



GOLF TERRACES

SALE PURCHASE & CONSTRUCTION AGREEMENT MANAGEMENT SCHEME

12 June 2003



DENARAU
ISLAND RESORT

PARTICULARS OF SALE PURCHASE & CONSTRUCTION

Date of Agreement:	The	day of	200
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PARTIES TO THIS AGREEMENT

Vendor:	Aotea Limited
Purchaser: (Full names)	
Purchaser's Address:	

PARTICULARS OF APARTMENT

Apartment No:	Apartment (shown on the Apartment Plan)
Estate:	Leasehold (sublease of a State Lease)

PRICE AND PAYMENT

Land Price	FJ\$ plus VAT.
Construction Price:	FJ\$ plus VAT.
Furniture Price:	FJ\$ plus VAT.
Total Price:	FJ\$ plus VAT.
Deposit:	10% of the Total Price.
Payment of Deposit:	The Deposit must be paid to the Vendor on execution of this agreement.
Balance of Total Price:	The balance of the Total Price must be paid to the Vendor by bank cheque on the Settlement Date.

RELATED DOCUMENT

Apartment Management Agreement:	The Purchaser will enter into an Apartment Management Agreement (in the form set out in Schedule 4) with a suitably qualified manager designated by the Vendor.
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SETTLEMENT AND POSSESSION DATE

Settlement Date:	10 Business Days after the date that the Vendor notifies the Purchaser that the Satisfaction Date referred to in Clause 2.1.1 has occurred.
Possession Date:	On the Settlement Date.

DIRECTORY

	Vendor	Purchaser
Legal firm:	Howards	
Solicitor acting:	Wylie Clarke	
Postal address:	Level 7, FNPF Place Victoria Parade GPO Box 13687 Suva FIJI	
Telephone:	00679 3300 046	
Facsimile:	00679 3300 180	

EXECUTION

Vendor

AOTEA LIMITED by its duly authorised representative

^ _____
Signature of Representative

Purchaser

^ _____
Signature of Purchaser

^ _____
Signature of Purchaser (if more than one)

This is an important document which will be legally binding on signing. You should seek independent professional advice before signing.

It is agreed that:

1. the Vendor sells and the Purchaser purchases the Vendor's right, title and interest in the Apartment Lease, Common Facilities Rights and Furniture Fitout;
2. the Vendor will procure construction of the Apartment and the Common Facilities; and
3. the Purchaser will enter into an Apartment Management Agreement in substantially the form attached as Schedule 4 with the Manager designated by the Vendor;

on the terms of the Particulars of Sale Purchase and Construction and Conditions of Sale Purchase and Construction contained in this agreement.

CONDITIONS OF SALE PURCHASE & CONSTRUCTION

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

"**Apartment**" means the Apartment Lease and the Apartment Building for the Apartment described in the Particulars of Sale Purchase and Construction and "**Apartments**" means all of the apartments (including the Apartment) shown on the Apartment Plan.

"**Apartment Building**" means the physical structure within the boundaries shown in the Apartment Plan to be built substantially in accordance with the Plans and Specifications.

"**Apartment Lease**" means the registered sublease of the Apartment in substantially the form attached as Schedule 3 and "**Apartment Leases**" means the leases of the Apartments.

"**Apartment Plan**" means the plan of the Apartments attached as Schedule 2.

"**Apartment Management Agreement**" means a management agreement for the letting of the Apartment in substantially the form of Schedule 4.

"**Approval**" means the full and final approval of the Subdivision Plans by the Relevant Authority, including written consents and approvals from parties other than the Vendor and the Relevant Authority necessary to give effect to those plans, and the disposal of any objection or appeal and the expiry of any objection or appeal period.

"**Body Corporate**" means Denarau Golf Terrace Apartments, Inc.

"**Body Corporate Management Agreement**" means a management agreement entered into between the Body Corporate and the Manager substantially in the form attached as Schedule 6 for the management of the Common Facilities and the provision of certain secretarial services to the Body Corporate.

"**Business Day**" means the period commencing 9am and ending 4.30pm Standard Time of any day in Suva, Fiji other than Saturday, Sunday and any public holiday.

"**Certificate of Practical Completion**" means a certificate by or notice from the Project Manager that the construction of the Apartment has reached Practical Completion.

"**Common Facilities**" means that part of the Land not comprising the Apartments and includes the swimming pool, breeze ways, paths and driveways and landscaped areas, utilities room, air conditioning, fire detection and protection system, cooling towers and plant and equipment servicing the Development.

"**Common Facilities Rights**" means the rights to use the Common Facilities as a member of the Body Corporate (as constructed for the Body Corporate by the Vendor).

"**Conditions of Sale Purchase and Construction**" means the conditions of sale, purchase and construction set out in this agreement.

"**Constitution**" means the constitution of the Body Corporate substantially in the form of Schedule 7.

"**Default Interest Rate**" means 16% per annum.

"**Deposit**" means the sum calculated for the deposit in accordance with the Particulars of Sale Purchase and Construction.

"**DCL**" means Denarau Corporation Limited.

"**Development**" means the Vendor's development known as "Golf Terraces Apartments" which will comprise the Apartments and the Common Facilities and be constructed substantially in accordance with the Plans and Specifications prepared by the Vendor and approved by the Relevant Authority.

