



## PARTIES

**1 Abacus Twin Waters Resort Pty Limited**

**2 Abacus Funds Management Limited**

**3 [ proposed purchaser ]**

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## **CONFIDENTIALITY DEED**

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### **DATE:**

### **PARTIES**

1. **Abacus Twin Waters Resort Pty Limited and Abacus Funds Management Limited as trustee for Abacus Twin Waters Resort Trust**, both of Level 34, Australia Square, 264-278 George Street, Sydney, New South Wales (**Provider**);
2. [proposed purchaser] of [proposed purchaser's address] (**Recipient**).

### **RECITALS**

- A. The Provider possesses information concerning the property and business at Twin Waters Resort, Ocean Drive, Twin Waters Sunshine Coast Queensland Australia (**Property**) which is valuable confidential and commercially sensitive to the Provider.
- B. The Recipient wants the Information to consider the purchase of the Property.
- C. The Provider is only willing to disclose the Information to the Recipient on the basis set out in this Deed and the Recipient acknowledges and agrees that the Provider's business operations may be damaged if any of the Information is used or disclosed in a manner contrary to the manner permitted by this Deed and that such damage may not be able to be sufficiently remedied by an award of damages.
- D. Abacus Funds Management Limited enters into this Deed in its capacity as trustee of Abacus Twin Waters Resort Trust only.

### **THE PARTIES AGREE**

#### **1. DEFINITIONS AND INTERPRETATION**

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- 1.1 In this Deed (including the recitals) unless the context otherwise requires:

**Deed** means this Deed and any document that varies or supplements it;

**Disclosing Parties** means the persons other than the Provider contemplated by subparagraph(a)(i) of subclause 2.2;

**Information** means the information contemplated by recital A and all information subsequently provided by the Provider to the Recipient for the purpose of or in connection with or incidental to the Proposal; and

**Proposal** means the proposed transaction, giving rise to the provision of Information, contemplated by recital B.

- 1.2 References to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this Deed.

- 1.3 Headings in this Deed are for convenience only and do not affect its interpretation or construction.
- 1.4 In this Deed unless the context otherwise requires:
  - (a) the singular includes the plural and vice versa;
  - (b) each gender includes the other two genders;
  - (c) the word "person" means a natural person and any association, body or entity whether incorporated or not;
  - (d) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (e) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
  - (f) a reference to an associate of a person (the primary person) includes a reference:
    - (i) where the primary person is a body corporate, to a director or secretary of the body, a related body corporate or a director or secretary of a related body corporate;
    - (ii) in any other case (including the case where the primary person is a body corporate), to
      - A. a person in concert with whom the primary person is acting, or proposes to act;
      - B. the trustee of a trust in relation to which the primary person is a beneficiary whether presently or prospectively, or could reasonably be regarded by virtue of any arrangement or understanding whether formal or informal and whether or not enforceable as capable of benefiting directly or indirectly under the relevant trust, or in relation to which the primary person is capable of controlling, sanctioning, limiting or restraining the actions of the trustee;
      - C. a person in partnership with whom the primary person carries on business but does not include a reference to a person who gives advice to the primary person, or acts on behalf of the primary person, in the proper performance of the functions attaching to a professional capacity or a business relationship;
  - (g) "including" when introducing an example or list of things does not limit the example or the meaning of the words to which the list relates to that example or those words only or to examples and words of a similar kind only;
  - (h) a reference to any thing is a reference to the whole and each part of it; and

- (i) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (j) expressions defined in Chapter 1 of the Corporations Act 2001 (Cth) have (with necessary modifications) corresponding meanings in this Deed.

## **2. CONFIDENTIALITY AND RELATED ISSUES**

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- 2.1 The Recipient warrants to the Provider that it has a bona fide interest in pursuing the Proposal.
- 2.2 The Recipient agrees that it will, and will cause all its officers employees advisers agents and associates to:
  - (a) keep in strict confidence:
    - (i) all of the Information, whether written or oral and whether previously now or in future disclosed or provided by the Provider or any of its officers employees advisers agents partners or associates; and
    - (ii) the fact that the Provider and the Recipient have entered into this Deed and the Recipient has been or will be provided with the Information and that it intends to investigate the Proposal; and
  - (b) not give disclose copy photograph reproduce use or permit to be used any of the Information or such facts other than:
    - (i) for the sole purpose of investigating the Proposal; or
    - (ii) where such Information or facts:
      - A. are already in the possession of the Recipient prior to provision of the Information by the Provider or any of the Disclosing Parties;
      - B. are or become publicly known without any breach of this Deed;
      - C. are required or compelled by any law, listing rule of any stock exchange, court or tribunal or any process of law to be disclosed, but only if, in any such circumstance, the Recipient gives prompt notice to the Provider of such requirement or compulsion and does not oppose (and provides reasonable assistance to) the Provider to enable the Provider to obtain appropriate protective orders from appropriate courts or other reliable assurances from other third parties to whom the Information or such facts are to be disclosed that it will be kept confidential;
      - D. are permitted to be disclosed with the prior written approval of the Provider; or
      - E. have been received by the Recipient in good faith from a third party (not being a Disclosing Party) not subject to a confidentiality agreement if such Information or facts did not

come into the possession of such third party by or through any breach of this Deed.

