

Development Management Agreement

**Windesea Build Pty Ltd and One Wharf Investments
Pty Ltd**

and

One Wharf Development Pty Ltd

HWL
EBSWORTH
LAWYERS

Level 14 Australia Square
264-278 George Street
Sydney NSW 2000
DX 129 Sydney
Phone +61 2 9334 8555
Fax 1300 369 656

hwlebsworth.com.au
Ref PG:KG:246572

Table of Contents

1.	Definitions	1
1.1	Definitions.....	1
1.2	Incorporation of definitions	2
2.	Authority and Status of Parties	2
2.1	Authority	2
2.2	Term	3
2.3	Ownership of Land	3
2.4	No Partnership.....	3
2.5	Name	3
2.6	Fidelity and Good Faith	3
3.	Obligations of Parties	3
3.1	Title to the Land.....	3
3.2	Dealings with Land	4
3.3	Authority	4
3.4	Insurance.....	4
3.5	Rates and Land Tax	4
3.6	Payment of rent from Ground Floor Lease.....	4
3.7	Payments to Development Manager	4
3.8	Payment of Commissions.....	5
4.	Management	5
4.1	Decisions	5
4.2	Acknowledgment about Development Manager	6
4.3	Deemed decisions.....	6
	Despite anything else in this Agreement, for so long as:.....	6
4.4	Meetings	6
5.	One Wharf Project	6
5.1	General object of One Wharf Project	6
5.2	Commitment to Proceed with One Wharf Project	7
5.3	Design and Approvals	7
5.4	Planning and Environment Court	7
5.5	Execution of the Works	7
5.6	Joint Venturer's Obligations.....	7
5.7	Development Manager's Obligations	8
6.	Signing and Power of Attorney	8
6.1	Signing of Permitted Documents.....	8
6.2	Power of Attorney	9
7.	Project Cost Statement	9
7.1	Project Cost Statement	9

8.	Other obligations	9
8.1	General obligation to co-operate	9
8.2	General undertakings by the Parties	10
8.3	Development Manager's Undertakings	10
8.4	Indemnities	10
9.	Dispute resolution	11
10.	Termination	12
11.	Goods and Services Tax (GST)	12
11.1	Preliminary.....	12
11.2	GST exclusive	12
11.3	Liability to pay GST	13
11.4	Tax Invoice	13
11.5	Adjustment Event	13
11.6	Reimbursement of Expenses	13
11.7	Non Merger.....	13
11.8	Compliance with Law.....	13
12.	Assignment	13
12.1	Assignment by Development Manager	13
12.2	Assignment by Joint Ventures.....	13
13.	Notices	14
14.	General Provisions	14
14.1	Costs	14
14.2	Governing Law	14
14.3	Further Assurances	14
14.4	Entire Agreement.....	15
14.5	Variations and Waivers to be in Writing	15
14.6	Counterparts.....	15
14.7	No Notice of Revocation.....	15
14.8	Authority to Sign	15
14.9	Exchange by Fax.....	15
15.	Interpretation	15

Development Management Agreement

Date	26 July 2013
Parties	<p>Windesea Build Pty Ltd ACN 087 276 953 of Suite 124, 8 Quay Street, Haymarket NSW 2000 (Windesea) and</p> <p>One Wharf Investments Pty Ltd ACN 144 535 302 of "Fairfax House", Level 5, 19-31 Pitt Street, Sydney NSW 2000 (Quantum)</p> <p>(together known as the Joint Venturers)</p> <p>One Wharf Development Pty Ltd ACN 164 783 327 of Level 5, 19-31 Pitt Street, Sydney NSW 2000</p> <p>(Development Manager)</p>
Recitals	<p>A. As at the date of this Agreement, the Joint Venturers have entered into the Joint Venture Agreement to undertake the One Wharf Project.</p> <p>B. The Development Manager has been incorporated by the Joint Venturers to undertake the Works on the Land and act as the development management company for the One Wharf Project.</p> <p>C. The Development Manager must carry out or procure that the Works are carried out in accordance with this Agreement.</p> <p>D. The Joint Venturers and Development Manager have agreed to enter into this Agreement to record the Parties' rights, obligations and entitlements in respect of the One Wharf Project.</p>

The parties agree, in consideration of, among other things, the mutual promises contained in this Agreement as follows:

1. Definitions

1.1 Definitions

In this Agreement unless the context otherwise requires:

Agreement means this agreement as amended from time to time.

