

Deed of Settlement and Release

Ryals Hotel Pty Ltd ACN 625 109 373

Angus Ryals

Anthony Ryals

Zhaos Pty Ltd ACN 120 517 400

**Piper Alderman
Lawyers**

Level 23
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Australia
t +61 2 9253 9999
f +61 2 9253 9900
www.piperalderman.com.au

Sydney • Melbourne • Brisbane • Adelaide

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Deed of Settlement and Release

Parties

1. **Ryals Hotel Pty Ltd ACN 625 109 373** of 253 Broadway Glebe NSW 2037 (**Ryals Hotel**);
2. **Angus Ryals** of 253 Broadway Glebe NSW 2037 (**Angus**);
3. **Anthony Ryals** of 85 Whylandra Street, Dubbo NSW 2830 (**Anthony**);
4. **Zhaos Pty Ltd ACN 120 517 400** of 253 Broadway, Ultimo NSW 2007 (**Zhaos**).

Introduction

- A. In June 2018, Ryals Hotel and Zhaos entered into the Lease.
- B. In November 2018, Ryals Hotel commenced Supreme Court of New South Wales (**Supreme Court**) proceedings 2018/00309511 against Zhaos (**2018 Proceedings**).
- C. In June 2020, the Supreme Court awarded judgment for Ryals Hotel in the 2018 Proceedings.
- D. In August 2020, Zhaos commenced Supreme Court proceedings 2020/00230904 against Ryals Hotel (**2020 Proceedings**).
- E. In February 2021, the Supreme Court ordered for Zhaos to pay costs to Ryals Hotel in connection with the 2020 Proceedings.
- F. In March 2021, Anthony commenced Supreme Court proceedings 2021/00078151 against Zhaos (**2021 Proceedings**).
- G. The Parties have agreed to settle all Claims in connection with the Lease, the 2018 Proceedings, the 2020 Proceedings and the 2021 Proceedings in accordance with the terms of this Deed.

Operative clauses

1. Definitions and interpretation

1.1 Definitions:

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

Business Day means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Claims means all past, present and future actions, suits, causes of action, debts, dues, costs, claims, liabilities, demands, damages, losses, costs and expenses of any description, decisions, judgments and orders either at law or in equity or arising under statute, whether or

not the facts, matters or circumstances giving rise to those claims are known to the Parties at the time of this Deed, except for breaches of this Deed.

Deed means this Deed of Settlement and Release.

Development Consent means development consent in relation to development application no. D/2018/1316/A.

Lease means the lease between Ryals Hotel and Zhaos signed in June 2018 with respect to the Property, registered no. AP80462.

Party or Parties means a party to this Deed.

Property means 247-253 Broadway, Glebe NSW 2034 comprised in certificate of title folio identifiers 1/958122 and 1/77602.

Settlement Sum means the settlement sum referred to in clauses 2 and 6.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the Introduction is correct;
- (b) headings do not affect interpretation;
- (c) singular includes plural and plural includes singular;
- (d) words of one gender include any gender;
- (e) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (f) reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- (g) reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- (h) reference to a thing (including a right) includes a part of that thing;
- (i) reference to two or more persons means each of them individually and any two or more of them jointly;
- (j) reference to dollars means Australian dollars unless otherwise stated;
- (k) "Including" and similar expressions are not words of limitation;
- (l) a provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed;
- (m) If an act must be done on a specified date that is not a Business Day, it must be done on the next Business Day.

1.3 Parties

- (a) If a Party consists of more than one person, this Deed binds each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) A Party that is a trustee is bound both personally and in that Party's capacity as a trustee.
- (d) A Party holds the benefit of any release or indemnity provided for in this Deed on behalf of themselves and for the benefit of that Party's present and former, directors, officers, employees, contractors and agents.

