
AND

**AGREEMENT BETWEEN THE SHAREHOLDERS
OF AN INCORPORATED JOINT VENTURE**

Rudra Legal Corporation Pty Ltd

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Campbelltown NSW 2560

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THIS AGREEMENT dated day of 2019

BETWEEN (Shareholders)

AND of (Company)

RECITALS

- A.** The shareholders have agreed to participate in the joint venture project herein described and have agreed to incorporate a company for that purpose and to acquire shares in such joint venture company and to the regulation of their rights and obligations by the constitution of the company and the terms hereof.

OPERATIVE PART

1. General

- (a) This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In this agreement except to the extent that the context otherwise requires:

- (i) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (ii) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (iii) Grammatical forms of defined words or phrases have corresponding meanings;
- (iv) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (v) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (vi) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (vii) References to a party are intended to bind their executors, administrators and permitted transferees;

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- (viii) Obligations under this agreement affecting more than one party bind them jointly and each of them severally; and
 - (ix) Confidential information means the information, plans, specifications, and data concerning the planning, financing, cost, operations and marketing of the joint venture project available to a party or its employees as a result of the joint venture.
- (b) The bankers of the joint venture shall be .
 - (c) All cheques are to be signed by two directors of the company.
 - (d) The solicitors of the joint venture shall be .
 - (e) The accountants of the joint venture shall be .

2. Representative

In the event that any party is a company then that party shall appoint in writing a person to attend meetings of the joint venture company and manage the affairs of the joint venture on its behalf. The company so appointing the representative covenants that its appointed representative has the authority to bind the company on all matters relating to the joint venture.

3. Overview of the purpose of the joint venture

The joint venture company proposes to acquire a site and design, construct and sell a complex of strata title factories and offices.

4. Term of the joint venture

The joint venture commences on the date hereof and continues until determined in accordance with the provisions hereof or until a day agreed in writing by the parties or until the day upon which it is wound up by an order from a court or when the project has been completed and the parties no longer have an interest in the joint venture.

5. Contribution of capital and share of profits and losses

The parties shall contribute the capital required to complete the project by way of loan account at the same rate of interest for all loans as is agreed by the parties in the proportions listed in the schedule and shall share in the profits and losses of the venture in the same proportions.

6. Allotment and transfer of shares

- (a) Immediately following the execution hereof the parties must cause the company to allot shares as follows:

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- (i) On receipt by the company of \$ from shareholder 1, the allotment of A class shares at par to shareholder 1;
 - (ii) On receipt by the company of \$ from shareholder 2, the allotment of B class shares at par to shareholder 2;
 - (iii) On receipt by the company of \$ from shareholder 3, the allotment of C class shares at par to shareholder 3; and
 - (iv) On receipt by the company of \$ from shareholder 4, the allotment of D class shares at par to shareholder 4.
- (b) A transfer of shares by a party will only be effective if and when the transferee agrees in writing with the other parties to assume, observe, perform and satisfy the obligations of the transferor party under the articles and this agreement.
 - (c) All shares shall be of equivalent value and unless agreed by all parties shall have the same rights to vote, participate in dividends and share in the capital of the company.

7. Sale of whole of company or project following offer

If the parties receive from a person who is not a party hereto an offer to acquire all of the issued capital of the company or the whole of the project then:

- (a) Each party must notify the other parties in writing, within 14 days of receipt of the offer, whether or not that party wishes to accept the offer;
- (b) A meeting of the board must be held, within 21 days of receipt of the offer, to discuss whether or not the parties will accept the offer; and
- (c) If within 35 days of receipt of the offer, a party wishes to accept the offer and other parties do not wish to accept the offer, then they must within 14 days after that 35-day period acquire the shares of the parties wishing to accept the offer at the price offered pro rata to their shareholding, otherwise the original offer must be accepted.

8. Sale of shares in joint venture company to a third party

- (a) If a party wishes to accept an offer from a person who is not a party to the joint venture to acquire the whole of its shareholding in the joint venture company, then that party must immediately notify the other parties in writing of its desire to accept the offer, and give the other parties 14 days to agree to acquire such interest on the same terms and conditions with completion to take place within a further 30 days.
- (b) If the continuing parties do not wish to acquire the shareholding then they will either accept the sale to the new party provided that the new party enters into a joint venture agreement on the same terms as herein contained or counter offer their shares for sale upon terms and at a price nominated. In the event that the first party wishes to accept the counter offer but does not agree that the price reflects a due market price for such

interest, then the price shall be determined by the mean of two valuations by valuers experienced and qualified to make such valuations, one obtained by each party with the cost thereof shared equally by them. If none of these courses of action are acceptable to the parties then the undertaking of the joint venture shall be sold by auction within a reasonable time and all parties shall be entitled to bid at such auction.