"**FJS**" means the lawful currency of Fiji.

"**Furniture Fitout**" means the furnishings and equipment described in Schedule 5 to be installed in the Apartment.

"**Head Lease**" means a new State Lease to be issued in respect of the Land or a sublease of State Lease 13734.

"Land" means the land comprising approximately 0.9193 hectares shown on, and to be subdivided in accordance with, the Apartment Plan.

"Manager" means the person designated by the Vendor to be the manager under the Apartment Management Agreement and the management agreement described in clause 7.10.

"Particulars of Sale Purchase and Construction" means the particulars of sale, purchase and construction set out in this agreement.

"Plans and Specifications" means the plans and specifications of the Apartment and the Development described in Schedule 1.

"Practical Completion" means the stage when the Apartment, in the opinion of the Project Manager, is complete except for minor omissions and minor defects which, in the opinion of the Project Manager;

- (a) the Vendor has reasonable grounds for not promptly correcting; or
- (b) do not prevent the Apartment from being used for the purpose for which it is intended; or
- (c) rectification of which will not prejudice the convenient use of the Apartment.

"Project Manager" means the person appointed by the Vendor from time to time as project manager for the purposes of this agreement.

"Purchaser" means the person described as the Purchaser in the Particulars of Sale Purchase and Construction.

"Relevant Authority" means any corporation (including DCL), and any government, local, statutory or non-statutory authority or body having jurisdiction over the Development.

"Rules" means the Constitution and the rules attached to and forming part of the Constitution together with such amendments as the Vendor may require to ensure the proper and efficient functioning of the Body Corporate.

"Settlement" means the performance by the parties of their obligations under this agreement intended to take place on the Settlement Date.

"Settlement Conditions" means the conditions set out in clause 8.2.

"Settlement Date" means the date determined in accordance with the Particulars of Sale Purchase and Construction.

"Stakeholder" means the Vendor's solicitors described in the Particulars of Sale Purchase and Construction who will act as the stakeholder for the Vendor and the Purchaser in relation to the application of the deposit in accordance with clause 4.

"Subdivision Plans" means the plan to subdivide State Lease No. 13734 to create the Head Lease and the Apartment Plan.

"Total Price" means the total price payable under this agreement specified in the Particulars of Sale Purchase and Construction.

"VAT" means value added tax pursuant to the VAT Act.

"VAT Act" means the *Value Added Tax Decree 1991 (Fiji)*.

"Vendor" means the person described as Vendor in the Particulars of Sale Purchase and Construction.

"Works" means the construction and other works required to complete the Development.

Governing Law

- 1.2** This agreement is governed by the laws of The Fiji Islands, and the parties submit to the non-exclusive jurisdiction of the courts of The Fiji Islands in respect of any dispute or proceeding arising out of this agreement.

Headings

- 1.3** Headings, subheadings, and the table of contents (if any) are included for ease of reference and none of the provisions of this agreement are to be construed or interpreted by reference to such headings, subheadings or the table of contents.

Statutes and regulations

1.4 References to:

1.4.1 statutes are to statutes of The Fiji Islands unless otherwise specified; and

1.4.2 statutes, regulations, ordinances, or by-laws extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them.

Language

1.5 All communications and documents relating to and in connection with this agreement must be in English.

Amendments

1.6 This agreement may only be amended, supplemented or novated by the parties in writing.

Words, references and derivatives

1.7 In this agreement, unless the context otherwise requires:

1.7.1 words importing a particular gender include any other gender;

1.7.2 the singular includes the plural and vice versa;

1.7.3 "person" includes a body corporate;

1.7.4 words designating a body corporate will extend to and include the body corporate, its successors, administrators and permitted assigns;

1.7.5 where two or more parties are bound by a provision, whether those parties are referred to individually or together, the provision will bind those parties jointly and each of them severally;

1.7.6 derivatives of any defined term have a corresponding meaning to that of the defined term; and

1.7.7 words and phrases not otherwise defined have the same meanings as in section 2 of the *Property Law Act* Cap 130 (Fiji).

2. CONDITIONS

2.1 This agreement is subject to and conditional upon:

2.1.1 the Vendor:

(a) achieving, in the Vendor's absolute discretion, sufficient pre-sales of Apartments to proceed with the Works;

(b) obtaining all approvals required from the Director of Lands in Fiji and the Director of Town and Country Planning to subdivide the State Lease No. 13734 to create a new lease for the Land and to subdivide the Land in accordance with the Apartment Plan on terms and conditions (including zoning) that are acceptable to the Vendor, in the Vendor's absolute discretion; and

(c) achieving the registration of the Apartment Plan at the office of the Registrar of Titles, Suva;

within 2 years of the date of this agreement (the "Satisfaction Date"); and

2.1.2 prior to the Satisfaction Date, any Appeal referred to in clause 6.8 being settled or determined in favour of the Vendor, to allow the approval to be given on terms and conditions that are acceptable to the Vendor, in the Vendor's absolute discretion.

Benefit

- 2.2** The parties have inserted the conditions in paragraphs (a) and (b) of clause 2.1 for the sole benefit of the Vendor and the Vendor alone may waive those conditions.

