

DATED

2004

FEATHERSTONE ESTATE WATER SUPPLY
DEED

BETWEEN:

ALBURY CITY COUNCIL ABN 69 071 146 814

and

G.M.COMPANIES PTY LTD ABN 22 741 244 014
and COLIN JOSS & CO PTY LTD ABN 73 003 538 583

KELL MOORE SOLICITORS PTY LTD

571 KIEWA STREET
ALBURY NSW 2640

Tel: 02 - 6021 2844

FAX: 02 - 6021 6075

REF: BRC:31042

THIS AGREEMENT is made on

2004

BETWEEN **ALBURY CITY COUNCIL ABN 69 071 146 814** of 553 Kiewa Street, Albury,
New South Wales (**Council**)

AND **G.M.COMPANIES PTY LTD ABN 22 741 244 014** of 530 Regina
Avenue, Albury, New South Wales and **COLIN JOSS & CO PTY LTD ABN**
73 003 538 583 of 220 Borella Road, Albury, New South Wales
(**Developers**)

BACKGROUND

- A. Council owns the Waterview Wastewater Treatment Plant, Riverina Highway, Albury (**WWTP**).
- B. Council produces treated effluent at the WWTP (**Reclaimed Water**).
- C. The Developers own land at North Albury and intend to develop this land into a golf course and residential estate (**Featherstone Estate**).
- D. Council intends to let a contract for the construction of a water main from WWTP to the Featherstone Estate (**Reclaimed Water Main**).
- E. Council intends, inter alia, to supply Reclaimed Water to the Developers for use on the Featherstone Estate.
- F. Council and the Developers intend by this Agreement to record that Council will provide the Developers with a secure and commercial long term arrangement for the supply and delivery of Reclaimed Water from the WWTP to the Featherstone Estate for use by the Developers in a cost effective and efficient manner.
- G. The parties have entered into this Agreement to record their respective roles in the development and operation of the Hume Golf Club Reclaimed Water Supply Scheme.

Deleted: as set out in the map annexed hereto as Schedule 1

OPERATIVE PROVISIONS

1. Definitions

- 1.1. In the interpretation of this Agreement when used in capitalised form:

Additional Consumer(s) means, apart from the Developers, all past,

present and future additional and other consumer(s) of Reclaimed Water using the Hume Golf Club Reclaimed Water Supply Scheme;

Annual Fee means, subject to any adjustment in accordance with clause 13.3, an annual fee equal to 7% (including the Depreciation Amount) of the Capital Works Costs and payable as set out in clause 13;

Authority includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not;
- (c) any other person, authority, instrumentality or body having jurisdiction, rights, duties or responsibilities in respect of the Environmental Law;

Capital Works Costs means:

- (a) all costs and expenses incurred or paid by Council to construct the Infrastructure for the Hume Golf Club Reclaimed Water Supply Scheme, including, without limitation, the Reclaimed Water Main; and
- (b) if any, the Extra Capital Works Costs.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action or claim for compensation arising out of any environmental contamination or breach of the Law caused by the Developers;

Commencement Date means the later of:

- (a) 7 Days after the completion of the construction of the Infrastructure to the reasonable satisfaction of Council; and
- (b) 1 November 2004;

Council Meter means the meter supplied and installed in accordance with the provisions of clause 8.3;

Day means a calendar day;

Depreciation Amount means an amount equal to 2% of the Capital Works Costs.

Easements means any and all easements necessarily created or to be created for the Infrastructure;

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that includes components referred to in paragraphs (a) to (c);

Environmental Law means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health;

Extra Capital Works means all works to the Infrastructure to be carried out or arranged by Council so as to increase the delivery rate of the Reclaimed Water to the Featherstone Estate to a rate of not less than 70 litres per second;

Extra Capital Works Costs means all costs and expenses incurred or paid by Council for the Extra Capital Works;

Featherstone Estate means land at North Albury being bounded by Burrows Road, Union Road, Nail Can Range, Range Road and Logan Road and comprising in part land known previously as the Hume Country Golf Club which is owned (or will be owned) by the Developers;