Audit means, in respect of the Project Costs, a process under which the Auditor verifies:

- (a) whether or not the Project Costs have been properly accounted for by the Development Manager in connection with the One Wharf Project; and
- (b) the amount of those Project Costs,

but does not involve the Auditor determining whether those Project Costs are reasonable in their nature or amount.

Auditor means an independent, suitably qualified and experienced person engaged by the Joint Venturers.

Commission means the agency commission payable by the Development Manager to an agent/introducer under a Contract for Sale up to a maximum of 3% of the purchase price.

Completion means the later of:

- (a) expiry of the defects liability period for all Contracts for Sale;
- (b) with the exception of any Lots to be retained by a Joint Venturer, all Contracts for Sale for Lots sold are completed;
- (c) the accounts for the One Wharf Project are reconciled; and
- (d) all financial and tax requirements are completed.

Joint Venturers means Windesea and Quantum.

Joint Venture Agreement means the joint venture agreement between the Joint Venturers and the Landowners dated on or about the same date as this Agreement.

Lease means a month to month lease between the Landowners and the Lessee for the premises known as the ground floor on the Land at the date of this Agreement.

Lessee means Price Screens and Security Pty Limited.

Party means a party to this Agreement.

Project Cost Statement means a statement of the Project Costs incurred by the Development Manager up to the date of the specified statement and which has not previously been included in a prior statement.

Transaction Documents means this Agreement, the Joint Venture Agreement, the Building Contract, securities for the Development Finance, Contracts for Sale and all other agreements and documents entered into or created for the purposes of the One Wharf Project.

1.2 Incorporation of definitions

For the purpose of this Agreement, the definitions in the Joint Venture Agreement are incorporated and form part of this Agreement.

2. Authority and Status of Parties

2.1 Authority

Each Party promises that it has full corporate or other right, power and authority to enter into this Agreement and to carry out the One Wharf Project.

2.2 Term

The One Wharf Project continues until determined by:

- (a) the sale of all of the Lots (unless otherwise agreed by the Joint Venturers) and distribution of the Proceeds of Sale in accordance with this Agreement; or
- (b) three years from the date of this Agreement (unless extended by agreement between the Parties),

or is otherwise determined or terminated in accordance with this Agreement.

2.3 Ownership of Land

The rights, powers and privileges granted in accordance with this Agreement do not create in favour of the Development Manager an estate or interest including, without limitation, an equitable interest in the Land or any improvements at any time constructed on the Land. The legal ownership in the Land will remain always with the Landowners subject to the Mortgage and any securities granted in relation to the Development Finance.

2.4 No Partnership

- (a) Nothing stated or implied in this Agreement makes a Party the partner, agent or legal representative of the other Party for any purpose or creates any partnership, agency or trust. Unless otherwise specifically stated in this Agreement, a Party has no authority to bind the other Party or to act for, or to incur any obligation or assume any responsibility on behalf of, the other Party.
- (b) With the exception of the Joint Venturers which are not several, the rights of the Parties are several, not joint and collective. Each Party is only responsible for their obligations. No Party will represent to anyone else that it has the authority to act as agent of, or to in any way bind or commit the other Party to any obligation to anyone else, other than pursuant to the terms of this Agreement.

2.5 Name

The project is to be known as the One Wharf Project.

2.6 Fidelity and Good Faith

Each Party:

- (a) undertakes to be just and faithful in all its activities and dealings with the other Party;
- (b) must act in good faith and assist the other Party in the performance of its obligations; and
- (c) recognises that this Agreement creates a fiduciary relationship between the Parties which can be enforced by equitable remedies.

