

Confidentiality Deed Poll

THIS DEED is made on

BY: The party named in Item 1 of the Schedule ("**Recipient**")

IN FAVOUR OF:

MARINA MIRAGE PTY LTD ACN 110 366 722 (RECEIVERS AND MANAGERS APPOINTED) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) of C/- KordaMentha, Level 5, Chifley Tower, 2 Chifley Square, Sydney, NSW, 2000 ("**the Owner**").

Recitals

- A. The Recipient has requested the Owner to disclose certain Confidential Information to the Recipient for the Approved Purpose.
- B. The Recipient acknowledges that the Confidential Information is confidential to the Owner and agrees to keep it confidential in accordance with the terms of this Deed.

Operative Provisions

1. Definitions

In this Deed:

"Approved Purpose" means the due diligence enquiries in respect of the Property conducted by the Recipient for a potential purchase;

"Confidential Information" means information of any kind and in any Form which is or has been disclosed by or on behalf of the Owner to the Recipient or its Representatives for or in connection with the Approved Purpose including without limitation all plans and drawings, business and marketing plans and strategies, financial information including financial projections and financial modelling, operating expenses, revenue, profit and loss statements, management reports, valuations, leases, contracts, agreements, deeds, incentive agreements and correspondence with tenants and other third parties, service agreements, and any and all reports relating to the Property and the negotiations for the purchase of the Property provided that it does not include any information which:

- (a) is in the public domain otherwise than as a result of a breach of this Deed; or
- (b) is known by or disclosed to the Recipient from any source other than information which is acquired directly or indirectly from the Recipient or the Recipient's Representatives;

"Form" includes oral, written and electronic form and copies;

"Property" means the property known as Marina Mirage and more particularly described in Item 2 of the Schedule;

"Related Body Corporate" has the meaning given in the *Corporations Act (Cth) 2001*;

“**Representative**” means, in relation to a party, a director, officer, employee, auditor, lawyer, consultant, agent or other adviser of that party or its Related Body Corporate.

2. Interpretation

In this Deed, unless the context requires otherwise:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing one gender include every gender;
- (d) an agreement, representation, or warranty by two or more persons binds them jointly and severally;
- (e) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (f) reference to a party includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns; and
- (g) clause headings are for reference purposes only.

3. General obligations of confidentiality

In consideration of the Owner making the Confidential Information available to the Recipient, the Recipient agrees:

- (a) to keep the Confidential Information confidential and secret; and
- (b) to take all reasonable steps to protect the confidential nature and secrecy of the Confidential Information.

4. Particular obligations of confidentiality

The Recipient:

- (a) must only use or reproduce the Confidential Information for the Approved Purpose;
- (b) must not disclose or permit disclosure of the Confidential Information to any person, except as permitted by this Deed;
- (c) must not permit unauthorised persons to have access to the Confidential Information;
- (d) must immediately notify the Owner on becoming aware of any unauthorised disclosure or use of the Confidential Information; and
- (e) must co-operate with the Owner in any action to protect the confidentiality of the Confidential Information.

5. Permitted disclosure

5.1 The Recipient may disclose Confidential Information to:

- (a) those of its or its Related Body Corporates' Representatives who reasonably require access to the Confidential Information for the Approved Purpose and who are obliged to treat the Confidential Information as confidential in the same manner and to the same extent as is provided under this Deed; and

- (b) any third parties which the Owner may approve in writing as persons to whom disclosure may be made, with such consent able to be withheld in the Owner's absolute discretion.

- 5.2 In any case the Recipient must ensure that its Representatives comply with the obligations in this Deed.
- 5.3 After reasonable notice to the Owner (to the extent practicable), the Recipient may also disclose Confidential Information to the extent required by law.
- 5.4 If the Recipient is uncertain as to whether any information is Confidential Information, the Recipient will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Owner agrees in writing that the Confidential Information is in the public domain.

6. Return of Confidential Information

- 6.1 If requested by the Owner, the Recipient must immediately deliver to the Owner, or destroy or have destroyed as the Owner directs, all the Confidential Information in the possession, power or control of the Recipient or any of its Representatives.
- 6.2 Despite clause 6.1, the Recipient will destroy all the Confidential Information in the possession, power or control of the Recipient or any of its Representatives upon the completion of the Approved Purpose.

7. Ownership of Confidential Information created

The Recipient agrees that the Owner is the owner of all Confidential Information (including any copyright in it).

8. Third Parties

- 8.1 The Recipient acknowledges that the Owner and any Related Body Corporate or Representative of the Owner is free to disclose any Confidential Information to any other person, should it so desire, and in those circumstances would not be under any obligation to notify the Recipient.

9. Survival of obligations

- 9.1 The obligations in this Deed are continuing obligations and survive the completion of the Approved Purpose and the return of the Confidential Information.
- 9.2 The parties agree that any provision of this Deed held to be invalid or unenforceable will be severed and, as far as possible, the remaining provisions read so as to give effect to the original intention of the parties.

10. Injunction relief

The Recipient acknowledges that the Owner is entitled to seek specific performance or injunctive relief as a remedy, in addition to any other remedies, for any breach or threatened breach of this Deed by the Recipient or its Representatives.

11. Indemnity

The Recipient indemnifies the Owner against all costs, expenses, liabilities directly or indirectly incurred or suffered by the Owner as a result of any breach of this Deed by the Recipient or its Representative.

12. Governing law

- 12.1 This Deed is governed by the law of Queensland.