- 2.3 Subject to subclause 2.2 but without limiting its generality, the Recipient must not use any of the Information in any manner whatever which will or may cause any injury damage or loss to the Provider or any of the other Disclosing Parties.
- 2.4 The Provider or the Recipient may terminate any investigation, evaluation or negotiation in relation to the Proposal at any time in its absolute discretion by giving written notice to that effect to the other of them and upon request by the Provider on or after such termination all Information and all copies compilations photocopies and reproductions (including those in a form not provided by any Disclosing Party) in the possession of the Recipient or any of its officers employees advisers agents and associates must immediately be returned to the Provider at the Recipient's cost.
- 2.5 The parties agree that neither the return nor the destruction of the Information or the termination of any investigation, evaluation or negotiation regarding the Proposal will relieve either party of any of their respective obligations under this Deed.
- 2.6 Other than for any warranties which may be provided upon the Recipient entering into the Proposal, the Recipient must make its own evaluation of, and may not rely upon, the Information nor make any claim whatever against the Disclosing Parties in connection with the Information.
- 2.7 The Recipient acknowledges that the Information contains information that is not generally available and that the Recipient and its officers employees advisers agents and associates may be prohibited by s1043A of the Corporations Act 2001 (Cth) from dealing in securities of the Provider or its related bodies corporate. The Recipient covenants that it will not, and will take all steps necessary to ensure that its officers employees advisers agents and associates do not, deal in any such securities in circumstances where it or they do not have a proper defence pursuant to Division 3 of Part 7.10 of the Corporations Act 2001 (Cth).
- 2.8 The Recipient acknowledges and agrees that, in the event of any breach or threatened or anticipated breach of the provision of this Deed, the Provider will be entitled to injunctive relief in addition to any other remedies which may be available to it.
- 2.9 The Recipient accepts full liability for any breach of any provision of this Deed by any of its officers employees advisers agents or associates as if they were parties to the Deed and bound by the same obligations as those binding the Recipient and the Recipient indemnifies the Provider against all losses, costs and expenses whatever that it may suffer or incur arising out of, in connection with and incidental to any such breach.

### **3. LIMITATION OF TRUSTEE'S LIABILITY**

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- 3.1 The Trustee enters into this Deed only in its capacity as trustee of the Trust (and, if the Trust is a registered managed investment scheme, as responsible entity for that scheme). The liability of the Trustee arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability.

- 3.2 This limitation of the Trustee's liability:
- (a) applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed; and
  - (b) survives termination of this Deed.
- 3.3 The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust (and, if the Trust is a registered managed investment scheme, as responsible entity for that scheme), including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- 3.4 The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the constitution establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- 3.5 For the purposes of clause 3.4, it is agreed that the Trustee cannot be regarded as being negligent or in breach of trust to the extent to which any failure by the Trustee to satisfy its obligations under this Deed has been caused or contributed to by a failure by the custodian of the Trust property (or its delegate) or any other person to fulfil its obligations in relation to the Trust or any other act or omission of that custodian (or its delegate) or any other person.
- 3.6 In this clause:

**Trust** means Abacus Twin Waters Resort Trust; and

**Trustee** means Abacus Funds Management Limited ACN 007 415 590.

#### **4. GENERAL**

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- 4.1 A covenant, warranty, agreement, representation, provision or obligation in this Deed which is made or given by or which applies to more than one person or which extends to or is for the benefit of more than one person binds and extends to or is for the benefit of, as the case may be, all of them jointly and each of them severally.
- 4.2 The validity, interpretation and performance of this Deed will be governed by the law of the State of New South Wales and of the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales and of the Commonwealth of Australia in respect of any dispute that arises in connection with this Deed.
- 4.3 This Deed contains the entire understanding between the parties in relation to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this Deed other than those expressly stated in it or necessarily implied by law.

- 4.4 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this Deed will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this Deed.
- 4.5 If any provision of this Deed is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.
- 4.6 This Deed may not be varied except by written instrument executed by the parties.

**EXECUTED** as a deed.

**EXECUTED** by **Abacus Twin Waters )**  
**Resort Pty Limited** in accordance with )  
s127 of the Corporations Act 2001 (Cth): )  
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Secretary/Director

Director

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Print name of signatory

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Print name of signatory

**EXECUTED** by **Abacus Funds )**  
**Management Limited** by its attorneys )  
who confirm that they have not received )  
notice of the revocation of the power of )  
attorney dated 15 February 2017  
registered no. Book 4721 No. 979 under  
which this document is signed:

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Attorney

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Attorney

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Print name of signatory

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Print name of signatory

**EXECUTED** by **[proposed purchaser]** in )  
accordance with s127 of the Corporations )  
Act 2001 (Cth): )  
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Secretary/Director

Director

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Print name of signatory

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Print name of signatory