
DATED

PLANNING AGREEMENT

**482 KIEWA STREET, ALBURY NSW 2640 (LOT 1 DP1070397 and Lot 1 DP
1113160)**

ALBURY CITY COUNCIL ABN 92 965 474 349

and

ZEVONOS HOLDINGS PTY LTD ACN 156 444 441

and

SKAGIAS PTY LTD ACN 088 951 393



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Planning Agreement made at _____ on _____

Parties

ALBURY CITY COUNCIL ABN 92 965 474 349 of 553 Kiewa Street, Albury NSW 2640
(**Council**)

ZEVONOS HOLDINGS PTY LTD ACN 156 444 441 of Suite 222, 111 Harrington Street, Sydney NSW 2000

and

SKAGIAS PTY LTD ACN 088 951 393 of Suite 222, 111 Harrington Street, Sydney NSW 2000
(**Developer**)

BACKGROUND

- A. The Developer has lodged a Development Application with Council to carry out the Proposed Development on the Land.
- B. The Proposed Development does not comply with Chapter 17 of Council's *Development Control Plan 2010* in relation to the provision for off street car parking.
- C. The Developer has offered to enter into a Planning Agreement on the terms of this Deed.

OPERATIVE PROVISIONS

1. Planning Agreement under the Act

This Deed constitutes a Planning Agreement within the meaning of section 7.4 of the Act.

2. Application of the Planning Agreement

The Planning Agreement constituted by this Deed applies to:

- 2.1 the Land; and
- 2.2 the Proposed Development.

3. Operation of this Planning Agreement

- 3.1 Subject to clause 3.2 the Parties agree that the terms of the Planning Agreement will commence operation and be effective from the Commencement Date and is terminated on the date the Developer is released and discharged under, or by virtue of the terms of this Deed.

3.2 The Parties agree that if the Developer:

- (a) has not lodged a Development Application for Development Consent to carry out the Proposed Development on the Land on or before the first anniversary of the Commencement Date; or
- (b) has obtained a Development Consent for that Development Application and the building, engineering or construction work relating to the building, subdivision or work the subject of the Development Consent has not physically commenced within 5 years of the date of the Development Consent,

then this Deed terminates and will be of no further force or effect.

4. **Definitions and Interpretation**

4.1 **Definitions**

Act means the *Environmental Planning and Assessment Act 1979*.

Application means an application for any Approval.

Assignment and Dealing Terms means the obligations imposed under on the relevant Parties under, and by virtue of Schedule 9.

Authorised Officer means, in the case of any party, a director or secretary or an officer or a person with delegated authority to act as an Authorised Officer for the purpose of this Deed.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier as defined in the Act.

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to Council, in the Council's absolute discretion, to pay the face value of that undertaking on demand.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Commencement Date means the date of this Deed.

Control or **Controlled** means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and/or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

Costs includes reasonable costs, charges and expenses, including those incurred in connection with advisers.

Costs Schedule means Schedule 10 of this Deed.

Council means Albury City Council.

Development Application has the meaning given to that term in the Act.

Development Consent has the meaning given to that term in the Act.

Development Contributions means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit provided for in the Development Contributions Schedule.

Development Contributions Schedule means Schedule 3 of this Deed.

Development Procedures means the terms and conditions imposed on the relevant Parties under, and by virtue of, Schedule 4.

Development Program means the timetable and milestones for each Development Contribution described in Schedule 5.

Dispute Resolution Procedures means the procedures imposed on the relevant Parties described within Clause 10 of this Deed.

Explanatory Note means the explanatory note relating to this Deed, as required by clause 25E of the Regulation, and attached as Schedule 11 to this Deed

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1919* (Cth).

Land means the land described in Schedule 2 which as at the date of this Deed is subject to the reservations and registered interests which are also set out in Schedule 2.

Law means:

- (a) the common law, including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

LEP means *Albury Local Environmental Plan 2010*.

Parent means any person or entity who Controls the Developer.

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

Plan of Subdivision means a plan of subdivision in respect of the whole, or part of, the Land relating to the Proposed Development which has been approved by the Council.

Proposed Development means the development proposed by the Developer as described in Schedule 2.

Real Property Act means the *Real Property Act 1900*.

Related Entity has the meaning “related entity” has in the *Corporations Act 2001*.

Register means the Torrens title register maintained under the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Residential Allotment means an allotment of the Land which is intended to be developed, subject to development consent, by construction of a single dwelling house.

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

Review Procedures means the procedures set out in Schedule 7.

Security Arrangements means those security arrangements set out in Schedule 8.

Subdivision Certificate means a certificate that authorises the registration of a Plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919*.

