DEED OF RELEASE

PARTIES

THE OWNERS – STRATA PLAN NO. 50785

AND

UNIVERSAL FINANCE HOLDINGS PTY LTD ACN 101 116 447

AND

ANAGNOS PTY LTD ACN 160 117 957

DATED:

J.S. Mueller & Co.
1st Floor
240 Princes Highway
Arncliffe NSW 2205
DX 25315 Rockdale
02 9562 1266
02 9567 8551
REF: AM:DR:22255

DEED OF RELEASE

THIS DEED OF RELEASE is made on 2015

PARTIES

BETWEEN: **THE OWNERS – STRATA PLAN NO. 50785**
of c/- Strata Title Management, Suite 1, 191-193 Taren Point Road, Taren Point of the first part
("**owners corporation**")

AND: **UNIVERSAL FINANCE HOLDINGS PTY LIMITED ACN 101 116 447**
of Suite 1/344A Illawarra Road, Marrickville of the second part
("**Universal**")

AND: **ANAGNOS PTY LIMITED ACN 160 117 957**
of Suite 1/344A Illawarra Road, Marrickville of the other part
("**Anagnos**")

(collectively referred to as the "**parties**")

RECITALS

A. The owners corporation is the registered owner of the common property ("c**ommon property**") in the strata title complex known as Cote d'Azur situated at 1-3 McDonald Street, Cronulla to which Strata Plan No. 50785 relates ("**complex**").

B. Universal was the previous registered owner of lot 21 in Strata Plan No. 50785 situated at 3R/1 McDonald Street, Cronulla ("**lot 21**").

C. Anagnos is the current registered owner of lot 21.

D. There is an elevator tower located on the common property adjacent to the north-western boundary of lot 21 ("**elevator tower**") in which is situated an elevator ("**elevator**").

E. On 2 May 2003, the owners corporation made Special By-Law No. 2 that was subsequently registered in dealing registration no. AA96463 ("**special by-law**").

F. The special by-law states (among other things) that the owner of lot 21 is responsible for:

(a) properly maintaining and keeping in a state of good and serviceable repair the elevator and the elevator tower; and

(b) indemnifying the owners corporation for the costs and charges under the elevator maintenance contracts that the owners corporation has entered ("**elevator maintenance costs**");

until Sutherland Shire Council ("**Council**") agrees that the terms of a development application in relation to the construction of a bridge over Gerrale Street are complied with and the bridge is constructed and commissioned ("**owner's obligations**")

G. The parties have been in dispute about the nature and scope of the owner's obligations under the special by-law ("**dispute**").

H. The owners corporation alleges that the owner's obligations remain in force and that previously Universal was and now Anagnos is responsible for maintaining and repairing the elevator tower (including surrounding common property including a gazebo structure adjacent to the elevator tower ("**gazebo**")) and the elevator and indemnifying the owners corporation for all elevator maintenance costs.

I. Universal and Anagnos allege that the owner's obligations have expired and that they were and are not responsible for maintaining and repairing the elevator tower (or the gazebo) or the elevator or indemnifying the owners corporation for all elevator maintenance costs.

J. On 27 September 2012, Universal applied for orders from a Strata Schemes Adjudicator against the owners corporation under Chapter 5 of the *Strata Schemes Management Act 1996* ("**Strata Act**") to (in part) resolve the dispute in File No. SCS 12/49745 ("**application**").

K. On 18 January 2013, the application was upheld in part ("**Adjudicator's decision**").

L. On about 7 February 2013, the owners corporation appealed to the Consumer, Trader and Tenancy Tribunal against the Adjudicator's decision in File No. SCS 13/07378 ("**appeal**").

M. On 20 December 2013, the appeal was allowed in part.

N. The parties continue to disagree about the nature and scope of the owner's obligations under the special by-law and the matters that were the subject of the application and appeal.

