

OPTION AGREEMENT

TO SECURE A PROPERTY WITHIN THE
HAVEN DEVELOPMENT IN NAUSORI

EXECUTIVE DEVELOPMENT
PROPERTIES LIMITED

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Solicitors
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OPTION AGREEMENT**TO SECURE A PROPERTY WITHIN
THE HAVEN DEVELOPMENT
IN NAUSORI**

THIS AGREEMENT made this day of , 200 .

BETWEEN: **EXECUTIVE DEVELOPMENT PROPERTIES LIMITED** a limited liability company having its office at Nausori in the Republic of Fiji Islands (which together with its successors and assigns is hereinafter referred to as " EDP") of the one part,

AND: The person/s or party named in Schedule 1 (hereinafter together with executors, administrators, successors, permitted assigns and nominees referred to as "the Option Purchaser") of the other part.

Hereinafter together called "the Parties"

WHEREAS:

- A.** **EDP** is the registered proprietor of freehold land described as Lot 2 on the Deposit Plan No. 8886 and contained in Certificate of Title No. 28963 Nailagobokola (pron Nailango-mbo-kola), Nausori situated in the Eastern Division of Viti Levu, Fiji Islands in the Republic of Fiji Islands (hereinafter referred to as "the said Land") and named by EDP as "The Haven".
- B.** **EDP** is developing the Haven as a mixed use commercial development on the said Land including but not limited to a hotel and tourism, retail, offices and residential accommodation within a gated community.
- C.** **Pursuant** to this Agreement, EDP has offered to the Option Purchaser the right, but not the obligation, to a choice of a free standing architect designed house and land block, a terrace house, an apartment, or other property herein after described as a "unit", as an individual unit lease within the development,, the particulars of which are contained in Schedule 2 hereof,
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The option contract provides a party with the right to move to a full purchase, construct agreement on a unit.

NOW IT IS AGREED AS FOLLOWS:

1. OPTION FOR A UNIT LEASE

- 1.1** In consideration of the Option Purchaser paying to EDP the Fee as specified in Schedule 3 within seven days of execution of this Agreement, EDP grants to the Option Purchaser the Option as outlined in this Agreement setting out a number indicating the Option Purchaser's initial choice of a house and block or a terrace house, or an apartment site (Initial Position). A second and third option is also specified in the event that either EDP using its best endeavours is unable to provide the first option, or the Option Purchaser wants a final choice of product in different categories. The Selection Process will be based on the date and time that this Option was entered into, and the Fee paid and received.
- 1.2** The term of this Option will commence on receipt of the Option Fee and expire either on the Option Exercise Date as provided below in clause 2 or on the 31st December 2009 whichever is first (the Term). If the Option Fee is not paid within seven days of execution of this Agreement then the option will automatically lapse.
- 1.3** EDP hereby grants to the Option Purchaser one of a maximum of 3 Options providing the right to enter into One Strata Unit Lease, but not the obligation to Lease one of the Units on the basis of the Unit Selection Process in Schedule 4.
- 1.4** EDP commits that the Units will be offered for selection and Lease to the Option Purchaser and other Option holders pursuant to this agreement, prior to being offered to the general or open market.
- 1.5** EDP commits that the purchase price of the Units offered to the Option

Purchaser will be EDP's official general market retail list price for the Units as at the Notice of Exercise Date.

1.6 EDP commits that :

1.6.1 The freehold land for the said Units is owned by EDP and is not subject to legal or legislative restrictions which could stop this development proceeding as at the date of this agreement.

1.6.2 The approved Master Plan will provide for appropriate zoning for the said Units.

1.6.3 It will proceed to full planning approvals in a timely manner.

1.6.4 It will under the terms of this agreement allow the sale of this Option by the Option Purchaser.

2. OPTION EXERCISE

2.1 In accordance with the Unit Selection Process in Schedule 4 and pursuant to this agreement, EDP hereby agrees to provide the Option Purchaser with a minimum of 35 business days notice by way of issue to the Option Purchaser of a written Notice to Exercise stating the date the Option must be either exercised (Option Exercise Date) or;

2.2 converted to an "Alternate Option", and the procedures for exercise of the Option. (Notice to Exercise)

2.3 EDP undertakes to provide to the Option Purchaser the Notice to Exercise pursuant to clause 2.1 not later than 24 months from the date of this Agreement.

