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Date / /

Consent to and Variation of Sub-Lease

Premises: Railway Lots 47, 48 & 49 at Willaura

VicTrack
and

Ararat Rural City Council
ABN 92 492 188 087
and

Willaura Modern Incorporated (A0097792R)
ABN 51 217 487 089

VicTrack

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Schedule

1. **Date:** The day of
2. **Tenant:** Ararat Rural City Council ABN 92 492 188 087 of 59 Vincent St, Ararat VIC 3377
3. **Sub-Tenant:** Willaura Modern Incorporated (A0097792R) ABN 51 217 487 089 of 334 Back Bolac Road, Willaura VIC 3379
4. **Premises:** The premises described in the Lease and known as Railway Lots 47, 48 & 49 at Willaura
5. **Lease:** The lease of the Premises dated 13 December 2017 between VicTrack and the Tenant
6. **Sub-Lease:** The sub-lease between the Tenant and the Sub-Tenant in relation to that part of the Premises known as Railway Lot 47 at Willaura dated 13 November 2017, with the consent of VicTrack pursuant to the Deed of Consent to Sub-Lease
7. **Variation Date:**

Premises means the premises specified in Item 4.

Schedule means the schedule at the front of this Deed.

Sub-Lease means the Sub-Lease specified in Item 6 and where it is consistent with the context means the Sub-Lease as varied by this Deed.

Sub-Tenant means the party in Item 3 and includes the Sub-Tenant's successors and assigns and where it is consistent with the context includes Sub-Tenant's employees, agents, invitees and persons the Sub-Tenant allows on the Premises.

Tenant means the party in Item 2 and includes the Tenant's successors and assigns.

Variation Date means the date specified in Item 7.

Variations means the variations to the Sub-Lease set out in Annexure A.

VicTrack means Victorian Rail Track ABN 55 047 316 805 of 1010 Latrobe Street, Docklands VIC 3008, a statutory corporation established under section 8 the *Rail Management Act 1996* (Vic) and continued in existence under section 116 of the *Transport Integration Act 2010* (Vic) and includes VicTrack's successors and assigns and where it is consistent with the context includes VicTrack's employees and agents.

2. Variation of Sub-Lease

The Tenant and Sub-Tenant agree to vary the Sub-Lease on and from the Variation Date in accordance with the Variations.

3. VicTrack's consent to the Variations

VicTrack consents to the Variations subject to the terms of this Deed and without prejudice to VicTrack's rights, powers and remedies under the Lease (including in respect of any existing breach) or under any law and provided that such consent is not deemed to:

- 3.1 authorise any other arrangement or dealing with the Premises in contravention of the Lease; or
- 3.2 permit the Tenant or the Sub-Tenant to undertake any works, installations, alterations or other activities that the Tenant is not permitted to undertake under the Lease.

4. Sub-Lease

- 4.1 The Tenant and Sub-Tenant acknowledge and agree that it is the responsibility of the Tenant and the Sub-Tenant to ensure that the terms and conditions of the Sub-Lease are consistent with the terms and conditions of the Lease.
- 4.2 The Tenant and Sub-Tenant covenant and agree that, despite any provision in the Sub-Lease to the contrary, the Sub-Lease may only be varied with VicTrack's prior written consent.

- 4.3 If there is any inconsistency between the rights and obligations of the Sub-Tenant under the Sub-Lease and this Deed, the provisions of this Deed prevail to the extent of any inconsistency.

5. Termination of Lease

VicTrack, the Tenant and the Sub-Tenant covenant and agree that, despite any provision in the Sub-Lease to the contrary, if the Lease is validly terminated in accordance with the Lease, and unless VicTrack notifies the Sub-Tenant in writing that the Sub-Lease may continue (either for a definite or an indefinite period, at the end of which the Sub-Lease will end), the Sub-Lease will automatically be terminated upon termination of the Lease.