O. Further, Anagnos wishes to install, or permit the operator of the restaurant which trades from lot 21 ("**operator**") to install, an awning on the common property ("**awning**") to wholly cover the balcony adjacent to lot 21.

P. The installation of the awning requires the approval of Council under the *Environmental Planning and Assessment Act 1979* ("**EPA Act**") (which approval can only be given with the consent of the owners corporation which it has so far withheld) and the approval of the owners corporation under the Strata Act.

Q. The parties have agreed to resolve the dispute, and deal with Anagnos' request of the owners corporation for permission to apply to the Council for approval to install the awning under the EPA Act.

R. The parties wish to record the terms of their agreement concerning these matters in this deed.

AGREEMENT

1. Awning and Balcony

1.1 The owners corporation agrees, when requested to do so by Anagnos, to issue a letter addressed to Council containing the owners corporation's written consent to Anagnos or the operator applying to Council for an approval to install the awning under the EPA Act ("**owners corporation EPA Act consent**").

1.2 Anagnos agrees, when requested to do so by the owners corporation, to provide the owners corporation with a copy of any application by or on behalf of Anagnos or the operator to Council for approval to install the awning under the EPA Act.

1.3 The parties acknowledge and agree that the owners corporation EPA Act consent is not (and does not constitute) the approval of the owners corporation for the installation of the awning whether under the Strata Act or otherwise and that the owners corporation is only able to grant such approval at a general meeting.

1.4 The parties further acknowledge and agree that the owners corporation is presently not disposed to grant Anagnos or the operator exclusive use of the entire balcony.

2. Elevator Maintenance

2.1 The parties agree that Universal and Anagnos shall only be liable for elevator maintenance costs incurred from 12 December 2005 up to the date of this deed calculated in accordance with the following formula:

$$T = E \times \frac{UE}{TUE}$$

Where:

T = elevator maintenance costs payable by Universal and Anagnos

E = total elevator maintenance costs paid or payable by the owners corporation for the period 12 December 2005 up to the date of this deed

UE = the unit entitlement of lot 21

TUE = the aggregate unit entitlement for the complex

2.2 The parties further agree that, on and from the date of this deed, the owners corporation shall be responsible for properly maintaining and keeping in a state of good and serviceable repair the elevator and the elevator tower and bearing all elevator maintenance costs.

2.3 The owners corporation agrees to amend the special by-law, by deleting clauses C (iii) and C (iv) from the special by-law, within 12 months after the date of this deed, to give effect to the agreement recorded in clauses 2.1 and 2.2 of this deed, and Anagnos agrees to give its written consent to such amendment of the special by-law.

2.4 The parties acknowledge and agree that the owners corporation shall not be liable to reimburse Universal or Anagnos for any elevator maintenance costs or charges paid by either of them at any time. To the extent that Universal or Anagnos or both have an entitlement to make a claim to be reimbursed or paid by the owners corporation for any elevator maintenance costs or charges paid by either of them at any time, Universal and Anagnos each release the owners corporation from any such claim.

2.5 The parties further acknowledge and agree that the owners corporation has paid all elevator maintenance costs incurred from 12 December 2005 up to the date of this deed. To the extent that the owners corporation has an entitlement to make a claim against Universal or Anagnos or both to be reimbursed or paid for any elevator maintenance costs paid by it from 12 December 2005 up to the date of this deed, the owners corporation releases each of Universal and Anagnos from any such claim.

3. Universal's Release and Covenant not to Sue

3.1 Universal unconditionally and irrevocably releases and discharges the owners corporation from and in respect of all claims, demands, suits, causes of action, liabilities, damages, debts, costs, expenses, orders, verdicts and judgments whatsoever whether at law, in equity or under any statute ("**claims**"), that it had, that it now has or, but for this deed, that it may at any time hereafter have against the owners corporation in respect of, arising out of or in connection with the maintenance and repair of the elevator and elevator tower and elevator maintenance costs or charges (collectively the "**disputed matters**").