2.4 During the period up to the issue of the Notice to Exercise, EDP will report to the Option Purchaser quarterly as to progress on the development.

3. PREMIUM ON NON-EXERCISE OF OPTION OR ALTERNATE OPTION

3.1 The Fee shall be paid to EDP forthwith.

3.2 Subject to clause 3.3, should the Option Purchaser not exercise the Option or convert the Option to an Alternate Option then the Option Fee will be absolutely forfeited to EDP but subject to the provision in clause 5 below.

4. PREMIUM ON EXERCISE OF OPTION

4.1 Should the Option Purchaser exercise the Option, the Option Fee will comprise part of the purchase price or other moneys payable under the Sales Purchase and Construction contract.

5. ALTERNATE OPTION

5.1 Should the Option Purchaser not exercise the Option, then the Option Purchaser shall have until the expiry of the term to elect to allocate the Option Fee towards the deposit on the purchase of a Unit in the development or any other property offered by EDP during the Term up to the position where EDP has secured by options 65% of the total development: or

5.2 If the Option Purchaser has not exercised a option or an alternative option within the term for a Unit, then until the development is sold out, EDP will keep the Option Purchaser informed as to properties available and should the Option Purchaser agree to purchase a Unit, then the amount of the Option will be credited towards that purchase price: or

5.3 If the Option Purchaser has not entered into a contract for purchase of a Unit then prior to completion of the development the Option Purchaser may request and EDP in its absolute discretion but acting reasonably may repay the Option Fee less costs it has attributed directly towards administration and correspondence with the Option Purchaser: or

6. INTERPRETATION

6.1 In this Agreement unless a contrary intention appears:

6.1.1 **Agreement** includes any Option arising out of or in connection with this agreement;

6.1.2 **Apartment** means a residential dwelling within a complex to be constructed within the development and sold on a purchase and construction contract to be designed by an architect of EDP's choice and built by a company appointed by EDP on or about the site indicated on the Master Plan.

6.1.3 **Business day** means any day which banks are open in the Republic of Fiji Islands;

6.1.4 **Body Corporate** means an incorporated body which will manage and run the development and whose members shall all be owners of individual unit leases within the development.

6.1.5 **House and Land** means a house to be constructed within the master planned residential community known as The Haven on a block of land with an architect and builder selected by EDP.

6.1.6 **The Haven** is the name selected by EDP for the whole of development

6.1.7 **Master Plan** is the master plan developed by EDP for the site and may be subject to change or alteration.

6.1.8 **Nominee** means any person who is the Option Purchaser's financier or a person over whom the Option Purchaser has effective control;

6.1.9 **Notice of exercise of the Option** means a document substantially in the form specified in schedule 4;

6.1.10 **Option** means the Option granted under clause 1.1;

6.1.11 Option Expiry date means 31st December 2009;

6.1.12 Option Fee means the sum of \$10,000.00 Dollars plus VAT and costs in the currency of the Purchaser of the Option;

6.1.13 Priority means the priority in which completed expressions of interest forms are received by EDP together with this agreement fully executed and the Option Fee paid;

6.1.14 Property has the same meaning as in the contract for sale, purchase and construction;

6.1.15 Purchase Price means the amount of money required to enter into a Unit Strata Lease;

6.1.16 Purchaser means a person entering into a Unit Lease through a sale, purchase and construction agreement;

6.1.17 Terrace House means a residential dwelling subject to a sale, purchase and construction agreement, to be constructed by a builder of EDP's selection, on a design by an architect of EDP's choice, on a site as indicated by the Master Plan.

6.1.18 Unit means a house and land, terrace house or apartment within the gated community to be sold pursuant to a sale, purchase and construction agreement, as part of a unit title scheme and to be managed by a body corporate.

6.1.19 The singular includes the plural and vice versa;

6.1.20 Words importing a gender include every other gender;

6.1.21 Person includes an individual, firm, body corporate, association (whether incorporated or not) government or governmental, semi governmental and local authority or agency;

6.1.22 The schedules form part of this agreement;

6.1.23 **Sale, Purchase and Construction Agreement** means the contracts with annexures to be signed by the Option Purchaser to exercise the Option;

6.1.24 **VAT** means Value Added Tax applicable in the Republic of Fiji Islands.

