

Planning Agreement

between

Wollondilly Shire Council

and

W.G & R. Mallam

August 2007

WOLLONDILLY SHIRE COUNCIL

PLANNING AGREEMENT

Parties

Wollondilly Shire Council of 62-64 Menangle Street, Picton, New South Wales (**Council**)

and

William Garfield Mallam & Ross Mallam of 63 Kangaroo Point Road, Kangaroo Point, New South Wales (**Developer**)

Background

- A. On or about **21 August 2003**, the Developer made a Development Application to the Council for Development Consent to carry out Development on the Land.
- B. The Developer offered to enter into this Agreement and make the Development Contribution to the Council if the Development Consent was granted.

Operative Provisions

1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 (Clauses 93F to 93L) of the Act.

2 Application of this Agreement

2.1 This Agreement applies to the Land.

3 Operation of this Agreement

3.1 This Agreement shall take effect on the date that it is executed by the parties.

4 Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Area means the Local Government Area of Wollondilly in the State of New South Wales.

Council means Wollondilly Shire Council.

Development means the development subject of the Development Consent.

Development Application means development application [insert No.] lodged by or on behalf of the Developer with the Council in respect of the Land on [insert date] pursuant to the provisions of the Act.

Development Consent means the development consent granted by Council to the Development Application under the Act.

Development Contribution means the amount of \$1,447,224.00.

Dispute means a dispute regarding the terms or operation of this Agreement.

GST has the same meaning as in the *GST Law*.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Insolvency Event means the happening of any of these events:

- (a) Application which is not withdrawn or dismissed within 28 days is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) An application which is not withdrawn or dismissed within 28 days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
- (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (e) A body corporate is or states that it is insolvent; or
- (f) As a result of the operation of section 459F(1) of the Corporations Act 2001, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001; or
- (h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 or action is taken which could result in that event;
- (j) A receiver, manager or receiver and manager is appointed to the Company;
- (k) A body corporate becomes an externally administered body corporate within the meaning of the Corporations Act 2001; or
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land means Lot 191 Deposited Plan 1056243 at Picton in the State of New South Wales.

Party means a party to this agreement, including their successors and assigns.

Planning Agreement has the same meaning as in section 93C of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Subdivision Certificate has the same meaning as in the Act.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- 5.1 The Developer must pay the Development Contribution to Council by bank cheque or other cleared funds by way of instalments in accordance with the following formula:

$$\text{\$A} = [(\text{RL} \div 141) \times \text{DCI}]$$

Where:

\\$A means the proportional amount of the Development Contribution to be paid prior to the issue of the relevant Subdivision Certificate for the Development as indexed at the time for such payment;

DCI means the amount determined in accordance with the following formula:

$$\text{DCI} = \text{DC} \times \text{C} \div \text{D}$$

Where:

DC means the Development Contribution as defined in clause 4.1;

C means the most recent CPI prior to the date that payment is due to be made; and

D the most recent CPI before the date that this Agreement takes effect pursuant to clause 3.1.

CPI means the published Consumer Price Index (Sydney - All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Council, is a similar index;

For the avoidance of doubt, if C is actually less than D, then for the purposes of the above formula only C shall be deemed to be the same as D.

RL means the number of residential lots that the relevant Subdivision Certificate for the Development would enable to be created on the Land.

- 5.2 Subject to subclause 5.4 the Development Contribution is to be applied by Council for the following purposes within a reasonable time:
- (a) as to \$173,571 towards the cost of providing sporting facilities within the Area; and
 - (b) as to \$211,359 towards the cost of providing recreation facilities in the Area; and
 - (c) as to \$44,838 towards the cost of providing library facilities within the Area; and
 - (d) as to \$11,703 towards the cost of providing tree planting in the Area ; and
 - (e) as to \$391,554 towards the cost of providing road and traffic facilities within the Area; and
 - (f) as to \$23,547 towards the cost of providing bushfire mitigation facilities within the Area; and
 - (g) as to \$11,703 towards the cost of providing animal management services within the Area; and

- (h) as to \$68,949 towards the cost of providing management and administration services within the Area; and
 - (i) as to \$510,000 towards the cost of providing an upgrade to the intersection of Regreme Road and Argyle Street, Picton.
- 5.3 The Development Contribution paid pursuant to subclause 5.1 may be pooled with other monetary contributions paid under Division 6 of Part 4 of the Act in accordance with the conditions of a development consent or a planning agreement and applied progressively for the purposes identified in subclause 5.2.
- 5.4 If the Development Contribution exceeds the amount required to carry out the purposes identified in subclause 5.2 the surplus may be used and applied by Council for any purpose in its absolute discretion.
- 5.5 The Developer has agreed to pay the Development Contribution on the basis that Development Consent would permit subdivision of the Land into at least 141 residential lots. If the number of residential lots subject of the Development Consent is less than 141, then the Development Contribution shall reduce by an amount of \$10,264 per lot (based on the calculation of the Development Contribution of \$1,447,224 divided by 141).

