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**By Fax & By Post**

10 April 2006

Clerk to the Panel of Planning,  
Lands and Works,  
Legislative Council Secretariat,  
Legislative Council Building,  
8 Jackson Road,  
Central,  
Hong Kong  
(Attn: Ms Anita Sit)

Dear Ms Sit,

**Review of Lease Modification to Permit Change of Use for  
Sites Previously Granted by Private Treaty (PTG) Review**

As requested by Members at the meeting on 28 March 2006, the Director of Lands undertook to provide information setting out the differences between the old version and the new version of two clauses in the Conditions of Grant for PTGs. I write to provide the relevant information for your follow up action.

When the captioned item was discussed at that meeting, the Director of Lands informed Members that a new version of the "commence to operate" clause and the "cessation and diminution of user" clause had been adopted in the Conditions of Grant for new PTGs. Tightening up the provisions is intended to strengthen the Director of Lands' position in the event of any need for future enforcement.

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Annex A shows a comparison between the old version and the new version of the master clauses for Members' reference. The key changes include :-

- (a) there is now a mandatory requirement on the Grantee not only to commence using the lot, but also to continue using the lot for the purpose specified;
- (b) the “cessation and diminution of user” clause now expressly provides that the PTG is granted on the special terms and for the special purpose set out in the land grant;
- (c) a clear acknowledgement on the part of the Grantee that the lot must be used for the special purpose;
- (d) a new provision stipulating that the Director’s opinion on whether a lot has ceased to be used, or adequately used, for the intended purpose is conclusive and binding on the Grantee; and
- (e) a clear acknowledgement on the part of the Grantee that for the purpose of the provision at (d) above, the opinion of the Director will be unfettered, conclusive and binding on him.

Under the two clauses, there is now a positive requirement of the Grantee to use the lot for the specified purposes and he acknowledges the special nature of the grant. In enforcing the lease conditions, the onus will as always be on the Government, as landlord, to demonstrate that, on the evidence, the grantee is in breach of the condition, entitling the Government to re-enter the lot.

Yours sincerely,

(Herbert LEUNG)  
Director of Lands (Atg.)

Encl.

c.c. Permanent Secretary for Housing, Planning & Lands (Planning & Lands)  
Administrative Assistant to Secretary for Housing, Planning & Lands

Existing Master Clause	New Master Clause	
<p>Commence to operate (Assuming the public facility held under the lease is a school)</p> <p>(9) The Grantee shall within xx calendar months from the date on which possession of the lot is given open and commence to operate the School on a scale satisfactory to the Permanent Secretary, and shall conduct the School in accordance with all Ordinances and Regulations relating to education which are or may at any time be in force in Hong Kong and in all respects to the satisfaction of the Permanent Secretary. If it is at any time shown to the satisfaction of the Director that there has been a breach of this Special Condition, it shall be lawful for the Government to re-enter upon and take back possession of the lot or any part thereof and all buildings, structures, erections and works thereon without notice and thereupon the rights of the Grantee in and to the lot under this Agreement shall absolutely cease and determine, and upon the exercise of this power no compensation whatsoever shall be payable to the Grantee.</p>	<p>Commence and continue to operate #[ ] Adopt if public facilities are required to be provided [* insert the detailed facilities]</p>	<p>The Grantee must, within xx calendar months from the date of this Agreement (or any other date as may be agreed in writing by the Director) # [open and] commence to operate and, throughout the term hereby agreed to be granted, continue to operate the { * } referred to in Special Condition No. ( ) hereof for the purposes specified in Special Condition No. (user clause) hereof on a scale and in a manner to the satisfaction of the Director and in accordance with all Ordinances, any regulations made thereunder and any amending legislation and in all respects to the satisfaction to the Director.</p>

<b>Existing Master Clause</b>	<b>New Master Clause</b>	
<p>Cessation of user</p> <p>(10) If it is at any time shown to the satisfaction of the Director that the lot or any part thereof or any building or part of any building thereon has ceased to be used for the purposes specified in Special Condition No. (8) hereof (as to which the non-user thereof for such purposes for a period of six calendar months shall be conclusive) or that the extent of the user thereof for such purposes has so diminished that the retention of the lot or any part thereof for such purposes is no longer justified, it shall be lawful for the Government to re-enter upon and take back possession of the lot or any part thereof and all buildings, structures, erection and works thereon without notice and the rights of the Grantee in and to the same under this Agreement shall thereupon absolutely cease and determine and upon the exercise of this power no compensation whatsoever shall be payable to the Grantee.</p>	<p>Cessation or diminution of user</p>	<p>( ) The lot having been granted on the special terms and for the special purposes set out in these Conditions, the Grantee hereby acknowledges and agrees that it must be used for those purposes to the satisfaction of the Director and, if, at any time during the term hereby agreed to be granted, the Director is of the opinion that the lot or any part of it or any building or structure or part of any building or structure on it has ceased to be used for the purposes specified in Special Condition No. (user clause) hereof (as to which, and without prejudice to the rights of the Director under this Special Condition, the non-user of the lot or any part of it for those purposes for a total period of six calendar months during the term hereby agreed to be granted shall be conclusive evidence) or that the extent of the user for those purposes has so diminished to the extent that the lot or any part of it is, in the opinion of the Director, either not being used or adequately used for the purposes for which it is granted, the Grantee will be deemed to be in breach of Special Condition No. (commence and continue to operate clause) hereof and this Special Condition and it will be lawful for the</p>

		<p>Government to re-enter upon and take back possession of the lot or any part of it, or any interest in it and the buildings and structures on it without notice, whether under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Cap. 126, or at common law, or otherwise and upon the exercise of this power, the rights of the Grantee under this Agreement will absolutely cease and determine and no compensation whatsoever will be payable to the Grantee. The Grantee hereby acknowledges and agrees that for the purpose of this Special Condition, the opinion of the Director will be unfettered, conclusive and binding on the Grantee.</p>
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