4.2 General

In this Deed unless the contrary intention appears:

- (a) A reference to a document or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;

- (d) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) “include” or “including” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a Party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (m) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed;
- (n) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules, Exhibits and Annexures form part of this Deed.

5. **Development Contributions to be made**

The Parties agree that:

- 5.1 the Developer will provide, or procure the provision, of the Development Contributions; and
- 5.2 the Council acknowledges to the Developer that it is the Council's present intention that the Development Contribution will be made available for use or expenditure for the purposes set out in column 2 of Schedule 3; and
- 5.3 to the extent that a Development Contribution may be described in, or implied by, this Deed, including clause 5.2, as having a particular use (intended or otherwise), the Developer acknowledges and agrees that:
- (a) the Council has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose (other than as set out in clause 5.2); and
 - (b) the Council has no obligation to use or expend a Development Contribution for a particular purpose; and
 - (c) the Council does not have any obligation to monitor or follow-up the use or expenditure of such a Development Contribution including if the Council transmits a Development Contribution to any other Authority.

6. Application of the Development Contributions

The Developer will provide, or procure the provision of, the Development Contributions at the time or times and in the manner set out in the Development Contributions Schedule and in accordance with the Development Procedures, and the Development Program.

7. Application of sections 7.11 and 7.12 of the Act to the Proposed Development

The application of sections 7.11 and 7.12 of the Act to the Proposed Development are not excluded and may be imposed by virtue of a condition to any future Development Consent to the extent permissible by Council's *Infrastructure Contribution Plan 2014*.

8. Registration of this Deed

Not applicable to this Deed. This clause has been intentionally deleted.

9. Review of Deed

The Parties agree that this Deed will be reviewed or modified in the circumstances, and in accordance with, the Review Procedures.

10. Dispute Resolution

10.1 Notice of Dispute

If a dispute between any of the Parties arises in connection with this Deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

10.2 Further steps required before proceedings

Any dispute between the Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

10.3 Disputes for expert determination

If the mediation referred to in paragraph 10.2 has not resulted in settlement of the dispute, the Developer or any one Party may, with the prior written consent of each other Party, refer the matter to expert determination, such expert to act in accordance with paragraph 10.4.

10.4 Choice of expert

A dispute to be referred to an expert in accordance with paragraph 10.3 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 10.3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Law Society (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

10.5 Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;

- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert setting out the terms of the expert's determination and the fees and expenses payable to the expert.

10.6 **Directions to expert**

In reaching a determination in respect of a dispute, the independent expert must give effect to the intent of the Parties entering into this Deed.

10.7 **Expert not arbitrator**

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing a final certificate as soon as practicable.

10.8 **Compliance with directions**

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

10.9 Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10.10 Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

10.11 Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert will not be liable in respect of the expert determination, except in the case of fraud or misfeasance by the expert.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

10.12 Other courses of action

If the mediation referred to in paragraph 10.2 or the expert determination required or agreed under paragraph 10.3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

10.13 Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 10.13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

11. Security and enforcement

11.1 Security

The Developer has agreed to provide security to the Council for performance of the Developer's obligations under this Deed on the terms and conditions of the Security Arrangements, if any.

11.2 Enforcement

This Deed may be enforced by either Party in any court of competent jurisdiction.

11.3 No prevention to enforcement

For the avoidance of doubt, nothing in this Deed prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
- (b) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

12. Notices

12.1 Form

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below;

Council

Address: 553 Kiewa Street, Albury NSW 2640

Telephone: 6023 8111

Attention: Mr David Christy

Email: dchristy@alburycity.nsw.gov.au

Developer

Address: Suite 222, 111 Harrington Street, Sydney NSW 2000

Telephone: 0414 262 545

Attention: Mr Jim Katehos

Email: jim@inplacon.com.au

12.2 Change of address

If a Party gives another Party 3 Business Days notice of a change of its address or contact details, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.

12.3 **Receipt**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted;
- (c) 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.

12.4 **Receipt – next Business Day**

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, 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.

13. **Approvals and Consent**

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in the Parties 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.

14. **Assignment and dealings**

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless agreed in writing by all Parties.

15. **Costs**

15.1 The reasonable costs regarding the negotiation, preparation, execution, advertising, stamping and registration of this Deed and any deeds in relation to this Deed are to be borne by the Parties and in the proportions as set out in the Costs Schedule.

15.2 The Developer agrees to pay or reimburse the Council on demand for:

- (a) Costs of the Council in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and

- (b) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed,

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

16. **Entire agreement**

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before this Deed 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 Deed and all transactions.