3. Obligations of Parties

3.1 Title to the Land

During the term of this Agreement and the Joint Venture Agreement, unless otherwise agreed by the Joint Venturers, and subject to completion of the Sale Contracts, Windesea must ensure that the Landowners remain the registered owners of the Land.

3.2 Dealings with Land

Until completion of the One Wharf Project, termination of this Agreement or as otherwise specified in this Agreement or the Joint Venture Agreement, Windesea must ensure that the Landowners do not sell or otherwise deal with the Land except in accordance with the Joint Venture Agreement.

3.3 Authority

- (a) The Parties agree that each of the Parties and their officers, employees, agents and contractors are authorised to enter the Land for all purposes associated with the One Wharf Project, subject to the Joint Venture Agreement.
- (b) Once the Land (or any part of it) is in the possession or control of a building or other contractor, the Parties must comply with the terms of any applicable building work contract as to entry upon the Land or that part of the Land in the possession or control of the contractor.

3.4 Insurance

The Development Manager must in the joint names of the Parties effect insurance cover (including comprehensive insurance for any improvements on the Land, public liability, workers' compensation, company officers' liability and other appropriate cover) to adequately protect the interests of the Landowners, the Parties and their officers, employees and agents at all times during the term of the One Wharf Project. The Development Manager must provide the Joint Venturers with a certificate of currency of insurance when requested by the Joint Venturers evidencing the insurance as required by this clause 3.4. The costs of such insurances will form part of the Project Cost.

3.5 Rates and Land Tax

- (a) Windesea is responsible for, and must pay all rates and charges assessed and charged on the Land up and until the day before the Quantum Funding Date.
- (b) The Joint Venturers are responsible for, and the Development Manager must pay all rates, charges, levies and land tax assessed and charged on the Land by the due date from the Quantum Funding Date. Such rates, charges, levies and land tax assessed and charged on the Land will form part of the Project Costs.
- (c) The Development Manager must supply the Joint Venturer with evidence of payments required by clause 3.5(b).
- (d) In the event that the Development Manager fails to make any payments as required by clause 3.5(b), the Development Manager indemnifies the Joint Venturers from all Claims, late fees, penalties and the like that are incurred by the Joint Venturers as a result of the Development Manager's failure to make the payments.

3.6 Payment of rent from Ground Floor Lease.

The Development Manager acknowledges and agrees that if the Development Manager receives any rent or other monies under the terms of the Lease, such rent and other monies must be applied to the One Wharf Project.

3.7 Payments to Development Manager

From the date of the first draw down of the Development Finance until Completion, the Joint Venturer must pay to the Development Manager a fee being equal to \$20,000.00 plus GST per month in consideration for the Development Manager entering into this Agreement and

carrying out the One Wharf Project in accordance with the terms of this Agreement, up to a maximum amount of \$300,000.00 (plus GST). This amount is to be paid on the first day of each month, in advance.

3.8 Payment of Commissions

- (a) The Development Manager must pay the Commission payable under a Contract for Sale for a Lot as follows:
 - (i) 25% of the Commission by the date ninety (90) days after the contract date under a Contract for Sale;
 - (ii) 25% of the Commission by the date thirty (30) days after the first drawdown of the Development Finance; and
 - (iii) 50% of the Commission on the date of completion of a Contract for Sale.
- (b) If a Contract for Sale is terminated due to the purchaser's default, any Commission will be refunded to the Development Manager.
- (c) If a Contract for Sale is not completed because the Development Manager agrees to release the purchaser from its obligation to complete the Contract for Sale, the Development Manager must still pay the Commission to the agent.
- (d) Within 5 Business Days from the date of the first drawdown of the Development Finance and receipt of a tax invoice from Joe Owen, the Development Manager must pay to Joe Owen the sum of \$73,500.00 being payment of his agent's fee (**Initial Commission**). The Initial Commission will form part of the Project Costs.

