Deed of Settlement and Release

Reference: MYS002-00009

26 November 2019

Roldon Holdings Pty Limited
ACN 608 493 090

The Owners – Strata Plan No. 50785

Layrir Pty Limited
ACN 002 337 162

Delcazi Pty Limited
ACN 078 528 284

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Deed

Date

Click here to enter a date

Parties

First party

Name	Roldon Holdings Pty Limited (**Roldon**)
ACN	608 493 090
Contact	Theo Casimatis
Telephone	02 9260 2625

Second party

Name	The Owners – Strata Plan No. 50785 (**The OC**)
Contact	Adrian Mueller
Telephone	02 9562 1266

Third party

Name	Layrir Pty Limited (**Layrir**)
ACN	002 337 162
Contact	Mark Isaacs
Telephone	02 9525 8100

Fourth party

Name	Delcazi Pty Limited (**Delcazi**)
ACN	078 528 284
Contact	Mark Isaacs
Telephone	02 9525 8100

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Background

A. Roldon is the registered proprietor of Lot 2 in strata plan no. 50785, located at 1 McDonald Street, Cronulla.

B. Layrir is the registered proprietor of Lot 1 in strata plan no. 50785, located at 1 McDonald Street, Cronulla. Delcazi is the current lessee of Lot 1.

C. In or around mid-2018, Delcazi erected the Awning over the exclusive use area and/or common property of the OC.

D. Roldon alleges that by erecting the Awning, Delcazi breached, *inter alia,* the By-Laws and the *Strata Schemes Management Act 2015* (NSW). Roldon also alleges that the OC and Layrir breached certain obligations owed to Roldon as a result of the OC and Layrir permitting the Awning to be erected.

E. The OC, Layrir and Delcazi deny the allegations of Roldon referred to in paragraph D above.

F. On or about 17 May 2019, Roldon commenced the Proceedings against the OC, Layrir and Delcazi.

G. The parties have agreed to settle the Proceedings and associated claims in accordance with this deed.

H. The parties enter into this deed without any admission of liability and with the intention of resolving the matters between them and any disputes which have arisen or potentially may arise.

1 Definitions

In this deed, unless the context indicates a contrary intention:

Awning means the structure erected by Delcazi over the exclusive use area benefiting Lot 1 in Strata Plan No. 50785 at 1 McDonald Street Cronulla and/or common property of the OC pursuant to the By-Laws in or around mid-2018 as indicated in the Survey Plans;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

By-Laws means Registered Dealing AN566916J being the Consolidated Set of By-Laws of the OC dated 8 August 2018;

Claim means any claim or liability of any kind and includes any action, suit, cause of action, arbitration, debt, due, costs, claim, demand, interest, verdict or judgment whatsoever whether at law or in equity or arising out of the provisions of statute;

Law means any law applicable including legislation, ordinances, regulations and by-laws and other subordinate legislation;

Proceedings means proceedings bearing file no. SC 19/23354 commenced by Roldon in the New South Wales Civil and Administrative Tribunal on or around 17 May 2019;

Tribunal means the New South Wales Civil and Administrative Tribunal;

Settlement Date means the date on which all parties exchange executed counterparts of this deed;

State means a state or territory of Australia;

Structure means any awning, canopy, shade, shelter, tarpaulin, covering or any other building or structure which unreasonably obscures the exposure of Lot 2 at 1 McDonald Street Cronulla from the Cronulla Beach Promenade; and

Survey Plans means the survey plans in schedule 1 to this deed.

2 Interpretation

In this deed, unless the context indicates a contrary intention:

(a) (**documents**) a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;

(b) (**references**) a reference to a party, clause, paragraph, schedule or annexure is to a party, clause, paragraph, schedule or annexure to or of this deed;

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(c) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this deed;

(d) (**Background**) the Background forms part of this deed and is the context for any exercise of construction of this deed;

(e) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;

(f) (**including**) including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;

(g) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;

(h) (**singular and plural**) the singular includes the plural and the plural includes the singular;

(i) (**gender**) words importing one gender include all other genders;

(j) (**legislation**) a reference to legislation or any legislative provision includes:

(i) any modification or substitution of that legislative provision; and

(ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;

(k) (**time and date**) a reference to a time or date is to the time and date in Sydney, Australia;

(l) (**joint and several**) an agreement, representation, covenant, warranty, right or obligation:

(i) in favour of two or more persons is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons binds them jointly and severally;

(m) (**replacement bodies**) a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and

(n) (**Australian currency**) a reference to dollars or $ is to Australian currency.

2.2 Construction

(a) Neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(b) The parties agree that the following clauses of this deed are conditions, in the sense that they are fundamental obligations going to the heart of the agreement between them:

(i) Clause 3; and

(ii) Clause 4.

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(c) Without in any way limiting their rights pursuant to this deed, at law, or otherwise, the parties agree that any breach of the clauses referred to at clause **Error! Reference source not found.**(b) above will enliven a right to terminate this deed.