2. Payment

- 2.1 Subject to the vacation by Ryals Hotel of the Property as referred to in clause 3.1, Zhaos must pay to Ryals Hotel, Angus and Anthony the total sum of \$461,842 (**Settlement Sum**) by 14 December 2021.
- 2.2 Payment of the Settlement Sum may be made by electronic funds transfer into the following trust account:

Bank:	ANZ
Account Name:	Piper Alderman Law Practice Trust Account (NSW)
BSB:	012 003
Account Number:	83 637 6382
Reference:	426815

3. Other matters

- 3.1 The Parties agree that Ryals Hotel:
 - (a) must vacate the Property by 14 December 2021;
 - (b) must return all keys to the Property including any security access devices;
 - (c) must arrange for all rooms in the Property to be made good in the same condition as room R316 inspected by the parties on 10 November 2021 with twin rooms with one bedside table and family rooms with three bedside tables;
 - (d) must arrange for each room TV rack area to be patched and painted;
 - (e) must arrange for a new smoke detector to be installed in room R316;
 - (f) must arrange for the walls in the level 2 lobby of the Property to be repainted back to its original colour; and
 - (g) upon receipt of the Settlement Sum, surrenders to the Zhaos all of its right, title and interest in the Lease and agrees to take all steps, to sign all documents and do all things necessary to surrender the Lease and remove the Lease from the title of the Property and the Zhaos hereby consent to the surrender of the Lease.

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- 3.2 Upon payment of the Settlement Sum, the Parties agree:
- (a) that they will take all steps to dismiss the 2021 Proceedings on the basis that there be no order as to costs by submitting signed orders, in the form attached at Annexure A to this Deed to the Court;
 - (b) Zhaos shall be absolutely entitled to any bank guarantee, security deposit or rent in advance paid by Ryals Hotel; and
 - (c) the Lease shall be considered terminated.

4. Release

- 4.1 Subject to Zhaos paying the Settlement Sum in accordance with the terms of this Deed, Ryals Hotel, Angus and Anthony release and discharge Zhaos from all Claims Ryals Hotel, Angus and Anthony have, have had or may have against Zhaos, including but not limited to those arising out of or in connection with the Lease, the 2018 Proceedings, the 2020 Proceedings and the 2021 Proceedings.
- 4.2 Subject to Ryals Hotel, Angus and Anthony complying and discharging with their obligations in accordance with the terms of this Deed, Zhaos releases and discharges Ryals Hotel, Angus and Anthony from any Claims Zhaos has, has had or may have against Ryals Hotel, Angus and Anthony including but not limited to those arising out of or in connection with the Lease, the 2018 Proceedings, the 2020 Proceedings and the 2021 Proceedings.
- 4.3 The Parties may plead this Deed in bar to any action or proceeding in respect of any matter the subject of a release given by this Deed, except that nothing in this clause will prevent the Parties from exercising their rights under this Deed.

5. Assignment of right, title and interest in Development Consent

- 5.1 Subject to Zhaos paying the Settlement Sum pursuant to clause 2 of this Deed, Ryals Hotel, Angus and Anthony must, jointly and severally:
- (a) take all steps, sign all documents and do all things necessary to assign to the Zhaos all of their right, title and interest in the Development Consent;
 - (b) not apply to the Council for a refund of any payment of application fees or contributions paid to the Council in relation to the Development Consent;
 - (c) take all steps, sign all documents and do all things necessary to assign to the Zhaos the benefit of any application fees or contributions paid to the Council in relation to the Development Consent; and
 - (d) must not do anything or take any action to prevent, preclude or adversely affect the Zhaos from obtaining the benefit of the Development Consent and the benefit of any application fees or contributions paid to the Council in relation to the Development Consent.
- 5.2 The parties agree that notwithstanding what is said in clause 5.1, Ryals Hotel, Angus and Anthony shall not be required to provide any documents prepared for the purpose of an application for a construction certificate in relation to the Property.

