

**Reply to the Hon Fred LI's Letter of 15 December 2009 to
the Legislative Council Panel on Housing
Enquiring About the Operation of Carparks
Under The Link Real Estate Investment Trust**

Background

Prior to the listing of The Link Real Estate Investment Trust (The Link REIT) in November 2005, the demand of the tenants of public rental housing (PRH) for parking spaces in some carparks under the Hong Kong Housing Authority (HA) was low. In order to optimise the use of the carparking spaces, HA applied to the Town Planning Board (TPB) for planning permission and to the Lands Department (LandsD) for waivers as applicable to allow letting of these carparking spaces to non-eligible persons i.e. those other than the residents, occupiers and their bona fide guests and visitors as specified in the respective leases (hereinafter collectively referred to as “non-residents”). After its listing, The Link REIT has to apply to the LandsD for temporary waivers if it intends to let its carparking spaces to non-residents when the waivers become invalid.

Waivers for carparks under The Link REIT (item 1 in the letter)

2. Prior to the listing of The Link REIT at the end of 2005, upon HA's application, 110 waivers were granted by the LandsD to allow letting of parking spaces in the carparks concerned to non-residents. As at the end of 2009, 80 waivers ceased while 30 were still in force. The latter will cease when HA has completed assigning the legal titles of the carparks^{Note 1}. Please refer to **Annex 1** for details. The number of parking spaces involved was not specified in the waivers granted. According to the information submitted by The Link REIT, more than 700 carparking spaces were let to non-residents during the period when the waivers became invalid.

^{Note 1} In the reply to “Waivers of lease conditions granted in respect of the car parking facilities divested by the Hong Kong Housing Authority” at the Legislative Council Meeting on 2 December 2009, it was stated that among the 111 waivers, 82 ceased while 29 were still in force. Upon further verification, there should be 110 waivers, 80 of which ceased while 30 are still in force.

Enforcement of the land lease (items 2 and 7 in the letter)

3. The Link REIT should apply to the TPB for planning permission and to the LandsD for waivers if it intends to let the carparking spaces to non-residents after the waivers become invalid. Prior to the approval of waivers by the LandsD, the execution of waiver documents and the payment of waiver fees, it is The Link REIT's responsibility to ensure that no carparking spaces are let to non-residents.

4. Upon learning from the media in early September 2009 that The Link REIT might have let carparking spaces to non-residents, the LandsD immediately discussed the issue with The Link REIT and reiterated that the Government would take lease enforcement action and recover any waiver fees and interests should there be any violation of the user restriction on the carparks.

Assessment of waiver fees (items 3 and 4 in the letter)

5. Subsequently, The Link REIT wrote to the LandsD on 28 October 2009, stating that other than a carpark (26 parking spaces were involved) for which difficulty was encountered in ceasing letting to non-residents, no more parking spaces had been let to non-residents since October 2009. Moreover, the payment of a sum of around \$7.15 million as the retrospective waiver fees was proposed in the letter for letting more than 700 carparking spaces to non-residents up to the end of September 2009.

6. Generally speaking, the LandsD determines the waiver fees by assessing the difference in the rental value of the premises for the permitted use before and after the issue of the waiver letter. The LandsD is examining the sum of around \$7.15 million offered by The Link REIT as the retrospective waiver fees and has requested further information concerning the accounts so as to decide whether the retrospective waiver fees offered by The Link REIT are reasonable.

Progress of and information on waiver applications for carparks under The Link REIT (items 5 and 6 in the letter)

7. The Link REIT applies to the LandsD for waivers for more than 200 parking spaces in its 15 carparks (the list is at **Annex 2**). It takes time to process the waiver applications, including examining the information provided by The Link REIT, obtaining additional information, consulting departments concerned, and after granting the approval-in-principle to the applications, drawing up the terms and conditions of the waivers, and calculating the waiver fees payable, etc. The time required to process the waiver applications varies with the individual circumstances and complexity of each case.

8. If planning permission is required, The Link REIT should submit a separate application to the TPB. The TPB will process the application under the provisions of the Town Planning Ordinance. As required by the Ordinance, the TPB will consider the application and decide within two months upon receipt of the application. Generally speaking, the LandsD will consider approving the waiver application of The Link REIT after planning permission has been granted.

The Link REIT to ensure letting of carparking spaces to eligible persons and the provision of accurate information (items 8 and 10 in the letter)

9. The LandsD has reminded The Link REIT to ensure its full compliance with all the lease conditions, including letting the carparking spaces to eligible persons only. The Link REIT is also required to ensure that information on the retrospective waiver fees and on the waiver applications provided is accurate, and to submit detailed information on the rental income, certified to be true and correct by professionals. If it comes to the Government's knowledge that the information provided by The Link REIT is inaccurate or there is violation of the lease conditions, the Government will seek legal advice and take appropriate follow-up action. The Government will not rule out the possibility of taking legal action when necessary.

Publication of carparking facilities under public housing developments
(item 9 in the letter)

10. Members of the general public have access to the information on the provision of carparking facilities in housing estates/ courts/ shopping centres, etc and on carpark operators at HA's website. They may also call the hotline on 2712 2712 or approach any carpark management office direct for enquiries on the leasing of carparking spaces.

