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GOVERNMENT OF FIJI

MOMI BAY DEVELOPMENT DECREE 2010
 (DECREE NO. 28 OF 2010)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Momi Bay Development Decree 2010.
 (2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Decree, unless the contrary intention appears—

“Acquired native land” has the same meaning as in the Land Swap Agreement.

“Developer” means Matapo Limited a Fiji incorporated limited liability Company having its registered office at Muaror & Co, 25 Gorrie Street, Suva, Fiji;

“Director of Lands” means the person holding all State Lands on behalf of the State under section 4(1) of State Lands Act [Cap. 132];

“Fiji Development Bank” means the Fiji Development Bank established under the Fiji Development Act [Cap. 214];

“FNPF” as the context requires means the Fiji National Provident Fund and the Fiji National Provident Fund Board under the Fiji National Provident Fund Act [Cap. 219];

“instrument of title” has the meaning as defined in the Land Transfer Act [Cap. 131] or the Agricultural Landlord and Tenant Act [Cap. 270] and includes any agreement to lease issued by the Director of Lands or the Native Land Trust Board;

“Land Swap Agreement” means the arrangement for the exchange of freehold and native land in the agreement dated 31st May 2005 made between Tokatoka Naisau and the Developer;

“Loan Facility” means the Syndicated Development Facility Agreement for Momi Bay made between the FNPF, Fiji Development Bank and the Developer;

“Minister” means the Minister responsible for Finance;

“Momi Bay Integrated Resort Development” or “Momi Integrated Resort Development” means the integrated resort development at Momi within the boundaries of the lands depicted in the original Master Plan of Momi Integrated Resort Development as depicted in the Schedule 1 to this Decree as subsequently varied and which was planned and commenced by the Developer;

“NLTB” means the Native Land Trust Board and shall have the same meaning as in the Native Land Trust Act [Cap. 134];

“Person” or “Persons” shall include any company or association or body of persons, corporate or unincorporated;

“Registrar of Titles” or “Registrar” means the Registrar as defined in section 2 of the Land Transfer Act [Cap. 131];

“Schedule” means the Schedules to this Decree;

Object of the Decree

3.— (1) The objects of this Decree are—

- (a) to protect the funds advanced to the Developer by FNPF under the Loan Facility and the value of the securities provided by the Developer for the advances for Stage I of the Momi Bay Integrated Resort Development;
- (b) to expedite the foreclosure applications made by FNPF after default by the Developer in completion and repayment to FNPF; and
- (c) to give effect to such other matters, as provided in this Decree.

(2) The Decree achieves these objects by—

- (a) providing for the expedited foreclosure of all registered lands under the Land Transfer Act and unregistered lands covered by mortgages granted by the Developer to FNPF in respect of Stage I of the development upon default in completion and repayment caused by failure to account properly for all advances taken and failure to pay contractors from drawdown of funds advanced; and
- (b) providing for all lands in Stage I of the Momi Bay Integrated Resort Development together with all improvements and fixtures thereon to be vested in FNPF for the benefit and protection of the members of FNPF.

PART 2—DIRECTIONS AS TO FORECLOSURE

Registered Lands

4.—(1) The Registrar of Titles shall immediately on the coming into effect of this Decree, register the pending foreclosure applications lodged by FNPF in respect of all the pieces and parcels of land comprised in instruments of title standing in the name of the Developer registered with the Registrar secured and covered by Registered Mortgage Numbers 577303 and 699990.

(2) The Registrar shall not be required nor shall the Registrar require FNPF to comply with any further formalities under sections 73 and 74 of the Land Transfer Act [Cap. 131].

(3) The provisions of subsections (1) and (2) of this section shall apply to all instruments of title already issued by the Registrar whether in their original form or as subsequently subdivided and or consolidated and or further subdivided and or titles pending issue or to be issued on request from the Developer or FNPF in accordance with Deposited Plans already registered or pending registration.