4. Management

4.1 Decisions

All decisions in regard to the carrying out of the One Wharf Project are to be made by the Joint Venturers in accordance with the Joint Venture Agreement, and implemented by the Development Manager including, without limitation, in relation to the following matters:

- (a) Budgets and expenditure including the Feasibility Statement;
- (b) the terms of finance for the One Wharf Project;
- (c) the content of applications for any Approvals;
- (d) changes to applications for the Project DA;
- (e) the form for the Sale Contracts (including special conditions and variations);
- (f) changes to applications for Approvals;
- (g) whether to appeal the result of the Project DA, any section 96 application or any other Approvals;
- (h) the preparation of the Plans and Specifications and changes to the Plans and Specifications;
- (i) the terms of the Building Contract;

- (j) the civil and / or building works contracts and changes to the civil and / or building works contracts or the waiver or release of rights under those contracts;
- (k) the appointment of consultancies and contractors including the civil and / or building works contractors (and including the engagement of any Party to perform any service or task in connection with the One Wharf Project that the Party is not already required to do under this Agreement);
- (l) amendments to the Schedule of Project Costs;
- (m) amendments, variations, modifications, alterations, additions, deletions to any document required to lodge or register any of the subdivision plans anticipated by the Joint Venture Agreement including section 88B instruments, positive covenants, restrictions as to user, easements, strata by-laws, strata management statement and any agreements regarding the shared plaza area with the adjoining owner;
- (n) amendments to the Master Price List; and
- (o) strategic decisions in connection with the One Wharf Project including approval of funding proposals and budgets.

4.2 Acknowledgment about Development Manager

- (a) The Joint Venturers acknowledges that the Development Manager may cause another entity associated with or nominated by the Development Manager to be appointed as development / project manager pursuant to a project management agreement to assist the Development Manager to carry out the One Wharf Project, subject to obtaining the prior approval of the Joint Venturers.
- (b) The terms of that appointment will be set out in a project management agreement on such terms and conditions agreed by the Joint Venturers (acting reasonably).

4.3 Deemed decisions

Despite anything else in this Agreement, for so long as:

- (a) the Joint Venturers are the persons originally named as parties to this Agreement, as "Joint Venturers"; and
- (b) the directors of the Development Manager are nominees of the persons referred in clause 4.3(a),

then all decisions of the Development Manager in relation to the matters for which it is responsible under this Agreement will be deemed to be decisions of the Joint Venturers in respect of those matters.

4.4 Meetings

The Parties must meet every month from the date of this Agreement until Completion to discuss and decide all matters in relation to the One Wharf Project, as determined pursuant to the Joint Venture Agreement.

5. One Wharf Project

5.1 General object of One Wharf Project

The Parties agree that the object of the One Wharf Project is to:

- (a) construct the Building on the Land;
- (b) to sell the Lots; and
- (c) to complete the Works.

5.2 Commitment to Proceed with One Wharf Project

The Development Manager agrees to proceed with and carry out the One Wharf Project in a timely and cost effective manner with due regard to market forces, weather and town planning conditions, in accordance with the directions of the Joint Venturers and its obligations under this Agreement.

5.3 Design and Approvals

Subject to the terms of the Joint Venture Agreement, the Joint Venturers and the Development Manager are jointly responsible for obtaining the Approvals for the Works the subject of the One Wharf Project including briefing and monitoring consultants in the preparation of Plans and Specifications.

5.4 Planning and Environment Court

If the Development Manager wishes to pursue the use of an Approval including if necessary seeking an appeal to the Land and Environment Court or any other appropriate forum, the Development Manager must seek the consent of the Joint Venturers. The Joint Venturer must take all such necessary steps to assist the Development Manager in obtaining any Approval or seeking an appeal to the Land and Environment Court or any other appropriate forum, where they have consented to such action.

5.5 Execution of the Works

- (a) The Joint Venturers must procure that the:
 - (i) Land is available for demolition, site and building works, reconfiguration, titling as required for the execution of the One Wharf Project; and
 - (ii) Development Manager pay all costs incurred in carrying out the Works (such costs are Project Costs).
- (b) The Development Manager must cause the Works to be carried out in accordance with the Project DA, all Approvals, all statutory or governmental requirements, the law (including any occupational health and safety laws) and good building practices, at all times subject to budgets approved by the Joint Venturers and otherwise in accordance with this Agreement
- (c) The Development Manager acknowledges and agrees that for the purpose of complying with all occupational health and safety laws in the carrying out of the Works, the Development Manager will be the principal contractor.

