

# CONFIDENTIALITY DEED

## PARTIES

FISHERMAN'S WHARF (AUSTRALIA) PTY LIMITED ACN 113 572 704  
JIMFUE CAM MINH LUU & TOMSIN LUU  
(‘Donor’)

AND

//2//  
(‘Recipient’)

DATED

*SLATTERY JURD & COMPANY*  
*SOLICITORS*  
*P.O. BOX 57*  
*RAMSGATE NSW 2217*  
*TEL: 029529 3666*  
*Email: [office@slatteryjurd.com.au](mailto:office@slatteryjurd.com.au)*  
*Ref: S.D. MOREY:DC*

**THIS DEED** dated

2018

**PARTIES: FISHERMAN'S WHARF (AUSTRALIA) PTY LIMITED ACN 113 572 704 and JIMFUE CAM MINH LUU AND TOMSIN LUU** both of 11 Moorefield Avenue, Hunters Hill NSW 2110 (**'Donors'**)

//2// of //2b//, //2c// (**'Recipient'**)

## **INTRODUCTION**

- A. The Donor owns the Confidential Information as defined in this Deed.
- B. The Donor is prepared to undertake discussions with the Recipient and to make available to the Recipient information regarding Fisherman's Wharf (Australia) Pty limited and its operations as a Seafood Restaurant at the premises in the Retail Arcade, Shop 10, Sydney Fish Market, Bank Street, Pyrmont (hereinafter called "the Restaurant"). They do so upon the Recipient's express undertaking that he will retain in confidence all information the Recipient may gain or the Donor may disclose to him concerning the Restaurant.

## **IT IS AGREED**

### **1. INTERPRETATION**

In this Deed:

- (a) *Confidential Information* means all financial and business information of whatever kind relating to the Donor's operation of the Restaurant (including any profit projections, research, diagrams, plans or other documents whatsoever belonging to the Donor) disclosed by the Donor to the Recipient prior to, at or after the execution of this Deed by the Recipient and includes:
  - (i) all statements whether oral or in writing made prior to, at or after the execution of this Deed by the Donor and any employees, agents or consultants thereof;
  - (ii) any other information or knowledge of the Donor disclosed to the Recipient during the course of gaining access to information relating to the Restaurant; and
  - (iii) all information or knowledge acquired by the Recipient as a result of the Donor permitting the Recipient to have access to any Confidential Information;
- (b) **"Restaurant"** means the Seafood Restaurant operated by Fisherman's Wharf (Australia) Pty Limited ACN 113 572 704 and known as Fisherman's Wharf Seafood Restaurant on part of the land Auto Consol 3200-167 known as the Retail Arcade, Shop 10, Sydney Fish Market, Bank Street, Pyrmont.
- (c) the singular includes the plural and vice versa;

- (d) a reference to one gender includes a reference to all other genders;
- (e) headings to clauses are included for the sake of convenience only and shall not affect the interpretation of the clauses to which they relate;
- (f) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (g) the word *person* means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- (h) this Deed shall bind each party's legal personal representatives, successors and assigns; and
- (i) when a party comprises two or more persons the rights and obligations of such persons pursuant to this Deed shall enure for the benefit of and bind all of them jointly and each of them severally.

## 2. **CONFIDENTIALITY**

In consideration of the Donor providing the Recipient with access to the Confidential Information, the Recipient covenants to the Donor that, subject to clause 3:

- (a) he will treat the Confidential Information as subject to a duty of confidence and will only use the Confidential Information for the purpose of the development of financial models and to secure the financing of the Restaurant. The Recipient will not use the Confidential Information for any other purpose including competing against the Donor or acting on behalf of any person competing against the Donor in relation to the Restaurant;
- (b) except as is permitted specifically under this clause, he will not in any other way use the Confidential Information without the Donor's prior written consent (which shall not be unreasonably withheld);
- (c) he will only disclose the Confidential Information on a 'need to know' basis to the officers, employees and professional advisers listed in the Schedule;
- (d) he will advise each person to whom the Confidential Information is disclosed that he is subject to a duty of confidence, and that the Confidential Information is not to be used for any purpose other than the development of financial models and to secure the financing of the Restaurant;
- (e) he will take at his sole expense whatever steps the Donor may consider necessary to enforce the duty of confidence against any person to whom the Confidential Information has been disclosed by the Recipient and who is in breach of that duty;

- (f) he will not disclose the Confidential Information to any person not listed in the Schedule without the prior written consent of the Donor;
- (g) he will keep a list of all persons to whom any Confidential Information is disclosed and will provide a copy of the list to the Donor, if requested to do so by the Donor; and
- (h) he will clearly mark all Confidential Information as being subject to this Deed, such marking to state that it is contrary to this Deed to disclose or use the Confidential Information without the prior written consent of the Donor unless such disclosure or use is in accordance with the terms of this Deed.