Unregistered Lands

5.—(1) Notwithstanding the pending application in court by FNPF to foreclose, the Director of Lands shall cause to be cancelled the Approval Notice of Lease or any other instrument of title covered by L.D Ref: 60/782 comprising an area of 43.6 hectares (subject to survey) known as Momi-Bay Nadi Foreshore in the Province of Nadroga/Navosa issued to the Developer and covered by Mortgage Number 8984 in favour of FNPF and shall upon such cancellation issue a fresh Approval Notice of Lease or other instrument of title to FNPF for the unexpired term of the Developer's cancelled Approval Notice of Lease or other instrument of title or for such longer period and on such terms to be negotiated between the Director of Lands and FNPF.

(2) Notwithstanding the pending application in Court by FNPF to foreclose, the Native Land Trust Board shall cause to be cancelled the Agreement to Lease for Tourism Purposes or other instrument of title covered by NLTB Ref: 4/11/6989 comprising an area of 231 acres (subject to survey and less the area extracted as part of a land swap with the NLTB, Developer, Director of Lands and the State) known as Navatudamu (Part of) and Nauluubura (Part of) in the Province of Nadroga for a term of 99 years with effect from 1st January 2004 issued to the Developer and covered by Mortgage Number 8983 in favour of FNPF and shall upon such cancellation issue a fresh Agreement to Lease or other instrument of title to FNPF for the unexpired term of the Developer's cancelled Agreement to Lease or other instrument of title for such longer period, terms and varied or consolidated area as the NLTB and the FNPF may agree.

(3) FNPF shall on the commencement of this Decree be entitled to, and the NLTB shall grant a 99 year lease on the Acquired native land on such terms, conditions or consolidated area (which may include the land in subsection (2)) to be negotiated between FNPF and NLTB provided that nothing contained herein shall be construed as imposing any obligation which the Developer had under the Land Swap Agreement on FNPF.

(4) The pending applications in Court referred to in subsections (1) and (2) of this section shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall wholly terminate upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, and the provisions of subsections (4) and (5) of section 8 shall apply mutatis mutandi.

Caveats, judgments and subsequent interests

6.—(1) The Registrar of Titles shall upon the commencement of this Decree remove any caveats, judgments, charges, encumbrances or other interests registered, entered or endorsed on any instruments of title subsequent to the Mortgage numbers 577303 and 699990 and shall not register any caveat, judgment, charges encumbrances or other interest pending the vesting of the titles to FNPF under this Decree.

(2) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any application for a charging order, order approving a judgment creditor sale, order for sale, order for extension of any judgment or caveat registered or lodged on any instrument of title or order execution by any person or body against any land subject to this Decree pending the vesting of ownership to FNPF.

(3) Any proceeding, action or application before any court, tribunal, commission or any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (2) that had been instituted before the commencement of this Decree and whether determined or not at that date or presently pending any appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall wholly terminate upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, tribunal, commission or any other person or body exercising a judicial function and the provisions of subsections (4) and (5) of section 8 shall apply mutatis mutandi.

PART 3—VESTING OF IMPROVEMENTS AND FIXTURES

Vesting of other property

7.—(1) Notwithstanding any claim by any person, including the Developer, but without affecting the rights of any relevant authority under the Electricity Act [Cap. 180], Telecommunications Act [Cap. 173] and the Water Authority of Fiji Promulgation 2007, all improvements and fixtures (whether on or under the land or in the water) and forming part of or attached to any land covered in sections 4 and 5 shall on the commencement of this Decree vest into the ownership of FNPF, without compensation being payable to any person.

(2) Notwithstanding any claim by any person, including the Developer, all intellectual property rights in name of the development and all the plans, designs and other property in Schedule 2 shall vest absolutely in FNPF on the commencement of this Decree and FNPF or any assignee of FNPF shall have the unrestricted right to use and take immediate possession of those properties from the Developer or any other person having possession or copies of those properties without any charge or payment from FNPF, provided however that nothing contained in this subsection shall prevent any person from making a claim against the Developer to recover any payment or fees for the sale or supply of any property the subject of this subsection.

