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Lease

Premises: Railway Lot 26 at Moama

VicTrack
and

Moama Bowling Club Ltd
ACN 001 046 939

VicTrack



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Reference Schedule - Lease

Item 1.	Tenant: (Clause 1)	Moama Bowling Club Ltd ACN 001 046 939 of 6 Shaw Street, Moama NSW 2731
Item 2.	Guarantor: (Clause 1 & 24)	Not applicable
Item 3.	Premises: (Clause 1)	Railway Lot 26 at Moama, delineated and coloured pink on the plan attached to this Lease as Attachment 5
Item 4.	Commencement Date: (Clause 1)	1 October 2015
Item 5.	Term: (Clause 1 & 2.1)	Twenty (20) years
Item 6.	Further Term(s): (Clause 1 & 2.2)	Not applicable
Item 7.	Last date for exercising the Option for the Further Term: (Clause 2.2.1)	Not applicable
Item 8.	Rent: (Clause 1 & 3)	\$16,000 per annum plus GST payable by equal calendar monthly payments in advance on the 1st day of each month during the Term
Item 9.	Percentage Rent Increase Date(s) and Amount: (Clause 1 & 4)	4% on every anniversary of the Commencement Date during the Term except for any Market Review Date
Item 10.	Market Review Date(s): (Clause 1 & 5)	On every 5 th anniversary of the Commencement Date during the Term
Item 11.	CPI Adjustment Date(s): (Clause 1 & 6)	Not applicable
Item 12.	Security Deposit: (Clause 1 & 10)	An amount equal to six (6) months rent (plus GST)
Item 13.	Permitted Use: (Clause 1 & 16.1)	Car park provided that the Tenant must not use the Premises wholly or predominantly for the sale or hire of retail goods or the retail provision of services within the meaning of the Act.
Item 14.	Tenant's Proportion:	Not applicable
Item 15.	Retail Lease Schedule: (Clause 1 & 25.5)	Not applicable
Item 16.	Ground Lease Schedule: (Clause 1 & 25.5)	As set out in Attachment 2
Item 17.	Transport Infrastructure Schedule: (Clause 1 & 25.5)	Not applicable



Item 18. Special Conditions:
(Clause 1 & 25.5)

As set out in Attachment 4



General Conditions - Lease

VicTrack leases the Premises to the Tenant subject to the terms contained in this Lease.

The Guarantor guarantees the obligations of the Tenant on the terms specified in the guarantee provisions of this Lease.

Executed by the parties as a deed on the

13th

day of

July

2016 7.

Signed for and on behalf of **Victorian Rail
Track** by its Authorised Signatory in the
presence of

Signature of Authorised Signatory

Caterina Valente

Name of Authorised Signatory (print)

**MANAGER
PROPERTY MANAGEMENT**

Signature of Witness

Mark Harris

Name of Witness (print)

Title of Authorised Signatory (print)

Executed by **Moama Bowling Club Ltd ACN)
001 046 939** in accordance with s 127(1) of the)
Corporations Act 2001:)

Signature of Director

BRETT THOMSON

Print full name

Signature of Director (or Company Secretary)

PAUL BARNES

Print full name



1. Definitions

In this Lease unless expressed or implied to the contrary:

Accreditation means any accreditation required to be held by the Tenant or its related entity under any Law to carry out the Permitted Use.

Act means the *Retail Leases Act 2003* (Vic).

Approval means any permit, licence, consent, grant, certificate, sealing or other approval obtained or required to be obtained by the Tenant from a Government Agency or any other person in relation to the Premises or the use and occupation of the Premises and includes any Planning Approval and any requisition, condition or requirement from a Government Agency or any other person.

Attachment means an attachment to this Lease.

Building Regulations means the *Building Regulations 2006* (Vic).

Claim means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action

Clearances means the minimum distance that must exist between any Third Party Services and any Tenant's Improvements.

Condition Report means the condition report attached to this Lease as Attachment 7.

Contamination means the presence in, on or under land or groundwater of a Hazardous Material (whether a chemical substance or other solid, liquid or gas) at a concentration above the concentration at which the substance is normally present in, on or under land in the same locality as the Premises, being a presence that presents a risk of harm to human health or any other aspect of the Environment. For the purpose of this definition, a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance, structure or other matter. **Contaminant** and **Contaminated** have a corresponding meaning.

Commencement Date means the date specified in Item 4.

CPI means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as VicTrack reasonably determines.

CPI Adjustment Dates means the date(s) (if any) specified in Item 11.

Current CPI means the CPI number last published before the current CPI Adjustment Date.

Dangerous Goods has the same meaning as in the Australian Code for the Transport of Dangerous Goods by Road and Rail from time to time or as otherwise defined in Safety Legislation.

Environment means all components of the Earth, including each and any combination of the constituents of:

- (a) land, air, groundwater and water and any living organism in any of them;
- (b) the atmosphere;



- (c) any organic or inorganic matter; and
- (d) structures, buildings and other human-made areas.

Environmental Consultant means a person who is an expert in, and who has at least five years practical experience in:

- (a) for the preparation of an Environmental Management Plan, the preparation of Environmental Management Plans; and
- (b) for an Environmental Improvement Plan or other Contamination matter, the assessment, management and remediation of Contamination in, on, under or migrating from land.

Environmental Damage means any damage, impact, effect on the Environment which is an Environmental Hazard, Contamination or which could result in non-compliance with or breach of Environmental Law.

Environmental Hazard means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage or handling of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Improvement Plan means an environmental improvement plan outlining the nature and extent of Contamination and the recommendations for managing and cleaning up or remediating Contamination or Environmental Damage at the Premises or emanating from the Premises prepared by an Environmental Consultant.

Environmental Law means:

- (a) all Laws relating to town planning, the Environment, noise, development, construction or structures, health, Contamination, waste disposal, land management and Hazardous Material;
- (b) all conditions of all Approvals issued under any law in paragraph (a); and
- (c) regulations and any order, guideline, notice, direction or requirement of any Government Agency in relation to these matters.

Environmental Management Plan means a plan that documents the mitigating and monitoring actions with specific responsibilities for protecting the Premises, and/or any person on the Premises, from Environmental Damage prepared for the Premises by an Environmental Consultant or by VicTrack.

Further Term means the further term(s) specified in Item 6.

Franchisee means any person who operates a rail or tram business in Victoria or on VicTrack land outside Victoria under a franchise from Public Transport Victoria or otherwise and any person succeeding any of them.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute, or a stock exchange.

Ground Lease Schedule means the schedule (if any) described in Item 16.

Guarantor means the person(s) specified in Item 2.



Hazardous Material means any substance, gas, liquid, chemical, mineral or other physical or biological matter:

- (a) that is or may become toxic, flammable, inflammable, explosive;
- (b) that is otherwise dangerous, harmful to the Environment or any life form or which may cause Contamination; or
- (c) that is a material or compound controlled, prohibited or regulated from time to time by any Environmental Law or by any Safety Legislation.

Improvements means any buildings, structures, rail infrastructure, paving, earthworks, fences, fixtures and other works and items that are erected, constructed or located above, on or under the Premises including any VicTrack Improvements.

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) in the case of a natural person, if that person becomes bankrupt;
- (b) being in liquidation or provisional liquidation or under administration;
- (c) being wound up or dissolved or an application is made for its winding up or dissolution;
- (d) having a controller, receiver, manager, administrator or analogous person appointed to it or any of its property;
- (e) being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- (f) being unable to pay its debts or being otherwise insolvent;
- (g) becoming an insolvent under administration, as defined in section 9 of the *Corporations Act 2001* (Cth);
- (h) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (i) any analogous event or circumstance under the Laws of any jurisdiction;
- (j) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring; or
- (k) in the case of a company, if that company is deregistered with the Australian Securities and Investments Commission,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by VicTrack

Item means an item in the Reference Schedule.

Law includes any statute, regulation, ordinance, statutory instrument or by-law, present or future, and any requirement, notice, order or direction of any Government Agency, including environmental requirements, any relevant standard published by Standards Australia and the conditions of any licence or permit or similar instrument issued under a Law.

Lettable Area(s) means the lettable area as determined by VicTrack acting reasonably.



Market Review Date means the date(s) (if any) specified in Item 10.

Percentage Rent Increase Date means the date(s) specified in Item 9.

Permitted Use means the use specified in Item 13 in accordance with and subject to relevant Laws including Safety Legislation.

Planning Approval means any Approval given under any planning scheme or any planning scheme amendment approved and gazetted from time to time under the *Planning and Environment Act 1987* (Vic).

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the *Occupational Health and Safety Regulations 2007* (Vic).

Premises means the premises specified in Item 3 and includes any VicTrack Improvements.

Previous CPI means the CPI number last published before the immediately preceding CPI Adjustment Date, or the Commencement Date (whichever is the later).

Public Transport Victoria means the Public Transport Development Authority, a body corporate established under the *Transport Integration Act 2010* (Vic) trading as "Public Transport Victoria" and includes its predecessors in law, assigns and successors.

Rates and Taxes means the rates, taxes, charges and levies specified in clause 7.1.

Reference Schedule means the schedule of Items specified on the page at the front of this Lease.

Rent means the amount specified in Item 8 as reviewed, adjusted or increased under this Lease.

Retail Lease Schedule means the schedule (if any) described in Item 15.

Safety Legislation means:

- (a) any legislation applicable to occupational health and safety, rail safety, road transport, dangerous goods, gas safety and electrical safety;
- (b) any regulations made under that legislation; and
- (c) any directions or notices issued by any relevant Government Agency or any code of practice or compliance code applicable to the Premises or any part of it or the Permitted Use.

Safety Requirements means any direction, instruction, request or requirement notified by VicTrack to the Tenant in writing which is relevant to or necessary for compliance by VicTrack or the Tenant with any applicable Safety Legislation.

Security Deposit means the amount specified in Item 12.

Services means any services, drains, pipes, groundwater bores and cables above, below, affecting or connected to the Premises.

Services Plan means any plan showing the location of Services and attached to this Lease at Attachment 5 or at Attachment 7.

Small Business Commissioner means the Small Business Commissioner referred to in the Act.



Special Conditions means the conditions described in Item 18.

