LAND DESCRIPTION

Lot B on Plan of Subdivision 805188R.

PARENT TITLES:
- Volume 09067 Folio 277 to Volume 09071 Folio 453
- Volume 09681 Folio 752 to Volume 09681 Folio 753
- Volume 09681 Folio 755 to Volume 09681 Folio 756
- Volume 11815 Folio 309 to Volume 11824 Folio 502
- Volume 11962 Folio 770 to Volume 12006 Folio 548

Created by instrument PS805188R 25/03/2019

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

MOONEE VALLEY RACING CLUB INC of GATE 1 MCPHERSON STREET, MOONEE PONDS VIC 3039

PS805188R 25/03/2019

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE as to part AQ809297D 09/03/2018
COMMONWEALTH BANK OF AUSTRALIA

MORTGAGE as to part AR245612F 16/07/2018
HAMTON HOSTPLUS JVMV PTY LTD

CAVEAT as to part AJ972964K 17/10/2012
Caveator
TELSTRA CORPORATION LTD
Grounds of Claim
LEASE WITH THE FOLLOWING PARTIES AND DATE.
Parties
THE REGISTERED PROPRIETOR(S)
Date
20/03/2012
Estate or Interest
LEASEHOLD ESTATE
Prohibition
ANY INSTRUMENT THAT AFFECTS MY/OUR INTEREST
Lodged by
AUSTRALIAN GOVERNMENT SOLICITOR
Notices to
AUSTRALIAN GOVERNMENT SOLICITOR of LEVEL 34 600 BOURKE STREET MELBOURNE VIC 3000

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT as to part Section 173 Planning and Environment Act 1987 US85349T 09/01/1997

AGREEMENT Section 173 Planning and Environment Act 1987 AQ569425F 19/12/2017

AGREEMENT Section 173 Planning and Environment Act 1987

"This copied document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright."
REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958
AR766959H 14/12/2018

DIAGRAM LOCATION
SEE PS805188R FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

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------------------------END OF REGISTER SEARCH STATEMENT------------------------

Additional information: (not part of the Register Search Statement)
Street Address: 33 DEAN STREET MOONEE PONDS VIC 3039

ADMINISTRATIVE NOTICES

NIL

eCT Control 15940N CBA - COMMONWEALTH BANK OF AUSTRALIA
Effective from 25/03/2019

DOCUMENT END
The document following this cover sheet is an imaged document supplied by LANDATA®, Land Use Victoria.

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The document is invalid if this cover sheet is removed or altered.
Application by a Responsible Authority for the Recording of an Agreement
Section 181 Planning and Environment Act 1987

Form 21

Lodged by:

Name: MADDOCKS
Phone: 9258 3765
Address: Collins Square, Tower Two
         Level 25, 727 Collins Street
         Melbourne VIC 3008

Ref: Customer Code: 1167E

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the register for the land.

Land: Volume 11815 Folio 310, Volume 11815 Folio 309, Volume 9681 Folio 756

Responsible Authority: Moonee Valley City Council of 9 Kellaway Avenue, Moonee Ponds, Victoria

Section and Act under which agreement made: Section 173 of the Planning and Environment Act 1987.

A copy of this Agreement is attached to this Application.

Signature for the Authority: _______________________________
Name of Officer: Pethus Barry
Position Held: Manager Statutory Planning
Date: 21/11/2017

Land Registry, 570 Bourke Street, Melbourne 3000, Phone 8636-2010
Dated 21 November 2017

Planning Agreement

Racecourse Residential and Mixed Use Precinct

Parties

Moonee Valley City Council

Moonee Valley Racing Club (Inc.)

Tamara Brezzi
Norton Rose Fulbright Australia
RACV Tower, Level 15, 485 Bourke Street
Melbourne VIC 3000
Tel: +61 3 8686 6226
nortonrosefulbright.com
Our ref: 2762363
Agreement dated

Parties

Moonee Valley City Council
of 9 Kellaway Avenue, Moonee Ponds, Victoria 3039
(Council)

Moonee Valley Racing Club (Inc.)
of Gate 1, McPherson Street, Moonee Ponds, Victoria 3039
(Owner)

Introduction

A The Owner is the registered proprietor of an estate in fee simple of the Land

B Council is the responsible authority for the administration and enforcement of the Moonee Valley Planning Scheme (Planning Scheme) pursuant to the provisions of the Act. Council enters into this Agreement in its capacity as a responsible authority.

