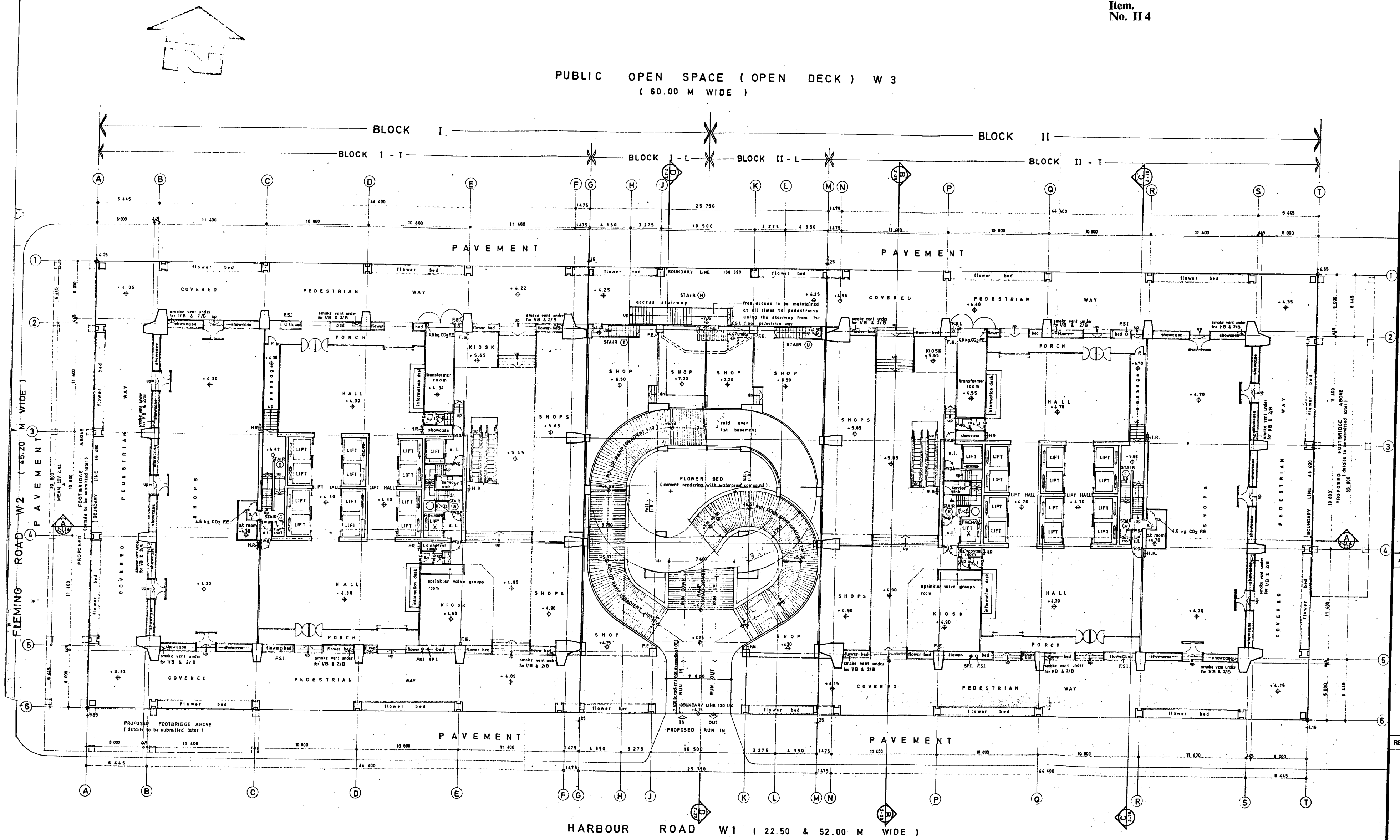
L. S. O. 563/HPA/63
DATE OF SALE 30-11-1976

Crown Lands & Survey Office, Hong Kong

Item No. H 4

REFERENCES:
File 78010
B. O. O.
F. S. D.

NOTES:
FOR DETAIL ARRANGEMENTS AND DIMENSIONS, PLEASE REFER TO THE CORRESPONDING 1:100 SCALE DRAWINGS.



GROUND FLOOR PLAN

(AUTOMATIC SPRINKLER SYSTEM TO BE PROVIDED FOR THIS FLOOR EXCLUDING PEDESTRIAN WAYS AND DRIVEWAYS LEADING TO UPPER FLOORS)
(AUTOMATIC CO2 SYSTEM TO BE PROVIDED TO TRANSFORMER ROOMS ON THIS FLOOR)

AMENDMENTS	SIGNATURE	DATE
REVISIONS	SIGNATURE	DATE

DESIGNED	
DRAWN	
CHECKED	
ARCHITECT/ENGINEER IN CHARGE	

CANCELLED
FOR REFERENCE ONLY.

