

Confidentiality Deed

Real Estate Capital Partners Managed Investments Limited ACN 115 913 810 in its capacity as responsible entity of the Real Estate Capital Partners Property Trust 3 (Receiver and Manager Appointed) ARSN 111 225 480

The Trust Company Limited ACN 004 027 749 in its capacity as the sub-custodian of the Real Estate Capital Partners Property Trust 3 (Receiver and Manager Appointed) ARSN 111 225 480

[Name of Recipient]

Alt[ABN/ACN/ARBN] [number]

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THIS DEED is made on

2013

BETWEEN:

- (1) **Real Estate Capital Partners Managed Investments Limited ACN 115 913 810 in its capacity as responsible entity of the Real Estate Capital Partners Property Trust 3 (Receiver and Manager Appointed)** ARSN 111 225 480 (the "**Discloser**");
- (2) **The Trust Company Limited ACN 004 027 749 in its capacity as the sub-custodian of the Real Estate Capital Partners Property Trust 3 (Receiver & Manager Appointed)** ARSN 111 225 450 (the "**Sub-Custodian**"); and
- (3) **[Name of Recipient] Alt[ABN/ACN/ARBN] [number]** (the "**Recipient**").

RECITALS:

- (A) The Discloser and the Sub-Custodian are considering a transfer of the interest they hold in the Asset (defined below as the "**Transaction**").
- (B) The Discloser has agreed to disclose Confidential Information to the Recipient provided that the Recipient agrees to enter into this document for the benefit of the Discloser and the Sub-Custodian.

THE RECIPIENT UNDERTAKES AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

"Asset" means the leasehold interest that the Discloser and the Sub-Custodian has in the Sydney Opera House Car Park.

"Authorised Person" means:

- (a) an officer or employee of the Recipient, whose duties require them to have access to Confidential Information;
- (b) a person who is engaged by the Recipient to provide professional advice (such as legal, financial or accounting advice) to it about the Transaction and owes an obligation of confidence to the Recipient in relation to information disclosed to the person;
- (c) a financial institution, investor or other person from which the Recipient intends to obtain a loan or equity financing for the Transaction; and
- (d) any other person nominated by the Recipient to the Receiver and approved in writing by the Receiver as an "Authorised Person".

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in New South Wales.

"Confidential Information" means:

- (a) all information disclosed by the Discloser, Sub-Custodian or the Receiver to the Recipient;

- (b) all documents which have been uploaded onto and made available for inspection in the Data Room;
- (c) the fact that the Discloser intends to proceed with the Transaction and/or that the Recipient or any Authorised Person have had, will have or are having discussions in connection with the Transaction;
- (d) all notes or other records prepared by the Recipient or an Authorised Person based on or incorporating the information referred to in this definition (and all copies thereof);
- (e) all copies of the information or those parts of the notes and other records referred to in this definition; and
- (f) information which is derived or produced wholly or partly from any information that is "Confidential Information" by virtue of this definition by or on behalf of the Recipient or any person (including an Authorised Person) to whom it has made such information available including an analysis, note, calculation, report, conclusion or summary.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the Recipient or any of its officers, employees or agents;
- (b) is public knowledge (except because of a breach of this document or the obligations of confidentiality under this document); or
- (c) the Recipient or an Authorised Person is required by law to disclose.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Data Room" means the electronic database the Discloser has established to disclose documents in relation to the Transaction and the Asset.

"Government Agency" means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.

"Permitted Purpose" means use solely for the purpose of considering and participating in the Transaction.

"Records" means records (including all copies) in any form or media (whether or not visible) that contain, refer to or are based on any Confidential Information.

"Receiver" means Martin Madden of KordaMentha, Level 5, 2 Chifley Square, Sydney in the State of New South Wales in his capacity as receiver and manager of the Discloser and the Sub-Custodian, and his partners, employees and agents.

"Transaction" means the proposed transfer of the Asset to the Recipient.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to "**applicable law**" includes any applicable law of a jurisdiction within or outside Australia, any applicable listing rule of the Australian Securities Exchange or of any other stock exchange (whether or not within Australia) on which securities of the relevant party are quoted and any applicable judgment or order of a court of competent jurisdiction or other Government Agency.
- (g) A reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) The words "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the *Corporations Act 2001* (Cth).
- (i) The expression "**this document**" includes the agreement, arrangement, understanding or transaction recorded in this document.