Tenant means the Tenant specified in Item 1 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

Tenant's Improvements means all property in the Premises (including the items listed as Tenant's Improvements in the Condition Report, all fixtures, buildings, fittings, furniture, furnishings, window coverings, blinds, light fittings, plant, machinery, installations and equipment) installed, owned or leased by the Tenant, but excluding any VicTrack Improvements.

Term means the term specified in Item 5, commencing on the Commencement Date and any period of overholding.

Third Party Rights means any rights of any person other than the Tenant under any licence or other grant of rights over any part of the Premises, whether granted by VicTrack or any other person entitled to do so, including any rights granted to any Transport Business.

Third Party Services means any electricity, petroleum, gas, water, sewerage, drainage and telecommunications pipes, cables and conduits, ground water monitoring wells, shared user pathways or any other service that is installed within, managed or provided by a third party and located within the Premises or VicTrack's land.

Transport Business means VicTrack, Public Transport Victoria, any Franchisee, the operators of the metropolitan, regional and interstate rail networks, the tourist and heritage railway operators and any other organisation which uses any VicTrack land or VicTrack facility to carry out a business providing transportation services.

Transport Infrastructure Schedule means the schedule (if any) described in Item 17.

Transport Operations means the operations of any Transport Business.

Valuer means the valuer appointed pursuant to clause 5.3 of this Lease.

VicTrack means Victorian Rail Track of 1010 Latrobe Street, Docklands, 3008, a statutory corporation established under section 8 of the *Rail Management Act 1996* and continued, in existence under section 116 of the *Transport Integration Act 2010* and includes VicTrack's successors and assigns and where it is consistent with the context includes VicTrack's employees and agents.

VicTrack Improvements means all buildings, structures, rail infrastructure, paving, earthworks, fences, fittings and fixtures contained in the Premises at the date the Tenant or the Tenant's predecessor in title (whether under a previous lease or an assignment or by other means) commenced occupation of the Premises or installed by VicTrack after that date and includes the any items listed as VicTrack Improvements in the Condition Report.

Weeds means any noxious weed as defined by the *Catchment and Land Protection Act 1994* (Vic) including ragwort, Paterson's curse, mallow, horehound, hawthorn, sweet brier, gorse, boneseed, blackberry, dock, thistles, cape weed, bent grass, kikuyu, couch and such other weeds as discovered by VicTrack during any inspection of the Premises.

2. Duration of the Lease

2.1 Term

This Lease is for the Term starting on the Commencement Date.



2.2 Option for a Further Term

VicTrack will grant to the Tenant a new lease for the Further Term if the Tenant:

- 2.2.1 gives VicTrack written notice asking for a new lease, not earlier than 6 months and no later than 3 months before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 7);
- 2.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from VicTrack;
- 2.2.3 has not persistently defaulted under this Lease and VicTrack has given written notice of the defaults; and
- 2.2.4 complies with all reasonable requirements of VicTrack including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by VicTrack to execute the guarantee contained in this Lease.

2.3 Terms of the New Lease

The new lease for the Further Term will contain the same terms and conditions as this Lease except that:

- 2.3.1 the commencement date in Item 4 will be the day after this Lease ends;
- 2.3.2 the length of term in Item 5 will be as specified in Item 6;
- 2.3.3 if the number of Further Terms specified in Item 6 is more than 1, the number of Further Terms specified in Item 6 shall be reduced by 1 and the date in Item 7 will be inserted in accordance with clause 2.2.1;
- 2.3.4 if the number of Further Terms specified in Item 6 shall be 1, Item 6 and Item 7 will be amended to read 'not applicable';
- 2.3.5 if the commencement date of the Further Term is a date specified in Item 9, Item 10 or Item 11, the commencing rent in Item 8 will be as determined in accordance with clause 4, 5 or 6 (as appropriate); and
- 2.3.6 any Special Conditions that are expressly stated to not apply to the Further Term shall be deleted.

2.4 Execution of New Lease for Further Term

The Tenant and the Guarantor (where applicable) must:

- 2.4.1 execute the new lease for the Further Term; and
- 2.4.2 sign any disclosure statement provided by VicTrack to the Tenant,

and return the above to VicTrack within 14 days of receipt from VicTrack.

2.5 Overholding

If the Tenant continues in occupation of the Premises after the end of the Term, without objection by VicTrack:



- 2.5.1 the Tenant occupies the Premises subject to the same terms and conditions as contained in this Lease except for those changes necessary to make this Lease appropriate for a monthly tenancy;
- 2.5.2 despite the manner in which the Rent is paid by the Tenant, the Tenant's occupation of the Premises during any period of overholding is as a monthly tenant;
- 2.5.3 either VicTrack or the Tenant may end this Lease during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 2.5.4 VicTrack may increase the monthly rent at any time by giving the Tenant one month's written notice.

3. Payment of Rent

The Tenant must pay the Rent to VicTrack, without demand, in accordance with the manner specified in Item 8 or such other manner specified by VicTrack from time to time.

4. Percentage Rent Review

- 4.1 On each Percentage Rent Increase Date the rent will increase by the percentage specified in Item 9.
- 4.2 The Tenant must pay VicTrack the increased Rent on and from the relevant anniversary of the Commencement Date, regardless of whether VicTrack has given notice to specify the new Rent.

5. Market Rent Review

5.1 Notice by VicTrack

- 5.1.1 Subject to clause 5.1.2, if a Market Review Date is specified in Item 10, VicTrack may at any time before or after the Market Review Date, give a notice to the Tenant:
 - (a) of VicTrack's assessment of the market rent for the Premises to apply from the Market Review Date; or
 - (b) that the Rent will be adjusted to reflect the change in CPI in accordance with clause 6,

provided that this clause will not apply if the Act applies to this Lease.

- 5.1.2 Where the Act applies to this Lease

VicTrack may at any time before or after a Market Review Date give notice to the Tenant of VicTrack's assessment of the market rent for the Premises to apply from the Market Review Date.



5.2 Tenant's Objection

If VicTrack gives a notice to the Tenant under clauses 5.1.1(a) or 5.1.2, the rent nominated by VicTrack in the notice to the Tenant will be the Rent which the Tenant must pay from the Market Review Date, unless the Tenant gives a written notice to VicTrack within 21 days of receipt of the notice from VicTrack objecting to the market rent specified in the notice from VicTrack. If the Tenant does not give VicTrack the written notice, the Tenant is deemed to have agreed to the market rent nominated by VicTrack.

5.3 Appointing Valuer

5.3.1 If the Tenant objects to the market rent specified by VicTrack within the time and manner specified in clause 5.2, then unless the Rent is subsequently agreed between the parties the Rent must be determined by a valuer, who is appointed (at the request of either party) by:

- (a) the President of the Australian Property Institute (Victorian Division) or its successor body; or
- (b) where the Act applies to this Lease, the Small Business Commissioner pursuant to section 37 of the Act.

5.3.2 Both parties acknowledge and agree that they must do all things reasonably necessary to formalise the appointment of the Valuer, including signing any indemnities reasonably required by the Valuer and signing and returning the valuer appointment request within 14 days of receipt.

5.4 Determination by Valuer

5.4.1 VicTrack and the Tenant must instruct the Valuer to:

- (a) determine a market rent for the Premises to apply on and from the Market Review Date;
- (b) determine a market rent which is not less than the rent payable immediately prior to the Market Review Date except this clause 5.4.1(b) will not apply where the Act applies to this Lease;
- (c) act as an expert and not an arbitrator (the Valuer's decision is binding on VicTrack and the Tenant);
- (d) consider the matters set out in any written submissions made by the parties provided that such submissions must have been received by the Valuer no later than 14 days from the date of appointment of the Valuer;
- (e) have regard to the matters set out in section 37(2) of the Act, where the Act applies to this Lease; and
- (f) ignore any deleterious condition of the Premises if the condition resulted from a breach of this Lease by the Tenant.

5.4.2 VicTrack and the Tenant must share the costs of the Valuer equally. Either party may pay the costs of the Valuer and the other party must reimburse its share of those costs on demand.

5.4.3 The Rent determined by the Valuer or agreed between the parties will be the Rent which the Tenant must pay from the Market Review Date.



5.5 Payment of Rent Pending Valuation

Where the Tenant objects to VicTrack's market assessment of the Rent, until the Rent is agreed or has been determined by the Valuer, the Tenant must continue to pay the Rent at the rate applying immediately prior to the Market Review Date plus an amount equal to 80% of any increase sought by VicTrack as specified in the notice pursuant to clause 5.1.1(a). On the next due date for the payment of the Rent following VicTrack and the Tenant agreeing on the Rent or the Valuer determining the Rent pursuant to clause 5.4, VicTrack and the Tenant must make any necessary adjustment.

5.6 Appointing New Valuer

If the Valuer does not make a determination within 45 days of appointment, resigns or otherwise becomes unable to make the determination, an alternative valuer may be appointed pursuant to clause 5.3.

6. CPI Adjustment of Rent

6.1 Calculation of Adjustment

6.1.1 On each CPI Adjustment Date the Rent will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

6.1.2 If VicTrack gives a notice to the tenant under clause 5.1.1(b), the Rent on the Market Review Date will be adjusted to an amount equal to the Rent payable immediately prior to the Market Review Date multiplied by the Current CPI and divided by the Previous CPI.

6.2 Payment of Adjusted Rent

On the next due date for the payment of the Rent, after the Tenant receives notice of the adjusted Rent from VicTrack, VicTrack and the Tenant must make any necessary adjustment to apply on and from the relevant CPI Adjustment Date or Market Review Date (as applicable).

7. Outgoings

7.1 Rates and Taxes

The Tenant must pay to VicTrack or the relevant Government Agency:

7.1.1 local government rates and charges;

7.1.2 water rates and charges, including water usage charges;

7.1.3 sewerage and drainage rates and charges;

7.1.4 land tax (assessed on the Premises on a single holding basis) except this cost is excluded where the Act applies to this Lease; and

7.1.5 all other rates, taxes, charges and levies,

assessed in connection with the Premises or the Tenant's use and occupation of the Premises.



7.2 Copy of notice of Rates and Taxes

The Tenant must provide a copy of any Rates and Taxes notice, assessment or invoice it receives, directly from the relevant Government Agency, to VicTrack within 14 days of receiving it.

