SUMMARY

As civil litigation has become more time consuming and costly and as the technical complexity issues in commercial disputes has increased, a growing volume of conflicting claims has been settled by alternative private proceedings such as arbitration, mediation, negotiation or other informal process that maintains the privacy of business transactions.

In Singapore disputes in the building industry are normally settled privately or via court procedure. The litigated cases are well recorded. However, those privately settled cases often lack a formal record which would provide a framework to learn from experience. The subject case study therefore attempts to analyze the technical issues involved and the strategy taken to a final solution in a privately settled dispute.

The three objectives of the report are to examine the use of negotiation for resolving dispute in a case study, to explore two alternative means of resolving disputes using mediation and arbitration, and to evaluate the merits and demerits of the three methods of dispute resolution.

The research methodology encompassed site visits to the subject property and interviews with the aforementioned parties.

This study focuses only on the process of dispute resolution of the case. The success or otherwise of this resolution will be discussed based on the various methods of dispute resolution. In terms of the outline of the study, an analysis of the process adopted in the dispute resolution from litigation to negotiation is attempted with regard to factors affecting the process. The interview findings with the disputing parties involved were collated to form a collective stance to provide an important context of the human factor in dispute resolution.
The state of the parties in dispute as well as the local residential property market was briefly evaluated. The parties' interest to enter into negotiations appears to follow naturally from the two companies' interests. Through collaboration the Management Council could rejuvenate the premises and maintain its market value as a prime development, and the Developer could maintain its reputation as a developer of quality private housing. There was a high level of liquidity, strong occupier demand and the economy was robust, albeit that growth had reduced somewhat from what was then an unsustainable level. To dampen the residential market and remove the speculative element, on 14 May 1996, the Government announced a number of measures which included a tax on profits made for any sale of residential property within three years of its purchase.

A review of the negotiation process addresses the parties' actions, relationship and context. The parties' motivations for a negotiation are considered. Then the discussion traces in detail the negotiation between the disputing parties and the ancillary talks with other ancillary parties. Each of these negotiations is described according to the issues stemming from the parties' (organizational) relationship, the individual players involved, relevant conditions, the negotiation process/session held, proposals made, and the final outcome.

The following chapter further examines the moves by both parties in the negotiation to establish if mediation and arbitration will yield more satisfactory results or settlement. The mediator's involvement in changing the negotiation procedure or intervention to break a specific deadlock was discussed. Next, arbitration proceeding as an alternative to litigation is reviewed. Had the case been reverted to arbitration, the privacy of the business transaction will be protected and the Developer will less likely make concessions which are not due to defects and will be more firm in its position. As in contrast with costs and public exposures of litigation, arbitration provides relatively expeditious and inexpensive resolution of disputes by arbitrators possessing the expert
knowledge of the building processes and act in an informal process that maintains the privacy of the business transactions.

In conclusion, recommendations were made on developing a strategy and procedural framework for treatment of future claims. A six-perceptual dimension that forms a useful framework for diagnosis of a case was proposed to analyze a dispute before a decision is made on whether direct or third party dispute approach is to be adopted. Preventive measures including a total quality control system are also recommended. It is hoped that with a procedural framework in place, the overall success of resolving a dispute will be even greater.