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Featherstone Meter means the meter supplied and installed in accordance with the provisions of clause 8.1;

Featherstone Water Entitlement means a maximum of 900 megalitres per Year of Reclaimed Water derived from the WWTP;

Fees means the fees and charges set out in clause 13;

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or charge imposed by or under the GST Law;

GST Law means the same as in the *A New Tax System (Goods & Services Tax) Act 1998* or any other Act imposing or relating to the administration of such a tax;

GST Rate means the rate of GST under the GST Law;

Hume Golf Club Reclaimed Water Supply Scheme means the water supply scheme to be operated by Council using the Reclaimed Water and the Infrastructure;

Hume Test Point means a Reclaimed Water test point immediately adjacent to the Featherstone Meter;

Infrastructure means the infrastructure owned by Council and detailed in Schedule 2 including, inter alia, the Reclaimed Water Main, the WWTP Pump Station, storages and chlorination equipment;

Invoice means a tax invoice under the GST Law;

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance, or by-law, present or future, and whether federal, state or otherwise;

Month means a calendar month;

NSW Guidelines for Use of Reclaimed Water means the guidelines prepared from time to time by the NSW Recycled Water Coordination Committee (or such other body or Authority) for the urban and residential use of reclaimed water in New South Wales;

Operating Expenses means all expenses (excluding management and administration expenses of Council) incurred or paid by Council in operating the Infrastructure in respect, only, of the supply and delivery of the Featherstone Water Entitlement to the Featherstone Estate in any Year including without limitation:

- (a) all electricity charges attributed to the operation of the WWTP Pump Station, but, only in respect of the supply and delivery of the Featherstone Water Entitlement (or any part of it);
- (b) all rates, taxes, charges and impositions currently and in the future payable to any Federal, State, local government, statutory or public authority or corporation, if any, in respect of the properties and/or Easements traversed by the Infrastructure.

Reclaimed Water means water derived from wastewater and treated to a standard for re-use only in accordance with the NSW Guidelines for Use of Reclaimed Water;

Reclaimed Water Main means the Reclaimed Water supply pipeline owned by Council extending from the WWTP and extending, inter alia, to the flange on the Featherstone Estate side of the Featherstone Meter and referred to in and forming part of the Infrastructure;

Requirement includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any Authority or under any Law including an Environmental Law, whether in writing or otherwise, and regardless of to whom it is addressed or directed;

Substance includes:

- (a) any form of organic or chemical matter whether solid, liquid or gas; and
- (b) radiation, radioactivity and magnetic activity.

Supply or **Supplied** means the same as in the GST Law;

Term means the term of this Agreement as set out in clause 5;

Water Act means the *Water Act 1912 (NSW)* (or other replacement legislation) as amended from time to time;

WWTP Pump Station means the pump station located at the WWTP owned by Council and forming part of the Infrastructure;

Year means a financial year commencing on 1 July and ending on 30 June (both inclusive).

- 1.2. The headings in this Agreement are inserted for guidance only and do not affect the content of any clauses.
- 1.3. Words importing one gender shall import the other and neuter genders. Words importing persons shall include corporations and vice versa. Words importing the singular number shall include the plural number and vice versa.
- 1.4. Where a party comprises two or more persons any obligation on the part of that party shall bind all such persons jointly and each of them severally.
- 1.5. Words and phrases defined in the Recitals or Schedules or elsewhere in this Agreement shall have the meaning therein ascribed to them.
- 1.6. A reference to a dollar sum is a reference to that sum in Australian dollars.

2. Preamble

- 2.1. Notwithstanding anything else contained in this Agreement the parties agree that in carrying out their respective obligations under this Agreement they will manage and use all water (including the Reclaimed Water) in a cost effective and efficient manner so as to maximise its use and limit the impact of such use on the Environment.
- 2.2. (a) Council agrees that the Developers will have (and will, at all times, continue to have) first use of the Reclaimed Water derived from the WWTP up to the full amount of the

Featherstone Water Entitlement.