7.3 Proportion of Rates and Taxes

If any Rates and Taxes are not separately assessed in connection with the Premises, the Tenant must pay to VicTrack within 14 days of demand the proportion of the Rates and Taxes that the Lettable Area of the Premises bears to the total Lettable Area assessed.

7.4 Receipt for Payment

The Tenant must provide to VicTrack receipts for any Rates and Taxes paid by the Tenant within 7 days of request by VicTrack.

8. Other expenses

8.1 Utilities

The Tenant must, within 14 days of demand:

- 8.1.1 pay for all utilities in connection with the Premises, including garbage removal, electricity, gas, water and telephone services;
- 8.1.2 at its own cost arrange for the regular removal of waste and sewerage from the Premises; and
- 8.1.3 where the Premises are not separately metered, pay for the cost of installing separate meters to assess the charges for the utilities.

8.2 Costs and Duty

The Tenant must pay to VicTrack within 14 days of demand:

- 8.2.1 any stamp duty payable on this Lease (including penalties and fees);
- 8.2.2 VicTrack's reasonable costs in connection with the preparation, negotiation and execution of this Lease except if this amount is not recoverable where the Act applies to this Lease;
- 8.2.3 VicTrack's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether VicTrack actually gives such consent or approval);
- 8.2.4 VicTrack's architects or contractors' fees payable pursuant to clauses 12.4.1(a) and 12.4.1(d); and
- 8.2.5 VicTrack's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.



9. GST

9.1 Definitions

In this clause:

- 9.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 9.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

9.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

9.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

9.4 Payment of GST

Subject to clause 9.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

9.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.4.

9.6 Reimbursements

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 9.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 9.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

9.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 9.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and
- 9.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.



10. Security Deposit

10.1 Delivery of Security Deposit

The Tenant must:

- 10.1.1 pay to VicTrack the Security Deposit by way of bank cheque and notify VicTrack of the Tenant's tax file number on or before the Commencement Date;
- 10.1.2 if VicTrack requires, deliver to VicTrack a bank guarantee for an amount equal to the Security Deposit on or before the Commencement Date; and
- 10.1.3 pay any additional amount towards the Security Deposit (including by providing a replacement or additional bank guarantee) within 14 days of demand to maintain the Security Deposit at the required level.

10.2 Form of Bank Guarantee

Any bank guarantee must be issued in favour of VicTrack by an authorised deposit taking institution as defined by the *Banking Act 1959* (Cth), that maintains an office in Melbourne where the bank guarantee may be presented, with no expiry date or an expiry date that is not less than 12 months after the end of the Term and any Further Term and otherwise be on such terms as VicTrack may require.

10.3 VicTrack's Right to Use Security Deposit

VicTrack may use any amount of the Security Deposit (including calling up payment of the bank guarantee) if VicTrack has any claim or entitlement to the payment of damages, costs or an amount of debt due under this Lease including to make good the cost of remedying breaches of the Tenant's obligations under this Lease or to recover any loss that VicTrack suffers from the Tenant's default.

10.4 Tenant to Replace Security Deposit

The Tenant must, within 14 days of demand, replace any amount of the Security Deposit used by VicTrack (including providing a replacement or additional bank guarantee).

10.5 Return of Security Deposit

VicTrack must, if the Tenant has complied with all of its obligations under this Lease, return the Security Deposit to the Tenant within 60 days of the end of this Lease.

10.6 Sale of the Premises

The Tenant must if necessary, at its cost, provide a replacement bank guarantee for an amount equal to the Security Deposit, in favour of any future owner of the Premises. Upon receipt VicTrack must return the original bank guarantee to the Tenant.

11. Payment requirements

11.1 No Deduction or Right of Set-off

The Tenant must pay all amounts due under this Lease to VicTrack (including the Rent and Rates and Taxes without deduction, counterclaim, withholding or right of set-off).

11.2 Interest on Late Payments

The Tenant must pay to VicTrack on demand interest at the rate per annum which is 2% higher than the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

11.3 Payment after Termination

The Tenant must:

- 11.3.1 make all payments due under this Lease; and
 - 11.3.2 provide all information to VicTrack under this Lease to calculate any such payments,
- even if this Lease has ended.

11.4 Method of payment

The Tenant must make all payments under this Lease in such manner as VicTrack reasonably requires, which may include by direct debit.

12. Repairs, Refurbishment and Alterations

12.1 Condition Report

The Tenant acknowledges and agrees that the Condition Report reflects the true condition of the Premises as at the date the Tenant first entered occupation of the Premises.

12.2 Repairs and Maintenance

The Tenant must:

- 12.2.1 keep the Premises and the Tenant's Improvements clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;
- 12.2.2 keep the Premises in the same condition as it was in at the date the Tenant or the Tenant's predecessor in title (whether under a previous lease or an assignment or by other means) first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in or attached to the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;
- 12.2.3 promptly remove any graffiti (including any unauthorised writing or drawing) on the external walls of the Premises;
- 12.2.4 paint and, where appropriate, paper any parts of the Premises previously painted or papered whenever reasonably required;
- 12.2.5 maintain in working order and protect all Services located at the Premises;
- 12.2.6 maintain any gardens, landscaped areas or other areas of vegetation in the Premises in a tidy and good condition and free of weeds and must comply with the Landlord's reasonable directions concerning weed control, mowing, pruning, tree risk assessments and associated lopping and other vegetation management requirements;



- 12.2.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by VicTrack when reasonably required;
- 12.2.8 repair all defective or broken lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 12.2.9 not permit any drainage from the Premises to be directed onto any adjacent property;
- 12.2.10 make good any damage caused to any adjacent property by the Tenant;
- 12.2.11 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Improvements, or any person; and
- 12.2.12 give VicTrack prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises.

12.3 Equipment in Premises

The Tenant must:

- 12.3.1 repair and maintain any VicTrack Improvements including air conditioning and heating equipment exclusively serving the Premises but excluding any essential safety measures (as defined under the Building Regulations) in accordance with VicTrack's reasonable requirements; and
- 12.3.2 comply with VicTrack's reasonable requirements concerning the use of any VicTrack Improvements, including air conditioning and heating equipment.

12.4 Alterations to Premises

- 12.4.1 The Tenant must ensure any alterations or works to the Premises, any Services to the Premises or the Tenant's Improvements are carried out in a proper and workmanlike manner:
 - (a) strictly in accordance with plans and specifications approved by VicTrack or VicTrack's architect or consultants (the cost of which must be paid by the Tenant to VicTrack within 14 days of demand). The plans and specifications must include:
 - (i) a submission detailing which Services will be affected and how the Tenant proposes to deal with the Services; and
 - (ii) a set of built drawings for the alterations or works;
 - (b) by appropriately qualified tradespersons holding insurance that is reasonable and customary for the work to be carried out and that satisfies any insurance requirements notified by VicTrack (acting reasonably);
 - (c) to VicTrack's reasonable satisfaction and in accordance with VicTrack's reasonable requirements (including VicTrack's requirements as to the standard, type, quality, size and colour of any of the Tenant's Improvements);

(d) if required by VicTrack (acting reasonably) under the supervision of VicTrack's architect or consultant (the cost of which must be paid by the Tenant to VicTrack within 14 days of demand); and

(e) in accordance with all Laws.

12.4.2 On completion of the alterations or works, the Tenant must promptly remove all unused building materials, equipment and debris and, if required as a matter of Law, obtain an occupancy permit or certificate of final inspection from the relevant Government Agency or building surveyor together with any associated compliance certificates issued by the relevant contractors for the alterations or works and deliver a copy to VicTrack.

12.5 Rail Safety

The Tenant acknowledges and agrees that if VicTrack (acting reasonably) considers that:

12.5.1 the Premises are within or in the vicinity of a rail safety zone;

12.5.2 rail infrastructure is erected on, below or within the vicinity of the Premises; or

12.5.3 a contractor engaged to carry out any alterations or works to the Premises would be likely to enter into or use land:

(a) within a rail safety zone; or

(b) upon which rail infrastructure is located,

then in considering any request for consent to carry out any alterations or works to the Premises, VicTrack may require that:

12.5.4 the Tenant submit detailed working drawings and specifications endorsed by a qualified building surveyor to VicTrack; and

12.5.5 all alterations and works be carried out by tradespersons approved by VicTrack and under the supervision of an architect, engineer or other person approved by VicTrack.

12.6 Trees and Shrubs

12.6.1 The Tenant must ensure that existing or new trees, shrubs or other plants on the Premises do not at any time obstruct the view of:

(a) a level crossing; or

(b) any signal or other sign.

12.6.2 If, in VicTrack's sole discretion, a plant, tree or shrub on the Premises obstructs the view of a level crossing, signal or sign, the Tenant must, within 7 days of receiving notice from VicTrack, remove the obstruction.

12.7 Fire Hazard

The Tenant must ensure that the Premises are free from all fire hazards at all times during the Term including grazing, slashing or mowing the Premises in accordance with all relevant legislation, regulations or municipal by-laws and complying with VicTrack's reasonable directions.



12.8 Weeds

The Tenant must control the growth of Weeds on the Premises by spraying or removing the Weeds at suitable times, but the Tenant must not:

- 12.8.1 spray during times when weather conditions may cause the spray to drift beyond the areas being sprayed or near any dams, creeks or persons; or
- 12.8.2 use any long term residual pesticides.

12.9 Pest Control

The Tenant must take all proper precautions to keep the Premises free of rodents, termites, cockroaches and other vermin and, if required by VicTrack, the Tenant must engage pest exterminators for that purpose.

12.10 Not Interfere with Utilities and Services

12.10.1 The Tenant must not interfere with, misuse or overload any:

- (a) Services or utilities to the Premises, including electricity, gas and water; or
- (b) Third Party Services.

12.10.2 Before carrying out any works under clause 12.4 of this Lease, the Tenant must notify VicTrack of any services or drains it locates.

12.11 Defacing Premises

The Tenant must not materially deface or damage the Premises (including drilling holes in the Premises) except where approved by VicTrack in accordance with clause 12.4.

12.12 Failure to Repair and Maintain

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from VicTrack, VicTrack may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to VicTrack on demand.

12.13 Fencing

12.13.1 VicTrack may by written notice require the Tenant to erect a fence of such type as approved by VicTrack around the whole or part of the Premises (**Fence**).