Cancellation

- 2.3** In the event that the conditions contained in clause 2.1 are not satisfied or waived before 4.30pm on the Satisfaction Date (time being of the essence) either party may, before the conditions contained in clause 2.1 have been satisfied or waived, cancel this agreement by giving notice to this effect to the other and upon cancellation of this agreement the Purchaser shall be entitled to the return of the Deposit.

3. PAYMENT OF PRICE

Time for payment

- 3.1** The Purchaser must pay the Total Price for the Apartment Building to be constructed by the Vendor for the Purchaser, the Furniture Fitout, the Apartment Lease and the Common Facilities Rights as follows:
- 3.1.1** the Deposit to the Stakeholder on execution of this Agreement (time being of the essence); and
 - 3.1.2** the balance of the Total Price to the Vendor in the manner set out in the Particulars of Sale Purchase and Construction (time being of the essence).

VAT

- 3.2** In addition to the Total Price, the Purchaser will pay to the Vendor the amount of all VAT chargeable on any taxable supply by the Vendor under this agreement.
- 3.3** Any amount payable by the Purchaser pursuant to clause 3.2 will be payable on the date on which the relevant supply is deemed to take place by virtue of the VAT Act.
- 3.4** If the Purchaser defaults in payment on the due date of any amount payable pursuant to clause 3.2 then, without prejudice to the Vendor's other rights and remedies, the Purchaser must pay to the Vendor upon demand an amount equal to the amount of any additional tax that becomes chargeable pursuant to the VAT Act.
- 3.5** As between the Vendor and the Purchaser, the Vendor is not obliged to pay any VAT, stamp duty, or additional tax or to take any other steps to minimise the liability in respect of such tax or additional tax until the corresponding payment is received from the Purchaser.
- 3.6** Where any of the Total Price is to be satisfied in whole or in part by the supply to the Vendor of any goods or services, the Vendor will pay to the Purchaser the amount of all VAT chargeable on such supply.
- 3.7** The provisions of clauses 3.3, 3.4 and 3.5 will apply, with any necessary changes, in respect of any amount payable by the Vendor under clause 3.6.

Internal offset of VAT

- 3.8** Notwithstanding clause 3.2, if the Purchaser:
- 3.8.1** satisfies the Vendor that the Purchaser can claim a refund of VAT on the Total Price; and
 - 3.8.2** delivers to the Vendor within 15 Business Days of the signature of this agreement by both parties, or such further period as the Vendor may allow, all documentation necessary for the Vendor to claim a VAT Offset (as defined below); and
 - 3.8.3** provides to the Vendor a letter in the form prepared by the Vendor addressed to the Commissioner of Inland Revenue, authorising the Commissioner to:

- (a) withhold the input VAT credit payable to the Purchaser in respect of the payment of the Total Price; and
- (b) offset the credit withheld against the output tax payable by the Vendor on account of receiving the Total Price;

then the Vendor shall endeavour to obtain from the Commissioner of Inland Revenue an offset such that the Purchaser is not obliged to pay the amount of VAT to the Vendor ("Offset"). If the Vendor cannot obtain an Offset of the full amount of the VAT payable by the Purchaser under this agreement then the Purchaser shall immediately pay to the Vendor the VAT payable on the Total Price.

4. DEPOSIT

- 4.1 The Stakeholder will hold the Deposit in its trust account with a registered bank in Fiji until Settlement Date (or until either party becomes entitled earlier).
- 4.2 The Vendor may cancel this agreement for non-payment of the Deposit (or any part of it) where the Vendor has first given to the Purchaser 3 Business Days notice in writing of the Vendor's intention to cancel and the Purchaser has failed within that time to make payment of the Deposit or any part of it then due.
- 4.3 The Purchaser acknowledges that the entire Deposit is in all respects to be regarded as a deposit and does not include any penalty component with the intention that in the event of cancellation entitling the Vendor to forfeit and retain the Deposit, the entire Deposit may be forfeited and retained. If at the time of cancellation only part of the Deposit had been paid, the Vendor may forfeit and retain that part and sue the Purchaser for the balance of the Deposit.
- 4.4 On the date the Vendor has a registrable memorandum of transfer for the Apartment Lease, or if the Vendor becomes entitled earlier, the Deposit and net interest may be paid to the Vendor, and this clause is sufficient authority to the Stakeholder to make that payment. If the Vendor becomes entitled to cancel this agreement pursuant to clause 12.3 or otherwise as a result of default on the part of the Purchaser, the Stakeholder will be entitled to release the Deposit and net interest to the Vendor and this clause is sufficient authority to the Stakeholder to make that payment.
- 4.5 The parties acknowledge that the Stakeholder will hold the Deposit as Stakeholder for the benefit of both parties.
- 4.6 If this agreement is cancelled other than for a breach by the Purchaser, the Stakeholder will refund the Deposit to the Purchaser and this clause is sufficient authority to the Stakeholder to make that payment. The Stakeholder and/or Vendor will not be required to account for any interest on the Deposit.