- (b) The rights of the Developers comprised in this Agreement have (and will, at all times, continue to have) priority over any other rights of the Additional Consumer(s).

3. Condition Precedent

- 3.1. This Agreement (and any further Deed) is conditional on Council obtaining approval from the Minister for Public Works pursuant to the provisions of Section 60 of the *Local Government 1993* for the construction and operation of:
 - (a) the Infrastructure; and
 - (b) the Hume Golf Club Reclaimed Water Supply Scheme.
- 3.2. Council will forthwith apply for the approval referred to in clause 3.1 and do all things and sign all documents to obtain such approval as expeditiously as possible.

4. Construction of Infrastructure

- 4.1. The Developers acknowledge and understand that Council has (or will on the signing of this Agreement) enter into a contract for the construction of the Reclaimed Water Main.
- 4.2. Council will use its best endeavours to ensure that the construction of the Reclaimed Water Main is completed as expeditiously as possible.
- 4.3. Council will use its best endeavours to complete the remainder of the Infrastructure as expeditiously as possible.
- 4.4. Council will undertake (and complete as expeditiously as possible) the Extra Capital Works as soon as the volume of Reclaimed Water used by the Developers on the Featherstone Estate exceeds 300 megalitres in any Year.
- 4.5. (a) Council is responsible for the cost of construction of the Infrastructure (including the Extra Capital Works).

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- (b) Apart from payment of the Annual Fee and the Operating Expenses, the Developers are not required to make any payments towards the cost of the construction of the Infrastructure (including the Extra Capital Works) and the WWTP Pump Station, or other costs associated with the production of the Reclaimed Water.

5. **Term**

- 5.1. This Agreement shall commence on the Commencement Date and continue for a term of 99 years (or until it is terminated in accordance with the provisions of this Agreement) (**Term**).
- 5.2. (a) The parties will after each period of 5 Years from the Commencement Date (or at such other times mutually agreed by the parties and from time to time) and during the Term convene a meeting to review and discuss the content and intent of the Agreement so as to ensure that the Agreement still properly represents the understandings and intentions of each party.
- (b) The terms of this Agreement will then be amended in accordance with the terms agreed by the parties.
- (c) In the absence of any agreement, the terms of this Agreement will continue to apply in accordance with the terms of this Agreement notwithstanding any changes proposed by either party.
- 5.3. Council may terminate this Agreement at any time during the Term by giving written notice of termination to the Developers upon the happening of any one or more of the following events:
- (a) where the Developers (or any one of them) is a company and a resolution is passed or court order made for the winding up of the Developers (or any one of them) or an official manager is appointed to the Developers (or any one of them) pursuant to any relevant law;
- (b) a receiver or manager or receiver and manager is appointed to the assets or undertaking of the Developers (or any one of them) or any part thereof; or

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- (c) the date of expiry without rectification of a notice referred to in this paragraph, that is to say:
- (i) if the Developers fail duly and punctually to carry out any obligation on its part to be performed or observed pursuant to this Agreement; and
 - (ii) the failure is not rectified within 30 Days after service of a written notice on the Developers specifying the nature of the failure and directing the Developers to whom the notice is addressed to rectify the failure or cause the failure to be rectified.
- 5.4. Notwithstanding the provisions of clause 5.3, Council must not terminate this Agreement until the provisions of clause 22 have been fully exhausted by the parties.
- 5.5. On termination of this Agreement:
- (a) all or any part of the Infrastructure (including the Featherstone Meter) will remain in the ownership of and be the property of Council;
 - (b) the Featherstone Meter may be recovered from the Featherstone Estate and taken away by the Council;
 - (c) any monies due or owing to Council by the Developers will immediately be paid to Council by the Developers; and
 - (d) the Developers will not be entitled to compensation for the termination of this Agreement.
- 5.6. Clause 5.5 does not affect any right of Council to recover any loss, damage, cost, liability, expense or payment from the Developers in connection with:
- (a) any default by the Developers under this Agreement; or
 - (b) Council's determination of this Agreement under clause 5.3.
- 5.7. The Developers indemnify Council against any claim, loss, damage, cost, liability, expense or payment incurred by Council in connection with:
- (a) any default by the Developers under this Agreement; or
 - (b) Council's determination of this Agreement under clause 5.3.