12.13.2 The Tenant must:

- (a) erect the Fence within a reasonable time and in accordance with clauses 12.4.1(c) and 12.4.1(e) of this Lease; and
- (b) maintain the Fence in good condition during the Term.

12.13.3 The Tenant acknowledges that the Fence is a Tenant's Improvement.

13. Contamination

- 13.1 Subject to clause 13.8, the Tenant must:
- 13.1.1 prevent Environmental Damage, degradation, pollution or Contamination occurring in, on, under or migrating from the Premises as a result of the Tenant's use or occupation of the Premises; and
 - 13.1.2 comply with all reasonable directions given by VicTrack or any directions given by any Government Agency concerning any Contamination in, on, under or migrating from the Premises.
- 13.2 Subject to clause 13.8, the Tenant indemnifies VicTrack against any Claim relating to any clean-up or removal of any Contamination to the extent not caused or contributed to by VicTrack.
- 13.3 Subject to clause 13.8, if any Contamination is found in, on, under or migrating from the Premises during the Term of the Lease, the Tenant must:
- 13.3.1 give VicTrack prompt written notice of the existence of the Contamination;
 - 13.3.2 at its own cost, promptly prepare and submit to VicTrack for approval (which must not be unreasonably withheld) an Environmental Improvement Plan;
 - 13.3.3 comply with the recommendations of the Environmental Improvement Plan approved by VicTrack pursuant to clause 13.3.2; and
 - 13.3.4 at the end of this Lease, provide supporting evidence, satisfactory to VicTrack (acting reasonably), from an Environmental Consultant approved of by VicTrack (acting reasonably) certifying that:
 - (a) the Premises is free from Contamination; or
 - (b) the Tenant has complied with the recommendations of the Environmental Improvement Plan approved by VicTrack pursuant to clause 13.3.2.
- 13.4 Subject to clause 13.8, if a notice is issued by the Environment Protection Authority (**EPA**) or any other relevant Government Agency to the Tenant in relation to the Premises (**Notice**), the Tenant agrees that:
- 13.4.1 it will promptly inform VicTrack of that Notice and provide a copy of it to VicTrack;
 - 13.4.2 VicTrack has the right to comment on the requirements of the Notice and to be involved in all discussions regarding the Notice, including participation in all meetings with the EPA and any Environmental Consultants; and
 - 13.4.3 VicTrack may (but is not obliged to) contribute towards the cost of a clean-up in response to the Notice in a standard greater than that required by the Notice.
- 13.5 If an environmental assessment or remediation process is undertaken by the Tenant at the Premises, voluntarily or in accordance with the terms of this Lease, the Tenant agrees that:
- 13.5.1 it will inform VicTrack of its intention to undertake the environmental assessment or remediation process prior to work commencing;
 - 13.5.2 VicTrack has the right to comment on and be involved in the proposed process, including determining the extent of clean-up proposed; and



- 13.5.3 VicTrack may (but is not obliged to) contribute towards the cost of a clean-up to a standard greater than that proposed.
- 13.6 The Tenant agrees that any environmental reports it prepares or has Environmental Consultants prepare for the Premises, including Environmental Management Plans, Environmental Improvement Plans, clean-up and remediation reports, audit reports or certificates and statements of audits, it will:
 - 13.6.1 provide copies of any and all reports to VicTrack; and
 - 13.6.2 provide for VicTrack to have reliance upon those reports.
- 13.7 If a dispute about Contamination arises out of or relates to this clause 13, the parties will submit to the following procedure to resolve the dispute:
 - 13.7.1 either party may deliver to the other party written notice of dispute, specifying the nature of the dispute (**Dispute Notice**);
 - 13.7.2 the parties will choose and appoint an independent environmental auditor appointed under section 53S of the *Environment Protection Act 1970* (Vic) (**Environmental Auditor**) to determine the dispute but the parties acknowledge and agree that such appointment shall not constitute the engagement of the Environmental Auditor to conduct an environmental audit or otherwise carry out any function under the *Environment Protection Act 1970* (Vic). In the absence of agreement by the parties as to the appointment of an Environmental Auditor within 7 days after the service of the Dispute Notice, either party may request that the President of the Law Institute of Victoria appoint an independent Environmental Auditor;
 - 13.7.3 the Environmental Auditor must make a determination on the issues in dispute as soon as practicable, and in any event within 30 days of the date that the Environmental Auditor is appointed, or such longer period as the parties may agree;
 - 13.7.4 the Environmental Auditor will act as an expert and not as an arbitrator, and may adopt such procedures as the Environmental Auditor sees fit;
 - 13.7.5 the Environmental Auditor's decision will be final and binding on the parties;
 - 13.7.6 VicTrack and the Tenant must share the costs of the Environmental Auditor equally; and
 - 13.7.7 notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Lease.
- 13.8 Nothing in this clause 13 will require the Tenant to bear the cost of or undertake:
 - 13.8.1 the preparation of the Environmental Improvement Plan; or
 - 13.8.2 any clean-up or removal of Contamination on the Premises,where the Contamination has not been caused or contributed to as a result of the use or occupation of the Premises by the Tenant or the Tenant's predecessor in title (whether under a previous lease or an assignment or by other means).

14. Insurance**14.1 Insurance**

The Tenant must maintain insurance noting VicTrack's interest as landlord, but not as joint insured, with an insurer authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia for:

- 14.1.1 public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by VicTrack);
- 14.1.2 any windows and any other glass in the Premises for the full replacement value.

14.2 Tenant's Improvements and Business Interruption

- 14.2.1 The Tenant must insure the Tenant's Improvements for loss and damage from risks including fire and water damage for their full replacement value.
- 14.2.2 The Tenant must maintain insurance cover for not less than 6 months business interruption.

14.3 Policy Terms and Conditions

The Tenant must ensure that the insurance required under this clause 14:

- 14.3.1 is on terms and conditions that are reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by this Lease; and
- 14.3.2 is only subject to an excess amount that has first been approved by VicTrack (such approval not to be unreasonably withheld).

14.4 Payment and Production of Policies

The Tenant must pay all insurance premiums on or before the due date for payment and provide VicTrack with a certificate of currency from the Tenant's insurer or its insurance broker, which clearly confirms that the requirements of this clause 14 have been met on or before the Commencement Date and each anniversary of the Commencement Date and a copy of the policy upon request.

14.5 Not Invalidate Policies

The Tenant must:

- 14.5.1 not do anything which may make any insurance effected by VicTrack or the Tenant invalid, capable of being cancelled or rendered ineffective, or which may increase any insurance premium effected by VicTrack; and
- 14.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

14.6 Requirements by Insurer

The Tenant must comply with all reasonable requirements of VicTrack's insurer in connection with the Premises.



15. Release and Indemnity

15.1 Release

Without limiting clause 15.3, the Tenant uses and occupies the Premises at its own risk and releases VicTrack from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of VicTrack's negligence.

15.2 Indemnity

The Tenant must indemnify and hold harmless VicTrack against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant except to the extent that such claims arise out of VicTrack's negligence.

15.3 No Compensation

VicTrack is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 15.3.1 any damage to the Premises;
- 15.3.2 the failure of any of VicTrack's Improvements to operate properly;
- 15.3.3 the interruption or damage to any Services or utilities (including electricity, gas or water) to the Premises;
- 15.3.4 the overflow or leakage of water in the Premises; or
- 15.3.5 any acts or omissions of VicTrack undertaken in any capacity other than in its capacity as the owner of the Premises, including (but not limited to) in exercising any powers under the *Transport (Compliance and Miscellaneous) Act 1983* (Vic) or the *Rail Management Act 1996* (Vic).

16. Permitted Use

16.1 Permitted Use

The Tenant must use the Premises for the Permitted Use and not use the Premises for any other purpose.

16.2 No Warranty

The Tenant:

- 16.2.1 acknowledges that VicTrack does not represent that the Premises are:
 - (a) suitable for the Permitted Use; and
 - (b) free from Contamination; and
- 16.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

17. Third Party Rights

17.1 The Tenant acknowledges and agrees that:

- 17.1.1 it is aware that the Premises may presently be or become subject to Third Party Rights;
- 17.1.2 it is aware that the Premises may presently contain or may in future contain Third Party Services;
- 17.1.3 the ability of VicTrack to grant rights under this Lease may depend on rights reserved to VicTrack and to the extent that the reservation may be inadequate to enable VicTrack to grant such rights, on VicTrack obtaining the consent of that person who is the holder of the Third Party Rights or that person who owns or controls Third Party Services;
- 17.1.4 the Tenant's obligations under this clause 17 are in addition to and not in substitution for the Tenant's obligations under this Lease in respect of Services; and
- 17.1.5 the Tenant must provide any assistance reasonably required by VicTrack to give effect to any grant of Third Party Rights.

17.2 In exercising any rights the Tenant has under this Lease, the rights and obligations of each Transport Business take precedence over the rights of the Tenant and the Tenant must not interfere with or in any way disrupt or prevent any Transport Business from complying with its obligations and responsibilities under any Laws or contractual documentation relating to Transport Operations.

17.3 The Tenant's rights under this Lease are subject to the Third Party Rights and Third Party Services and nothing in this Lease will grant or be interpreted as granting to the Tenant exclusive rights in relation to the installation, repair, renewal and replacement of Services, pipes, cables and conduits in the Premises.

17.4 The Tenant is responsible for ascertaining the location of any Third Party Services within the Premises and maintaining all Clearances from them as required by VicTrack and/or the party who owns or controls such Third Party Services.

17.5 Nothing in this Lease requires VicTrack to:

- 17.5.1 breach or act inconsistently with any contractual obligation it has with any third party or any other legal obligation, including without limitation any duty or obligation or requirement under any Safety Legislation; or
- 17.5.2 commence legal or other proceedings against a third party where it is not in the interests of VicTrack to do so.

18. Other obligations concerning the Premises

18.1 Compliance with Laws

The Tenant must comply with all Laws and any requirements of any Government Agency in connection with the Premises and the Tenant's specific use and occupation of the Premises, including without limitation any applicable Safety Legislation and Safety Requirements, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:



- 18.1.1 a negligent act or omission of the Tenant;
- 18.1.2 a failure by the Tenant to comply with its obligations under this Lease; or
- 18.1.3 the Tenant's use of the Premises.