6.1.25 This agreement is to be construed and interpreted as a conditional contract;

6.1.26 Headings are for convenience of reference only and will not affect the construction or interpretation of this agreement;

6.1.27 Where a party to this agreement is more than one person they are jointly and separately liable under the terms of this agreement.

7. ACT OF DEFAULT

7.1 There shall be an act of default if either party:

7.1.1 fails to perform its obligations to the other party under this agreement;
or

7.1.2 has a receiver, manager, receiver and manager, liquidator (including a provisional liquidator), special investigator, administrator, statutory manager or similar person appointed (whether by a court or other persons) concerning any of its property, assets, business or affairs; or

7.1.3 becomes bankrupt, insolvent or enters into a composition scheme or arrangement (whether formal or informal) with creditors; or

7.1.4 assigns its property, assets, business or affairs for the benefit of its creditors; or

7.1.5 has any bona fide distress, execution, attachment or other process made or levied against any of its assets which is not satisfied within seven days after service.

7.2 The non-defaulting party is known as the 'innocent party'.

8. NOTIFYING ACT OF DEFAULT

8.1 Each party undertakes to the other that it will promptly notify, in writing, the other of any event which constitutes an act of default by it.

9. TERMINATION

9.1 Upon the occurrence of an act of default the innocent party may, in its absolute discretion, and at such time as it may determine all or some of the following:

9.1.1 terminate this agreement; and

9.1.2 exercise any other power or right which the innocent party may have under this agreement or in law or in equity.

10. NOTICES

10.1 Any notice to be served by one party on the other under to this agreement must be in writing and is deemed to have been duly served if given:

10.1.1 by mail, two (2) business days after it is posted where the party's last known address is in the Republic of Fiji Islands, and five (5) business days after it is posted by airmail where the party's last known address is outside the Republic of Fiji Islands; or

10.1.2 by hand, at the time it is left at the party's last known place of residence

or business; or

10.1.3 by telex, upon receipt of the answerback; or

10.1.4 by facsimile transmission, at the time of transmission to the party's last known facsimile number or such earlier time if acknowledged by the receiving party; or

10.1.5 by mutual agreement, by email to specified email address with such email being deemed received if it is not returned.

11. ASSIGNMENT

11.1 The Option Purchaser shall not assign any of its rights or benefits under this agreement without the prior written consent of EDP but such consent shall not be unreasonably withheld or delayed as transferability of this option is important to the parties hereto.

11.2 EDP intends to develop the Units in a subsidiary company under the control of EDP and the Parties agree that EDP may, at its absolute discretion, assign its entire interest in this agreement to such a company.

12. PROPER LAW

12.1 This agreement is governed by and construed in accordance with the Laws of the Republic of Fiji Islands and each party submits to the non-exclusive jurisdiction of the courts of the Republic of Fiji Islands.

13. GENERAL

13.1 No failure, delay, relaxation, or indulgence on the part of either party in exercising any power or right arising out of or in connection with this agreement or otherwise will operate as a waiver of such power or right, nor

will any single or partial exercise of such power or right preclude any future exercise.

- 13.2** If any term or part of this agreement is invalid or not enforceable according to its terms, all other terms or parts which are self sustaining and capable of separate enforcement without regard to the invalid or unenforceable term or parties and will and continue to be valid and enforceable according to its terms.

14. ARBITRATION

- 14.1** Any dispute or difference arising out of or in connection with this agreement must be, and is hereby, submitted to arbitration by a single arbitrator in accordance with the provisions of the Arbitration Act, Cap 38.

- 14.2** Arbitration shall be conducted at Suva in the Republic of Fiji Islands by a single Arbitrator willing to act as agreed upon by the Parties, but failing agreement within twenty-one (21) days from the giving of that notice, by a single Arbitrator willing to act appointed by the President for the time being of the Fiji Law Society. Arbitration shall be conducted in accordance with and subject to the provisions of the laws relating to Arbitration in force in Fiji. The award of the Arbitrator shall be final and binding on both Parties.

15. STAMP DUTY AND COSTS

- 15.1** The Option Purchaser shall pay all Stamp duty (including penalties and fines) and VAT payable arising out of or in connection with this agreement and the exercise of the option one of more of them. The Option Purchaser indemnifies EDP in respect of all stamp duty (including penalties and fines) paid by or assessed or assessable to EDP concerning the exercise of the rights of the Option Purchaser or EDP. The Option Purchaser must not bring or defend any proceeding concerning this Agreement unless it has first paid any unpaid stamp duty (including penalties) or, if EDP has paid all or any of those amounts, the Option Purchaser has reimbursed EDP in full.