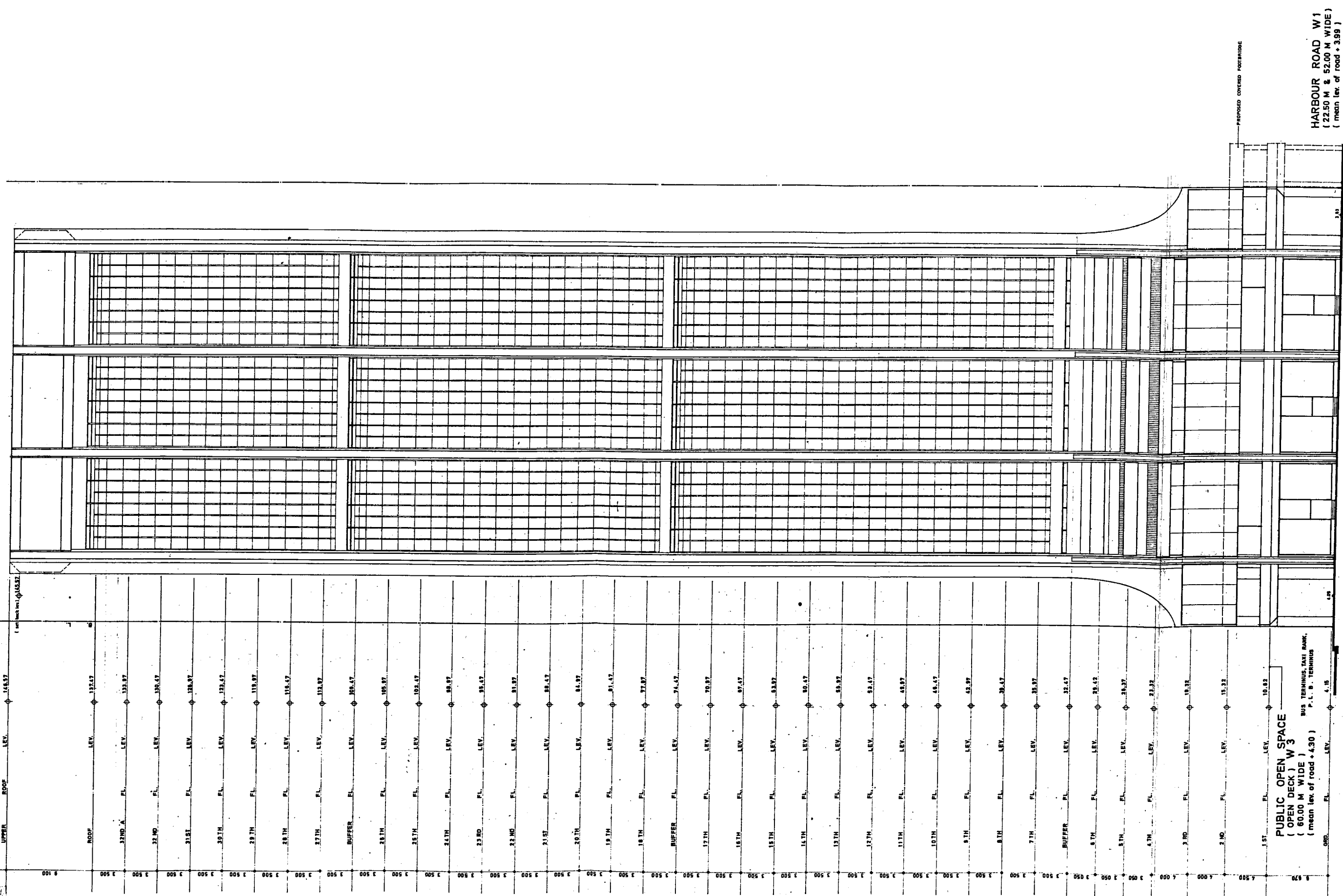
Y. S. LO & ASSOCIATES
ARCHITECTS & ENGINEERS

REMOVED BY
NO. 27
DATE 14/11/19
BY 100/100/100-5-179
FOR BALANCE
DATE 21.10.

JOB TITLE: **PROPOSED OFFICE / COMMERCIAL BUILDING ON I. L. 8392, HARBOUR ROAD & FLEMING ROAD, HONG KONG. (BLOCKS I & II)**

GENERAL NOTES:
1. Do not scale drawings; Figured dimensions are to be followed.
2. All dimensions are to be checked and verified on site.
3. All prints, notes, specifications and their copyright are the property of the Architects/Engineers.
4. This Drawing is not valid for construction or other purposes unless certified by the Architects/Engineers.

