

DATED

2009

BETWEEN:

BOTANY BAY CITY COUNCIL

of the first part

AND:

PAUL GIANNIKOURIS

AND

STEPHANI GIANNIKOURIS

AND

NORMAN GIANNIKOURIS

AND

KATINA GIANNIKOURIS

of the second part

AND

PAUL LESLIE MULHOLLAND

AND

DAVID BARRY MULHOLLAND

AND

ERIC ALLEN ROBINSON

of the third part

DEED

HOUSTON DEARN O'CONNOR

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Ref: ML:IM:B5192

THIS DEED is made on the _____ day of _____, 2009
between **BOTANY BAY CITY COUNCIL** of 141 Coward Street, Mascot ("Council") and
PAUL GIANNIKOURIS and STEPHANI GIANNIKOURIS of 4 Marine Parade,
Maroubra, **NORMAN GIANNIKOURIS and KATINA GIANNIKOURIS** of 15 Bell Street
Maroubra NSW 2035 ("Giannikouris") and **PAUL LESLIE MULHOLLAND, DAVID
BARRY MULHOLLAND AND ERIC ALLEN ROBINSON** of

("Mulholland").

WHEREAS:

- A. Giannikouris is the registered proprietor of the land known as 34 Kent Road Mascot being the whole of land contained in Folio Identifier 1/120732 ("the subject premises").
- B. Giannikouris proposes redeveloping the subject premises.
- C. On 25 March 2009 Council issued an amended Notice of Determination of Development Application to Paul Giannikouris authorising the subdivision of the subject premises into three Torrens Title lots (hereafter referred to as proposed Lots 10, 11 and 12) and dedication of land for the widening of Ossary Street and the extension of Coggins Place being development application number 09/131 ("the Development Consent").
- D. Mulholland and Giannikouris have entered into a contract for Giannikouris to sell proposed Lot 10 to Mulholland.
- E. On 11 November 2009, Council modified the Development Consent by:
 - (i) Amending Conditions 4, 5, 7, 8(b), 9, 18, 20, 23, 25(a), 26, 27 and 41;
 - (ii) Deleting Condition 19;
 - (iii) Adding Condition 2(b).
- F. The Development Consent as now amended is attached to this deed as Annexure "A".

- G. In compliance with the Conditions of the Development Consent the Council, Giannikouris and Mulholland now enter into this Agreement.
- H. On 2 April 2009, Council approved Development Application No. 09/155 for the warehousing of sound and production equipment, associated office space, alterations and additions to the existing warehouse buildings and three business identification signs on proposed Lot 10.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. This Agreement shall be binding upon the heirs, executors, transferees and assigns of each of the parties.
2. (a) Prior to the issue of the Subdivision Certificate, Giannikouris shall lodge a separate Development Application for the roadworks, widening, footpath and landscaping associated with the subdivision of the land (**“the roadworks development application”**).
- (b) Mulholland shall, prior to the issue of an Occupation Certificate for any proposed building(s) or use(s) of proposed Lots 10, carry out at his own expense the roadworks, widening, footpath and landscape works for that part of the works shown in Plans SC01 rev DA2 by Christiansen O'Brien Pty Ltd and 09187_DA_C101 rev 01 by Henry & Hymas adjoining Lot 10 on the Ossary Street and Kent Road frontages.
- (c) Giannikouris shall, prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lots 11 or 12, construct all the roadworks, widening, footpath and landscaping as shown in Plans SC01 rev DA2 by Christiansen O'Brien Pty Ltd and 09187_DA_C100 rev 01, 0109187_DA_C101 rev 01 and 0109187_DA_C500 rev 01 by Henry & Hymas, other than those referred to in 2(b) above.

(d) In the event roadworks adjacent to Lot 11 or 12 are commenced prior to roadworks under clause 2(b), then Giannikouris shall construct a temporary footpath from Kent Road along Ossary Street to provide pedestrian access to the new developments on Lots 11 and 12. The temporary footpath is to be suitable for wheelchair and pram use. An Occupation Certificate for any building or use of proposed lot 11 or 12 shall not issue until these works are completed to Council's reasonable satisfaction.

3. (a) Prior to the issue of the Subdivision Certificate, Mulholland will provide an unconditional bank guarantee in the sum of \$80,609 in relation to the works required to be undertaken and requirements pursuant to Clauses 2(b), 4(b) and 5(b) hereof, with such unconditional bank guarantee being in favour of the Council and to be held by Council until the works required to be undertaken and requirements pursuant to Clauses 2(b), 4(b) and 5(b) have been completed to Council's satisfaction. The Subdivision Certificate shall not be issued until this requirement has been satisfied.