15.2 Each party shall pay its own legal costs in connection with this agreement.

16. COUNTERPART EXECUTION

16.1 This Agreement may be executed in counterparts which taken together shall constitute one and the same instrument and any of the Parties to this Agreement may execute this Agreement by signing any such counterpart and the Agreement shall become binding on all Parties when each party has completed delivery of such counterpart.

IN WITNESS WHEREOF the parties have hereunto set their hands on the day and the year hereinbefore mentioned.

THE COMMON SEAL of Executive Development Properties LIMITED was hereunto affixed in our presence and we certify that we are the proper officers of the said company by whom and in whose presence the said Seal is to be affixed to documents executed by the said Company:

Director

Director/Secretary

SIGNED by the said as the Option Purchaser in my presence after the contents here of had been read over and explained to him in the language and he/she appeared fully to understand the meaning and effect thereof and made his/her signature thereto in my presence:

Option Purchaser

Name:

Schedule 1

The Option Purchaser

Name(s) _____
Company Name (if applicable)

Tel: Home: _____ Business: _____ Mobile: _____

Facsimile:

Email:

Address:

Solicitor:

Mailing Address (if different):

Citizenship:

Schedule 2

The following house & land Units (Leases) in the Strata Development are anticipated to be available-

29 blocks in three Sections breaking down as:

Section 1, comprising 14 house and land packages

Section 2, comprising 6 house and land packages; and

Section 3, comprising 9 house and land packages.

The house blocks vary in size, between 540 square meters and a maximum size of 1,000 square meters.

Up to an expected maximum of 40 terraces houses over 12 allotments.

Up to an expected maximum of 100 apartments.

Primary Units of which up to 65% of the total in any category will be offered as Options and the balance will be sold at open market price.

The units will be available at an initial estimated retail list price through participation in a restricted offer made by EDP to the Option Purchaser when the units leases become available for purchase, together with certain other associated rights (the Offer).

The units will be within a gated community where EDP intends to provide in the final development for the benefit of unit holders a wide range of lifestyle options and appeal that will include the following facilities, services and amenities:

- Community Club featuring facilities for tennis, basketball/netball, swimming pool, volleyball, a club house and child care centre;
- Community swimming pool with BBQ and recreation enclosure;
- Parks with cycling tracks;
- Expansive landscaped gardens;
- Fully secured environment;
- One only access point with a security centre; and
- A Community Service Centre.

The Houses built on the blocks, the terraces, and the apartments will be constructed by EDP and The Option Purchaser will be consulted as to final design and fit out. Any prices indicated to The Option Purchaser will therefore be a guide only.

D. The Option Purchaser desires to accept the Offer by EDP and secure the right and the Parties desire to enter into this Agreement in order to create a legally binding contract between them outlining their respective understandings, intentions, rights and obligations.

E. In this agreement and in all subsequent agreements, the Option Purchaser (if a non resident of Fiji) accepts and understands that: -

- (i) The development is planned as what is known in Fiji as a "Unit

Lease Title” Scheme (which in the US and other countries is known as a common interest development) managed by a Body Corporate (in the US and other countries known as a Home Owners Association).

- (ii) The purchasers will have a legal unit lease title which shall be an indefinite lease from EDP, which owns the Freehold title.
- (iii) Each unit lease is a registered lease title, transferable and may be mortgaged, used as security, and sold, at the owners discretion, subject to the rules of the Body Corporate.
- (iv) The purchaser will need to secure necessary approvals of relevant government authorities to purchase the property.

Schedule 3- The Option Fee

\$10,000.00 plus VAT as provided in Clause 6.1.12.

Choose Option Mark 1 to 3:

	First Choice	Second Choice	Third
Choice			
Free standing house on lot no
Single Level Terrace on lot no
A Double Level Terrace on lot no.
Apartment			
A one bedroom apartment
A two bedroom apartment
A threebedroom apartment

Note:

1. EDP will offer the Option Purchaser in the first place their first choice if available.
2. If the Option Purchaser passes on the first choice they will automatically be deemed to have chosen an Alternative Option which shall be in the first place the choice marked 2 above, or subject to advice from the Option Purchaser, choice 3 above. EDP will use it best endeavours to deliver the choice but does not warrant a particular lot or unit being available, since first choices are only reservations.