6. Breakdown of Settlement Sum

For the sake of clarity, the Parties agree and acknowledge that the Settlement Sum comprises the following agreed payments:

- (a) payment from Zhaos to Ryals Hotel, Angus and Anthony (as the case may be) in the sum of \$61,564.67 in relation to the 2018 Proceedings, the 2020 Proceedings and the 2021 Proceedings;
- (b) payment from Zhaos to Ryals Hotel in the sum of \$385,000 being the agreed amount of refund of the security deposit and rent in advance under the Lease;
- (c) payment from Ryals Hotel to Zhaos in the sum of \$7,500 in relation to the make good obligations which Ryals Hotel was otherwise obliged to discharge under the Lease; and
- (c) payment from Zhaos to Ryals Hotel in the sum of \$22,777.33 being reimbursement to Ryals Hotel for the application fees / contributions paid to the Council in relation to Development Consent.

7. Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

8. Severability

If any clause or sub-clause in this Deed is unenforceable, illegal or void, or makes this Deed or any part of it unenforceable, illegal or void, then that clause or sub-clause is severed and the rest of this Deed remains in force.

9. Entire understanding

This Deed:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Deed; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

10. Variation

The agreement recorded in this Deed cannot be varied or amended unless it is in writing and signed by the Parties.

11. Waiver

- 11.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

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- 11.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 11.3 A waiver is not effective unless it is in writing.
- 11.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
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12. Governing law and exclusive jurisdiction

This Deed is governed by and is to be construed in accordance with the laws in force in the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales and any Courts competent to hear appeals from those Courts.

13. Execution of Counterparts

- 13.1 This Deed may be executed in any number of counterparts. A counterpart may be a facsimile or other electronic form.
- 13.2 Together all counterparts make up one document.
- 13.3 If this Deed is executed in counterparts, it takes effect when each party has received the counterpart executed by each other party, or would be deemed to have received it if a notice.
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14. Costs

- 14.1 The Parties shall bear their own costs arising out of the preparation of this Deed.
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15. Confidentiality

The terms of this Deed are confidential. A Party must not disclose or permit to be disclosed either directly or indirectly the terms of this Deed or details of any discussion or negotiations between the Parties in relation to this Deed except:

- (a) with the written consent of each other Party;
 - (b) to the extent required by law;
 - (c) to the extent required to enforce the terms of this Deed; or
 - (d) to the extent which it necessary for a Party to disclose the terms of this Deed to its professional advisers or insurers (for the avoidance of doubt, including the advisers or insurers of related entities of the Party or of which a Party is a director, officer, shareholder, or employee).
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16. Assignment

A Party may only assign its rights or obligations under this Deed with the written consent of the other Party.

Execution

Executed as a Deed on

2021

Executed by
Ryals Hotel Pty Ltd ACN 625 109 373

.....
Sole Director

.....
Angus Ryals

Signed by
Angus Ryals
in the presence of:

.....
Witness

.....
JONATHAN HIDAYAT
Name (please print)

.....
Angus Ryals

Signed by
Anthony Ryals
in the presence of:

.....
Witness

.....
PAULA AMOS
Name (please print)

.....
Anthony Ryals

Executed by
Zhaos Pty Ltd ACN 120 517 400

.....
Director

.....
Name (please print)

.....
Director/Company Secretary

.....
Name (please print)

Annexure A

SHORT MINUTES OF ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Sydney Supreme Court
Case number	2021/00078151

TITLE OF PROCEEDINGS

Plaintiff	Anthony Ryals
Defendant	Zhaos Pty Ltd ACN 120 517 400

PREPARATION DETAILS

Prepared for	Anthony Ryals, Plaintiff
Legal representative	Jonathan Hidayat Piper Alderman
Legal representative reference	426815
Contact name and telephone	Jonathan Hidayat, (02) 9253 3830
Contact email	jhidayat@piperalderman.com.au

ORDERS

By consent, the Court orders that:

1. The proceeding, be dismissed with no order as to costs.

SIGNATURES

Plaintiff

The plaintiff consents.

Signature of legal representative

Capacity Jonathan Hidayat, Solicitor on the record for the
Plaintiff

Date: 2021

Defendant

The defendant consent.

Signature of legal representative

Capacity Bernard Chiu, Solicitor on the record for the Defendant

Date: 2021