(3) All documents or instruments brought into existence for the purpose of evidencing, recording or effecting the matters referred to in sections 4, 5 and subsections (1) and (2) of this section shall be exempt from stamp duty under the Stamp Duties Act [Cap. 205] as amended.

(4) Without limiting the generality of the subsection (3), the Stamp Duties Act [Cap. 205] shall not:

- (a) apply to any agreement brought into existence for the purpose of recording, evidencing or effecting any leasing, transfer or assignment of property of the Developer to or the vesting of any property into FNPF;
- (b) apply to any instrument recording, evidencing or effecting anything which is the subject of this Decree; or
- (c) operate to impose or attract any duty, fine, impost, penalty or assessment required or reasonably necessary to give effect to the purpose and intent of this Decree.

(5) Without limiting the generality of any other provision of this Decree, nothing in the State Acquisition of Lands Act [Cap. 135], State Lands Act [Cap. 132], Forest Decree 1992, Land Sales Act [Cap. 137], Land Transfer Act [Cap. 131], Native Lands Act [Cap. 133], Native Land Trust Act [Cap. 134], and any other written law amending or made thereunder shall invalidate or affect any instrument, instrument of title, agreement, document, transfer, assignment, Crown Grant or grant of lease given or made to the Developer to which FNPF by virtue of its mortgages and other securities and this Decree has become entitled to in the place of the Developer and the Registrar of Titles shall make such entries to give effect to the above provisions or as may be directed by the Minister.

(6) No further consent, permit, certification, ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, or fees of any kind whatsoever shall be required to be given or paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (2) notwithstanding any provision to the contrary in any written law.

(7) The vesting of any interest in any land to FNPF by virtue of this Decree shall be valid and effective notwithstanding any non-compliance with any written law by the Developer, FNPF, the Fiji Development Bank, NLTB, Director of Lands, Registrar of Titles or the State.

(8) The powers and rights conferred upon FNPF by the operation of this Decree shall not be limited or restricted in any way by the provisions of or non-compliance with any written law.

PART 4—MISCELLANEOUS

Certain decisions not to be challenged

8.—(1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any challenges by any person or body which seeks or purports to challenge or question:

- (a) the validity, legality or propriety of this Decree;
- (b) any decision of any Minister or any State official or body, made under this Decree;
- (c) any decision, action or omission made under or arising out of the provisions of this Decree;
- (d) the validity of the process, grant or issue of any leases, licences or other instruments of title by the Native Land Trust Board, Director of Lands, Registrar of Titles or the State to the Developer prior to the commencement date hereof;
- (e) the validity of the process, grant or issue of any leases, licences or other instruments of title by the Native Land Trust Board, Director of Lands, Registrar of Titles or the State subsequent to the commencement date hereof to FNPF;
- (f) the validity of any deed, document, agreement, mortgage, debenture or other writing creating, providing or securing the funding facility to the Developer by the Fiji Development Bank and FNPF as joint lenders or the provision of security over any lands forming part of Stage I of the Momi Integrated Resort Development within the boundaries depicted in the Schedule 1;
- (g) the validity of any agreement, deed, document or other instrument assigning the debts, securities and interest of the Fiji Development Bank to FNPF;
- (h) the validity of the exercise or enforcement of any rights, remedies or reliefs under the mortgages, debenture, Loan Facility or other securities held by FNPF as mortgagee given by the Developer or under the common law, equity or any other written law; or
- (i) the validity of the grant, issue or any agreement to grant or issue any instrument of title, lease or licence to the Developer prior to the commencement of this Decree for any land within the boundaries depicted in the Schedule 1, against the Native Land Trust Board, the Director of Lands, Registrar of Titles or the State;

(2) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to seek any remedy against the State or any official of the State in relation to the design, procurement and construction of the Momi Bay Road and the Momi Bay pipeline, until such time as the Momi Bay Integrated Resort Development is completed, including in particular, the completion of the hotel at the Momi Bay.