5. CONSTRUCTION OF APARTMENTS AND DEVELOPMENT

Vendor to procure construction

- 5.1 Subject to the Purchaser having made all required payments on account of the Total Price and the Conditions in clause 2 being satisfied, the Vendor must, as soon as possible and with all due diligence, application and speed, procure the commencement and completion of the construction of the Apartment and the Development in a good, proper, sound and professional manner and procuring the employment in the construction of the appropriate materials and, substantially in accordance with the Plans and Specifications and in accordance with all legal requirements.

Delays

- 5.2 The Vendor will not be responsible for any delays attributable to delays in securing consents or permits in respect of the Development or as a result of weather conditions, strikes, lockouts, accidents, unavailability of any material, finish, product or system referred to in the Plans and Specifications or any other matters beyond its reasonable control.

Variations required by the Purchaser

- 5.3 The Purchaser may not request variations to the Plans and Specifications.

Variations required by the Vendor

- 5.4 The Vendor may at any time alter or vary or consent to the alteration or variation of the Plans and Specifications in such manner as the Vendor considers appropriate having regard to the circumstances, provided that the Vendor must first obtain the Purchaser's consent if any alteration or variation materially detracts from the layout or quality of the Apartment. The Purchaser shall not be entitled to claim any compensation, damages, right or set-off or to make any objection or requisition based on an alteration or variation made in accordance with this clause.

Replacement Materials

- 5.5 If any materials or finishes set out in the Plans and Specifications are unprocurable or not procurable on reasonable terms or prohibited by law, or if other materials or finishes of equivalent or better quality can be procured on more favourable terms then the Vendor may substitute the materials with materials that are of a value and quality as near as reasonably practicable to the specified material.

Inspection by Purchaser

- 5.6 The Purchaser may, either personally or by the Purchaser's representative, after receiving a copy of the Certificate of Practical Completion from the Project Manager, inspect the Apartment and other works under construction during business hours, provided that reasonable notice of the Purchaser's intention to inspect has been given to the Vendor, and in so doing the Purchaser shall not interfere with the Vendor or the Vendor's employees, contractors or agents. The Purchaser or the Purchaser's representatives may only inspect the Development (including the Apartment) under construction prior to receiving a copy of the Certificate of Practical Completion if the Purchaser first obtains the Vendor's consent to such an inspection. Whether the Vendor gives consent to an early inspection shall be at the Vendor's absolute discretion.

Purchaser not to carry out work

- 5.7 The Purchaser shall not carry out any work on the Apartment prior to Settlement. If the Purchaser breaches this requirement the Purchaser shall compensate the Vendor in respect of any resultant loss or damage that the Vendor may suffer or incur.

Development Work

- 5.8 The Vendor, the Project Manager and the Vendor's surveyors, agents, consultants, engineers, contractors, sub-contractors, employees or any of them shall have the right to enter onto the Land, the Development and the Apartment at all times following the Settlement Date with such plant, machinery, vehicles and equipment and to do such work as shall, in the opinion of the Vendor, the Project Manager or the Vendor's engineers or contractors, be necessary or desirable to complete the construction of the Development and the Vendor shall not be liable for any damage or loss in value caused to the Development or to the Apartment arising therefrom.

Insurance

- 5.9 The Vendor shall procure the insurance of the Works for full replacement value under a builders' comprehensive policy and shall ensure that the policy is kept current until full replacement insurance is effected by the Body Corporate or the Settlement Date, whichever is the later.

Maintenance

- 5.10 There shall be a maintenance period of 90 days from the Settlement Date. The Vendor shall ensure that during or within a reasonable time from the expiry of the maintenance period, maintenance work on the Apartment notified to the Purchaser in writing to the Vendor prior to the expiry of the maintenance period (time being of the essence) is carried out. The Vendor shall not be required to repair damage or procure the repair of damage caused by fire, earthquake, tempest, landslide or other occurrence normally covered by a comprehensive insurance policy.

No withholding or Objection

- 5.11 The Purchaser shall not withhold the balance of the Total Price (or any part of it) or demand any retention on Settlement by reason of any defect, shrinkage or fault in the Apartment, whether due to defective materials, workmanship or any other cause or for any other reason or claim.

Acknowledgment of Completion

- 5.12 The Purchaser shall if so required by the Vendor as a precondition of Settlement confirm in writing prior to or at Settlement that the Apartment is complete to the Purchaser's satisfaction subject only to any maintenance work or other work as provided for in the Certificate of Practical Completion.

6. TITLE

Vendor to have Subdivision Plans Approved and Registered

- 6.1 Subject to the Vendor achieving sufficient pre-sales, the Vendor will, at its expense, as promptly as possible thereafter:
- 6.1.1 notify the Purchaser that sufficient pre-sales have occurred and the Vendor is proceeding with the Development;
 - 6.1.2 submit the Subdivision Plans to the Department of Lands & Survey (Fiji) for Approval as to survey;
 - 6.1.3 implement the conditions of Approval of the Director of Town and Country Planning and obtain the Director's final consent, provided that such conditions and final consent are acceptable to the Vendor in the Vendor's absolute discretion;
 - 6.1.4 cause the Subdivision Plans to be registered at the Office of the Registrar of Titles, Suva; and
 - 6.1.5 promptly notify the Purchaser once registration and Practical Completion have occurred, of the Settlement Date.