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6. **Supply and Delivery of Reclaimed Water**

- 6.1. Council will comply with:
- (a) the Law; and
 - (b) the NSW Guidelines for Use of Reclaimed Water, in relation to the supply and delivery of the Reclaimed Water.
- 6.2. The Developers will be entitled to take and use the Featherstone Water Entitlement (or any part of it) at such time or times as the Developers in their absolute discretion choose, subject to, any limitation in respect of the Infrastructure's capacity to deliver the Featherstone Water Entitlement.
- 6.3. Council will on and from the Commencement Date use its best endeavours to:
- (a) supply to the Developers from the WWTP the Featherstone Water Entitlement (or such part thereof as required from time to time by the Developers);
 - (b) deliver the Featherstone Water Entitlement (or such part thereof as required from time to time by the Developers) via the Infrastructure to the Hume Test Point;
 - (c) ensure, subject to clause 6.4, that the Reclaimed Water is delivered to the Featherstone Estate at the rate of not less than 50 litres per second, such pumped rate to be measured at the balance tank.
- 6.4. If the Extra Capital Works are carried out in accordance with clause 4.4, Council will on their completion ensure that the Reclaimed Water is delivered to the Featherstone Estate at the rate of not less than 70 litres per second, such pumped rate to be measured at the balance tank.
- 6.5. Despite clause 6.2, Council may from time to time and for such periods as Council may consider necessary stop or restrict the supply and delivery of Reclaimed Water in accordance with the provisions of this Agreement to carry out repairs and maintenance of the Infrastructure (or any part thereof) or of any other water works or delivery system connected with or related to the Infrastructure.

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6.6. Except in the case of emergency Council will not stop or restrict the delivery of Reclaimed Water in accordance with clause 6.5 unless at least 10 Days written notice has been given to the Developers.

6.7. Council will in carrying out any repairs and maintenance of the Infrastructure (or any part thereof) do so in a quick and efficient manner so as to limit any disruption to the business of the Developers.

6.8. (a) Subject to clauses 6.5, 6.6 and 6.7, if Council is unable to supply the Featherstone Water Entitlement, or any part of it, for any period in excess of 24 hours, then Council will, in those circumstances only, be obligated to use its best endeavours to supply the Developers with suitable and sufficient water to meet the usual Reclaimed Water use requirements of the Featherstone Estate.

(b) Any water to be supplied by Council in accordance with clause 6.8(a) will:

(i) be supplied by Council in accordance with any normally established supply and use patterns developed by the parties during the Term;

(ii) not exceed the Featherstone Water Entitlement; and

(iii) be at a cost ~~equal to the lowest tariff for town water supply at the date of such supply.~~

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6.9. (a) Council will from time to time carry out tests of the Reclaimed Water at the Hume Test Point in accordance with the NSW Guidelines for Use of Reclaimed Water and report the result of such tests:

(i) to the responsible Authorities; and

(ii) in the Annual Report.

(b) The purpose of the tests carried out pursuant to the provisions of clause 6.9(a) will be to ensure that the Reclaimed Water supplied and delivered by Council in accordance with the terms of this Agreement is of a quality and standard as determined from time to time by the NSW Guidelines for Use of Reclaimed Water.

7. Use of Reclaimed Water

- 7.1. The Developers will use the Reclaimed Water in accordance with:
- (a) the Law; and
 - (b) the NSW Guidelines for Use of Reclaimed Water.
- 7.2. The Developers will not:
- (a) use (or allow to be used) the Reclaimed Water for:
 - (i) drinking, cooking or kitchen purposes;
 - (ii) bath, showers, handbasins or personal washing;
 - (iii) clothes washing;
 - (iv) swimming pools;
 - (v) water contact recreation purposes;
 - (vi) the irrigation of crops for human consumption which are neither processed or cooked.
 - (b) sell or supply the Reclaimed Water to any other person other than residents, neighbourhood associations, land owners and other land users within the Featherstone Estate without the consent in writing of Council.