3.2 Universal unconditionally and irrevocably covenants not to sue the owners corporation for or in respect of, or in relation to anything arising out of or in connection with the disputed matters.

4. Anagnos' Release and Covenant not to Sue

4.1 Anagnos unconditionally and irrevocably releases and discharges the owners corporation from and in respect of all claims that it had, that it now has or, but for this deed, that it may at any time hereafter have against the owners corporation in respect of, arising out of or in connection with the disputed matters.

4.2 Anagnos unconditionally and irrevocably covenants not to sue the owners corporation for or in respect of, or in relation to anything arising out of or in connection with the disputed matters.

5. Owners Corporation Release and Covenant not to Sue

5.1 The owners corporation unconditionally and irrevocably releases and discharges Universal and Anagnos from and in respect of all claims that it had, that it now has or, but for this deed, that it may at any time hereafter have against Universal and Anagnos in respect of the disputed matters.

5.2 The owners corporation unconditionally and irrevocably covenants not to sue Universal and Anagnos for or in respect of the disputed matters.

5.3 To give effect to the release referred to in clause 5.1 above, the owners corporation agrees to remove from the account kept by Anagnos with the owners corporation any elevator maintenance charges, interest accrued thereon and any legal costs incurred in

connection with the recovery of elevator maintenance charges (if that has not been done already).

6. Bar to Further Claims

The parties agree that a release or covenant not to sue given in this deed may be pleaded by any party in whose favour the release or covenant is given as a defence and complete bar to any legal action taken by any party granting the release or giving the covenant in breach of this deed (apart from legal action concerning the construction or enforcement of the release or covenant).

7. Legal Advice

The parties warrant that they have each obtained independent legal advice, or had the opportunity to obtain independent legal advice, as to the nature, effect and extent of this deed and that none of them has been induced to execute the deed by any improper pressure, coercion or undue influence.

8. Costs of this Deed

Each party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of this deed.

9. Severance

If at any time any provision of this deed is or becomes illegal, invalid, unenforceable or void in any respect, that provision will be ignored, read down or severed so far as is possible in order to preserve the essence of the bargain between the parties and so as to uphold the legality, validity and enforceability of the remaining provisions of this deed.

10. Governing Law

The parties agree that the laws of New South Wales govern this deed. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

11. Entire Agreement

This deed contains the whole of the agreement between the owners corporation, Universal and Anagnos relating to its subject matter and supersedes any previous agreements, arrangements and understandings concerning same.

12. Variation

Any amendment to or variation of this deed is not effective unless it is in writing and signed by the parties.

13. No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this deed will operate as a waiver. Nor will any single or partial exercise of any right, power,

or remedy preclude any other or further exercise of that, or any other, right, power or remedy.

14. Assignment

A party cannot assign any or all of its rights under this deed.

15. Confidentiality

The parties agree to keep the existence and terms of this deed confidential except that the parties acknowledge and agree that this deed shall in draft form be appended to the notice for and minutes of a meeting of the owners corporation or executive committee for the purpose of being approved and in its final form will form part of the records of the owners corporation.

16. Counterparts

This deed may be executed in counterparts and the executed counterparts taken together shall constitute the one and the same instrument.

EXECUTED AS A DEED

The common seal of The Owners - Strata Plan No. 50785 was affixed on _____ 2015 in the presence of:

Signature(s): _____

Name(s): _____

being the person(s) authorised by section 238 of the *Strata Schemes Management Act 1996* to witness the affixing of the common seal.

EXECUTED by **UNIVERSAL FINANCE HOLDINGS PTY LTD ACN 101 116 447** in accordance with Section 127 of the Corporations Act 2001 in the presence of:)

…….. ……..
Secretary/Director Director

EXECUTED by **ANAGNOS PTY LTD ACN 160 117 957** in accordance with Section 127 of the Corporations Act 2001 in the presence of:)

…….. ……..
Secretary/Director Director