No warranty

- 6.2 The Vendor gives no warranty to the Purchaser as to when the things provided for in clause 6.1 will occur and the Purchaser acknowledges that the dates by which those things are to occur are not essential conditions of this agreement.

Insufficient Sales

- 6.3 In the event that the Vendor elects not to proceed with the Development due to the Vendor, in the Vendor's absolute discretion, not achieving sufficient pre-sales, the Vendor will, as promptly as possible, notify the Purchaser that the Development is not proceeding and cancel this agreement.

Measurements

6.4 All measurements and areas are or may be approximations and are subject to any variation which may be found necessary upon checking by the Relevant Authority, the Vendor's surveyor or the Registrar of Titles and neither party will be entitled to:

6.4.1 make any claim against the other;

6.4.2 claim any compensation, damages or right of set off; or

6.4.3 make any objection or requisition,

based on such a variation.

Variations

6.5 The Vendor may at any time make minor variations to the Subdivision Plans (including by alteration, variation or cancellation of any proposed drainage reserve or easement area shown on those plans) in such manner as the Vendor considers appropriate having regard to the circumstances, and the Purchaser will not be entitled to claim any compensation, damages or right of set-off or to make any objection or requisition based on such alteration, variation or cancellation.

Caveat

6.6 The Purchaser:

6.6.1 will not register a caveat against any person's title to or estate in the Land (or land including the Land) or the Common Facilities, nor permit anyone claiming an interest through the Purchaser to do so;

6.6.2 if the Purchaser does register a caveat or permits anyone claiming an interest through or on behalf of or at the instruction of the Purchaser to register such a caveat the Purchaser, will be liable for all damages suffered and costs incurred by the Vendor or any other persons in connection therewith including the costs of removal and the costs and expenses incurred directly or indirectly by any consequent delay in the registration of either the Subdivision Plans or the completion of settlement of a sale of any other Apartments;

6.6.3 will withdraw the caveat or procure the withdrawal of the caveat (as appropriate) forthwith upon being requested to do so by the Vendor;

6.6.4 irrevocably appoints the Vendor as the Purchaser's attorney and agent to prepare, sign, and register a withdrawal of any caveat; and

6.6.5 will pay the costs of so doing immediately upon demand by the Vendor.

Purchaser not to object

6.7 The Purchaser will not object, or take any steps to object, to any of the Vendor's applications for consents and approvals from any Relevant Authority in respect to the Approval or any part of the Land nor will the Purchaser permit anyone claiming an interest through or on behalf of or at the instruction of the Purchaser to so object or to take any such steps to object. If the Purchaser acts in breach of this clause then the Purchaser will be liable for all damages suffered and costs incurred by the Vendor or any other person in connection therewith, including the costs and expenses incurred directly or indirectly by any consequent delay in the Vendor undertaking or completing the Development.

Appeals

6.8 In the event of each of the following occurring (an "Appeal Event"):

6.8.1 the Approval being granted by the Director of Town and Country Planning and an appeal being brought by an objector to the Approval to an appropriate Court (the "Objector Appeal");

6.8.2 the Approval being refused or given on terms and conditions which are unacceptable to the Vendor, in the Vendor's absolute discretion; or

6.8.3 the Director of Town and Country Planning has not determined the application for the Approval within the limits prescribed by law;

the Vendor must decide within thirty days of receipt of notification of the Appeal Event whether to become a party to the Objector Appeal or appeal to a court of relevant jurisdiction against the decision or the failure to act referred to in clauses 6.8.2 and 6.8.3 respectively (the "Appeal").

6.9 If the Vendor decides to Appeal then the Vendor must:

6.9.1 lodge the Appeal as soon as reasonably practicable after such decision and in any event, within any period described by virtue of any statute; and

6.9.2 use all reasonable endeavours to procure that the Appeal is processed as quickly as practicable thereafter.

7. BODY CORPORATE AND MANAGEMENT

Vendor's development

7.1 The Vendor is developing as a residential estate the Land so depicted on the Apartment Plan.

Common Facilities

7.2 The Vendor's Development will include the construction of the Common Facilities.

7.3 The Vendor will transfer the Head Lease (the residue land under which will be the land comprising the Common Facilities after the grant of the Apartment Leases) and deliver any other documents required to fully transfer title in and control of the Common Facilities to the Body Corporate prior to the Settlement Date.

Rules

7.4 The Vendor reserves the right to amend the Rules prior to the Settlement Date as the Vendor in its sole discretion deems necessary or desirable, and if it does so will promptly provide a copy to the Purchaser.

7.5 The Purchaser is not entitled to:

7.5.1 object to any amendment of the Rules before the Settlement Date; or

7.5.2 delay Settlement or seek any compensation or other remedy because of any such amendment.

Purchaser to Deliver Apartment Management Agreement

7.6 The Purchaser must within 5 Business Days after receiving the completed Apartment Management Agreement from the Vendor, execute and deliver the Apartment Management Agreement to the Vendor (as to which time is of the essence).

Completion of formal matters

7.7 If at the time the executed Apartment Management Agreement is returned to the Vendor that agreement is incomplete in any formal respect, the Vendor and its solicitors are authorised to complete it.