8. Meters

- 8.1. Council will, for the purpose of ascertaining the quantity of Reclaimed Water supplied and delivered to the Developers under this Agreement, provide and fix a meter (which expression includes any meter installed either temporarily or permanently in place thereof) of such size, situation and description as it may determine on the Reclaimed Water Main at a location suitable to both parties.
- 8.2. The Featherstone Meter shall belong to the Council and shall not be removed or in any way disturbed or interfered with except by an official of, or a person authorised by, the Council.
- 8.3. In addition to the Featherstone Meter, Council may install and operate (at the sole cost of Council) a meter located at the WWTP so as to ascertain the quantity of Reclaimed Water drawn from the WWTP and then pumped through the Infrastructure.

8.4. The consumption of Reclaimed Water shall be recorded in writing from readings taken from the Featherstone Meter (or the Council Meter) by an official of, or a person authorised by, Council on the last day of each Month during the continuance of this Agreement and on the termination of this Agreement.

9. **Easements**

9.1. The parties acknowledge and agree it may be necessary to create, grant or transfer the Easements for the proper use, repair and maintenance of the Infrastructure.

9.2. The parties will do all things, sign all documents and instruments and produce all relevant titles necessary for the creation, grant or transfer of the Easements.

10. **Additional Consumer(s)**

10.1. Subject, at all times, to the provisions of clauses 2.2, 6.3 and 10.2, Council may, using the Hume Golf Club Reclaimed Water Supply Scheme (or any part of it), supply and deliver Reclaimed Water to the Additional Consumer(s).

10.2. Council will not supply and deliver Reclaimed Water to any Additional Consumer(s), at any time, if such intended supply and delivery will ~~interrupt~~ the supply and delivery of the Featherstone Water Entitlement (or any part of it).

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11. **Environmental Contamination**

11.1. The Developers will as a result of using the Infrastructure and the Reclaimed Water:

- (a) without delay:
 - (i) remediate any environmental contamination caused by the Developers or their employees or agents and which:
 - (A) any Authority requires remediated;

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- (B) otherwise constitutes a health and safety risk in the Council's reasonable opinion; and
 - (ii) comply with the Requirements of any authority and the Law with respect to the condition of the Environment; and
 - (b) indemnify the Council against all Claims arising from the matters set out in clause 10.1 (a).

11.2. If:

- (a) the Developers fail to comply with clause 11.1 (a) in accordance with the Requirements of any Authority and the Law (or otherwise within a reasonable time of notice from Council); or
- (b) any emergency which requires the immediate remediation of environmental contamination or compliance with a Requirement or the Law which the Developers are required to remediate or comply with under this Agreement,

then Council may remediate the environmental contamination or comply with the Law or the Requirement and the cost of so doing shall at Council's option be payable by the Developers to Council on demand on a full indemnity basis until all costs incurred by Council have been recovered from the Developers.

11.3. For the purpose of this clause "**costs**" includes any reasonable cost, fine, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including all legal fees.

12. **Repair and Maintenance of Infrastructure**

12.1. Council will at all times keep the Infrastructure properly maintained, serviced, renewed and in good repair.

12.2. Subject to the provisions of clause 6, all repairs, service, renewal, cleaning and maintenance of the Infrastructure will be at the sole discretion of Council and may be carried out by Council at such time or times as Council considers necessary.

12.3. The Developers may after giving reasonable written notice to Council arrange for an inspection of the Infrastructure with surveyors, engineers, workmen, vehicles, plant, equipment, things, or persons authorised by Council, such inspection to be at the sole cost and expense of the Developers.

13. **Fees**

13.1. The Developers will from time to time pay to Council the Annual Fee and the Operating Expenses.

13.2. The Annual Fee will be paid by the Developers to Council on:

- (a) the Commencement Date; and
- (b) every anniversary of the Commencement Date.