5.6 Joint Venturer's Obligations

Without limitation to the Joint Venturers' obligations elsewhere in this Agreement, Windesea must:

- (a) procure that the Landowners sign any necessary consent to the Development Manager's applications for any Approvals (as approved by the Joint Venturers);

- (b) procure that the Landowner's permit the erection on the Land of any notice or sign required in connection with the application(s) for the Approvals; and
- (c) permit the Development Manager and its consultants, agents and contractors to enter the Land for the purpose of carrying out the One Wharf Project.

5.7 Development Manager's Obligations

Without limitation to the Development Manager's obligations elsewhere in this Agreement, the Developer must:

- (a) obtain a valuation of the Land in accordance with clause 5.9(c) of the Joint Venture Agreement;
- (b) enter into the Building Contract with the Builder in accordance with clause 5.9(h) of the Joint Venture Agreement;
- (c) set up and manage a bank account in the name of the Development Manager at ANZ Bank Limited, Pitt Street, Sydney Branch for the purposes of paying any Project Costs. One signatory from each Joint Venturer will be required to sign cheques and withdraw any money from the account or to close the account;
- (d) ensure that the Project Costs are in accordance with the Schedule of Project Costs (as amended from time to time) and current budgets;
- (e) submit the Contract for Sale to the Landowners for consent, where consent has not already been provided under the Joint Venture Agreement;
- (f) carry out any services and activities required to be undertaken in order to deliver the One Wharf Project in accordance with this Agreement and the Joint Venture Agreement;
- (g) give to the Joint Venturers at the end of each month a Project Costs Statement in accordance with clause 7;
- (h) disburse the Proceeds of Sale in accordance with clause 2.6 of the Joint Venture Agreement; and
- (i) lodge and progress, any strata plans and associated documentation with the Land Titles Office, as required to procure the subdivision of the Land as envisaged by the One Wharf Project;
- (j) prepare and lodge tax returns, BAS statements and other tax applications in relation to the One Wharf Project, if directed by the Joint Venturers; and
- (k) at all times act in accordance with the instructions of the Joint Venturers, including any decisions made pursuant to clause 5.1.

6. Signing and Power of Attorney

6.1 Signing of Permitted Documents

The Permitted Documents will be signed by the Development Manager in accordance with the Power of Attorney referred to in clause 6.2.

6.2 Power of Attorney

- (a) Windesea must procure that the Landowners appoint the Development Manager as their joint/several power of attorney. The appointment will include authority to sign on behalf of the Landowners, the Permitted Documents.
- (b) The Power of Attorney commences on the date of this Agreement and is irrevocable until:
 - (i) the One Wharf Project is Complete;
 - (ii) the One Wharf Project is terminated; or
 - (iii) this Agreement is lawfully determined or terminated.

7. Project Cost Statement

7.1 Project Cost Statement

- (a) The Development Manager must at the end of each month give to the Joint Venturers a Project Costs Statement.
- (b) The Development Manager must ensure that the Project Costs Statement sets out in relation to each Project Cost specified in that Project Costs Statement the amount, the payee and the nature of the Cost.
- (c) The Joint Venturers may from to time (but only once in respect of a particular Project Cost Statement), give notice to the Development Manager that it wishes to conduct an Audit of the Project Costs specified in the Project Costs Statement.
- (d) The Development Manager must co-operate with an Audit of the Project Costs in accordance with clause 7.1(c).
- (e) The Development Manager must:
 - (i) keep proper records of any contract, arrangement or understanding relating to the engagement of another person to carry out any of the Development Manager's obligations under this Agreement;
 - (ii) keep proper records of the Project Costs; and
 - (iii) retain those records and make those records available to the Auditor.
- (f) If an Audit of the Project Costs specified in the Project Costs Statement in accordance with clause 7.1(c) reveals that a particular Project Costs Statement contains Costs which are not Project Costs then that Project Costs Statement will be adjusted in accordance with the Audit.