Vendor as attorney to sign Apartment Management Agreement

7.8 The Purchaser appoints the Vendor and its directors and secretaries jointly and each of them severally to be the attorney of the Purchaser (or where more than one person comprises the Purchaser, of each such person) to sign the Apartment Management Agreement, but this power of attorney may not be exercised unless the Purchaser has failed to comply with clause 7.6.

Purchaser to become Member

- 7.9** The Purchaser acknowledges that the Purchaser is entitled and obliged to become and remain a member of the Body Corporate (conferring the Common Facilities Rights) while the Purchaser is registered as the lessee pursuant to the Apartment Lease, and to fulfil and perform all of the obligations of a member of the Body Corporate, including paying any levies set by the Body Corporate, in accordance with the provisions of the Constitution. The Purchaser acknowledges that a breach by the Purchaser of the Constitution or the Rules will constitute a breach of the Apartment Lease.

Body Corporate Management Agreement

- 7.10** The Purchaser acknowledges that the Body Corporate will enter into the Body Corporate Management Agreement.

Amendments to Apartment Lease, Apartment Management Agreement, Body Corporate Management Agreement and Constitution

- 7.11** The Purchaser acknowledges and agrees that the Vendor may make such changes as it considers appropriate having regard to the circumstances, to the Apartment Lease, Apartment Management Agreement, the Body Corporate Management Agreement and the Constitution prior to the Settlement Date and the Purchaser will not be entitled to claim any compensation, damages or right of set-off or to make any objection or requisition based on such alteration or variation provided that such changes do not, in the reasonable opinion of the Vendor, have any material impact on the Purchaser.

8. SETTLEMENT AND POSSESSION

Time and place for Settlement

- 8.1** Settlement will be effected and completed before 3.00pm on the Settlement Date at the office of the Registrar of Titles in Suva, The Fiji Islands.

Settlement conditions

- 8.2** The following must be satisfied before Settlement:
- 8.2.1** the conditions contained in clause 2.1 have been satisfied or waived;
 - 8.2.2** the Project Manager has issued the Certificate of Practical Completion;
 - 8.2.3** all necessary consents and permits for the Works have been obtained;
 - 8.2.4** the Body Corporate has been duly established and the Head Lease has been assigned to the Body Corporate;
 - 8.2.5** the Common Facilities have been substantially completed; and
 - 8.2.6** the Manager has signed the Apartment Management Agreement and the Body Corporate Management Agreement and will be in a position to provide the services specified in those agreements from Settlement Date.

Interest for late payments

- 8.3** If for any reason except the default of the Vendor, any of the Total Price or any other money is not paid upon the due date for payment, the Purchaser will pay to the Vendor interest at the Default Interest Rate on such unpaid money from the due date for payment until payment, but this stipulation is without prejudice to any of the Vendor's rights or remedies including the right to claim for additional expenses and damages. For the purposes of this clause, a payment made on a day other than a Business Day or after the end of a Business Day or after the time for Settlement on the Settlement Date (as the case may be) will be deemed to have been made on the next following Business Day and the interest will be computed accordingly.

Documents to be delivered to Vendor

8.4 At Settlement, the Purchaser must give to the Vendor:

8.4.1 a bank cheque for the unpaid balance of the Total Price;

8.4.2 if not already provided pursuant to clause 7.6, the Apartment Management Agreement duly signed by the Purchaser; and

8.4.3 a cheque made out to the Body Corporate for the Body Corporate levy for the period from Settlement Date (unless covered by an apportionment with the Vendor pursuant to clause 8.7).

Settlement

8.5 On the balance of the Total Price, interest and other money (if any) due under this agreement being paid or satisfied as provided in this agreement and in any collateral or related agreement, the Vendor will concurrently hand to the Purchaser:

8.5.1 a registrable memorandum of transfer of the Apartment Lease and all other instruments in registrable form which may be required for the purpose of registering the memorandum of transfer; and

8.5.2 the duplicate copy of the Apartment Lease.

Transfer

8.6 The Vendor at the Purchaser's expense will prepare the memorandum of transfer of the Apartment Lease and provide a copy to the Purchaser for approval.

Apportionments

8.7 All outgoings (including the relevant proportion of outgoings of the Body Corporate), and any letting income in respect of the Apartment will be apportioned on the Settlement Date such that the Vendor bears and pays all outgoings and receives any income up to and including the Settlement Date and after that date the Purchaser will receive all income and bear and pay all outgoings in respect of the Apartment and the relevant proportion in respect of outgoings of the Body Corporate. For the avoidance of doubt the Purchaser acknowledges that the Vendor shall be entitled to let the Apartment prior to the Settlement Date for its own account.

9. PASSING OF TITLE AND PROPERTY

9.1 Property in and legal title to the Apartment, Furniture Fitout and the Common Facilities Rights will pass on Settlement, when the Vendor has received payment of the Total Price in full together with any other money payable under this agreement.

10. RISK

10.1 The Apartment and Furniture Fitout will remain at the sole risk of the Vendor until Settlement and pass to the Purchaser with effect from Settlement.