13.3. In the event that Council supplies and delivers Reclaimed Water to Additional Consumer(s) then the Annual Fee payable by the Developers will be calculated, from time to time, in accordance with the following formula:

$$\mathbf{AAF} = \frac{\mathbf{AF} \times \mathbf{FWE}}{\mathbf{RW}}$$

where

AAF means the amended Annual Fee;

AF means the Annual Fee;

FWE means the full amount of the Featherstone Water Entitlement; and

RW means the total amount of the FWE and any water entitlement of the Additional Consumer(s).

13.4. Council will deliver an account to the Developers for Operating Expenses ("**Operating Expenses Account**") annually and in any event by 1 September following the end of each Year and such account will be paid by the Developers within 30 Days of the date of the Operating Expenses Account.

14. **GST**

- 14.1. This clause applies if Council is or may become required to include GST in relation to any Supply under this Agreement after the GST Implementation Date in a GST Return ("**Taxable Supply**").
- 14.2. In addition to any other money payable by the Developers to Council under this Agreement ("**GST Exclusive Consideration**") the Developers must pay GST on the Taxable Supply to Council of an amount equal to the GST Exclusive Consideration multiplied by the GST Rate.
- 14.3. GST shall be payable by the Developers without deduction or set off of any other amount at the same time as the GST Exclusive Consideration under this Agreement is payable. In all other respects GST shall be payable by the Developers to Council on the same basis as the GST Exclusive Consideration is payable by the Developers under this Agreement.
- 14.4. Council must issue an Invoice or Invoices to the Developers for the amount of GST referable to the Taxable Supply.
- 14.5. If the Developers do not pay the GST to Council as set out in this clause then without prejudice to any other remedies of Council, the Developers will pay to Council upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by Council as a result of the Developers failure to pay the GST.
- 14.6. As between Council and the Developers, Council will not be obliged to pay any GST on or to take any other steps to minimise the liability in respect of GST until the corresponding payment is received from the Developers.
- 14.7. If Council determines on reasonable grounds that the amount of GST included in its GST Return referable to any Taxable Supply under this Agreement differs for any reason from the amount of GST payable by the Developers under this clause, the amount of GST paid or payable

by the Developers shall be adjusted accordingly.

15. **Interest**

If either party defaults ("**Defaulting Party**") in the payment of any money pursuant to this Agreement on the due date for payment, then in addition to any other rights which may be conferred upon the other party ("**Non-Defaulting Party**") by law or equity, the Non-Defaulting Party will be entitled to be paid interest by the Defaulting Party on such money at the prescribed rate from time to time referred to in Section 95 of the *Supreme Court Act 1970 (NSW)* from the date of such default until payment to the Non-Defaulting Party.

16. **Force Majeure**

16.1. No party will be liable nor deemed to be liable to the other party for failure or delay in meeting any obligation due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) Acts of God, war, fire, flood, embargo, litigation or any other cause beyond the control of the party which had the duty to perform.

16.2. In any such event, the time for performance of the obligations under this Agreement will be extended by the same period or periods (as the case may be) for which performance is delayed. The party so affected will use its best endeavours to avoid or remove such causes of non-performance and will continue performance hereunder with the utmost dispatch as soon as such causes are removed. Nothing in this clause will be construed as requiring the affected party to settle any industrial dispute.

17. **Council's Additional Powers**

Council may in addition to the powers given to Council under this Agreement and for the purpose of better enabling Council to carry out Council's obligations under this Agreement exercise all powers and authorities given to

councils under the *Local Government Act 1993*, as amended, (or the Law) and the ordinances relative to the supply of water or to any act, matter or thing in connection with the supply of water.

18. **No Assignment**

The rights of the Developers pursuant to this Agreement may not be assigned without the prior written consent of Council, such consent not to be unreasonably withheld, but the rights and obligations of the Developers may at the option of the Developers be assigned to or exercised by:

18.1. any related body corporate of the Developers;

18.2. any successors in title to the Featherstone Estate (or part thereof);

18.3. any entity acquiring the business of the Developers.