- (c) A party that is a company must inform the other parties of any proposed change in their effective control, which means the change of ownership of 50% or more of their shareholding or the change in more than 50% of their directors or any other change that effectively changes the persons who have effective control of the company and make the decisions for the company. Any such change invokes this provision as if it were a proposed sale to an outside party, and if the continuing parties choose to acquire the interest of such company rather than accept the change in effective control of it or determine the joint venture, then the price shall be determined by the mean of two valuations by valuers experienced and qualified to make such valuations, one obtained by each party with the cost thereof shared equally by the parties.

9. Employment of joint venture parties

The joint venture must employ any joint venture party who is qualified by itself or its employees to render services or provide goods to the joint venture but strictly on an arms-length competitive basis within normal trading terms.

10. Directors and board decision-making

- (a) The parties must ensure that:
- (i) One director is appointed by each of the shareholders;
 - (ii) Meetings of the board will take place at least once every month;
 - (iii) A chairman of directors is appointed by the directors; and
 - (iv) A managing director is appointed by the directors.
- (b) A decision by the board requires unanimous approval by all the directors.

OR

- (c) A decision by the board will be made in accordance with the constitution of the company and the law.

11. Management of the company

- (a) The managing director will be responsible for the day-to-day operations of the company and in particular the performance of their duties by the employee consultants and independent contractors of the company. They will ensure that all reports necessary for the board to have a comprehensive review of the project will be available at all board meetings.

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- (b) They will oversee the preparation of a budget and business plan setting out in detail all expenditure for planning, approval, consultancy, construction, finance, marketing and all other usual outlays in such an undertaking and will prepare a programme and time line for the project from commencement to finalisation with appropriate and conservative allowances of time for the completion of each stage of the project.
 - (c) They will appoint a finance manager who will keep true records and books of account in which full, true and correct entries are made of all dealings or transactions concerning the business and the joint venture's affairs using generally accepted accounting principles consistently applied.
 - (d) The finance manager will control all expenditures on the project and will report weekly on expenditures versus budget and on variations and projected changes to the project cost. They will be responsible for the day-to-day management of the financial affairs of the joint venture and will report on changes in time and cost from the business plan to the managing director as soon as they become apparent. They will prepare and present monthly profit and loss accounts both on a cash and on an accrual basis. They will check all invoices for their correctness as against quotes and will ensure that payments are only made for goods actually delivered and services actually completed.
 - (e) The managing director shall ensure that the parties may at any time by themselves or their appointees inspect the project and any property of the joint venture and take copies of any documents and discuss the project with any builder employee or consultant employed in or on the project to the intent that all information is openly and readily available to each party.

12. Joint venture parties

- (a) The parties must follow the program and in doing so:
 - (i) Not cause any delays due to failure to do such things and make such decisions on their part to be made and co-operate and use their best endeavours to ensure that the joint venture successfully completes the project;
 - (ii) Not use or disclose confidential information which damages the joint venture or any of the other parties and ensure compliance by the party's employees with this covenant;
 - (iii) At all times act in the best interests of the joint venture and in good faith; and
 - (iv) Not be involved in any undertaking which is in direct competition to that of the joint venture nor obtain goods or services at a discounted price due to the supply of the same goods or services to the joint venture.
- (b) The rights, duties and obligations of the parties under this agreement are several and nothing herein contained constitutes the parties to be partners or have any other relationship other than as defined herein.

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- (c) No party may pledge the credit of another party or in any way act for or incur obligations for another party.
 - (d) The parties must ensure that the joint venture:
 - (i) Keeps its assets in good repair, working order and condition, reasonable fair wear and tear excepted, and makes, from time to time as is necessary, proper repairs, renewals and replacements;
 - (ii) Complies with the contracts, arrangements and property and equipment leases to which it is a party;
 - (iii) Keeps its tangible assets which are able to be insured, insured by a financially sound and reputable insurer against loss or damage by fire, explosion and other risks customarily insured against by companies conducting businesses similar to the business in amounts not less than the full insurable value of those assets;
 - (iv) Maintains insurance with a financially sound and reputable insurer against other hazards and risks and liability to persons and property to an amount and in the way customarily insured against by companies conducting businesses similar to the business; and
 - (v) Observes and conforms with all valid requirements of government authorities relating to the business and its assets.