6 Application of s94 and s94A of the Act to the Development

- 6.1 This Agreement excludes the application of section 94 or section 94A of the Act to the Development but does not exclude the application of section 94 or section 94A of the Act to if the Development Consent enables more than 141 residential lots to be created on the Land. If the Development Consent enables more than 141 residential lots to be created on the Land, Section 94 or Section 94A of the Act will apply to any such residential lots over and above 141.
- 6.2 Section 94(6) of the Act does not apply to the Development Contribution provided by the Developer pursuant to this Agreement.

7 Confidentiality

- 7.1 The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

8 Registration of this Agreement

- 8.1 Registration of Agreement:
- a) As contemplated by Section 93H of the Act, the Developer agrees to procure the registration of this Agreement under the Real Property Act 1900 in the relevant folio of the Register for the Land within 10 business days of the execution of this Agreement and shall not commence the Development until this Agreement has been registered in the relevant folio of the Register for the Land under the Real Property Act 1900.
 - b) The Developer, at its own expense, must take all practical steps and otherwise do anything that the Council reasonably requires, to, and must procure:
 - i) the consent of each person who;
 - (a) has an estate or interest in the Land registered under the Real Property Act 1900; or
 - (b) is seized or possessed of an estate or interest in the Land; and

- ii) the execution of any documents; and
 - iii) the production of the relevant duplicate certificates of title; and
 - iv) the lodgement and registration of this Agreement by the Registrar-General in the relevant folio of the Register under the Real Property Act 1900.
- c) Notwithstanding any other provision of this Agreement the Development Contribution shall be reduced by an amount equivalent to the costs reasonably incurred by the Developer in procuring the registration of this Agreement pursuant to clause 8.1a) provided that:
- i) the amount of the reduction shall not exceed \$2000; and
 - ii) a full itemisation of the costs incurred by the Developer in procuring such registration (including copies of all invoices and records of payments) is provided to the Council.

8.2 The Council agrees to provide a release and discharge of this Agreement and a consent to removal from the relevant folio of the register kept under the Real Property Act 1900 of the entry relating to this Agreement with respect to any part of the Land if the Developer requests a partial release and discharge of this Agreement:

- a) upon full satisfaction of the Developer's obligations under this Agreement; or
- b) to effect a transfer of subdivided residential allotments created from the Land where the Developer has, at the time of the request, complied with the relevant terms of this Agreement.

9 Review of this Agreement

9.1 This Agreement may only be amended by a further Planning Agreement entered into by the parties.

10 Dispute Resolution

10.1 If any Dispute arises out of or in connection with this Agreement, the following procedure must be followed in order to resolve it:

- (a) either party may give written notice of the dispute to the other party. A representative nominated by each party must meet within ten (10) Business Days of receipt of that notice and attempt in good faith to resolve the dispute;
- (b) For the purposes of this clause a meeting may take place by telephone or other means of communication.

10.2 If the parties fail to resolve the dispute after following the procedures set out in clause 10.1, then they must agree on the appropriate method of alternative dispute resolution (which may include expert determination or mediation) within ten (10) Business Days of the date of the meeting held in accordance with clause 10.1(a).

10.3 If the parties select expert determination as the method of resolving the dispute, the expert must act as an expert and not an arbitrator, his determination will be binding upon the parties unless otherwise agreed and his costs must be shared equally between the parties.

10.4 If the parties fail to agree on the appropriate method of alternative dispute resolution in accordance with clause 10.2, the dispute must be referred for mediation to a mediator nominated by the then current Chairman of the Australian Commercial Disputes

Centre in Sydney (ACDC), or, if ACDC no longer exists, the chairman of a reputable commercial dispute resolution body, as agreed between the Council and the Developer, or if same cannot agree, nominated by the Council. The role of the mediator is to assist in the resolution of the dispute and the mediator may not make a decision which is binding on the parties.