1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

2. **UNDERTAKINGS**

2.1 **Acknowledgments**

The Recipient acknowledges and agrees that:

- (a) the Confidential Information is secret, confidential and valuable to the Discloser and the Sub-Custodian;
- (b) the Recipient owes an obligation of confidence to the Discloser and the Sub-Custodian concerning the Confidential Information;
- (c) the Recipient has no right or interest in any of the Confidential Information other than the right to use and disclose it on the terms set out in this document;
- (d) any breach or threatened breach of this document may cause the Discloser and the Sub-Custodian immediate and irreparable harm for which damages alone may not be an adequate remedy; and
- (e) the Discloser may commence proceedings to restrain any breach or threatened breach of this document or any other unauthorised access to, use or disclosure of any Confidential Information or to compel specific performance of this document.

2.2 **Indemnity**

The Recipient hereby undertakes to indemnify the Discloser and the Sub-Custodian against all losses, damages, expenses and legal costs that the Discloser or the Sub-Custodian may reasonably sustain or incur as a result, whether directly or indirectly, of any breach by the Recipient or an Authorised Person of this document.

3. **PERMITTED USE AND DISCLOSURE BY THE RECIPIENT**

3.1 **Use and disclosure of Confidential Information**

The Recipient must not, without first obtaining the written consent of the Discloser:

- (a) use any of the Confidential Information except to the extent necessary for the Permitted Purpose; or
- (b) disclose any of the Confidential Information to any person except:
 - (i) to the extent required by applicable law; or
 - (ii) subject to clause 3.3, to an Authorised Person, but only to the extent necessary for the Permitted Purpose.

3.2 **The Recipient's obligations**

The Recipient:

- (a) must at its expense ensure that, at all times, each Authorised Person to whom Confidential Information is disclosed, keeps Confidential Information confidential; and
- (b) must, and must ensure that each Authorised Person to whom Confidential Information is disclosed, does at its or their respective expense:
 - (i) notify the Discloser immediately if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information;

- (ii) immediately take all steps to prevent or stop the suspected or actual unauthorised use, copying, dissemination or disclosure of Confidential Information;
- (iii) comply with any direction issued by the Discloser or Sub-Custodian from time to time regarding enforcement of this document or the obligations of confidentiality under this document (including starting, conducting and settling enforcement proceedings); and
- (iv) maintain complete, accurate and up-to-date records of the use, copying, dissemination and disclosure of Confidential Information and provide these records to the Discloser or the Sub-Custodian on request.

3.3 **Conditions for Permitted Disclosure to Authorised Persons**

- (a) The Recipient may disclose Confidential Information only to those Authorised Persons who have a need to know (but only if and to the extent the Authorised Person has a need to know) for the purposes of the Transaction.
- (b) The Recipient must ensure that each Authorised Person to whom it discloses Confidential Information first agrees in writing to comply with, and does comply with, the terms of this document in relation to the Confidential Information as if the Authorised Person were named as a party to this document.

3.4 **Records**

Without limiting this clause 3, the Recipient may make Records, and may allow an Authorised Person to whom disclosure is permitted to make Records, but in each case only to the extent necessary for the Permitted Purpose.

3.5 **Security and control**

The Recipient must, at its expense:

- (a) establish and maintain effective security measures to safeguard the Confidential Information from access or use not authorised by this document; and
- (b) keep the Confidential Information and each Record:
 - (i) confidential, in a way that makes it clear that it is confidential and, if so required by the Discloser or Sub-Custodian, that it is confidential to the Discloser or Sub-Custodian;
 - (ii) under its effective control; and
 - (iii) secure from theft, loss, damage and unauthorised access or alteration, use and disclosure.

4. **EXCLUSIONS**

4.1 **Disclosure by law**

The Recipient must:

- (a) ensure that neither itself nor any of its Authorised Persons takes or fails to take, or procures or permits to be taken, any action as a result of which the Recipient may be required to make a disclosure under clause 3.1(b)(i);

- (b) inform the Discloser and the Sub-Custodian in writing of any disclosure that is so required before the disclosure is made;
- (c) consult with the Discloser and the Sub-Custodian and agree the content of any disclosure that the Recipient is required to make; and
- (d) use its best endeavours to restrict distribution of the Confidential Information so disclosed.