11. VENDOR'S WARRANTIES AND UNDERTAKINGS

11.1 The Vendor warrants and undertakes that on Settlement:

11.1.1 there are no arrears of any levies owed to DCL outstanding on the Apartment;

11.1.2 the Vendor has fully complied with the requirements specified in any compliance schedule issued by the Director of Town and Country Planning in respect of the Development;

11.1.3 there is no unremedied breach of the Apartment Lease or the Head Lease by the respective lessees thereunder; and

11.1.4 unencumbered title to the Apartment and Furniture Fitout will pass to the Purchaser.

11.2 The Vendor warrants and undertakes that:

11.2.1 any adjustments are paid or will immediately following Settlement be paid to the dates shown on the Vendor's statement of apportionments;

11.2.2 on the date of this agreement the Vendor has not received any notice nor has the Vendor any knowledge of any requisition or outstanding requirement imposed by any Relevant Authority in respect of the Land or any town planning notice which has not been disclosed to the Purchaser; and

11.2.3 if the Vendor receives any notice or demand from any Relevant Authority after the date of this agreement, it will (if not paying or complying with such notice or demand) forthwith deliver it to the Purchaser or the Purchaser's solicitor.

Extent of warranties

11.3 Except as expressly provided in this agreement, all other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded. No agent or representative of the Vendor is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by the Vendor in writing and the Vendor is not in any way bound by any such unauthorised statements nor will any such statements be taken to form a contract or part of a contract with the Vendor collateral to this agreement.

12. DEFAULT

Settlement notice

12.1 If the sale is not settled on the Settlement Date, either party may at any later time (unless the agreement has first been cancelled or become void) serve on the other party notice in writing ("Settlement Notice") to settle in accordance with this clause 12, but the Settlement Notice will be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the notice or is not so ready able and willing to settle only by reason of the default or omission of the other party to this agreement.

12.2 On service of a Settlement Notice the party on whom the notice is served must settle within 5 Business Days after the date of service of the notice (excluding the day of service) and in respect of that period time will be of the essence, but without prejudice to any intermediate right of cancellation by either party.

Purchaser's Default

12.3 If the Purchaser does not comply with the terms of the Settlement Notice served by the Vendor then:

12.3.1 without prejudice to any other rights or remedies available to the Vendor at law or in equity, the Vendor may:

- (a) sue the Purchaser for specific performance; or
- (b) cancel this agreement and pursue either or both of the following remedies:
 - (i) forfeit and retain for the Vendor's own benefit the entire Deposit paid by the Purchaser; and/or
 - (ii) sue the Purchaser for damages;

12.3.2 where the Vendor is entitled to cancel this agreement, the entry by the Vendor into a conditional or unconditional contract for the resale of the Apartment will take effect as a cancellation of this

agreement by the Vendor, if this agreement has not previously been cancelled, and such resale will be deemed to have occurred after cancellation;

12.3.3 the damages claimable by the Vendor under clause 12.3.1(b)(ii) will include all damages claimable at common law and equity and will also include (but will not be limited to) any loss incurred by the Vendor on any bona fide resale. The amount of that loss may include:

- (a)** interest on the unpaid part of the Total Price at the Default Interest Rate from the Settlement Date to the settlement of such resale;
- (b)** all costs and expenses reasonably incurred on any resale or attempted resale; and
- (c)** all outgoings (other than interest) and maintenance expenses in respect of the Apartment from the Settlement Date to the settlement of such resale; and

12.3.4 any surplus money arising from such resale will be retained by the Vendor.

Vendor's Default

12.4 If the Vendor does not comply with the terms of a Settlement Notice served by the Purchaser then the Purchaser may without prejudice to any other rights or remedies available to the Purchaser at law or in equity:

12.4.1 sue the Vendor for specific performance; or

12.4.2 without prejudice to any right of the Purchaser to damages, give notice in writing to the Vendor cancelling this agreement and requiring the Vendor forthwith to repay to the Purchaser any Deposit and any other money paid on account of the Total Price and interest on such sums at the Default Interest Rate from the date or dates of payment by the Purchaser until repayment.

Extension of time for compliance

12.5 The party serving a Settlement Notice may at the request or with the consent of the other party extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the Settlement Notice will be deemed to expire on the last day of the extended period or periods and it will operate as though this clause stipulated the extended period of notice in lieu of the period otherwise applicable, and time will be of the essence of the agreement accordingly. An extension may be given either before or after the expiry of the period of the notice.

12.6 Nothing in this clause 12 will preclude a party from suing for specific performance without giving a Settlement Notice.

12.7 A party who serves a Settlement Notice under this clause will not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

13. RIGHT TO CANCEL AND FORCE MAJEURE

13.1 If the Vendor or its contractor has not commenced construction of the Works by 30 June 2004, then either party may at any time thereafter but before 31 December 2004 by notice in writing to the other cancel this agreement.

13.2 If war, civil disorder, act of Government or any other factor beyond the reasonable control of the Vendor or its contractor, whether similar or not ('Specified Event') prevents the Vendor from commencing or continuing construction of the Works or renders it impracticable for the Vendor or its contractor to commence or continue construction of the Works, then the Vendor may by notice in writing notify the Purchaser of the Specified Event and cancel this agreement.