(b) Prior to the issue of the Subdivision Certificate, Giannikouris will provide an unconditional bank guarantee in the sum of \$378,900 in relation to the works required to be undertaken and requirements pursuant to Clauses 2(c), 4(a) and 5(a) hereof, with such unconditional bank guarantee being in favour of the Council and to be held by Council until the works required to be undertaken and requirements pursuant to Clause 2(c), 4(a) and 5(a) have been completed to Council's satisfaction. The Subdivision Certificate shall not be issued until this requirement has been satisfied.

(c) (i) Should the works required by Clause 2(b) not be carried out within three (3) years of the date of this agreement, then Council can call upon the bank guarantee and use the necessary amount of those funds to carry out such works itself.

In the event that the unconditional bank guarantee contains insufficient funds for the Council to complete works in accordance with this clause

then Council shall be entitled to recover from Mulholland its further costs as a debt due to it in any Court of competent jurisdiction.

- (ii) Should the works required by Clause 2(c) not be carried out within three (3) years of the date of this agreement, then Council can call upon the bank guarantee and use the necessary amount of those funds to carry out such works itself.

In the event that the unconditional bank guarantee contains insufficient funds for the Council to complete works in accordance with this clause then Council shall be entitled to recover from Giannikouris its further costs as a debt due to it in any Court of competent jurisdiction.

- 4a. Giannikouris shall ensure that all services (Utility, Council etc) within the road reserve and footpath areas adjacent to Lots 11 and 12 are relocated and/or adjusted to match the proposed and/or existing levels prior to the release of the unconditional bank guarantee referred to in 3(c)(ii) and prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lots 11 or 12.
- 4b. Mulholland shall ensure that all services (Utility, Council etc) within the road reserve and footpath areas adjacent to Lot 10 are relocated and/or adjusted to match the proposed and/or existing levels prior to the release of the unconditional bank guarantee referred to in 3(c)(i) and prior to the issue of an Occupation Certificate for any building(s) or use(s) of proposed Lot 10.
- 5a. Giannikouris shall provide a validation report described and referred to in Condition 25 for each of proposed Lots 11 and 12 prior to the issue of an Occupation Certificate for any building or use on that respective lot.
- 5b. Mulholland shall provide a validation report described and referred to in Condition 25 for proposed Lot 10 prior to the issue of an Occupation Certificate for any building or use on that lot.
- 6. Giannikouris shall provide the detailed landscape documentation described and referred to in Condition 26 in a timely manner to allow Council to assess and approve the proposed landscaping prior to the works being carried out.

- 7a. Giannikouris shall appoint Council as the Principal Certifying Authority (PCA) for any Development Applications and Construction Certificates relating to proposed Lots 11 and 12 and in relation to the Development Application and Construction Certificate for the roadworks Development Application.
- 7b. Mulholland shall appoint Council as the Principal Certifying Authority (PCA) for any Development Applications and Construction Certificates relating to proposed Lot 10.
8. (a) Mulholland shall satisfy the requirements of Clauses 2(b), 4(b) and 5(b) before an Occupation Certificate is issued with respect to any building(s) or use(s) on Lot 10 and in any event, within three (3) years of the date hereof.
- (b) Giannikouris shall satisfy the requirements of Clauses 2(c), 2(d) (if applicable), 4(a) and 5(a) before any Occupation Certificate issues for any building(s) or use(s) on Lots 11 or 12 and in any event, within three (3) years of the date hereof.
9. Council will be entitled to refuse to issue any Occupation Certificate:
- (a) In respect of proposed Lot 10 until it is satisfied on reasonable grounds that all of the requisite works, including the roadworks, widening, footpath construction, validation and associated landscaping works have been completed to Council's reasonable satisfaction being the works required pursuant to Clause 2(b), ~~2(d) if applicable~~, 4(b) and 5(b) hereof.
- (b) In respect of proposed Lots 11 or 12 until it is satisfied on reasonable grounds that all of the requisite works, including the roadworks, widening, footpath construction, validation and associated landscaping works have been completed to Council's reasonable satisfaction being the works required pursuant to Clause 2(c) ^{2(d) if applicable} / 4(a) and 5(a) hereof.
- 10B. Should Giannikouris propose to sell the subject premises or part thereof to a purchaser not party to this deed and prior to the obligations in this deed having been completed, then it shall:
- (a) Within seven (7) days of listing the subject premises or part thereof for sale, either through an agent or privately, notify the Council of such intention.

- (b) As a condition of any sale it shall require that the incoming purchaser enter into a like Agreement to this Agreement with the Council in which the same covenants as set out herein shall apply including the provision of unconditional bank guarantees for the roadworks, footpath construction, validation and landscaping works; and
- (c) Within seven (7) days of exchange of Contracts notify the Council of the sale and provide the Council with a copy of the Contract. Council shall within a further 21 days submit to the purchaser (as notified by Giannikouris) a form of Agreement substantially in the same form as this Agreement for execution by the purchaser. As from the date of exchange of such further agreement between the Council and the purchaser, Giannikouris shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date) and the release of the unconditional bank guarantees (on receipt of equivalent bank guarantees by Council from the purchaser).