4.2 **Public disclosure**

Subject to clause 4.1, the Recipient must not make any public statement or issue any press release with respect to any Confidential Information or the Transaction except with the prior written consent of the Discloser or the Sub-Custodian.

5. **RECIPIENT'S FURTHER ACKNOWLEDGMENTS**

5.1 **Definition of Disclosed Information**

In this clause 5, "**Disclosed Information**" means information made available by the Discloser and the Sub-Custodian to the Recipient and includes Confidential Information.

5.2 **Acknowledgments**

- (a) The Recipient acknowledges and agrees that:
 - (i) nothing in this document requires the Discloser or the Sub-Custodian to make any information available to the Recipient, and the making of any information available is at the absolute discretion of the Discloser or the Sub-Custodian;
 - (ii) neither the Discloser or the Sub-Custodian, their respective officers, employees, agents, advisers or consultants makes any representation or warranty (express or implied) that the Disclosed Information is accurate, complete or reliable;
 - (iii) it must rely solely on its own investigations and analysis, and must not rely on any Disclosed Information, for the Permitted Purpose or otherwise;
- (b) Without limiting clause 5.2(a), to the extent that Disclosed Information includes any projections, forecasts, statements, estimates or opinions with respect to anticipated future performance or other forward looking information (together "**Forward Looking Information**"), the Recipient acknowledges and agrees that the Forward Looking Information:
 - (i) depends on certain key assumptions which are matters of opinion only and may not be reasonable or prove to be correct (and some of which are unstated or hypothetical);
 - (ii) depends on a number of matters which involve subjective opinions; and
 - (iii) is subject to significant uncertainties and contingencies, many of which are outside the Discloser's or the Sub-Custodian's control.

Accordingly no representation or warranty (express or implied) is made in relation to the Forward Looking Information.

5.3 **Disclaimer**

The Recipient acknowledges and agrees that the Discloser and the Sub-Custodian:

- (a) are not under any legal obligation, nor will they have liability to the Recipient of any nature whatsoever, with respect to the Transaction by virtue of this document;
- (b) do not undertake (whether expressly or by implication) to negotiate with the Recipient in any particular manner or at all, or to refrain from negotiating with anyone else in respect of the Asset;
- (c) do not accept any responsibility for any interpretation that the Recipient, or any of its Authorised Persons, may place on the Confidential Information or for any opinion or conclusion that the Recipient or any Authorised Person may form as a result of examining the Confidential Information;
- (d) any opinions expressed in any Confidential Information are opinions given at the date that the opinion was formed and may have ceased, or may in the future cease, to be appropriate in the light of subsequent knowledge or attitudes; and
- (e) this document does not give the Recipient any right, title or interest in the Confidential Information and in particular this document does not transfer any interest in any intellectual property.

6. **RETURN OR DESTRUCTION OF RECORDS**

6.1 **Treatment of Records**

At the Discloser's or the Sub-Custodian's request or, if earlier, if either party notifies the other that it does not wish to proceed with the Transaction, the Recipient must immediately stop using all Confidential Information, and at its expense must:

- (a) deliver to the Discloser or, at the Recipient's option, destroy all documents and other materials containing, recording or referring to the Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible Records, containing, recording or referring to the Confidential Information,

which are in the possession, custody or control of the Recipient, its Authorised Persons, or of any person to whom it has given access to any Record.

6.2 **Certification**

If requested by the Discloser or the Sub-Custodian to do so, the Recipient must (within five days of the request) certify in writing to the Discloser or the Sub-Custodian that every Record in the possession, custody or control of the Recipient or of any person to whom it has given access to any Record has been delivered, erased or destroyed in accordance with clause 6.1.

6.3 **No release**

The return, destruction or deletion of Records under clause 6.1 does not release the Recipient from its obligations under this document.

7. **TERMINATION**

7.1 **Notice to terminate**

The Discloser may terminate this document at any time with immediate effect by giving written notice to the Recipient.

7.2 **Consequences on termination**

Upon termination of this document, the right of the Recipient and all Authorised Persons to use Confidential Information ceases and the Recipient will no longer be given access to the Data Room.