8. Other obligations

8.1 General obligation to co-operate

If the approval or consent of a Party must be obtained under this Agreement, or for the One Wharf Project, that Party must respond promptly and must not, unless this Agreement or the Joint Venture Agreement expressly provides otherwise, unreasonably withhold or delay giving its approval or consent.

8.2 General undertakings by the Parties

The Parties must:

- (a) promptly execute all documents that must be executed for the One Wharf Project (including all applications for Approvals and proceedings instituted to obtain the Project DA or any Approvals);
- (b) comply with all laws relevant to their respective obligations under this Agreement or the Joint Venture Agreement;
- (c) not breach, or cause a party to breach, a Transaction Document;
- (d) promptly send each other copies of all notices, certificates and other material correspondence received by them under or pursuant to the Transaction Documents;
- (e) promptly notify each other of the occurrence of an event of default under the Transaction Documents and of any event that, after the lapsing of time, satisfaction of a condition, the giving of notice or the determination of materiality, would constitute an event of default under a Transaction Document; and
- (f) promptly notify each other of any breach of a Transaction Document by a Party to a document.

8.3 Development Manager's Undertakings

The Development Manager must not at any time:

- (a) terminate, rescind, discharge (otherwise than by performance) or agree to vary a Transaction Document; or
- (b) grant any material waiver, time or indulgence in respect of an obligation under a Transaction Document;
- (c) enter into any agreement that may have the effect of derogating from the obligations of a person under a Transaction Document;
- (d) do or omit to do anything with a result that another party to a Transaction Document may rescind or terminate the Transaction Document, or

without the consent of the Joint Venturers.

8.4 Indemnities

Except to the extent that any damage or injury is caused or contributed to by the Joint Venturers or the Landowners, the Development Manager indemnifies the Joint Venturers and the Landowners against any loss or Claim arising from, and any Costs incurred in connection with (including legal Costs on a full indemnity basis or a solicitor and own client basis whichever is the higher), for any act, omission, negligence or a default by the Development Manager under any Transaction Document including as a result of:

- (a) a breach by the Development Manager of any of its obligations, representations, warranties, covenants and undertakings under a Transaction Document;
- (b) damage to or loss of anything or loss of property of the Landowners; or
- (c) injury to or the death of any person.

- (d) the termination of any Transaction Document unless such termination is caused by the Joint Venturers or the Landowners;
- (e) fraud, misconduct or dishonesty;
- (f) the conduct of the Development Manager, its servants, contractors or agents or any agent or contractors appointed by the Development Manager in carrying out the Works; and
- (g) undertaking the One Wharf Project.

9. Dispute resolution

- (a) If a dispute or difference arises or the Parties fail to agree in connection with any matter arising out of or relating to this Agreement (except as otherwise expressly provided for in this Agreement) either Party may give a Notice of Dispute to the other.
- (b) The Parties will ask their respective representatives to resolve the dispute identified in the Notice of Dispute or in clause 9(a). These persons are:

Party	Nominated Person
Joint Venturers	Hilda Chiming Cheong and Peter Gribble
Development Manager	Hilda Chiming Cheong and Peter Gribble

- (c) If the Parties do not settle the dispute specified in the Notice of Dispute within 10 Business Days after the Notice of Dispute is given, either Party may require the dispute to be determined by an expert in the relevant field agreed upon and appointed jointly by the Parties.
- (d) If the Parties are unable to agree on an expert within 5 Business Days after the Notice of Dispute is given, then:
 - (i) if the dispute involves the legal interpretation of this Agreement or if the Parties are unable to agree whether the dispute involves legal interpretation of this Agreement either Party may apply to the President of the Bar Council of New South Wales or his or her nominee to appoint an independent Queen's or Senior Counsel to resolve the dispute or to determine whether the dispute involves legal interpretation of this Agreement, as the case may be; and
 - (ii) in any other case, either Party may apply to the President for the time being of the Royal Australian Institute of Architects (NSW Chapter) or his or her nominee to appoint an expert in the relevant field who is prepared to determine the dispute.
- (e) The expert agreed upon or appointed under this clause acts as an expert and not as an arbitrator and the decision of the expert is final and binding on the Parties.
- (f) The Parties agree that the expert has no power to make any decision or determination in relation to the application of any statutory remedy or statutory damages.