10C. Should Mulholland propose to sell Lot 10 to a purchaser not party to this deed and prior to the obligations in this deed having been completed, then it shall:

- (a) Within seven (7) days of listing the subject premises or part thereof for sale, either through an agent or privately, notify the Council of such intention.
- (b) As a condition of any sale it shall require that the incoming purchaser enter into a like Agreement to this Agreement with the Council in which the same covenants as set out herein shall apply including the provision of unconditional bank guarantees for the roadworks, footpath construction, validation and landscaping works; and
- (c) Within seven (7) days of exchange of Contracts notify the Council of the sale and provide the Council with a copy of the Contract. Council shall within a further 21 days submit to the purchaser (as notified by Mulholland) a form of Agreement substantially in the same form as this Agreement for execution

by the purchaser. As from the date of exchange of such further agreement between the Council and the purchaser, Mulholland shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date) and the release of the unconditional bank guarantees (on receipt of equivalent bank guarantees by Council from the purchaser).

- 11A. Should Giannikouris propose to otherwise transfer or assign its interest or any part thereof to a transferee or assignee then it shall before such assignment or transfer taking place have the incoming assignee or transferee enter into an agreement substantially in the same form as this agreement. In so far as the interest of Giannikouris assigned or transferred, as and from the date of exchange of such further Agreement between the Council and the assignee or transferee, Giannikouris shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date).
- 11B. Should Mulholland propose to otherwise transfer or assign its interest or any part thereof to a transferee or assignee then it shall before such assignment or transfer taking place have the incoming assignee or transferee enter into an agreement substantially in the same form as this agreement. In so far as the interest of Mulholland assigned or transferred, as and from the date of exchange of such further Agreement between the Council and the assignee or transferee, Mulholland shall be released from its obligations pursuant to this Deed (other than any liability for any breaches committed prior to that date).
12. Giannikouris shall pay the Council's reasonable Solicitor/Client costs of preparing this Agreement and the cost of Council registering a caveat over the title to the subject premises, if in the opinion of Council it is prudent to do so. Further, should it be necessary for Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of its caveat being registered on the title to the subject premises Giannikouris shall pay the Council's reasonable Solicitor/Client costs of obtaining Council's consent to such registration. Giannikouris shall also pay the Council's reasonable Solicitor/Client

costs of preparing a Positive Covenant and having it registered over the title to the property, should it become necessary.

- 13 (a). Giannikouris and Mulholland covenant and agree to, within 30 days of written request by Council, execute a Positive Covenant pursuant to Section 88E of the Conveyancing Act 1919 wherein the obligations imposed by this Deed are incorporated into such Positive Covenant and shall do all such things and execute all such documents to have such Positive Covenant registered on the title to the subject premises. Giannikouris and Mulholland further agree that the Council shall, pending registration of such Positive Covenant, be entitled to register a caveat at the Land Titles Office against the title of the subject premises_ to protect its rights hereunder. Council covenants and agrees to consent to:

- (i) The registration of the proposed Subdivision Plan pursuant to the development consent; and
- (ii) The registration of the transfer from Giannikouris to Mulholland of proposed Lot 10 in the subdivision; and
- (iii) The registration of the mortgage from Mulholland to its mortgagee in relation to proposed Lot 10,

within seven (7) days of receiving a written request from Giannikouris in relation to the registration of the Subdivision Plan and the transfer and from Mulholland in relation to the mortgage. It is acknowledged and accepted that in consenting to the transfer from Giannikouris to Mulholland the caveat is to remain on the title to Lot 10 until Council is required to withdraw it pursuant to Clause 13(b) hereof.

- 13 (b) Council shall withdraw any caveat registered over the titles to the subject premises within 14 days of a written request to do so by either Giannikouris or Mulholland made after issue of an Occupation Certificate for any buildings or uses on Lots 10, 11 or 12 insofar only as relates to the Lot for which the Occupation Certificate has issued.

14. Should Giannikouris be in breach of any terms of this Agreement, and without any prior warning being given, Council can, at its option, enforce by way of injunctive relief in the Supreme Court the provisions of this Agreement which have been breached, seek damages or seek to enforce the provisions of Conditions 8 and 9 of the Development Consent whether by way of order under Section 121B of the Environmental Planning and Assessment Act, Class 4 proceedings in the Land and Environment Court or otherwise.

15.
 - a) All monies payable by and on behalf of Giannikouris under this Agreement are exclusive of Goods and Services Tax or like impost (GST).
 - b) Liability for GST (payable in respect of any taxable supply) is additional. It is payable by Giannikouris to the Council at the same time as rent and other monies are payable.