7.3 **Actions on termination**

Upon termination of this document, the Recipient must immediately, at the option of the Discloser or the Sub-Custodian:

- (a) return to the Discloser or the Sub-Custodian;
- (b) destroy and certify in writing to the Discloser or the Sub-Custodian the destruction of; or
- (c) destroy and permit a representative of the Discloser or the Sub-Custodian to witness the destruction of,

all Confidential Information in the possession or control of the Recipient and/or its Authorised Persons.

7.4 **Accrued rights and remedies**

Termination of this document does not affect any accrued rights or remedies either party may have.

7.5 **Survival of obligations**

The terms of this document and specifically the Recipients' undertaking to keep the Confidential Information confidential will continue for a period of 12 months from the date of receipt of such Confidential Information, irrespective of whether this document is terminated.

8. **RECEIVER**

8.1 **Limitation of liability**

The Recipient acknowledges and agrees that:

- (a) the Receiver has signed this document as agent for and on behalf of the Discloser and the Sub-Custodian and is not a party to this document in his own right;
- (b) the Receiver has made no representations or warranties in relation to this document, the Transaction or the Asset;
- (c) the Receiver, his firm, partners, employees, agents, advisers and representatives are released from any claim for loss (whether arising prior to or after execution of this document) arising out of or in any way related to this document; and
- (d) the Recipient will not sue the Receiver personally in respect of any liabilities, claims, demands, suits, causes of action, damages, debts, verdicts and judgments

whatsoever whether at law or in equity or under any statute which they have or which, but for this document, could, would or might at any time hereafter have or have had against the Receiver personally arising out of this document or any of the documents referred to in this document.

8.2 Benefit of this document

Notwithstanding any other provision of this document, or any other applicable law or statute, and, for the avoidance of doubt the Receiver may enforce this limitation of liability against the Recipient in their own names or in the name and on behalf of the Discloser or the Sub-Custodian as they see fit.

9. NOTICES

9.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and either:

- (a) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
- (b) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error.

9.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by fax or delivered:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting.

9.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

Party	Address	Fax number	Attention
Discloser/ Sub- Custodian	Real Estate Capital Partners Managed Investments Ltd in its capacity as responsible entity of Real Estate Capital Partners Property Trust 3 (Receiver & Manager Appointed)	(02) 8257 3099	Paul Mirams / Michael Johns

Party	Address	Fax number	Attention
	c/- KordaMentha Level 5, 2 Chifley Square SYDNEY NSW 2000		
Recipient	[enter details]	[enter details]	[enter details]

10. **GENERAL**

10.1 **Governing law**

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.
- (c) The Recipient irrevocably waives any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum.

10.2 **Liability for expenses**

- (a) Subject to paragraph 10.2(b), each party must pay its own expenses incurred in negotiating, executing and stamping this document.
- (b) The Recipient must indemnify the Discloser and the Sub-Custodian against, and must pay the other party on demand the amount of, any duty that is payable on or in relation to this document and the transactions that it contemplates.

10.3 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

10.4 **Assignment**

The Recipient may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the Discloser or the Sub-Custodian.

10.5 **Waiver of rights**

A right may only be waived under this document in writing, and:

- (a) no other conduct by the Discloser or the Sub-Custodian (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

10.6 **Operation of this document**

- (a) Subject to clause 10.6(b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

10.7 **Counterparts**

This document may be executed in counterparts.

EXECUTED as a Deed.

EXECUTED for and on behalf of **Real Estate Capital Partners Managed Investments Limited ACN 115 913 810** in its capacity as responsible entity of the **Real Estate Capital Partners Property Trust 3 (Receiver and Manager Appointed)** ARSN 111 225 480 by its receiver and manager:

Signature

Signature of witness

Receiver and Manager

Name

EXECUTED for and on behalf of **The Trust Company Limited ACN 004 027 749** in its capacity as the sub-custodian of the **Real Estate Capital Partners Property Trust 3 (Receiver and Manager Appointed)** ARSN 111 225 480 by its receiver and manager:

Signature

Signature of witness

Receiver and Manager

Name

EXECUTED by [] ACN []:

Signature of director

Signature of director/secretary

Name

Name