6. No Tenant release

- 6.1 The Tenant acknowledges and agrees that the Tenant remains liable for, and is not released by this Deed or the Sub-Lease from, the Tenant's obligations under the Lease and that the Tenant is responsible to VicTrack for the acts and omissions of the Sub-Tenant.
- 6.2 Nothing in this Deed varies or affects VicTrack's rights against the Tenant under the Lease.

7. Sub-Tenant release

The Sub-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.

8. Sub-Tenant indemnity

The Sub-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 Sub-Tenant except to the extent that such claims arise out of VicTrack's negligence.

9. Sub-Tenant's insurance

- 9.1 The Sub-Tenant must maintain insurance, noting VicTrack's interest as head landlord, but not as joint insured, with an insurer authorised by the *Insurance Act 1973*, for public liability for the amount of \$20 million concerning one single event (or such greater sum as reasonably required by VicTrack).
- 9.2 The Sub-Tenant must pay all insurance premiums on or before the due date for payment and produce to VicTrack copies of the certificate of currency prior to the commencement date of the Sub-Lease, within 14 days of each anniversary of the renewal of the Policy throughout the term of the Sub-Lease and at any other time upon request by VicTrack.
- 9.3 The Sub-Tenant must not do anything which may make any insurance effected by the Sub-Tenant invalid, capable of being cancelled or rendered ineffective.

10. Other Sub-Tenant's covenants

- 10.1 The Sub-Tenant covenants with VicTrack that the Sub-Tenant has read and is aware of and specifically acknowledges the covenants, terms and conditions in the Lease.
- 10.2 The Sub-Tenant must during the term of the Sub-Lease and any extension or holding over:
- 10.2.1 not do anything or fail to do or permit anything to be done, the doing of, the failing to do or the permitting of which would be, cause or contribute to a breach or non-observance by the Tenant of the Tenant's covenants and obligations under the Lease;
 - 10.2.2 perform and observe the Sub-Tenant's covenants and obligations under the Sub-Lease;
 - 10.2.3 where an activity requires VicTrack's consent under the Lease if undertaken or proposed to be undertaken by the Tenant, not carry out that activity without first having obtained VicTrack's consent (which consent may be given or withheld in accordance with the terms and conditions of the Lease);
 - 10.2.4 despite anything to the contrary in the Sub-Lease, not sub-sub-lease or share possession or transfer or otherwise deal with the Sub-Lease without VicTrack's prior written consent; and
 - 10.2.5 pay VicTrack's reasonable costs in relation to any consent required under this Deed (whether or not such consent is provided) or any default by the Sub-Tenant under this Deed, including full indemnity for legal costs and disbursements.

11. VicTrack's costs

The Tenant must pay on demand VicTrack's reasonable legal and other costs and expenses in relation to the preparation, negotiation and finalisation of this Deed.

12. GST**12.1 Definitions**

In this clause:

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

12.2 GST exclusive

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

12.3 Increase in consideration

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

12.4 Payment of GST

Subject to clause 12.5 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 Deed.

12.5 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 12.4.

12.6 Reimbursements

If this Deed 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:

12.6.1 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

12.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

12.7 Adjustment events

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

12.7.1 the supplier must provide an adjustment note to the recipient within 10 business days of becoming aware of the adjustment; and

12.7.2 any payment necessary to give effect to the adjustment must be made within 10 business days after the date of receipt of the adjustment note.

13. General**13.1 Alterations**

This Deed may be altered only in writing signed by each party.

13.2 Approvals and consents

Except where this Deed expressly states otherwise, a party may withhold or give conditionally any approval or consent under this Deed.

13.3 Survival

Any indemnity or any obligation of confidentiality under this Deed is independent and survives termination of this Deed. Any other term by its nature intended to survive termination of this Deed survives termination of this Deed.

13.4 Counterparts

This Deed may be entered into by the exchanged of executed counterparts.