### **3. OBLIGATIONS NOT TO APPLY**

The obligations of the Recipient under clause 2 shall not apply to any of the Confidential Information which:

- (a) the Recipient (or any of his employees or professional advisers) is (or are) required by statute or law (including the Listing Rules of the Australian Stock Exchange Limited) to disclose, reproduce, use or disseminate, subject to reasonable written prior notice being given to the Donor;
- (b) is in or enters the public domain, otherwise than as a result of a breach by the Recipient of his duty hereunder or disclosure by any person receiving the Confidential Information from the Recipient; or
- (c) is established by means of written records and otherwise to the satisfaction of the Donor as already known to the Recipient prior to the date of this Deed.

### **4. SAFE KEEPING AND RETURN OF CONFIDENTIAL INFORMATION**

- 4.1. The Recipient will ensure that all written material provided by the Donor to him to facilitate their discussions is safely and securely stored when not in use, and the Recipient hereby acknowledges that such material including all copies thereof remains the absolute and exclusive property of the Donor.
- 4.2. Upon written demand by the Donor, the Recipient shall, within 7 days of receipt of such demand, return to the Donor all Confidential Information received by him and any copies of the Confidential Information that the Recipient has made (whether the Donor has authorised him to make such copies or not), together with the list referred to in clause 2((g)). The Donor shall keep that list confidential and shall not use or disclose its contents without the prior written consent of the Recipient or unless it is established that such use or disclosure is necessary to enforce the Donor's rights as a result of a breach of this Deed and/or the duty of confidence herein referred to.

### **5. RIGHTS NOT TO BE ASSIGNED**

The Recipient shall not assign or transfer all or any part of his rights or obligations under this Deed.

6. **INDEMNIFICATION**

The Recipient hereby indemnifies and shall keep indemnified the Donor against any loss, damage, cost (including legal costs on a solicitor-client or full indemnity basis whichever is the higher) or expense suffered or incurred by the Donor directly or indirectly in connection with or arising out of or as a result of a breach by the Recipient or his directors, officers, agents, employees of the Recipient or professional advisers of any of the terms of this Deed.

7. **FAILURE TO ENFORCE NOT TO AFFECT VALIDITY**

The failure of the Donor at any time to enforce any of the provisions of this Deed or any rights in respect hereto or to exercise any election herein provided shall not be a waiver of those provisions, rights or elections or affect the validity of this Deed.

8. **SEVERABILITY**

Each provision of this Deed is severable and distinct from the other provisions and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable in any jurisdiction the same will be severed and neither the validity, legality or enforceability of the remaining provisions in that jurisdiction or the validity, legality or enforceability of such provisions in any other jurisdiction will be affected.

9. **PROPER LAW**

This Deed shall be governed and construed in accordance with the laws in force in the State of New South Wales.

10. **NOTICES**

Service of any notice under or relating to this Deed shall be sufficiently served:

- (a) if delivered personally to the party to be served;
- (b) if left at or sent by pre-paid registered post to:
  - (i) the address of the party to be served as set out in the description of that party at the beginning of this Deed;
  - (ii) the last known place of abode or business of the party to be served; or
  - (iii) the registered office of any party to be served which is a company;

and in the case of posting such notice shall be deemed to have been duly served on the second day after such notice has been posted; or

- (c) if sent by facsimile transmission to the last known facsimile number of the party to be served and shall be deemed to have been duly served at the time such facsimile transmission is sent.

**EXECUTED** as a Deed.

**SCHEDULE**

(the Recipient's legal adviser)

(the Recipient's financial Adviser)

**THE COMMON SEAL OF  
FISHERMAN'S WHARF (AUSTRALIA)  
PTY LIMITED** was hereunto affixed in the  
presence of:

.....

**SIGNED SEALED & DELIVERED** by )  
**JIMFUE CAM MINH LUU & TOMSIN** )  
LUU in the presence of: )

.....

.....  
Signature

.....  
Signature of Witness

.....  
Print Name of Witness

**SIGNED SEALED & DELIVERED** by )  
 )  
in the presence of: )

.....  
Signature

.....  
Signature of Witness

.....  
Print Name of Witness

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