19. **Intent of Agreement**

19.1. This Agreement is intended to replace all other prior or existing deeds, instruments or document relating to the supply and delivery of Reclaimed Water by Council to the Developers for use on the Featherstone Estate and the maintenance and repair of the Infrastructure in a cost effective and efficient manner.

19.2. Council and the Developers intend by this Agreement to record their intent of Council providing Featherstone Estate with a secure and commercial long term arrangement for the supply and delivery of Reclaimed Water from the WWTP for use by the Developers in a cost effective and efficient manner.

20. **Agreement to Prevail**

Subject to clause 5, the provisions of this Agreement shall continue until terminated by the unanimous consent of the parties.

21. Dispute Resolution

- 21.1. If a dispute arises out of or relates to this agreement, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to the agreement and to the dispute expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- 21.2. (a) A party claiming that a dispute has arisen, must give written notice to the other parties to the dispute specifying the nature of the dispute.
- (b) On receipt of the notice specified in clause 20.2(a), the parties to the dispute must within 7 Days of receipt of the notice seek to resolve the dispute.
- (c) If the dispute is not resolved within 7 Days or within further period as the parties agree then the dispute is to be referred to ACDC.
- (d) The mediation is to be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are deemed incorporated.
- (e) In the event that the dispute has not settled within 28 Days or such other period as agreed to in writing between the parties after the appointment of the mediator, the dispute is to be submitted to arbitration (administered by ACDC) and conducted in accordance with the ACDC's Arbitration Guidelines which are deemed incorporated.
- (f) The arbitrator is not to be the same person as the mediator.
- (g) This clause will not merge on completion.

22. Miscellaneous

- 22.1. Each party will bear and pay their own costs of and in connection with negotiation and preparation of this Agreement.

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- 22.2. All stamp duty, if any, on this Agreement and on any other document executed to give effect to this Agreement will be paid by the Developers.
- 22.3. This Agreement shall bind each of the parties which execute it notwithstanding that one or more of the persons or corporations named in this Agreement as parties may never execute it and the execution of this Agreement by any such person or corporation is or may become void or voidable.
- 22.4. This Agreement is binding on the successors of each party.
- 22.5. The provisions of this Agreement will remain in full force and effect and be binding upon the parties notwithstanding the winding up or liquidation of either of the parties.
- 22.6. If part or all of any provision of this Agreement is illegal or unenforceable then it may be severed from this Agreement and the remaining provisions of this Agreement will continue in full force and effect.
- 22.7. The parties acknowledge that this Agreement constitutes the entire agreement and understanding by the parties and that all prior arrangements, representations, warranties and discussions between the parties are to be disregarded.
- 22.8. The parties agree and acknowledge that they will do all things within reason to give effect to the intent and spirit of this Agreement.
- 22.9. This Agreement shall be governed and construed in accordance with the laws of New South Wales and the parties irrevocably submit themselves to the jurisdiction of the courts having jurisdiction in New South Wales.

EXECUTED as a deed.

THE SEAL of **ALBURY CITY COUNCIL** was)
affixed by the Mayor and General Manager)
in accordance with the delegated authority)
given by Council:)
)

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Signature of authorised person

.....
Print Name of authorised person

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Office held

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Signature of authorised person

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Print Name of authorised person

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Office held

THE COMMON SEAL of **G.M.COMPANIES PTY**)
LTD ABN 22 741 244 014 was affixed in the)
presence of authorised persons:)
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Signature of authorised person

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Print Name of authorised person

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Office held

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Signature of authorised person

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Print Name of authorised person

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Office held

THE COMMON SEAL of **COLIN JOSS & CO PTY**)
LTD ABN 73 003 538 583 was affixed in the)
presence of authorised persons:)
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Signature of authorised person

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Print Name of authorised person

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Office held

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Signature of authorised person

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Print Name of authorised person

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Office held

SCHEDULE 1

MAP

SCHEDULE 2

CAPITAL WORKS - INFRASTRUCTURE