18.2 Licences and Permits

The Tenant must maintain all licences and permits required for the Tenant's specific use of the Premises and obtain the prior written consent of VicTrack before varying any licence or permit or applying for any new licence or permit.

18.3 Nuisance

The Tenant must not do anything in connection with the Premises which may:

- 18.3.1 cause a nuisance or interfere with any other person; or
- 18.3.2 be dangerous or offensive in VicTrack's reasonable opinion.

18.4 Security

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant.

18.5 Signs

The Tenant must not display or affix any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises, without obtaining VicTrack's prior written consent.

18.6 No Smoking

The Tenant must:

- 18.6.1 not permit any smoking in the Premises without obtaining the prior written consent of VicTrack; and
- 18.6.2 display 'no smoking' signs in the Premises if requested by VicTrack.

18.7 Heavy Objects

The Tenant must not bring onto or store any heavy objects in the Premises that are likely to damage the Premises.

18.8 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of VicTrack may endanger the Premises or be a risk to any person or property.

18.9 Tenant's Employees

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.



18.10 Health and Safety

18.10.1 The Tenant and VicTrack must so far as they are reasonably able consult, co-operate and co-ordinate activities between them and others engaged at or associated with the Premises to provide for optimal health and safety risk management and compliance with Safety Legislation.

18.10.2 The Tenant must:

- (a) promptly notify VicTrack of any incident, injury, property damage or Environmental Damage which occurs at the Premises; and
- (b) promptly inform VicTrack of any circumstance identified in (a) which gives rise to an obligation to notify a relevant Government Agency under Safety Legislation and of any such notification made by the Tenant.

18.10.3 The Tenant must from time to time as appropriate assess the risks associated with the occupation and use of the Premises and take such steps as are necessary to ensure compliance by the Tenant and VicTrack with Safety Legislation.

18.10.4 The Tenant must:

- (a) notify VicTrack prior to undertaking any works at the Premises with respect to which VicTrack is or may be deemed to be a Principal Contractor; and
- (b) accept nomination or appointment by VicTrack as the Principal Contractor in relation to any such works.

18.10.5 The Tenant must:

- (a) inform and at all times keep informed VicTrack of any and all circumstances that may give rise to duties or obligations of VicTrack under Safety Legislation relating to the handling, storage or transport of Dangerous Goods;
- (b) provide such assistance as may be required to enable VicTrack to comply with relevant Safety Legislation, including complying with all Safety Requirements; and
- (c) provide to VicTrack upon and in accordance with any reasonable request documents or other information evidencing such compliance including but not limited to:
 - (i) relevant manifests;
 - (ii) material safety data sheets;
 - (iii) risk assessments;
 - (iv) training and induction records;
 - (v) emergency response plans and associated activities;
 - (vi) fire protection;
 - (vii) audits;
 - (viii) relevant policies and procedures;



- (ix) reports relating to incidents associated with Dangerous Goods at the Premises; and
- (x) Safety Requirements.

18.10.6 Without limiting clause 8.2.5, the Tenant must indemnify VicTrack in relation to including any costs incurred by VicTrack in taking steps to ensure compliance by it or the Tenant with Safety Legislation, where such or equivalent steps should have been taken by the Tenant in compliance with the Safety Legislation or Safety Requirements.

18.10.7 If the Tenant fails to comply with Safety Legislation or Safety Requirements and the failure is continuing or repeated or a single event that causes a serious risk to the health or safety of any person, without limiting VicTrack's other rights under this Lease, VicTrack may by written notice to the Tenant require the Tenant to suspend any or specified activities at the Premises.

18.11 Services

18.11.1 The Tenant must advise VicTrack of the location of all Services identified by the Tenant during the Term including:

- (a) all Services identified by the Tenant during the course of any alterations or works at the Premises (other than those Services identified in the Condition Report or Services Plan); and
- (b) the location of Services identified in the Condition Report or any Services Plan where the Tenant becomes aware that the location of Services are located in an area different to that specified within the Condition Report and/or Services Plan.

18.11.2 The Tenant acknowledges that:

- (a) VicTrack does not represent that the Services exist and/or are located in the areas identified in the Condition Report and/or Services Plan; and
- (b) the Tenant must make its own enquiries as to the existence and/or location of the Services.

18.12 Cultivation

18.12.1 The Tenant must not use the Premises to cultivate fruit, vegetables or other items of food for commercial or domestic human or animal consumption without obtaining VicTrack's prior written consent.

18.12.2 VicTrack will not unreasonably withhold its consent pursuant to clause 18.12.1 if the Tenant proves to VicTrack's reasonable satisfaction that the Premises are suitable for the intended cultivation use and, if required by VicTrack, may require the Tenant to provide:

- (a) a soil test confirming that the Premises are suitable for the intended cultivation use; and/or
- (b) a certificate (in a form approved by VicTrack) from an appropriately qualified and experienced person approved of by VicTrack that the Premises are free from Contamination.

18.13 No Hazardous Materials

18.13.1 In addition to its other obligations in this Lease concerning Contamination and environmental management of the Premises, the Tenant must not bring onto the Premises or store on the Premises Hazardous Material or Dangerous Goods unless:

- (a) required by the Tenant for the Tenant's specific use of the Premises; and
- (b) the Tenant obtains VicTrack's prior written consent (such consent may be given or withheld or given subject to any conditions as VicTrack determines in its absolute discretion); and
- (c) the Tenant provides VicTrack with an Environment Management Plan in relation to the relevant substance(s), which meets VicTrack's reasonable requirements.

18.13.2 The Tenant must also:

- (a) on or before the Commencement Date provide VicTrack with a register listing all Hazardous Material and Dangerous Goods which the Tenant intends to bring onto or store on the Premises; and
- (b) immediately provide VicTrack with an amended and updated register if the list should at any time become inaccurate or out dated.

18.14 Land Use Activity Agreement

The Tenant must promptly notify VicTrack in advance of any activities which are, or may become the subject of any land use activity agreement under Division 2 of Part 4 of the *Traditional Owner Settlement Act 2010* (Vic) that is applicable to the Premises.

19. Dealing with interest in the Premises**19.1 No Parting with Possession**

The Tenant must not share or give up possession of the Premises or part thereof including assigning this Lease, sub-leasing the Premises or part thereof or granting to any person a licence or concession in respect of the Premises or part thereof, without the prior written consent of VicTrack, subject to clause 19.2.

19.2 Conditions of Consent

VicTrack will not unreasonably withhold its consent to an assignment, sublease or licence if the Tenant:

- 19.2.1 requests VicTrack in writing to consent to the assignment of the Lease or the grant of a sub-lease or licence;
- 19.2.2 has remedied any breach of this Lease of which the Tenant has received written notice from VicTrack;
- 19.2.3 provides to VicTrack the following:
 - (a) the name, address and where appropriate ACN and ABN of the new tenant, sub-tenant or licensee;



- (b) proof, to VicTrack's reasonable satisfaction, that the new tenant, sub-tenant or licensee is solvent and able to comply with its obligations under this Lease or the sub-lease or licence (as the case may be) by providing at least 2 references as to the financial circumstances of the new tenant, sub-tenant or licensee and at least 2 references as to the business experience of the new tenant, sub-tenant or licensee;
 - (c) a completed credit application signed by the new tenant, sub-tenant or licensee;
 - (d) a copy of any contract of sale of business which relates to the assignment, sub-lease or licence;
 - (e) a copy of the proposed sublease or licence; and
 - (f) an assignment of lease, deed of consent to sub-lease or deed of consent to licence (as the case may be) in the form reasonably required by VicTrack executed by the Tenant and the new tenant, sub-tenant or licensee (as the case may be);
- 19.2.4 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by VicTrack, to execute the guarantee contained in this Lease;
- 19.2.5 pays VicTrack's reasonable costs in connection with approving the new tenant, sub-tenant or licensee (whether or not consent is granted to the assignment, sub-lease or licence) and the costs of the preparation, negotiation and stamping of any document required under this clause (that are payable whether or not the assignment, sub-lease or licence proceeds); and
- 19.2.6 where the Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by section 61(3) of the Act.

19.3 Additional Conditions upon Grant of Sub-lease or Licence

The Tenant must provide VicTrack, to VicTrack's reasonable satisfaction, with the current details of any sub-lease or licence (as the case may be) including but not limited to any monies payable under that sub-lease or licence within 14 days of receiving a written request for such information from VicTrack.

19.4 Change of Permitted Use

Despite clauses 19.1 and 19.2, VicTrack may, in its absolute discretion, withhold its consent to an assignment of lease, sub-lease or licence if the new tenant, sub-tenant or licensee seeks to use the Premises, or part thereof, for a use other than the Permitted Use.

19.5 No Assignment if Act to Apply

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease would result in the Act applying to this Lease (either during the Term or as a result of the grant of a lease for the Further Term) VicTrack may withhold its consent to an assignment of this Lease.

19.6 Change in Shareholding

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either



beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek VicTrack's prior written consent.

19.7 Mortgage of Lease

The Tenant must not create any security over this Lease or the Premises or VicTrack's Improvements without VicTrack's prior written consent.

20. Tenant's obligations at the end of this Lease

20.1 Tenant's Obligations

On or before the end of this Lease, the Tenant must:

- 20.1.1 vacate the Premises and give them back to VicTrack in a condition consistent with the Tenant having complied with its obligations under this Lease, including (without limitation) its obligations under clause 13;
- 20.1.2 remove the Tenant's Improvements (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Improvements including making good any damage caused by the removal of the Tenant's Improvements, restoring the surface of the Premises to VicTrack's reasonable satisfaction, following VicTrack's reasonable directions and ensuring that all Services to the Tenant's Improvements are disconnected; and
- 20.1.3 give to VicTrack all keys and other security devices for the purposes of obtaining access to the Premises.

20.2 Tenant's Improvements Left in Premises

- 20.2.1 If the Tenant fails to remove the Tenant's Improvements pursuant to clause 20.1.2, then, at VicTrack's election, anything left in the Premises after 7 days of the end of this Lease:
 - (a) may be deemed to be abandoned by the Tenant;
 - (b) may be removed and/or stored by VicTrack at the Tenant's cost and at the Tenant's risk; and
 - (c) may be delivered to the Tenant at its address for service of notice at the Tenant's cost and at the Tenant's risk.
- 20.2.2 If VicTrack elects that some or all of the Tenant's Improvements are deemed to be abandoned in accordance with clause 20.2.1, then upon the expiry of the Term or any earlier determination of this Lease, the Tenant acknowledges that:
 - (a) those Tenant's Improvements will become the property of VicTrack;
 - (b) the Tenant is not entitled to receive any compensation from VicTrack; and
 - (c) the Tenant must do all acts and sign all documents as may be required by VicTrack to effect the transfer and vesting of the ownership in those Tenant's Improvements to VicTrack.