2.3 Timing of acts or things

(a) If the time for doing any act or thing required to be done under this deed or a notice period specified in this deed expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing done under this deed is done after 5 pm on a day, it is taken to have been done on the following Business Day.

(c) The time for removal of the Awning set out in clause 3.1 is of the essence.

3 Removal of the Awning

3.1 Delcazi must remove the part of the Awning marked in yellow on the Survey Plans, comprising of both the retractable covering and the structure, at its own cost, on or before 30 November 2019.

3.2 The parties agree that the section of the Awning marked in blue in the Survey Plans is permitted to remain subject to the By-Laws.

4 Prohibition on erecting further Structures

4.1 The parties agree that subject to clause 4.2 of this deed, no party may permit any Structure to be erected on or over the area marked yellow in the Survey Plans.

4.2 The parties agree that the prohibition in clause 4.1 of this deed does not include any Structure or other object that is permitted to be erected pursuant to Special By-Law 46 of the By-Laws.

5 Releases

On and from the date Delcazi completes its obligations pursuant to clause 3.1 of this deed, each party releases and forever discharges each other party from any Claim save for any Claim, action or enforcement of an action for breach or enforcement of this deed.

6 Disposal of Proceedings

6.1 Subject to Delcazi completing its obligations pursuant clause 3.1 of this deed, the parties agree to cause the Proceedings to be dismissed with no order as to costs, with the intention that each of the parties bear their own costs.

6.2 To give effect to clause 6.1 of this deed, the parties agree that:

(a) Within 2 Business Days of Delcazi completing its obligations under clause 3.1, Roldon must cause a Request for Withdrawal of Application form withdrawing the Proceedings to be filed with the Tribunal; and

(b) The OC, Layrir and Delcazi have been informed of and consent to Roldon filing the Request for Withdrawal of Application form referred to in clause 6.2(a).

7 Costs and expenses

Each party will bear its own costs of negotiating and performing its obligations under this deed.

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8 Relationship between parties

8.1 Nothing in this deed:

(a) constitutes a partnership between the parties; or

(b) except as expressly provided, makes a party an agent of another party for any purpose.

8.2 A party cannot in any way or for any purpose:

(a) bind another party; or

(b) contract in the name of another party.

9 Further assurances

9.1 Except as expressly provided in this deed, each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to this deed and the matters contemplated by it.

9.2 Each party warrants to the others that:

(a) it has full power and authority to enter into and perform this deed; and

(b) it has received legal advice regarding the subject matter of this deed.

9.3 Each person who executes this deed on behalf of a party warrants that they have full power and authority to execute this deed and bind that party to it.

10 Variation

No variation of this deed is effective unless made in writing and signed by each party.

11 Counterparts

11.1 This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.2 A party that has executed a counterpart of this deed may exchange it with another party by emailing a PDF copy of the executed counterpart to that other party, which will be a valid delivery of this deed.

12 Entire agreement

The contents of this deed constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this deed, whether orally or in writing.

13 Invalidity

13.1 A word or provision must be read down if:

(a) this deed is void, voidable, or unenforceable if it is not read down;

(b) this deed will not be void, voidable or unenforceable if it is read down; and

(c) the provision is capable of being read down.

13.2 A word or provision must be severed if:

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(a) despite the operation of clause 13.1, the provision is void, voidable or unenforceable if it is not severed; and

(b) this deed will be void, voidable or unenforceable if it is not severed.

13.3 The remainder of this deed has full effect even if clause 13.2(a) or clause 13.2(b) applies.

14 Waiver

A right or remedy created by this deed cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right or remedy operate as a subsequent waiver of the same right or remedy or of any other right or remedy of that party.

15 Survival after termination

Clauses 4 (Prohibition on erecting further Structures) and 5 (Releases) continue to apply after expiration or termination of this deed.

16 Governing law and jurisdiction

16.1 The laws applicable in New South Wales govern this deed.

16.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts in relation to any dispute under, arising out of or in connection with this deed.

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Schedule 1 Survey Plans

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Executed as a deed

Executed by **Roldon Holdings Pty Ltd** ACN 608 493 090 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Date

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Signature of Sole Director and Sole Secretary

.....

Print name of Sole Director and Sole Secretary

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Signed, sealed and delivered by the common seal of **The Owners – Strata Plan No. 50785** hereunto affixed accordance with section 273(2)(a) of the *Strata Schemes Management Act 2015* (NSW) in the presence of:

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Date

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Signature

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Name & Position

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Common Seal of **The Owners – Strata Plan No. 50785**

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Signature

.....

Name & Position

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Executed by **Layrir Pty Ltd** ACN 002 337 162 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Date

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Signature of Sole Director and Sole Secretary

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Print name of Sole Director and Sole Secretary

Executed by **Delcazi Pty Limited** ACN 078 528 284 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Date

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Signature of Sole Director and Sole Secretary

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Print name of Sole Director and Sole Secretary

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