Lands Department
Planning Department
Housing Department
January 2010

Annex 1**Waivers granted to divested carpark under The Link REIT**

Estate/ Court	The date on which the waiver ceased	Estate/ Court	The date on which the waiver ceased
1. Butterfly Estate	21/6/06	2. Cheung Fat Estate	23/3/06
3. Cheung Hang Estate	16/11/09	4. Ching Wah Court	1/6/07
5. Choi Fai Estate	18/8/09	6. Choi Wan Estate	7/10/09
7. Choi Yuen Estate	21/6/06	8. Chuk Yuen Estate	27/11/07
9. Chung On Estate	2/5/06	10. Fortune Estate	16/11/09
11. Fu Cheong Estate	18/5/06	12. Fu Heng Estate	3/12/05
13. Fu Shin Estate	28/2/06	14. Fu Tai Estate	7/11/06
15. Fu Tung Estate	31/12/08	16. Fung Tak Estate	3/12/05
17. Hau Tak Estate	2/5/06	18. Hin Keng Estate	3/12/05
19. Hing Wah Estate	16/4/07	20. Hung Hom Estate	31/12/08
21. Ka Fuk Estate	8/7/08	22. Ka Tin Court	1/6/07
23. Kai Yip Estate	16/1/09	24. Kam On Court	1/6/07
25. King Lai Court	1/6/07	26. Kwai Fong Estate	10/11/09
27. Kwong Tin Estate	2/5/06	28. Kwong Yuen Estate	3/12/05
29. Lai On Estate	18/9/09	30. Lee On Estate	19/9/08
31. Lei Cheng Uk Estate	3/12/05	32. Lei Tung Estate	25/11/05
33. Lek Yuen Estate	22/12/07	34. Leung King Estate	3/12/05
35. Lok Fu Estate	28/2/08	36. Lok Wah Estate	20/10/09
37. Long Ping Estate	24/8/06	38. Lower Wong Tai Sin Estate	19/11/07
39. Ming Tak Estate	17/11/08	40. Nam Cheong Estate	31/12/05
41. Oi Man Estate	7/11/06	42. Oi Tung Estate	18/5/06
43. On Yam Estate	2/5/06	44. Po Tat Estate	22/10/09

Estate/ Court	The date on which the waiver ceased	Estate/ Court	The date on which the waiver ceased
45. Sau Mau Ping Estate	18/5/07	46. Sha Kok Estate	30/9/08
47. Shek Wai Kok Estate	31/8/09	48. Sheung Tak Estate	30/5/07
49. Shun On Estate	31/12/08	50. Shun Tin Estate	10/6/09
51. Siu Hei Court	1/6/07	52. Siu Sai Wan Estate	18/6/07
53. Sun Chui Estate	17/7/09	54. Sun Tin Wai Estate	30/5/08
55. Tai Hing Estate	29/9/09	56. Tai Ping Estate	3/12/05
57. Tai Wo Hau Estate	24/3/09	58. Tai Yuen Estate	27/11/07
59. Tin Chak Estate	2/5/06	60. Tin Ma Court	1/6/07
61. Tin Shui Estate	27/11/07	62. Tin Tsz Estate	19/11/07
63. Tin Yat Estate	19/2/09	64. Tin Yiu Estate	2/5/06
65. Tong Ming Court	1/6/07	66. Tsui Lam Estate	31/7/06
67. Tsui Wan Estate	3/12/05	68. Tsz Ching Estate	30/3/07
69. Tsz Lok Estate	31/1/08	70. Tsz Man Estate	30/5/08
71. Tung Tau (II) Estate	3/12/05	72. Upper Ngau Tau Kok Estate	29/7/08
73. Upper Wong Tai Sin Estate	27/4/07	74. Wah Lai Estate	7/11/06
75. Wah Sum Estate	20/7/09	76. Wang Fuk Court	1/6/07
77. Wang Tau Hom Estate	10/6/09	78. Wo Che Estate	30/5/07
79. Yat Tung Estate	19/10/09	80. Ying Ming Court	1/6/07

Housing estates with waivers still in force				
1. Ap Lei Chau Estate	2. Cheung Hong Estate	3. Cheung Wan Estate	4. Chun Shek Estate	5. Hing Man Estate
6. Hing Tung Estate	7. Kai Tin Estate	8. Kin Ming Estate	9. Ko Yee Estate	10. Kwai Shing Estate
11. Kwong Fuk Estate	12. Lai Kok Estate	13. Lung Hang Estate	14. Ma Hang Estate	15. Mei Lam Estate
16. On Ting Estate	17. Ping Tin Estate	18. Po Tin Estate	19. Sam Shing Estate	20. Shek Lei Estate
21. Shek Yam Estate	22. Shun Lee Estate	23. Tin Wah Estate	24. Tin Wan Estate	25. Tin Yuet Estate
26. Tsui Ping Estate	27. Un Chau Estate	28. Wan Tsui Estate	29. Yau Oi Estate	30. Yiu Tung Estate

Annex 2

A list of carpark in 15 housing estates/ courts
for which The Link REIT has submitted waiver applications

1. Cheung Fat Estate	2. Choi Ha Estate	3. Hing Wah (I) Estate
4. Hoi Fu Court	5. Kwai Hing Estate	6. Sha Kok Estate
7. Sun Chui Estate	8. Tai Wo Estate	9. Tai Wo Hau Estate
10. Wo Che Estate	11. Yee Kok Court	12. Upper Wong Tai Sin Estate
13. Siu Hei Court	14. Leung King Estate	15. Wah Lai Estate