- (g) Where this clause is intended to apply, no Party may commence or maintain any action relating to a dispute or difference arising out of or in relation to this Agreement until it has been referred and determined as provided in this clause. This clause does not limit the right of either Party to seek injunctive relief.
- (h) An expert may engage other consultants to advise him or her if he or she considers it necessary.
- (i) The fees of the expert (and any other consultants he or she engages) are payable as directed by the expert and in the absence of direction equally by the parties.

10. Termination

- (a) A Party (**Non Defaulting Party**) may terminate this Agreement if:
 - (i) an Event of Default occurs in respect of the another Party (**Defaulting Party**);
 - (ii) the Non Defaulting Party serves a written notice on the Defaulting Party specifying the Event of Default and requiring the Defaulting Party to remedy the Event of Default; and
 - (iii) the Defaulting Party fails to rectify the Event of Default within a reasonable time (not being less than 10 Business Days) of receiving written notice from the Non Defaulting Party.
- (b) A Non Defaulting Party may not terminate this Agreement except under clause 10(a).
- (c) If:
 - (i) an Event of Default is the appointment of a Controller to a Defaulting Party; and
 - (ii) within 30 Business Days after the date of the Controller's appointment, the Controller gives notice to the other Party that it will perform the Defaulting's Party's obligations under this Agreement,then that Event of Default will cease to be an Event of Default.
- (d) The termination of this Agreement under this clause 10 does not prejudice a Party's Claim against the other Party arising from a breach of this Agreement occurring before the date such termination is effected.

11. Goods and Services Tax (GST)

11.1 Preliminary

Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

11.2 GST exclusive

Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

11.3 Liability to pay GST

If a Party makes a taxable supply under this Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

11.4 Tax Invoice

Notwithstanding the foregoing, the Recipient is not obliged under this Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

11.5 Adjustment Event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to clause 11.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

11.6 Reimbursement of Expenses

If a third party makes a taxable supply and this Agreement requires a party to this Agreement (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

11.7 Non Merger

This clause does not merge on completion and will continue to apply after expiration or termination of this Agreement.

11.8 Compliance with Law

Compliance with a law requiring the payment of money to any Authorities rather than to a payee is not a breach of this Agreement.

12. Assignment

12.1 Assignment by Development Manager

The Development Manager must not transfer the whole or part of its interests in this Agreement to any third party without the consent of the Joint Venturers (such consent may be withheld at the sole discretion of the Joint Venturers).

12.2 Assignment by Joint Ventures

If either a Joint Venturer or both Joint Venturers (as the case may be) assigns its interest in the Joint Venture Agreement in accordance with clause 11 of the Joint Venture Agreement (**Departing Party**) to a third party (**Incoming Party**), the Development Manager and if applicable, the Joint Venturer not assigning its interest in the Joint Venture Agreement (**Remaining Parties**) must consent to the assignment of the Departing's Parties interest in this Agreement to the Incoming Party provided the Incoming Party enters into a deed of covenant with the Remaining Parties to comply with the Departing Party's obligations under this Agreement.