21. VicTrack's rights and obligations

21.1 Quiet Enjoyment

As long as the Tenant does not breach this Lease, VicTrack must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease or where such interruption or disturbance is required to enable compliance by VicTrack or any other party with Safety Legislation.

21.2 Alterations to the Premises

VicTrack may carry out any works, alterations, renovation or refurbishment of the Premises which may include extending or reducing any Improvements but must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising VicTrack's rights under this clause.

21.3 Dealing with the Premises

VicTrack may:

- 21.3.1 subdivide the Premises or grant easements or other rights over the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;
- 21.3.2 install, repair and replace pipes, cables and conduits in the Premises (including, without limitation, the Services); and
- 21.3.3 use the roof and external walls of the Premises for any purposes VicTrack determines.

21.4 Entry by VicTrack

VicTrack may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 21.4.1 inspect the condition of the Premises;
- 21.4.2 rectify any default by the Tenant under this Lease; and
- 21.4.3 carry out any inspection, repairs, maintenance, works or alterations in the Premises which VicTrack decides to or is required to carry out by this Lease, any Law or Government Agency or pursuant to VicTrack's exercise of any of its functions and obligations under the *Transport (Compliance and Miscellaneous) Act 1983* or the *Rail Management Act 1996*.

VicTrack must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising VicTrack's rights under this clause.

21.5 Emergency Entry

VicTrack may enter the Premises at any time without giving notice to the Tenant in an emergency.

21.6 Reletting and Sale

VicTrack may:



- 21.6.1 affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and
- 21.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending purchasers of the Premises at any reasonable time upon reasonable notice to the Tenant during the Term.

Any sign erected by VicTrack must not unreasonably interfere with the Tenant's use and occupation of the Premises.

21.7 VicTrack's Consent

Where VicTrack is required to give its consent under this Lease, unless otherwise specified, VicTrack must not unreasonably withhold its consent but may give its consent subject to such conditions as VicTrack may reasonably determine.

22. Termination of Lease

22.1 Re-entry

VicTrack may re-enter the Premises and terminate this Lease if:

- 22.1.1 any part of the Rent is in arrears for a period of 14 days after VicTrack has given the Tenant written notice of such arrears; or
- 22.1.2 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from VicTrack; or
- 22.1.3 the Tenant or the Guarantor is the subject of an Insolvency Event.

22.2 Damages following Determination

If this Lease is terminated by VicTrack, the Tenant agrees to compensate VicTrack for any loss or damage VicTrack suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

22.3 Essential Terms

The essential terms of this Lease are clauses 3, 4, 7.1, 8.1, 8.2, 9, 10.1, 12.1, 12.2, 12.3, 12.4, 13, 14.1, 16.1, 18.3, 19.1, 19.6 and 19.7. Other terms of this Lease may also be essential terms if they are specified as such. The breach of an essential term is a repudiation of this Lease.

22.4 No Deemed Termination

If the Tenant vacates the Premises, VicTrack will not be deemed to have terminated this Lease merely by accepting keys from the Tenant, entering the Premises for any purpose, or showing the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as VicTrack gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.

23. Destruction or Damage of Premises

23.1 Reduction in Rent

If the Premises or any part of the Premises are destroyed or damaged to the extent that the Tenant cannot use or access the Premises (except if the Tenant caused or contributed to the destruction or damage or VicTrack's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then VicTrack will reduce the Rent and the Rates and Taxes by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises or the relevant part of the Premises.

23.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or damaged, VicTrack may, within 6 months from the date of such damage or destruction, give notice to the Tenant:

- 23.2.1 terminating this Lease, where VicTrack considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 23.2.2 that VicTrack will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

VicTrack does not have to reinstate the Premises.

23.3 Tenant's Right of Termination

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to VicTrack terminating this Lease where VicTrack does not:

- 23.3.1 give notice to the Tenant pursuant to clause 23.2; or
- 23.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, pursuant to clause 23.3, each party is released from all further obligations under this Lease. Nothing in this clause releases either party from any breach of this Lease arising prior to the date of termination.

23.4 Dispute Resolution

If a dispute arises under this clause about the amount of the Rent or Rates and Taxes payable by the Tenant, either party may give to the other a dispute notice specifying the dispute and requiring its resolution under this clause (**Notice of Dispute**). Within 14 days after the Notice of Dispute is given, representatives of each party authorised to settle the dispute must confer to try to resolve the dispute. If the dispute is not resolved within 21 days after the Notice of Dispute is given, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

23.5 No Compensation

The Tenant acknowledges that if the Premises are destroyed or damaged or if this Lease is ended pursuant to this clause 23, the Tenant is not entitled to receive any compensation from VicTrack.



24. Guarantor

24.1 Liability of Guarantor

In consideration of VicTrack granting this Lease to the Tenant at the Guarantor's request, the Guarantor:

- 24.1.1 guarantees that the Tenant will strictly observe and perform its obligations under this Lease including during any period of overholding or any Further Term;
- 24.1.2 must pay on demand to VicTrack money for any loss suffered by VicTrack due to the Tenant's breach of this Lease; and
- 24.1.3 indemnifies VicTrack against all loss suffered by VicTrack as a result of VicTrack having entered into this Lease including as a result of a breach of this Lease by the Tenant or this Lease being unenforceable against the Tenant.

24.2 Extension of Liability

The Guarantor is liable even if:

- 24.2.1 VicTrack grants to the Tenant or a Guarantor any indulgence or extension of time;
- 24.2.2 this Lease is varied or ends for any reason whatsoever;
- 24.2.3 this Lease cannot be registered at the Titles Office;
- 24.2.4 any Guarantor does not sign this Lease; or
- 24.2.5 VicTrack decides not to sue the Tenant or any other Guarantor.

24.3 Not Enforce Claim Against Tenant

The Guarantor must:

- 24.3.1 not seek to recover any money from the Tenant until VicTrack has been paid all moneys owing from the Tenant under this Lease;
- 24.3.2 not prove in the bankruptcy or winding up of the Tenant unless VicTrack has been paid all moneys owing to VicTrack by the Tenant under this Lease; and
- 24.3.3 pay to VicTrack any money which VicTrack has been unable to retain as a preferential payment received from the Tenant.

24.4 Sale of Premises

If VicTrack sells the Premises VicTrack may assign the benefit of the Guarantor's obligations.

24.5 Security Deposit

If the Act applies to this Lease, VicTrack and the Tenant agree that if the Tenant wishes to provide a security deposit in lieu of the guarantee pursuant to this clause 24, it will be reasonable for VicTrack to require the security deposit to be an amount equal to one year's Rent plus GST from time to time and the Tenant:

- 24.5.1 must pay any additional amount towards the security deposit within 14 days of demand to maintain the security deposit at the required level; and



24.5.2 acknowledges that the payment of any security deposit pursuant to this clause 24.5 is in addition to the payment of the Security Deposit.

The parties rights and obligations concerning any security deposit provided pursuant to this clause 24 will be governed by clause 10.

25. General

25.1 Notices

Any notice required to be served under this Lease must be in writing signed by the party issuing the notice or its authorised officer(s), lawyer(s) or appointed attorney(s) and must be served by post, facsimile transmission or hand delivered to:

25.1.1 the Tenant at its address set out in this Lease or the Tenant's registered office address or the Premises or the last known address of the Tenant; and

25.1.2 VicTrack at its address set out in this Lease or any other address notified in writing to the Tenant by VicTrack.

25.2 Time of Service

A notice or other communication is deemed served:

25.2.1 if delivered personally or left at the person's address, upon delivery;

25.2.2 if posted, 2 business days after being posted;

25.2.3 if sent by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

25.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

25.3 Entire Understanding

This Lease and the disclosure statement attached to this Lease (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

25.4 Waiver

If VicTrack accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of VicTrack's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of VicTrack's rights under this Lease.

25.5 Lease Schedules, Community Conditions and Special Conditions

25.5.1 The parties agree and acknowledge that the Lease incorporates the terms and conditions set out in the Retail Lease Schedule, Ground Lease Schedule, Community Conditions, Transport Infrastructure Schedule and Special Conditions (where applicable).

25.5.2 The parties further agree and acknowledge that:

- (a) the Retail Lease Schedule overrides any inconsistent provisions in the Lease;
- (b) the Ground Lease Schedule overrides any inconsistent provisions in the Lease;
- (c) the Community Conditions override any inconsistent provisions in the Lease and the Ground Lease Schedule;
- (d) the Transport Infrastructure Schedule overrides any inconsistent provisions in the Lease; and
- (e) the Special Conditions override any inconsistent provisions in the Lease, the Ground Lease Schedule, Community Conditions and the Transport Infrastructure Schedule.

25.6 No Caveat

The Tenant must not lodge for registration or permit to exist a caveat, a mortgage of this Lease or any other registrable instrument on any title to the Premises. If the Tenant lodges a caveat, a mortgage of this Lease or other dealing on any title to the Premises, the Tenant appoints VicTrack as its attorney to do everything necessary to remove the caveat, mortgage or other dealing, including executing and registering a withdrawal of caveat or discharge of mortgage (or other relevant instrument, as the case may be) and the Tenant must reimburse to VicTrack any costs incurred by VicTrack under this clause.

26. Interpretation

26.1 Governing Law and Jurisdiction

This Lease is governed by and is to be construed in accordance with the Laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

26.2 Persons

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

26.3 Joint and Several

If a party consists of more than one person, this Lease binds them jointly and each of them severally.

26.4 Legislation

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

26.5 Clauses and Headings

In this Lease:



- 26.5.1 a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Lease; and
- 26.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

26.6 Severance

In this Lease:

- 26.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 26.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

26.7 Number and Gender

In this Lease, a reference to:

- 26.7.1 the singular includes the plural and vice versa; and
- 26.7.2 a gender includes the other genders.