(3) Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsections (1) and (2) that had been instituted before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, all orders whether preliminary or substantive made therein shall be wholly vacated save in so far as any decision or judgment had upheld the validity of any securities or rights of FNPF and Fiji Development Bank as mortgagee or lenders under the Loan Facility with the Developer upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, tribunal, commission or any other person or body exercising a judicial function.

(4) A certificate under subsection (3) is, for the purposes of any proceedings in a court, tribunal, commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(5) A decision of the Chief Registrar, tribunal, commission or any other person exercising a judicial function to issue a certificate under subsection (3) is not subject to challenge in any court, tribunal, commission or any other adjudicating body.

Immunity from proceedings

9.—(1) No person shall be entitled to bring any proceeding of any nature whatsoever in any court, tribunal or commission or before any other body exercising a judicial function which, whether directly or indirectly, seeks to make any claim or seeks any relief including compensation, damages, indemnity or contribution against FNPF or the Fiji Development Bank or purports to claim any relief by way of a counterclaim or joinder as a party to any proceeding for anything done or omitted to be done by virtue of any duty or obligation imposed, (whether contractual or otherwise) under the common law, equity, any statutory or other written law, agreement, deed, mortgage, debenture or other document or instrument on FNPF or the Fiji Development Bank in relation to their involvement and actions taken as a financier or mortgagee in the Momi Bay Integrated Resort Development.

(2) Any action which is presently pending before any court, tribunal or commission or before any other body exercising a judicial function, shall immediately terminate upon the commencement of this Decree including any pending appeals and all orders or judgments granted prior to that date shall be vacated save in so far as any decision or judgment, whether directly or indirectly, which had upheld the validity of any securities or rights of FNPF and Fiji Development Bank as mortgagee or lenders under the lending facility agreement with the Developer, and a certificate to that effect shall be issued by the Chief Registrar, tribunal, commission or any other person or body exercising a judicial function, and the provisions of subsections (4) and (5) of section 8 shall apply mutatis mutandi.

Offence for refusal of possession

10.—(1) Any person who wilfully conceals, retains possession of, destroys, damages, alters or refuses to give or deliver possession to FNPF or any person authorised or instructed by FNPF to take possession of any property in Schedule 2, or any person who assist another in any activity aforesaid, shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding \$100,000.00 or to a term of imprisonment not exceeding 5 years or both.

(2) Without limiting the generality of subsection (1) an act shall be deemed to be wilful when it continues following an oral or written demand, and possession shall include actual physical possession as well as having the right to custody, possession, control or power over anything.

SCHEDULE 1



SCHEDULE 2

- (i) Approved Scheme Plans for the total development at Momi which were designed and planned by Developer to undertake and complete.
- (ii) All approved (by the relevant authorities) and unapproved drawings and plans including as built and variations both architectural and engineering of whatsoever nature prepared for the Momi Bay Integrated Resort Development covering without limitation the following:-
 - (a) Roads and other infrastructure;
 - (b) Development and completion of the golf course and the club house;
 - (c) All residential subdivisions and lots;
 - (d) All marina developments and lots;
 - (e) All condominium and other residential developments;
 - (f) All hotel developments and infrastructure;
 - (g) Complete drawings/ plans including structural and engineering for all buildings to be erected in the Momi Bay Integrated Resort Development; and
 - (h) All other plans/ drawing (structural or engineering) whether approved by the Rural Local Authority or not relating to any of the matters covered above or which may not be included above but which are or were part of the project for the integrated resort development including all quantity surveys, valuations and other reports from builders and contractors on the progress and actual works completed to date in the project.

GIVEN under my hand this 8th day of June 2010.

EPELI NAILATIKAU
President of the Republic of Fiji