13.3 If this agreement is cancelled pursuant to this clause 13, the Purchaser will be entitled to the return of the Deposit in accordance with clause 4.6 and neither party will have any right or claim against the other.

14. SALES OF APARTMENT GENERALLY

14.1 The Purchaser will not object (and waives any right to do so) to methods employed by the Vendor in an endeavour to sell other Apartments including, without limitation, as to the use of signs, the placement of signs on the Common Facilities and the maintenance of display apartment(s) and/or a sales office, provided that the Vendor does not cause unreasonable interference to the comfort and convenience of the Purchaser and its use and enjoyment of the Apartment.

15. GENERAL

Assignment

15.1 The Purchaser cannot assign, transfer, or otherwise dispose of or alienate the benefit of this agreement, without the prior written consent of the Vendor, which consent will not be unreasonably or arbitrarily withheld or delayed.

15.2 If the Vendor consents to the assignment, transfer, disposal of, or alienation of the benefit of this agreement by the Purchaser, the Purchaser will at the cost of the Purchaser prepare, have executed and stamped a deed, in a form acceptable to the Vendor, pursuant to which the assignee, transferee or disponent covenants with the Vendor that the assignee, transferee or disponent is bound by the provisions contained or implied in this agreement and on the part of the Purchaser to be observed and performed.

15.3 The Vendor will be free to assign, transfer, or otherwise dispose of or alienate the benefit of this agreement to a third party on such terms and conditions as it thinks fit.

Costs

15.4 Each party will pay its own costs of and incidental to the negotiation, preparation, execution and delivery of this agreement.

Non Merger

15.5 Notwithstanding any rule of law to the contrary, the provisions of this agreement will not merge in any settlement to be effected, or in any instrument to be executed and given in accordance with the provisions of this agreement, but will remain in full force and effect.

Notices

15.6 Any notice permitted or required to be given under this agreement will be in writing and will either be:

15.6.1 delivered;

15.6.2 mailed by pre-paid registered mail; or

15.6.3 sent by facsimile transmission, to the addressee or the addressee's solicitor named in the Particulars of Sale Purchase and Construction at that person's last known address or facsimile number shown in the Particulars of Sale Purchase and Construction.

15.7 Any notice required to be given under this agreement or prescribed by statute will be valid and effectual if given under the hand of the party, the party's solicitor, or any authorised representative for the time being of the party, and if the party is a corporation, by its general manager, company secretary or a director.

15.8 Any notice sent by registered mail will be deemed to have been received on the third Business Day following the date of mailing. A notice sent by facsimile transmission during a Business Day will be deemed to be received upon completion of an error free transmission and in every other case will be deemed, upon completion of an error free transmission, to be received at 9.00am (Fiji time) on the next Business Day after it is sent.

Representation

15.9 This agreement and the schedules and attachments to this agreement, together with any approvals and consents in writing provided for in this agreement and given before the execution of this agreement, contain the entire agreement between the parties, notwithstanding any negotiations or discussions prior to the execution of this agreement, and notwithstanding anything contained in any brochure, report or other document. The Purchaser acknowledges that it has not been induced to execute this agreement by any representation, oral or otherwise, made by or on behalf of the Vendor, which is not set out in this agreement.

Severability

15.10 If any provision of this agreement or the application thereof to any person or circumstance is or becomes invalid or unenforceable, the remaining provisions will not be affected by that event and each provision will be valid and enforceable to the fullest extent permitted by law.

Stamping

15.11 The Purchaser will if required before the expiration of 2 months from the date of this agreement duly stamp either the counterpart or the original copy of this agreement or a transfer in pursuance of it, and in default of the Purchaser doing so the Vendor may stamp this agreement and recover the cost from the Purchaser.

15.12 If any stamp duty exemption is available to either party, each party will at any time upon request complete and sign any stamp duty exemption forms appropriate to the transaction.

Liability

15.13 If there is more than one Purchaser or Vendor, the liability of the Purchasers or of the Vendors (as the case may be) is joint and several.

15.14 Where the Purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the Purchaser will at all times remain liable for all obligations on the part of the Purchaser.

Counterparts

15.15 This agreement may be made by each party signing a copy and forwarding it to the other by registered mail or by facsimile. Each party subsequently will deliver their signed copy to the other party.

SCHEDULE 1

PLANS AND SPECIFICATIONS

Golf Terraces

Elemental Building Specification

1. Foundations – reinforced concrete grid beams
2. Ground Floors – reinforced concrete
3. Suspended floors – pre-cast and reinforced concrete
4. Walls
Structural – reinforced concrete / masonry
Non-load bearing – masonry and steel stud / plasterboard
5. Roof
Frame – steel/timber
Sheeting – pre-finished steel profile
6. Floor finishes – ceramic tiles
7. Windows and doors – aluminium / timber
8. Ceilings – suspended gib. board

SCHEDULE 2

APARTMENT PLAN

(see attached)

**SCHEDULE 3
APARTMENT LEASE
(see attached form)**

SCHEDULE 4

APARTMENT MANAGEMENT AGREEMENT

**SCHEDULE 5
FURNITURE FITOUT**

SCHEDULE 6

BODY CORPORATE MANAGEMENT AGREEMENT

**SCHEDULE 7
BODY CORPORATE CONSTITUTION**