C The Land has been rezoned to Activity Centre Zone. The Owner wishes to redevelop its adjoining land (which is zoned Special Use Zone under the Planning Scheme) to construct a new track and grandstand, and to redevelop the Land to construct apartments, other commercial buildings and public open space.

D The Land is subject to the Activity Centre Zone – Schedule 1 under the Planning Scheme (ACZ), and is identified as Precinct 9 as described in Schedule 1 to the ACZ.

E Clause 5.9-5 of Schedule 1 to the ACZ requires that, before a permit is granted for any use, development or subdivision on the Land, the owner of the Land must enter into an agreement to the satisfaction of the responsible authority under Section 173 of the Act for the provision of certain public open space contributions, financial contributions, and contributions or delivery or upgrade of on-site or off-site physical and community infrastructure. Specifically, clause 5.9-5 of Schedule 1 to the ACZ states:

"Before a permit is granted for any use, development or subdivision within Precinct 9, the owner of the land must enter into an agreement to the satisfaction of the responsible authority under Section 173 of the Planning and Environment Act 1987, for the provision of:

- A public open space contribution in the form of a single park equivalent to 5000 square metres, and additional open spaces up to 2000 square metres.
- A financial contribution equivalent to the construction of two full sized AFL/Cricket playing fields, including lights and car parking.
- A financial contribution equivalent to the construction of a 500 square metre sporting pavilion.
- Contributions or delivery/upgrade on-site or off-site for physical and community infrastructure, having regard to the demand generated by the anticipated additional population within Precinct 9, including:
  - Contribution towards or provision of public art on the site. There is potential to draw upon the racing activities of the land and incorporate this with the retention of heritage features or buildings
  - Financial contributions equivalent to 30 per cent of the construction cost of a Multi-Purpose Community Facility on-site (based on a 500 square metre
facility) in accordance with the approved Staging Plan specified at Clause 6.0 of this Schedule
- Any identified transport mitigation measures and infrastructure identified in the Integrated Transport Plan
- The timing for delivery of infrastructure at agreed trigger points which are to be based upon the release of residential lots set out in the approved Staging Plan specified at Clause 6.0 of this Schedule.

F Clause 52.01 of the Planning Scheme requires a person who proposes to subdivide land to make a contribution to Council for public open space in an amount specified in the schedule to that clause.

G Council has determined that the Owner may provide the contributions that are the subject of this Agreement in full satisfaction of the requirements of clause 5.9-5 of Schedule 1 to the Activity Centre Zone, clause 52.01 of the Planning Scheme and any requirements pursuant to the Subdivision Act 1988.

H Council acknowledges that no further contributions will be required by Council with respect to the Land beyond those in this Agreement, including any traffic mitigation works, under a Development Contributions Plan or otherwise.

I The parties acknowledge that the contributions to be made under this Agreement have been calculated on a precinct-wide basis for Precinct 9 in Schedule 1 to the ACZ, and are not intended to be capable of adjustment except to be adjusted except as specified in this Agreement.

J The parties enter into this Agreement to facilitate the requirements referred to in this Introduction.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

(1) **Act** means the Planning and Environment Act 1987 (Vic);

(2) **ACZ** means the Activity Centre Zone – Schedule 1 of the Planning Scheme;

(3) **Agreement** means this document, including any schedule or annexure to it;

(4) **Approval** means any approval, licence, consent, authority or permit;

(5) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(6) **Certification** means certification of a plan of subdivision by Council under the Subdivision Act 1988;

(7) **Commercial Lot** means a lot which in the opinion of Council is of a size and dimension such that it is intended to be developed for commercial purposes without further subdivision;
(8) **Council** means Moonee Valley City Council or its successor as the authority responsible for administering and enforcing the Planning Scheme;

(9) **Financial Contributions** means the total financial contributions as specified in Schedule 1 to this Agreement;