18. **Governing Law and Jurisdiction**

This Deed 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 and benefits**

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

20. **No fetter**

Nothing in this Deed shall be construed as requiring the 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**

- 21.1 The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any Law.
- 21.2 If any clause or part of a clause is illegal, enforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

22. **Severability**

- 22.1 If a clause or part of a clause of this Deed 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.
- 22.2 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 Deed, but the rest of the Deed is not affected.

23. **Modification or Variation**

No modification or variation of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

24. **Waiver**

- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- 24.2 A waiver by a Party is only effective if it is in writing.
- 24.3 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**

25.1 **Consideration does not include GST**

Any consideration expressed in this Deed is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

25.2 **GST payable**

If any supply under or in connection with this Deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**).

The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GSTR Act multiplied by the applicable GST rate; and
- (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the

tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

The supplier of a taxable supply made under or in connection with this Deed must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

25.3 Reimbursement

Despite any other provision of this Deed, any amount payable under or in connection with this Deed, which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

25.4 Defined GST terms

Words and expressions used in this clause 25 have the meaning given to them in the GST Act.

26. Effect of Schedules

The Parties agree to comply with the terms and conditions contained in the Schedules as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

27. Confidentiality

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

28. Overdue payments

The Developer agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances.

The rate to be applied to each daily balance is the rate 3% per annum above the Reserve Bank Cash Rate.

Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause.

The Developer's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Deed.

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Council on the amount of that liability as an

independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause.

29. Release and indemnity

- 29.1 The Developer agrees that the Development Contributions, the Proposed Development and all property in the Land are at the risk of the Developer. The Developer releases the Council from liability or loss arising from, and Costs incurred in connection with any matter or thing contemplated by this Deed including the Development Contributions and the Proposed Development on the Land.
- 29.2 The Developer indemnifies the Council and the Council's employees, agents, officers or contractors against all costs and expenses paid or payable by the Council or any liability or loss arising from, and any Costs (including legal costs and expenses on a full indemnity basis or a solicitor and own client basis whichever is the higher) incurred in connection with any matter or thing contemplated by this Deed including the Development Contributions and the Proposed Development on the Land.
- 29.3 The indemnity in clause 29.2 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends. It is not necessary for the Council to incur expense or make payment before enforcing a right of indemnity under this Deed.

30. Explanatory Note

The Explanatory Note must be used to assist in construing this Deed to the extent stated in Schedule 11.

Schedule 1 – Section 7.4 Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.	 The Developer has lodged a a Development Application with Council in relation to the Land.
Description of land to which this Deed applies	482 Kiewa Street, Albury NSW 2640 Certificate of Title Folio Identifier 1/1113160 and 1/1070397
Description of change to the environmental planning instrument to which this Deed applies	Not applicable
Applicability of section 7.11 of the Act	In accordance with Council's <i>Infrastructure Contribution Plan 2014</i> , no section 7.11 contributions will be imposed.
Applicability of section 7.12 of the Act	In accordance with Council's <i>Infrastructure Contribution Plan 2014</i> , section 7.12 levies may be imposed by Council in addition to any obligations imposed by this Deed.
Consideration of benefits if under this Deed if section 7.11 applies	Not Applicable
Mechanism for Dispute resolution	Clause 10
Enforcement of this Deed	Clause 11
No obligation to grant consent or exercise functions	Clause 20

Schedule 2 – Land

1. **Title**

The whole of the land comprised in Certificate of Title Folio Identifiers 1/1113160 and 1/1070397 and being the land described as 482 Kiewa Street, Albury NSW 2640.

2. **Encumbrances**

The land is subject to a mortgage in favour of Westpac Banking Corporation

3. **Proposed Development**

The proposed development is for the construction of four (4) retail premises.

Schedule 3 – Development Contributions Schedule

1. Development Contributions

The Developer undertakes to make the following Development Contributions:

Column 1	Column 2
Development Contribution	Intended use
Payment of \$375,000	<p>This contribution is made to offset a shortfall of twenty five (25) car parking spaces by the Developer for the Proposed Development.</p> <p>Council relies upon Chapter 17 of its <i>Development Control Plan 2010</i> in assessing the requirement for car parking and its Schedule of Fees and Charges adopted as part of its annual Budget.</p> <p>Council intends to use the Development Contribution to contribute to the cost of public car parking.</p>

Schedule 4 – Development Procedures

Not Applicable

Schedule 5 – Development Program

The Developer must pay the Development Contribution to Council prior to the issue of the Occupation Certificate for the Proposed Development.

Schedule 6 - Release and Discharge Terms

The Council agrees to provide a release and discharge of this Deed with respect to any part of the Land upon the Developer satisfying all of its financial obligations under this Deed.