13.5 Entire agreement

This Deed constitutes the entire agreement between the relevant parties in connection with its subject matter and supersedes all previous agreement or understandings between the parties in connection with their subject matter.

13.6 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

14. Interpretation**14.1 Joint and several**

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

14.2 Legislation

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

14.3 Clauses and headings

In this Deed:

14.3.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Deed; and

14.3.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed.

14.4 Severance

In this Deed:

14.4.1 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

14.4.2 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 Deed.

14.5 Number and gender

In this Deed, a reference to:

14.5.1 the singular includes the plural and vice versa; and

14.5.2 a gender includes the other genders.



Signing Page

Executed by the parties as a deed on the date specified in Item 1.

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

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory (print)

Name of Witness (print)

Title of Authorised Signatory (print)

The Common Seal of the **Ararat Rural City Council**)
was affixed hereto in accordance with the resolution of)
Council made on _____)
)

.....
Chief Executive Officer

Executed as a deed by **Willaura Modern**)
Incorporated ABN 51 217 487 089 by being signed)
by those persons who are authorised to sign on)
behalf of the incorporation in the presence of:)

.....
Signature of Committee Member

.....
Signature of Committee Member

.....
Print full name

.....
Print full name

.....
Address

.....
Address

.....
Signature of Witness

.....
Witness full name

Annexure A

Variations

The Sub-Lease is varied on and from the Variation Date as follows:

1. Items 6 and 7 of the reference schedule of the Sub-Lease are deleted and replaced with the following:

Item 6. Premises: The premises described in the Head Lease and known as Railway Lots 47, 48 and 49 at Willaura

Item 7 Term: The period commencing on the Commencement Date and expiring 11 November 2022

2. A new clause 16 is inserted as follows:

16. Not for Profit Status and exemption from the Act

16.1 The Tenant warrants that:

16.1.1 it is a non-profit organisation as defined in section 72 of the *Land Tax Act 2005* (Vic) (**NPO**); and

16.1.2 its constitution and rules (**Constitution**) and/or the provisions of the *Associations Incorporated Reforms Act 2012*:

(a) specify purposes of providing or promoting community, cultural, recreational or similar facilities or activities or objectives;

(b) provide that the Tenant must apply its profits in promoting its objects; and

(c) prohibit the payment of any dividend or amount to its members.

16.2 The Tenant must ensure that each of the warranties contained clause 16.1.2 remain true throughout the Term and must not amend its Constitution during the Term so as to cause a breach of this obligation.

16.3 Without limiting clause 16.2, the Tenant must promptly notify the Landlord of any proposed amendment to its Constitution during the Term and must notify the Landlord immediately upon any amendment becoming effective.

16.4 Despite clause 19 of the Head Lease (that forms part of this Sub-Lease by virtue of 4.1), the Tenant must not seek to assign this Sub-Lease or sub-sub-lease or licence any part of the Premises except to an NPO with a constitution and rules that:

16.4.1 specify purposes of providing or promoting community, cultural, recreational or similar facilities or activities or objectives;

16.4.2 provide that the Tenant must apply its profits in promoting its objects; and

16.4.3 prohibit the payment of any dividend or amount to its members.

16.5 Without limiting the prohibition on using the Premises wholly or predominantly for a retail use, the Tenant acknowledges and agrees that pursuant to the determination



made by the Minister for Small Business under section 5 of the *Retail Leases Act 2003 (Act)* on 6 October 2014, the Act does not apply to this Lease.

- 16.6 The Tenant acknowledges and agrees that the level of rent and frequency and method of review have been determined and agreed by the Landlord based upon the "not for profit" community status of the Tenant and the fact that the Act does not apply to this Lease.
 - 16.7 The Tenant indemnifies the Landlord against all loss incurred by the Landlord if the Tenant is in breach of the warranty in clause 16.1 and the Act applies to this Lease.
 - 16.8 This clause is an essential term of this Lease.
4. Annexure B is deleted.



Annexure B

Deed of consent to sublease

See attached