10.5 The costs associated with appointing the mediator under clause 10.4 must be shared equally between the parties.

11 Enforcement

11.1 The Developer commits an "event of default" if it commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions to be performed or observed by the Developer under this Agreement.

11.2 Where the Developer commits an event of default the Council may:

- a) serve a notice on the Developer requiring the breach of this Agreement to be rectified within a reasonable period from the date of the notice;
- b) claim damages for breach of contract from the Developer.

11.3 The rights vested in the Council pursuant to 11.2 do not prevent the Council from exercising any other rights that it may possess at law.

12 Termination

12.1 This Agreement terminates in the following events:

- (a) the parties agree in writing to terminate the operation of this Agreement at any time;
- (b) an Insolvency Event affects a party;
- (c) the Council, acting reasonably, serves notice on the Developer terminating this Deed where the Developer has failed to comply with a notice issued in accordance with clause 11.2(a); and
- (d) payment by the Developer of the Developer Contribution to Council in accordance with the terms of this Agreement.

12.2 Upon termination of this Agreement:

- (a) all future rights and obligations of the parties under this Agreement are discharged; and
- (b) all pre-existing rights and obligations of the parties under this Agreement continue to subsist.

13 Notices

13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- 13.1.1 Delivered or posted to that Party at its address set out below.
- 13.1.2 Faxed to that Party at its fax number set out below.

Council

Attention: Mr Les McMahon
General Manager
Address: 62-64 Menangle Street, Picton NSW 2571 or
PO Box 21
Picton NSW 2571
Fax Number: (02) 4677 2339

Developer

Attention: Mr W.G. & Mr R. Mallam
Address: 63 Kangaroo Point Road
Kangaroo Point NSW 2224
Fax Number: (02) 9522 7358

- 13.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 13.3.1 If it is delivered, when it is left at the relevant address.
- 13.3.2 If it is sent by post, 2 business days after it is posted
- 13.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 Approvals and Consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Costs

Each party shall pay its own costs in relation to negotiating, preparing, executing, stamping and registering this Agreement.

16 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

17 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18 Governing Law and Jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19 Joint and Individual Liability Benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No Fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21 Representations and Warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

22 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

23 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Execution:

Dated: 22/8/07.

Executed as an Agreement:

The Common Seal of Wollondilly Shire Council was affixed pursuant to a resolution made on 20 November 2006 in the presence of:

Mayor: *J. Allan*

Name: (printed)

Les McMahon

General Manager

Name: (printed) LES MCMAHON

Executed by W.G. & R. Mallam in the presence of:

Witness: *Judith A. Mallam*

Name: (printed) JUDITH A. MALLAM

W. G. Mallam

Ross Mallam

W G Mallam

R Mallam

Explanatory Note

(As per Clause 25E - Environmental Planning and Assessment Regulation 2000)

Draft Planning Agreement – Jarvisfield Estate (Stage 3), Picton Development

The purpose of this Explanatory Note is to provide a plain English summary to support the public exhibition of a Draft Planning Agreement, under Section 93F of the Environmental Planning and Assessment Act 1979 (EPA Act 1979), for the Jarvisfield Estate (Stage 3), Picton Development.

1. Parties to the Planning Agreement

W.G & R. Mallam (the Developer) made an offer to Wollondilly Shire Council to enter into a voluntary Planning Agreement, in connection with their Development Application to the Council for Development Consent to carry out the Development on the Land. As per Section 93F(1) EPA Act 1979, this Planning Agreement is a voluntary Agreement; thereby, the parties described as follows, make this Agreement on a voluntary basis;

Wollondilly Shire Council (Planning Authority)
62-64 Menangle Street
PICKTON NSW 2571

and

W.G & .R Mallam (Developer)
63 Kangaroo Point Road
KANGAROO POINT NSW 2224

2. Description of the Subject Land

The subject lands to which this Planning Agreement applies is described as follows;

Lot 191 in Deposited Plan 1056243; being Kyeema Street West, Picton NSW 2571

With reference to Section 93H of the EPA Act 1979, each person who has an estate or interest in the land described above will agree to registration of the Planning Agreement, either in the relevant folio of the Register under the Real Property Act 1900, or the General Register of Deeds if the land to which it applies does not come under the Real Property Act 1900.