13. Privacy

- 13.1 Notwithstanding any other provision of this Deed the Recipient shall ensure that Personal Information is protected, used or disclosed only in accordance with the requirements of the *Privacy Act 1988* (Cth).
- 13.2 The Recipient's obligations under this clause include, but are not limited to protecting the Personal Information against:
- (a) misuse and loss;
 - (b) unauthorised access;
 - (c) unauthorised modification; and
 - (d) unauthorised disclosure.
- 13.3 The Recipient shall not, without the written authority of the Owner:
- (a) use Personal Information;
 - (b) disclose Personal Information to the person to whom the Personal Information relates; or
 - (c) disclose Personal Information to any other person.
- 13.4 The Recipient shall notify the Owner immediately when it becomes aware that a disclosure of, or access to, the Personal Information may be required by law.
- 13.5 The Recipient shall use Personal Information only for the purposes of fulfilling the Recipient's obligations under this Deed.
- 13.6 Upon the request of the Owner the Recipient shall:
- (a) deliver and/or return Personal Information to the Owner;
 - (b) destroy Personal Information.
- 13.7 For the purposes of this clause "Personal Information" means "personal information" as that term is defined in the Privacy Act 1988, and which the Recipient holds, creates or receives in connection with the purposes of this Deed.

14. Disclaimer

The Recipient acknowledges that the Owner:

- (a) accepts no responsibility for any interpretation or comment, opinion or conclusion that the Recipient or any of its Representatives or third parties may form as a result of examining Confidential Information which is disclosed.
- (b) makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the Confidential Information, including, without limitation, any financial projections or the future performance of the Property. Any financial projections are estimates only, and are based on factors that may change in the future and should not be relied upon.

15. Notices

- 15.1 Any notice, approval, request, demand or other communication (notice) to be given for the purposes of this Deed must be in writing and must be:

- (a) served personally; or
- (b) sent by ordinary or registered post - person to person mail (airmail if overseas); or
- (c) sent by facsimile transmission, to the addresses or facsimile numbers in the Schedule (or such other address or facsimile number as a party notifies in writing).

15.2 A notice given:

- (a) personally will be served on delivery;
- (b) by post will be served seven days after posting;
- (c) by facsimile transmission will be served on receipt of a transmission report by the machine from which the facsimile was sent indicating that the facsimile had been sent in its entirety to the facsimile number specified in this document or such other number as may have been notified by the receiving party. If the facsimile has not been completely transmitted by 5:00 pm (determined by reference to the time of day at the recipient's address) it will be deemed to have been served on the next day.

16. Consent or approval

If the Recipient must obtain the Owner's consent or approval, the consent or approval must be asked for and given in writing and may be given by the Owner conditionally or unconditionally or withheld by the Owner as it decides.

17. Costs

Each party must bear its own legal and other costs and expenses arising directly or indirectly with respect to the preparation, execution, completion and performance of this Deed or any related documentation.

18. Waiver

No waiver by the Owner of any failure or omission by the Recipient to comply with its obligations under this Deed will be valid unless in writing and will not operate as a waiver of any subsequent failure or omission.

19. Entire understanding

This Deed contains the entire understanding between the parties regarding their rights and obligations as to the subject matter of this document.

20. Receivers liability

The Recipient acknowledges that:

- (a) David Winterbottom and Martin Madden of KordaMentha, Chartered Accountants, Level 5, Chifley Tower, 2 Chifley Square, Sydney, NSW, 2000 (the **Receivers**) are the receivers and managers jointly and severally appointed to Marina Mirage Pty Ltd ACN 110 366 722; and
- (b) except to the extent required by law, the Receivers shall not be personally liable to the Recipient in respect of this Deed.

21. Owner's Capacity and Liability

The Recipient acknowledges that:

- (a) Marina Mirage Pty Ltd ACN 110 366 722 (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement) (the "Trustee") acts only in its capacity as trustee of the Marina Mirage Unit Trust ABN 24 947 243 531 ("Trust"). The Trustee can only act in accordance with the terms of the agreement under which it is appointed as the Trustee and is not liable under any circumstances to any party under this Deed. This limitation of the Trustee's liability 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.
- (b) The Trustee is not obliged to do or refrain from doing anything under this Deed (including, without limitation, incur any liability) unless the Trustee's liability is limited in the same manner as set out in clause 21(a).
- (c) No attorney appointed in accordance with this Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any liability.
- (d) A liability arising under or in connection with this Deed 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. This limitation of the Trustee's liability 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.
- (e) 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.
- (f) This clause applies despite any other provision of this Deed or any principle of equity or law to the contrary.

Schedule

Item 1:

Recipient

Name and ACN

**Recipient's Address for
Notices**

Attention:

Fax No:

Email:

Item 2:

Title Details

Lots 531 and 533 on WD5980, Lot 532 on WD6315 and Lot 534 on SP223393, County Ward, Parish
Gilston, Title Reference 17730199

Item 3:

**Owner's Address for
Notices**

Marina Mirage Pty Ltd ACN 110 366 722 (Receivers and Managers
Appointed) (Subject to Deed of Company Arrangement)
C/ KordaMentha
Level 5 Chifley Tower
2 Chifley Square
SYDNEY NSW 2000
Attention: Michael Johns
Fax No: (02) 8257 3009
Email: mjohns@kordamentha.com

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED

by

in accordance with section 127 of the
Corporations Act 2001 (Cth) in the
presence of:

Signature of director

Signature of director/secretary