26.8 Exclusion of Statutory Provisions

The following statutory provisions are excluded from this Lease:

- 26.8.1 Section 144 of the *Property Law Act 1958* (Vic); and
- 26.8.2 Division 7 of the *Transfer of Land Act 1958*.



Attachment 1 Retail Schedule

Not applicable



Attachment 2 Ground Lease Schedule

1. No VicTrack Improvements

The Tenant acknowledges that the Premises comprise of land only and that there are no VicTrack Improvements.

2. Tenant's obligations with respect to the Tenant's Improvements

2.1 The Tenant acknowledges that:

2.1.1 it is the owner of the Tenant's Improvements;

2.1.2 it must, at its own cost:

(a) maintain;

(b) repair (including structural and capital repairs); and

(c) insure,

the Tenant's Improvements throughout the Term and any Further Term of this Lease;

2.1.3 it assumes all risks associated with the Tenant's Improvements; and

2.1.4 VicTrack will not be responsible for any maintenance works, repairs or insurance obligations in relation to the Tenant's Improvements.



Attachment 3 Transport Infrastructure Schedule

Not applicable



Attachment 4 Special Conditions

1. Condition Report

- 1.1 The Tenant acknowledges that it must, within 28 days of the date of this Lease, complete and return to VicTrack's solicitors the Condition Report.
- 1.2 Once approved by VicTrack, the Tenant authorises VicTrack or its solicitors, to insert the Condition Report into Attachment 7 of this Lease.
- 1.3 Clause 12.1 is deleted and replaced with:

'12.1 Condition Report

The Tenant acknowledges and agrees that the Condition Report reflects the true condition of the Premises as at the date of the Condition Report.'

2. Heritage Contingency Plan

- 2.1 The Tenant acknowledges that it has read, understands and accepts the Heritage Contingency Plan provided by VicTrack and attached at Attachment 7 of this Lease (**Heritage Contingency Plan**).
- 2.2 Without limiting clause 18.1, the Tenant must comply with the requirements, procedures and recommendations set out in the Heritage Contingency Plan (as may be amended by written notice by VicTrack to the Tenant from time to time).

3. Administration Fee Payable for Late Payments

- 3.1 Without limiting any other provision of this Lease, the Tenant must pay to VicTrack on demand an administration fee in the amount of \$250.00 for each and every instance that any money payable by the Tenant under this Lease is not paid on the date on which such payment became due.
- 3.2 VicTrack may, in its absolute discretion, alter the administration fee payable pursuant to Special Condition 3.1 by written notice to the Tenant.



Attachment 5 Plan

See attached



Attachment 6 Disclosure Statement

Not applicable



Attachment 7 Additional Attachments

Heritage Contingency Plan

Condition Report

VicTrack – Brookfield Global Integrated Solutions
Land Condition Report

Property Name:

Lot 26 - RAILWAY.

Property Address:

Ph:

As above. - MOAMA

Applicant;

Lessee;

Occupier:

MOAMA BOWLING CLUB

Term of Lease:

20 YEARS.

Land Area:

0.75 hectares (estimate).

Please provide a complete description of the Land as per the following categories.

Topography:

General characteristics of the land, are there highs and lows in the land? Is it on an incline? What shape is the land? Give as much information as possible

FLAT.

Access:

How is the land accessed? Does the land have street frontage? If so from which side? Is there evidence of land accessed by others, do those people have permission to gain access?

The land has access from north, south, east & west.
Street frontage is from Francis st & also the intersection at Shaw st & Cobb highway (S.W.). Land mostly used as car park therefore public access available.

Services:

Does the site offer good Drainage, Sewerage, Power or Gas? Is there evidence that the land is subject to flooding, does water pool on the land, please give details:

Yes. Drainage, sewage etc are all in excellent condition. Land not prone to flooding. Water doesn't really pool on land.

VicTrack – Brookfield Global Integrated Solutions Land Condition Report

Land Surface:

Give details of the surfacing material on the land ie: concrete, soil, asphalt, etc and its condition.

95% asphalt. Some small garden beds & concrete pathways.

Improvements and Foliage:

Give details of any improvements on the land ie: Fences, Buildings, Trees etc.

A canopy (10m x 4m) near the Blair st entrance to the club. Steel structure, canvas cover.

Contamination:

Give details of any rubbish, Landfill, soil markings, stains, wells, underground tanks, or any unusual circumstances that may indicate the land has been contaminated or disturbed.

N/A.

History of Use:

Car park. for many years..

Please provide at least 3 photos of the premises with detail and comments below.

Picture 1.

refer to file 'Lot 26 photos 1'

location - club side of railway, standing on the
most northerly part of the main building facing
North East.

Picture 2.

refer to file 'Lot 26 photos 2'

location, club side of railway, standing on the
most northerly part of the main building facing
South West.

Picture 3.

refer to file 'lot 26 photos 3'

location - standing on the opposite side of the
railway to the main club, facing south west.
Picture includes canopy discussed earlier in
'improvements & foliage'.

Picture 4.

refer to file 'lot 26 photos 4'

location - standing on the opposite side of the
railway to the main club, facing north east.

VicTrack – Brookfield Global Integrated Solutions Land Condition Report

Declaration

I/we declare that all the information provided above is true and is an accurate representation of the condition of the land as at the date of the report.

Lessee: MOAMA BOWLING CLUB

Signature: 

Lucas Walker
Finance Manager
Moama Bowling Club Ltd

Signature/s:

Date: 19 June 2017

VicTracks Agent:

Signature: 

Date: 13/7/17

Lot 26 photos - 1



Lot 26 photos - 2



Lot 26 photos - 3



Lot 26 photos - 4





Heritage Contingency Plan

When Working on or Occupying VicTrack Owned Land

VicTrack

DISTRIBUTION PAGE

Heritage Contingency Plan

When Working on or Occupying VicTrack Owned Land

Date: 19 August 2014

Prepared By:

Environment and Sustainability Group

Property Department

VicTrack

VicTrack

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VicTrack

1.0 INTRODUCTION

1.1 Overview

This Heritage Contingency Plan (HCP) has been prepared for use by VicTrack employees, rail infrastructure lease (RIL) tenants, non-rail third party tenants, contactors and anyone conducting any kind of activity on VicTrack owned land that may contain cultural heritage values.

This HCP was prepared to provide a strategy to manage cultural heritage found during the course of an activity (such as soil disturbance works) where the activity has potential to impact upon cultural heritage material on VicTrack owned land and has no formal heritage approvals under the *Heritage Act 1995*, *Planning and Environment Act 1987* or *Aboriginal Heritage Act 2006*.

If site specific cultural heritage investigations and formal heritage approvals (i.e the CHMP, Permit, Consent or Planning Permit conditions and contingency plans) have been completed, then the contingency plans in those approval documents supersede this HCP.

1.2 Objective

The HCP provides a structured framework in which the requirements for recording and salvaging of Aboriginal or historical places will be assessed, and action taken, within the course of works.

In particular, this HCP provides contingency plans for the following:

- Unexpected Discovery of Human Remains;
- Unexpected Discovery of Isolated Aboriginal Cultural Heritage;
- Unexpected Discovery of Stratified Occupation Deposits;
- Unexpected Discovery of other Aboriginal Cultural Heritage; and
- Discovery of Historical Cultural Heritage Material During Works.

1.3 Legislative Requirements

It is the responsibility of the parties identified in Section 2.1 to ensure works comply with legislative requirements and guidance, including but not limited to:

- *Heritage Act 1995*.
- *Planning and Environment Act 1987*
- *Aboriginal Heritage Act 2006*
- *Aboriginal Heritage Regulations 2007*

VicTrack

2.0 IMPLEMENTATION OF THE HCP

2.1 Responsibilities

To ensure the successful implementation of the HCP, the following stakeholders are required to assume responsibility for the actions below.

Party	Responsibility
Site Owner - VicTrack	<p><i>Overarching responsibility for the communication and implementation of the requirements of the HCP.</i></p> <ul style="list-style-type: none">• Provision of this HCP to site tenants / occupiers and contractors conducting earthworks or activities that may impact upon cultural heritage values at the site.• Conducting compliance auditing of implementation of the HCP if soil disturbance works have been organised by the Site Owner or on land occupied by VicTrack (Site Owner and Occupier).
Site Tenants / Occupiers RILs	<p><i>During tenancy / occupation responsibility for the implementation of this HCP ensuring appropriate actions are taken should Aboriginal or Heritage places be uncovered.</i></p> <ul style="list-style-type: none">• Provision of this HCP to contractors who are likely to be in contact with soil at the site.• Ensuring any contractors and visitors are inducted and comply with the requirements of this HCP.• Conducting compliance auditing of implementation of the HCP.• Ensuring compliance with all applicable legislation and guidelines relevant to management of cultural heritage.• Reporting any incidents, complaints, non-conformances and corrective actions taken to the Site Owner.
Construction / Maintenance Workers On-site Contractors	<p><i>Perform any activities / soil disturbance works in the manner specified in this HCP.</i></p> <ul style="list-style-type: none">• Complying with all applicable legislation and guidelines relevant to management of cultural heritage.• Ensuring that all employees, sub-contractors it engages and any other personnel accessing the site whilst under its control comply with the requirements of this HCP.• Ensure the contingency plans for discovering Aboriginal or Historical Cultural Heritage Material are adhered to for construction / maintenance workers.• Works must cease on discovery of Aboriginal or Historical Cultural Heritage Material• Contact appropriate authorities outlined in this HCP if unexpected discovery of Aboriginal or Historical Cultural Heritage Material occurs (i.e. The Victoria Police, State Coroner's Office, Heritage Victoria and/or the Department of Sustainability and Environment Emergency Coordination Centre)• Reporting any incidents, complaints non- conformances and corrective actions taken to the Site Tenant / Occupier or Site Owner for which they are working.

2.2 Revision of HCP

This HCP is a working document and it is expected that it will require review and amendment to accommodate any relevant legislation changes and to continually improve the effectiveness of current and future HCPs. VicTrack as the Site Owner and author of this document is responsible for the review and revision of this HCP document.

3.0 CONTINGENCY PLANS

The following sections describe minimum measures for recording and salvaging any discovered Aboriginal or historical places during the course of an activity and action taken.