This means that the Planning Agreement as registered by the Registrar-General, is binding on and enforceable against the owner of the land, as if they are a Party to the Agreement; hence, irrespective of future ownership of the land, this Planning Agreement will apply to the land in perpetuity, until it is discharged.

3. Description of Proposed Development Application

The Development Application lodged with Council by the developer is to create 141 additional allotments, in accordance with Wollondilly Shire Council Development Control Plan (DCP) No. 50 – Residential Development. The Development Application aims to, in addition to residential development, provide open space areas and new cycleway, and protection of an area of ecological significance.

The Development Application for Development Consent to carry out Development on the Land has been placed on exhibition for public comment, concurrently with the Draft Planning Agreement. Following receipt of comments from government agencies and the public, the Development Application may be amended if necessary.

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the Draft Planning Agreement is to ensure the sufficient provision of infrastructure and service needs, generated by the incoming population resulting from the Jarvisfield Estate (Stage 3), Picton development. To this end, the offer made by the Developer is largely based on the need identified by Council through the Wollondilly Section 94 Contributions Plan 2000 (as per Section 94 of the EPA Act 1979).

Further, the Developer has also offered contributions toward facilities that otherwise would not normally have been provided under Council's Development Contributions Plan. The intent of this offer is to ensure it meets the needs of the incoming population into the area, as well as the Shire of Wollondilly.

The offer made by the Developer, the various facilities and their corresponding values, are described as follows;

Planning Agreement Proposal	Cash
<u>Open Space, Sporting & Recreation</u>	
Sporting	\$173,571
Recreation	\$211,359
<u>Library & Community</u>	\$44,838
<u>Transport & Traffic Management</u>	
Roads & Intersections	\$391,554
Upgrade to intersection of Regreme Rd and Argyle Street, Picton	\$510,000
<u>Bushfire Protection</u>	\$23,547
<u>Companion Animal Management</u>	\$11,703

<i>Plan Management & Administration</i>	\$68,949
<i>Tree Planting</i>	\$11,703
Total	\$1,447,224

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

In accordance with Section 93F(2) of the EPA Act 1979, the Draft Planning Agreement promotes the following public purpose;

- *The provision of public amenities and public services;*
- *The provision of transport and other infrastructure, relating to the subject land, and the Shire-wide network;*
- *The funding of recurrent expenditure relating to the provision of public amenities and public services;*
- *The conservation and enhancement of the natural environment.*

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

In accordance with the EPA Act 1979, the Draft Planning Agreement promotes its intent to encourage;

- (i). *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- (vi). *the provision of land for public purposes;*
- (v). *the provision and co-ordination of community services and facilities, and*
- (vi). *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.*

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement's intent is to promote the Public Interest through the provision of infrastructure and services, to meet the needs of the incoming population in the form of new residential dwellings. This will result in additional demand for the provision of facilities that promote the Public Interest, including;

- Open Space, Sporting and Recreation Facilities;

- Library, Information & Community Facilities;
- Transport & Traffic Management Facilities;
- Bushfire Protection Facilities;
- Companion Animal Management Facilities; and
- Environmentally Significant Facilities.

How the Draft Planning Agreement Promotes the Elements of the Council's Charter

In accordance with Section 8 of the Local Government Act 1993, the Draft Planning Agreement promotes the following elements of Council's charter;

- *To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;*
- *To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;*
- *To bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible; and*
- *To keep the local community and the State government (and through it, the wider community) informed about its activities.*

Whether the Draft Planning Agreement Conforms with the Council's Capital Works Program

The provision of infrastructure and services proposed through the Draft Planning Agreement, conforms with Council's Capital Works Program, as depicted in Council's Draft Management Plan 2006/2007. The timing of delivery for the proposed facilities in the Draft Planning Agreement is subject to the timing/staging of the Jarvisfield Estate (Stage 3) development.

The Impact of the Draft Planning Agreement on the Public or any Section of the Public

The new population resulting from the Jarvisfield Estate (Stage 3) development will generate the need for augmented or additional public services and public amenities. The Draft Planning Agreement aims to deliver necessary infrastructure and services, which will result in a positive impact on the Public or any Section of the Public.

Signatures of All Parties to the Draft Planning Agreement

As the Draft Planning Agreement is voluntary, this Explanatory Note is jointly prepared and endorsed by All Parties to the Agreement;