DRG. TITLE:
SCALE: 1:100
JOB NO: 78010
DRG. NO:



REFERENCES:
 File 78010
 B.O.O. 2/11/80/78
 F.S.D.
 Item No. H 4
 (continued)

NOTES:

AMENDMENTS	SIGNATURE	DATE
REVISIONS	SIGNATURE	DATE
DESIGNED		
DRAWN		
CHECKED		
ARCHITECT/ENGINEER IN CHARGE		

CANCELLED
 FOR REFERENCE ONLY

Y. S. LO & ASSOCIATES
 ARCHITECTS & ENGINEERS

DRG. TITLE:
 SCALE:
 JOB NO.: 78010
 DRG. NO.: 2-17

JOB TITLE:

**PROPOSED OFFICE / COMMERCIAL BUILDING ON I. L. 8392,
 HARBOUR ROAD & FLEMING ROAD HONG KONG (BLOCK I)**

GENERAL NOTE:
 1. Do not scale drawings: Figured dimensions are to be followed.
 2. All dimensions are to be checked and verified on site.
 3. All prints, notes, specifications and their copyright are the property of the Architect/Engineers.
 4. This Drawing is not valid for construction or other purposes unless certified by the Architect/Engineers.

RECEIVED BY
 APR 4 16 57 '79
 OFFICE

**Item.
No. I 1**

**Affidavit of Ma Yuk Piu
dated 17th October 1979.**

I, MA YUK PIU of Flat 1117, Kai Kwong Lau, Cho Yiu Chuen, Lai King Hill Road, Kwai Chung, Kowloon make oath and say as follows: —

1. I am employed by the Hong Kong Government as a Technical Officer (Reprographic).
2. On the 5th October 1979, I photographed the building constructed on Inland Lot 8390 (hereinafter called "the Lot").
3. There is now produced and shown to me marked Exhibit "A", a bundle of photographs numbered 1-3 inclusive. 10
4. These said photographs were developed and printed by me.
5. Photograph number 1 was taken from the western side of the Lot looking south.
6. Photograph number 2 was taken from the south side of the Lot looking west.
7. Photograph number 3 was taken from the south side of the Lot looking north.

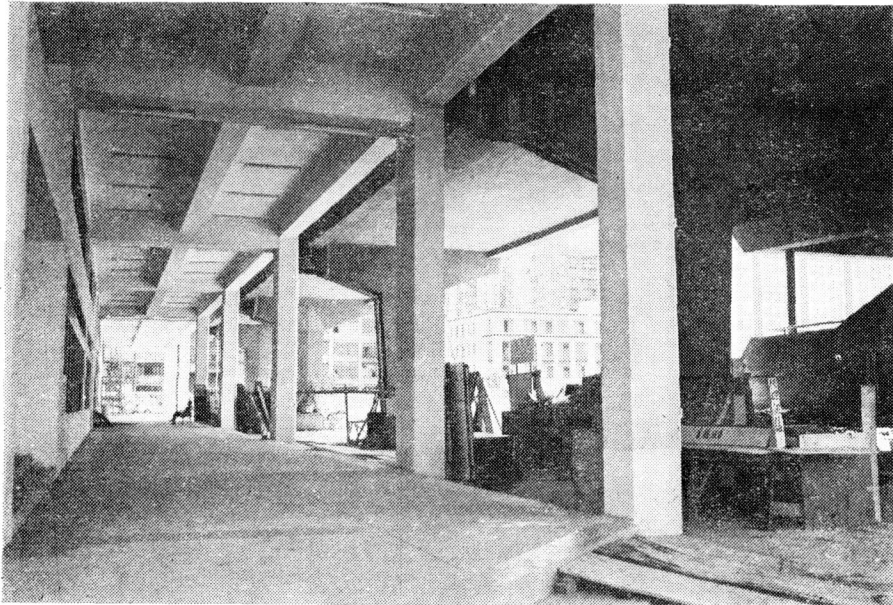
SWORN at C.D.O. (Central & Western) Hong Kong, this 17th day of October 1979. }

Before me,

DEBORAH TENG (MRS.)
Commissioner for Oaths.
C.D.O. (Central & Western)

Three photos of the building constructed on
Inland Lot No. 8390 taken at different angles.

Item.
No. 12



Item.
No. 12
(continued)



In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

MOON YIK COMPANY LIMITED *Appellants*
XIPHO DEVELOPMENT COMPANY LIMITED - - *(Plaintiffs)*

AND

ATTORNEY GENERAL - - - - - *Respondent*
(Defendant)

RECORD OF PROCEEDINGS

JOHNSON STOKES & MASTER
Solicitors for the Appellants (Plaintiffs)

CROWN SOLICITOR
Solicitors for the Respondent (Defendant)