Schedule 7 – Review Procedures

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

Schedule 8 – Security Arrangements

The Developer must pay the Development Contribution to Council prior to the issue of the Occupation Certificate for the Proposed Development.

Schedule 9 – Assignment and Dealing Terms

1. Developer's right to sell Land

The Developer must not sell, transfer or dispose of the whole or any part of the Land (other than a Residential Allotment) otherwise than in circumstances where paragraph 1.2 applies, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- 1.1 it satisfies the Council acting reasonably that the proposed Transferee is respectable and financially capable of complying with such of the Developer's obligations under this Deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Council acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
- 1.2 the rights of the Council under this Deed are not diminished or fettered in any way;
- 1.3 the Transferee signs a Deed in form and substance acceptable to the Council containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
- 1.4 any default by the Developer has been remedied by the Developer or waived by the Council; and
- 1.5 the Developer and the Transferee pay the Council's reasonable Costs in relation to that assignment.

2. Release

If the Developer sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of paragraph 1 of this Schedule 9, the Developer will be released from its obligations under this Deed with respect to the land being sold, transferred or disposed of.

3. No change in control

A person may only become or cease to be a Parent of the Developer with the Council's consent provided that before that event occurs:

- 4.1 the Developer satisfies the Council acting reasonably that the Developer, as controlled by the new Parent (**New Parent**), will have the capability, experience and expertise to carry out the Proposed Development and to satisfy the Developer's obligations under this deed (**Required Obligations**);
- 4.2 the New Parent signs a deed in form and substance acceptable to the Council containing provisions under which:

- (a) the New Parent agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
 - (b) the New Parent acknowledges and agrees that the rights of the Council under this Deed are not diminished or fettered in any way;
- 4.3 any default by the Developer has been remedied by the Developer or waived by the Council; and
- 4.4 the Developer and the New Parent pay the Council's reasonable Costs in relation to that consent.

Schedule 10 - Costs

Developer – \$2,000 plus GST

Council – Nil

Schedule 11 – Explanatory Note

The Explanatory Note relating to this Deed must not be used to assist in construing this Deed.

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act 1979

1. **Parties**

Albury City Council ABN 92 965 474 349 (Council)

Zevonos Holdings Pty Ltd ACN 156 444 441 and Skagias Pty Ltd ACN 088 951 393
(Developer)

2. **Description of Land**

Lot 1 Deposited Plan 1113160 and Lot 1 Deposited Plan 1070397 and being the land described as 482 Kiewa Street, Albury NSW 2640.

3. **Description of Development Application**

4. The proposed development is for the construction of four (4) retail premises.

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

The Planning Agreement requires the Developer to financially contribute to the Council the sum of \$375,000 in recognition of a shortfall in the provision of off site car parking considered necessary to offset the impacts that a development of this size and intensity will have on the surrounding area. It is the intention of Council to utilise the contribution to provide additional public parking in the area.

6. **Assessment of the Merits of the Planning Agreement**

The Planning Purposes Served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- A monetary contribution towards the cost of providing public car parking to meet the demands of the proposed development.

The Planning Agreement serves this purpose by recouping some of the costs of the provision of public car parking.

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

The Planning Agreement promotes the following objects of the Act:

- to promote the social and economic welfare of the community and a better environment by the proper management and development of the State's resources,
- to promote the orderly and economic use and development of land

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the Public Interest by committing the developer to make a monetary contribution towards relevant local infrastructure required by the development.

How the Planning Agreement promotes the Elements of the Council's Guiding Principles

The Planning Agreement promotes the elements of the Council's Guiding Principles by:

- providing monetary contributions towards the delivery of adequate, equitable and appropriate services and facilities for the community

Whether the Planning Agreement conforms with the Authority's Capital Works Program

The Planning Agreement does not form part of Albury City Council's currently adopted capital works program and will be incorporated into future budgets

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

No detrimental impact is identified on the Public or any section of the Public.

Other Matters

Whether the Planning Agreement includes a provision preventing Council from issuing any Planning Certificate, and if so, what specific things must be done before the certificate can be issued.

An occupation certificate cannot be issued for the Proposed Development until the Developer Contribution of \$375,000 is paid by the Developer.

EXECUTED as a Deed

EXECUTED by **ZEONOS HOLDINGS PTY LTD ACN 156 444 441** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

EXECUTED by **SKAGIAS PTY LTD ACN 088 951 393** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

THE SEAL of **ALBURY CITY COUNCIL ABN 92 965 474 349** was affixed in accordance with Reg 400 *Local Government (General) Regulation 2021* pursuant to a resolution made on and attested to by:

.....
Kylie King
Mayor

.....
Frank Zaknich
CEO