13. Notices

- (a) Notices under this Agreement may be signed by a Party.
- (b) Notices are effectively given if:
 - (i) delivered or posted to the other Party; or
 - (ii) sent to the facsimile number of the Party.
- (c) As at the date of this Agreement the particulars of the Parties are as follows:

The Development Manager

Name: One Wharf Developments Pty Ltd
Address: Level 5, 19-31 Pitt Street, Sydney, New South Wales, 2000

Joint Venturers

Name: Windesea Build Pty Ltd and One Wharf Investments Pty Ltd
Address: Level 5, 19-31 Pitt Street, Sydney, New South Wales, 2000
Phone No: Windesea Build Pty Ltd - 0414 607 398
Quantum – (02) 8823 5222

- (d) Posted notices will be treated as given 2 Business Days after posting.
- (e) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (f) Notices by a Party's solicitor to the other Party or its solicitor will be treated as given with the first party's authority.
- (g) For the purposes of Section 11 and 12 of the *Electronic Transactions (NSW) Act 2001*, the Parties consent to information being given by electronic communication.

14. General Provisions

14.1 Costs

The Costs arising out of the preparation, negotiation and signing of this Agreement will form part of the Project Costs. Any duty assessed on this Agreement is payable by the Development Manager and is a Project Cost.

14.2 Governing Law

This Agreement is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

14.3 Further Assurances

Each Party must take all steps, execute all documents and do everything reasonably required by the other Party to give effect to any of the transactions contemplated by this Agreement.

14.4 Entire Agreement

This Agreement constitutes the entire agreement between the Parties relating in any way to its subject matter. Each Party acknowledges that, in entering into this Agreement, it has not relied on any warranty, representation or other promise of any nature not contained in this Agreement.

14.5 Variations and Waivers to be in Writing

No variation, modification or waiver of any provision in this Agreement nor consent to any departure by a Party from a provision, will be of any effect unless it is in writing, signed by the Parties or their solicitors or (in the case of a waiver) by the Party giving it. Any variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

14.6 Counterparts

This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

14.7 No Notice of Revocation

Each person signing this Agreement as attorney for a Party, by so doing, promises the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

14.8 Authority to Sign

Each person signing this Agreement as an authorised officer or agent of any Party by so doing promises the other Party that, as at the date of signing, he or she has full authority to sign this Agreement on behalf of that Party.

14.9 Exchange by Fax

The parties may exchange counterparts by facsimile.

15. Interpretation

Headings are for convenience only and do not affect interpretation. In the interpretation of this Agreement, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) unless otherwise expressed in this Agreement, clause means a clause of this Agreement;
- (f) month means calendar month;

- (g) a reference to any party to this Agreement or any other agreement or document includes the party's executors, successors and substitutes or assigns;
- (h) an agreement, representation or warranty on the part of two or more persons binds all of them;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of each and all of them;
- (j) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (k) if any date falls on a Saturday, Sunday or public holiday in New South Wales then the date will be the Business Day next following such date;
- (l) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (m) if any term of this Agreement is legally unenforceable or made inapplicable, it will be severed or read down but so as to maintain (as far as possible) all other terms of this Agreement (unless to do so would change the underlying principal commercial purposes of this Agreement);
- (n) "including" and similar expressions are not words of limitation;
- (o) unless stated otherwise, one provision does not limit the effect of another; and
- (p) where the context permits, a reference to the whole includes any part. For example, the reference to a Lot includes any part of that Lot.

No rule of construction will apply to a provision of this Agreement to the disadvantage of a party merely because that party put forward the provision or would otherwise benefit from it.

Unless otherwise agreed by the Parties, all accounting matters are to be determined in accordance with sound accounting practices customary in the property development industry and generally accepted in Australia and in accordance with any rulings or requirements of the Commissioner of Taxation.

Development Management Agreement

Execution

Executed as a Deed in New South Wales

Executed by **Windesea Build Pty Limited** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):)
)


.....
Sole Director and Sole Company Secretary
HILDA CHEONG
.....
(Print) Full Name

Executed by **One Wharf Investments Pty Ltd**)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)
)


.....
Sole Director and Sole Company Secretary
Peter Gribble
.....
(Print) Full Name **DIRECTOR**

Executed by **One Wharf Development Pty)
Limited** in accordance with section 127 of the)
Corporations Act 2001 (Cth):)
)


.....
Director
HILDA CHEONG
.....
(Print) Full Name


.....
Director/Secretary
Peter Gribble
.....
(Print) Full Name **DIRECTOR**