Schedule 4- Unit Selection Process

- A. The Option Purchaser, being the holder of a Certificate, will be issued as per Clause 2 above a **Notice to Exercise** providing the Option Purchaser with a minimum of 35 business days notice stating the date the Option must be either exercised (**Option Exercise Date**) or converted to an "**Alternate Option**". Subject to this agreement and notwithstanding any other provisions in this agreement, the procedures to exercise the Option is intended to be as follows.
- B. The **Notice to Exercise** will contain the following:
- B.1 The Option Exercise Date being at least 35 business days from the date of the Notice to Exercise;
- B.2 Final design drawings and sales materials (including price lists) for the Units being Land lots and Home designs, Terraces, Apartments for use by the Option Purchaser, in considering whether to exercise the Option;
- B.3 The locations available for attendance by the Option Purchaser (for the exercise of the Option and exchange of contracts for the Lease by the Option Purchaser of one of the Units), should the Option Purchaser wish to exercise the Option.
- B.4 An **Intention to Exercise** form which the Option Purchaser will be required to return to EDP within seven business days of the date of the Notice to Exercise indicating the Option Purchaser's intention to proceed with a selection and Sub-Lease of one of the Units , and their indicative preferred choices of Units.
- C. On receipt of the Intention to Exercise from the Option Purchaser, EDP will within seven business days offer to the Option Purchaser a written **Invitation to Proceed**. The Invitation to proceed will contain:
- C.1 The final position number (based on the Option Purchaser's selected position for a Unit and varied as may be required at the absolute discretion of EDP) for the Option Purchaser's entitlement priority for selection of one of

the Units;

- i. The date and time and place for the Option exercise, by way of attendance at contract exchange. The date of exercise of the Option by way of Unit selection and Contract exchange will be a minimum of 21 business days from the date of the Invitation to Proceed, issued to the Option Purchaser.
 - ii. Full copies of final contracts and pricing.
 - iii. An independent legal opinion from a qualified practicing solicitor, and in Fiji certifying that the agreement is in a form acceptable to provide clear Unit Lease and comfort to any purchaser.
- D. Final allocation of Units and exchange of Contracts will be made on the Option Exercise Date in interview with the Option Purchaser in accordance with their final position number. EDP will, at its absolute discretion, issue offers to Unit Purchasers in accordance with their selection according to their final position Unit number and to the best of its ability and will not entertain any protests or enter into any disputes in relation to the final offer to any Unit Purchaser.
- E. The Option Purchaser must, in order to exercise the Option, comply fully and completely with the terms of the Notice to Exercise which will include the following agreed minimum provisions requiring the Option Purchaser to:
- E.1 serve a notice of exercise of the Option on EDP by 5pm on the Option Exercise Date or the Option will automatically convert to an Alternate Option;
 - E.2 deliver the contract duly executed and dated by the Option Purchaser on or before the Option Exercise Date;
 - E.3 deliver a bank cheque payable to EDP for the amount to bring the total paid including the option fee to an amount equal to 10% of the full

purchase price of the Unit in question as stipulated by EDP on or before the Option Exercise Date.

- E.4 execute all necessary documents that may be required by EDP to be executed; and
- E.5 if the notice of exercise of Option is given by the Option Purchaser's Nominee then there will also be forwarded with such notice and duly executed by the Option Purchaser an irrevocable authority certifying to EDP that the Option Purchaser has nominated such person to the exclusion of the Option Purchaser as its Nominee (such person being referred to as 'the Nominee') for the purpose of the option.
- F. Upon the exercise of the option there will be simultaneously entered into and completed between EDP and the Option Purchaser an agreement for the Sale, Purchase and Construction of the Unit upon the terms set out in the contract..
- G. Upon receipt of the documents referred to in "F" EDP will hand to the Option Purchaser or their respective solicitors the following:
- G.1 a counterpart of the contract, such counterpart to bear the same date (being the date of the exercise of the option) and to be executed by EDP;
- G.2 the transfer form to be executed by EDP on settlement;
- G.3 any other documents which according to the provisions of the contract EDP is required to hand to the Option Purchaser on completion of the contract.