16.
 - (a) Should the contract for the sale of Lot 10 from Giannikouris to Mulholland not complete for any reason, then Giannikouris covenants and agrees to perform and be subject to all of the obligations, covenants and agreements imposed upon or agreed to by Mulholland in this Deed.
 - (b) Both Giannikouris and Mulholland covenant and agree with Council to advise Council within 7 days in writing:
 - (i) of completion of the agreement between Giannikouris and Mulholland;
or
 - (ii) of termination or rescission.

IN WITNESS WHEREOF the parties have executed this Deed.

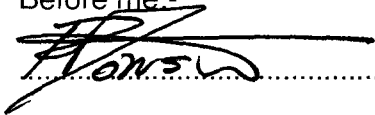
**SIGNED BY THE GENERAL MANAGER
FOR AND ON BEHALF OF
BOTANY BAY CITY COUNCIL**
Pursuant to Section 683 of the Local
Government Act 1993

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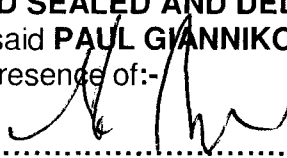
GENERAL MANAGER



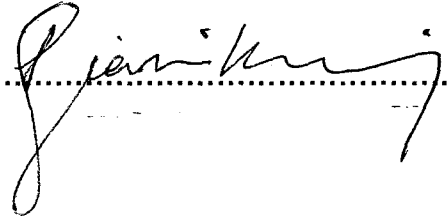
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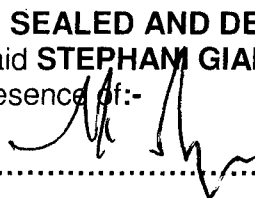
SIGNED SEALED AND DELIVERED
by the said **PAUL GIANNIKOURIS**
in the presence of:-


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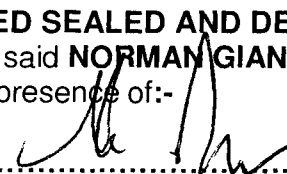
SIGNED SEALED AND DELIVERED
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in the presence of:-


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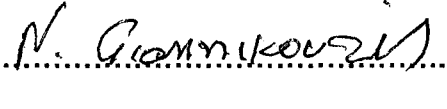
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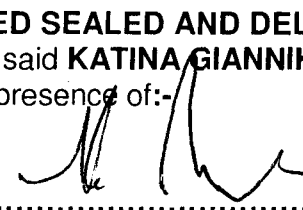
SIGNED SEALED AND DELIVERED
by the said **NORMAN GIANNIKOURIS**
in the presence of:-


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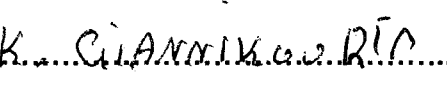
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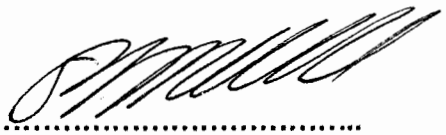
SIGNED SEALED AND DELIVERED
by the said **KATINA GIANNIKOURIS**
in the presence of:-

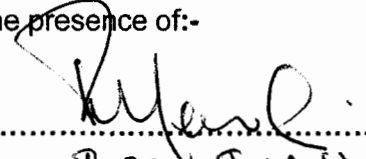

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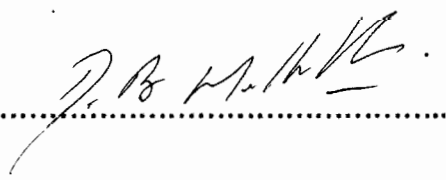

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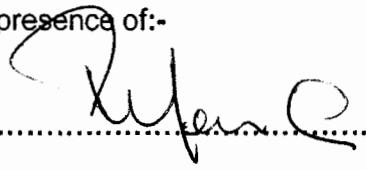
SIGNED SEALED AND DELIVERED
by the said **PAUL LESLIE MULHOLLAND**
in the presence of:-

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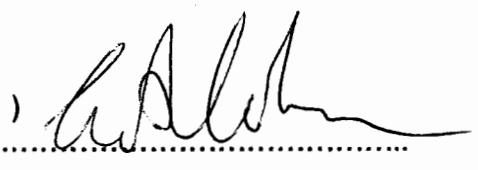

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Robert John Jones

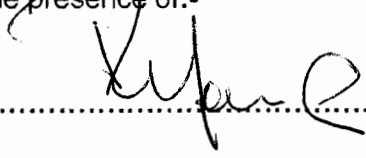
SIGNED SEALED AND DELIVERED
by the said **DAVID BARRY MULHOLLAND**
in the presence of:-

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SIGNED SEALED AND DELIVERED
by the said **ERIC ALLEN ROBINSON**
in the presence of:-

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