13. Dispute resolution

- (a) If a dispute arises then before any proceeding is commenced the party must give 14 days notice to the others setting out the dispute and seek discussion and compromise to resolve the dispute.
- (b) If after 14 days the dispute is not resolved then it must either be referred to mediation prior to commencing any proceedings or the joint venture determined in accordance with the following provisions. The costs of any mediation shall be borne by the parties in proportion to their shareholding in the company.

14. Determination of the joint venture

- (a) In the event that the parties are unable to resolve a dispute between them after following the dispute resolution procedures set out above then any party may offer by notice in writing to the other parties to sell their shares in the joint venture company at the price and on the terms nominated.
- (b) The other parties must within 14 days of receipt of such notice either accept the offer, pro-rata to their shareholding therein, whereupon settlement shall take place within 30 days, or indicate their unwillingness to acquire such shares and offer their shares to that party upon terms and at a price nominated.

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- (c) No later than 14 days after the date of receipt of the counter offer it may be accepted and such transaction is to be completed within 30 days of such acceptance.
 - (d) In the event that neither party wishes to acquire the shares of the other then the undertaking of the joint venture shall be sold by auction within a reasonable time and either party shall be entitled to bid at such auction.
 - (e) In the event that a party wishes to acquire the interest of another party under these provisions but does not agree that the price reflects a due market price for such interest, then the price shall be determined by the mean of two valuations by valuers experienced and qualified to make such valuations, one obtained by each party with the cost thereof shared equally by the parties.

15. Default

- (a) A party will be in default under this agreement if:
 - (i) That party transfers all or any of its shares except in accordance with this agreement; or
 - (ii) That party fails to make any payment due to the joint venture; or
 - (iii) That party continues to breach any obligation under this agreement after receiving 14 days notice to remedy the breach; or
 - (iv) The party goes bankrupt or insolvent or an order is made for the winding up or dissolution of the party or it assigns its estate for the benefit of creditors.
- (b) On the happening of a default event the non-defaulting parties may, by notice of default given in writing to the defaulting party within 30 days of the default, determine to acquire the shareholding of the defaulting party in the joint venture at a price determined by the mean of two valuations by valuers experienced and qualified to make such valuations, one obtained by each party with the cost thereof shared equally by the parties. Settlement is to be effected within 30 days of determination of the price.
- (c) In the event that the non-defaulting parties do not wish to acquire the shares of the defaulting party then the undertaking of the joint venture shall be sold by auction within a reasonable time and either party shall be entitled to bid at such auction.

16. Costs

The costs of preparation and finalisation of this agreement shall be shared by the parties in the same proportions as their shareholding in the joint venture company.

17. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally;
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

Each party shall at all times keep the company records up to date as to their residential and postal address, their private telephone and fax numbers and their email address. All notices may be served at the last recorded residential or postal address in the joint venture records.

18. Counterparts

This agreement may be executed in any number of counterparts and all counterparts when executed and taken together will constitute this agreement and the date of the agreement will be the date on which it is executed by the last party.

SCHEDULE

Shareholders

1. of
2. of
3. of
4. of

Contribution of capital and share of profits and losses

Shareholder 1	%
Shareholder 2	%
Shareholder 3	%
Shareholder 4	%
TOTAL	100%

Execution page

[Select appropriate signing clauses]

SIGNED AS AN AGREEMENT

SIGNED BY [insert name] in the
presence of:

.....
Signature

.....
Signature of witness

.....
Print name of witness

**EXECUTED BY [insert name of
company]**

.....
Director/Secretary

.....
Director

Name:

Name:

SIGNED BY [insert name] by being
signed by pursuant to [General
OR Enduring] Power of Attorney dated
, which is in the form authorised
by legislation and of which the attorney
has no notice of revocation, in the
presence of:

.....
Signature of attorney

Power of attorney registered number:

.....
Signature of witness

.....
Print name of witness

SIGNED BY [insert name] by its)
authorised officer in the presence of:)

.....
Signature of authorised officer

.....
Signature of witness

.....
Authorised officer's name:
Authority of officer:

.....
Print name of witness