3.1 DISCOVERY OF ABORIGINAL CULTURAL HERITAGE MATERIAL DURING WORKS

3.1.1 Unexpected Discovery of Human Remains

If any suspected human remains are found during any activity, works must cease. The Victoria Police and the State Coroner's Office must be notified immediately. If there are reasonable grounds to believe that the remains are Aboriginal, the Department of Sustainability and Environment Emergency Coordination Centre must be contacted immediately on 1300 888 544. This advice has been further developed and is described in the following five step contingency plan. Any such discovery at the Activity Area must follow these steps:

Discovery

- If suspected human remains are discovered, all activity within a buffer zone of 15 metres of the suspected human remains must stop to ensure minimal damage is caused to the remains; and
- The remains must be left in place, and protected from harm or damage.
- Notification
- Once suspected human skeletal remains have been found, the Coroners Office and the Victoria Police must be notified immediately;
- If there is reasonable grounds to believe that the remains could be Aboriginal, the Department of Sustainability and Environment Emergency Co-ordination Centre must be immediately notified on 1300 888 544; and
- All details of the location and nature of the human remains must be provided to the relevant authorities. If it is confirmed by these authorities that the discovered remains are Aboriginal skeletal remains, the person responsible for the activity must report the existence of the human remains to the Secretary, DPCD in accordance with Section 17 of the Aboriginal Heritage Act 2006.

Impact Mitigation or Salvage

- The Secretary, DPCD after taking reasonable steps to consult with any Aboriginal person or body with an interest in the Aboriginal human remains, will determine the appropriate course of action as required by Section 18(2)(b) of the Aboriginal Heritage Act 2006;
- An appropriate impact mitigation or salvage strategy as determined by the Secretary, DPCD must be implemented (This will depend on the circumstances in which the remains were found, the number of burials found and the type of burials and the outcome of consultation with any Aboriginal person or body);
- Note: In consultation with any relevant RAP, a sponsor may consider incorporating a contingency plan to reserve an appropriate area for reburial of any recovered human

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remains that may be discovered during the activity. This may assist the Secretary in determining an appropriate course of action.

Curation and Analysis

- The treatment of salvaged Aboriginal human remains must be in accordance with the direction of the Secretary, DPCD.
- Reburial
- Any reburial place(s) must be fully documented by an experienced and qualified archaeologist, clearly marked and all details provided to OAAV;
- Appropriate management measures must be implemented to ensure that the remains are not disturbed in the future.

3.1.2 Unexpected Discovery of Isolated Aboriginal Cultural Heritage

If an isolated stone artefact scatter (less than five artefacts) is found then the following management process must be followed:

- Work must immediately stop in the area within a buffer zone of 15 metres from the primary grid coordinate of a new Aboriginal archaeological place;
- A Cultural Heritage Advisor (CHA) must inspect the Aboriginal cultural heritage and record information sufficient for updating existing or completing new place records for inclusion in the VAHR;
- The Aboriginal archaeological place, objects or deposits must be recorded and documented in accordance with all relevant OAAV standards and guidelines;
- The CHA will facilitate the involvement of the RAP in the onsite investigation and assessment of the significance of the Aboriginal cultural heritage material;
- The activity may then recommence.

3.1.3 Unexpected Discovery of Stratified Occupation Deposits

If a stratified occupation deposit is found (remains of hearths or cooking fires, shell middens or stone artefact knapping floors), works must stop in the relevant area and the following process be followed:

- Work must immediately stop in the area within a buffer zone of 15 metres from the primary grid coordinate of a new Aboriginal archaeological place;
- A CHA will inspect the Aboriginal cultural heritage as soon as possible and within a maximum of three days of its discovery;
- The CHA will facilitate the involvement of the RAP in the onsite investigation and assessment of the significance of the Aboriginal cultural heritage;
- The Sponsor, the CHA and the RAP must discuss the possibility of avoiding and minimising harm to that Aboriginal cultural heritage, and the Sponsor must avoid or minimise harm to the Aboriginal cultural heritage, where possible;
- Where harm cannot be avoided, the CHA must salvage the cultural heritage with the aim of establishing the extent, nature and significance of the Aboriginal cultural heritage. Subsequent aims of the salvage excavation will be to establish:
- The relative and absolute (if possible) age of any identified Aboriginal cultural heritage;

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- The character of the excavated artefact assemblage if extant; and
- As far as possible, the nature of occupation of any identified Aboriginal cultural heritage.
- In cases where Aboriginal cultural heritage is considered in situ and where suitable sample material is available, appropriate age determinations (e.g. radiocarbon) are to be made to establish the age of the cultural material;
- Any artefacts recovered during excavations are to be secured by the CHA until the salvage has been concluded;
- Details regarding the methodology of any collection or salvage of Aboriginal cultural heritage located during the project will be determined by the CHA. Without limiting the options, a CHA will:
- Catalogue the Aboriginal cultural heritage;
- Label and package the Aboriginal cultural heritage with reference to provenance; and
- Ensure all excavated deposits are sieved, and the presence of any additional cultural heritage material recorded in detail;
- With the appropriate Aboriginal community representative/s relating to the Activity Area, arrange storage of the Aboriginal cultural heritage in a secure location together with copies of the catalogue and assessment documentation.
- Any excavations will take place in accordance with Regulation 61(3-7) of the Aboriginal Heritage Regulations 2007 and be supervised by a person appropriately qualified in archaeology. This person will also facilitate the involvement of appropriate Aboriginal community representative/s in these excavations and subsequent management discussions;
- Works may recommence at completion of the salvage excavation.
- Where it is determined that any salvaged or recovered Aboriginal cultural heritage material are to be reburied, they must be placed in a durable container together with information about their provenance and placed in a secure location as close as possible to their place of origin. The reburial location is to be documented and details provided to the VAHR;
- A report detailing the findings of any collection, salvage or analysis of Aboriginal cultural heritage material recovered as a result of this activity will be completed and lodged with the VAHR as soon as possible after the completion of the activity and within a maximum of 60 days. This report will include plans and/or maps that accurately present the location and extent of any excavation, and the details of exposed sediments and stratigraphy;
- All Aboriginal cultural heritage material found during the course of works will be reported to the Secretary, DPCD and a VAHR place recording form for new places found will be completed and returned to AAV. The person in charge of the works at the time that the Aboriginal cultural heritage material is found is deemed to be the person who discovered the place or object. Under the provisions Section 34(2)(a) of the Aboriginal Heritage Act 2006, it will not be necessary to obtain additional permits for Aboriginal archaeological places found, providing that the activity is undertaken within the scope of the CHMP.

3.1.4 Unexpected Discovery of other Aboriginal Cultural Heritage

If a dense artefact scatter, hearth feature or other Aboriginal cultural heritage is found, works must stop in the relevant area and the following process be followed:

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- Work must immediately stop in the area within a buffer zone of 15 metres from the primary grid coordinate of a new Aboriginal archaeological place;
- A CHA will inspect the Aboriginal cultural heritage as soon as possible and within a maximum of three days of its discovery;
- The CHA will facilitate the involvement of the RAP in the onsite investigation and assessment of the significance of the Aboriginal cultural heritage;
- The Sponsor, the CHA and the RAP must discuss the possibility of avoiding and minimising harm to that Aboriginal cultural heritage, and the Sponsor must avoid or minimise harm to the Aboriginal cultural heritage, where possible;
- Where harm cannot be avoided, the CHA must salvage the cultural heritage with the aim of establishing the extent, nature and significance of the Aboriginal cultural heritage. Subsequent aims of the salvage excavation will be to establish:
 - The relative and absolute (if possible) age of any identified Aboriginal cultural heritage;
 - The character of the excavated artefact assemblage if extant; and
 - As far as possible, the nature of occupation of any identified Aboriginal cultural heritage.
- In cases where Aboriginal cultural heritage is considered in situ and where suitable sample material is available, appropriate age determinations (e.g. radiocarbon) are to be made to establish the age of the cultural material;
- Any artefacts recovered during excavations are to be secured by the CHA until the salvage has been concluded;
- Details regarding the methodology of any collection or salvage of Aboriginal cultural heritage located during the project will be determined by the CHA. Without limiting the options, a CHA will:
 - Catalogue the Aboriginal cultural heritage;
 - Label and package the Aboriginal cultural heritage with reference to provenance; and
 - Ensure all excavated deposits are sieved, and the presence of any additional cultural heritage material recorded in detail;
- With the appropriate Aboriginal community representative/s relating to the Activity Area, arrange storage of the Aboriginal cultural heritage in a secure location together with copies of the catalogue and assessment documentation.
- Any excavations will take place in accordance with Regulation 61(3-7) of the Aboriginal Heritage Regulations 2007 and be supervised by a person appropriately qualified in archaeology. This person will also facilitate the involvement of appropriate Aboriginal community representative/s in these excavations and subsequent management discussions;
- Works may recommence at completion of the salvage excavation.
- Where it is determined that any salvaged or recovered Aboriginal cultural heritage material are to be reburied, they must be placed in a durable container together with information about their provenance and placed in a secure location as close as possible to their place of origin. The reburial location is to be documented and details provided to the VAHR;

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- A report detailing the findings of any collection, salvage or analysis of Aboriginal cultural heritage material recovered as a result of this activity will be completed and lodged with the VAHR as soon as possible after the completion of the activity and within a maximum of 60 days. This report will include plans and/or maps that accurately present the location and extent of any excavation, and the details of exposed sediments and stratigraphy;
- All Aboriginal cultural heritage material found during the course of works will be reported to the Secretary, DPCD and a VAHR place recording form for new places found will be completed and returned to AAV. The person in charge of the works at the time that the Aboriginal cultural heritage material is found is deemed to be the person who discovered the place or object. Under the provisions Section 34(2)(a) of the Aboriginal Heritage Act 2006, it will not be necessary to obtain additional permits for Aboriginal archaeological places found, providing that the activity is undertaken within the scope of the CHMP.

3.2 Discovery of Historical Cultural Heritage Material During Works

Under the Heritage Act 1995, in the unexpected event that a historical archaeological site is uncovered during the course of works, Heritage Victoria will need to be notified (03) 9637 9475 and a Heritage Inventory Site Card recorded. The appropriate Consent must be obtained from the Executive Director, Heritage Victoria before the site can be subject to further damage or disturbance.