(10) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time;

(11) **Land** means the land comprising that part of the Moonee Valley Racecourse that is located within Precinct 9 – Racecourse Residential and Mixed Use Precinct, as shown in the Precinct Map in clause 5.9-1 in Schedule 1 to the ACZ as at the date of this Agreement, being Volume 11815 Folio 310, Volume 11815 Folio 309 and Volume 9681 Folio 756;

(12) **Landscaping Works** means the landscaping works listed in the Staging Plan, to be provided by the Owner on the land comprising the Public Open Space Contributions listed in Schedule 1 to this Agreement;

(13) **Moonee Valley Racecourse** means the land generally bound by McPherson St, Dean St, Citylink, Wilson St and Thomas St, Moonee Ponds;

(14) **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Land or any part of it and includes a Mortgagee in possession;

(15) **Park** means the public open space land to be provided on the Land in the form of a single park equivalent to approximately 5000 square metres in area in accordance with clause 5.9-4 of the ACZ;

(16) **Planning Scheme** means the Moonee Valley Planning Scheme and any successor instrument or other planning scheme which applies to the Land;

(17) **Precinct** means a precinct as shown in the Staging Plan, or such other plan as is submitted to Council from time to time, and which may be comprised of one or more Stages;

(18) **Public Open Space Contributions** means the public open space contributions listed in Schedule 1 to this Agreement, including the land comprising those public open space contributions;

(19) **Residential Lot** means a lot which in the opinion of Council is of a size and dimension such that it is intended to be developed as a dwelling lot without further subdivision;

(20) **Stage** means a stage as shown in the Staging Plan, or such other plan as is submitted to Council from time to time, and which may form part of a Precinct;

(21) **Staging Plan** means the Staging Plan submitted under clause 6.0 of the ACZ, as amended from time to time;

(22) **Statement of Compliance** means a statement of compliance issued by Council under the *Subdivision Act 1988*;

(23) **Superlot** means a lot which in the opinion of Council is of a size and dimension such that it is likely to be further subdivided;
(24) **Tote Building** means the building existing within the Park, formerly used as the Tote in the operations of the Moonee Valley Racing Club and shown on the Planning Scheme maps as being affected by HO 379 under the Planning Scheme;

(25) **Traffic Mitigation Works** means the traffic mitigation works listed in Schedule 1 to this Agreement which, for the avoidance of doubt, may include traffic studies; and

(26) **Tribunal** means the Victorian Civil and Administrative Tribunal.

### 1.2 Interpretation

(1) **Reference to**:

(a) one gender includes the other;

(b) the singular includes the plural and the plural includes the singular;

(c) a person includes a body corporate;

(d) a party includes the party's executors, administrators, successors and permitted assigns;

(e) a thing includes the whole and each part of it separately;

(f) a statute, regulation, code or other law or a provision of any of them includes:

(i) any amendment or replacement of it; and

(ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and

(g) dollars means Australian dollars unless otherwise stated.

(2) "Including" and similar expressions are not words of limitation.

(3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

(5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

(6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

(7) The Introduction to this Agreement forms part of this Agreement including any terms defined within the Introduction.

(8) The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Land provided that if the Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.
2 Staging Plan

2.1 The parties agree that the Owner will, at the time that it makes any planning permit application in respect of the Land:

1. prepare the Staging Plan in accordance with the requirements of the ACZ;
2. include additional information in the Staging Plan showing:
   (a) Precincts, and any Stages comprising such Precincts;
   (b) Landscaping Works;
   (c) the timing for payment of the Financial Contributions, and the percentage of Financial Contributions payable at the time of the granting of a Statement of Compliance with respect to each Stage; and
   (d) the timing for the provision of the Traffic Mitigation Works, Landscaping Works and Public Open Space Contributions.

   to the satisfaction of Council.

3 Works in kind and provision of land

3.1 The Owner agrees that it will provide the Traffic Mitigation Works listed in Schedule 1 to this Agreement:

1. in accordance with plans and specifications approved by Council;
2. at the time specified in the Staging Plan; and
3. to the reasonable satisfaction of Council.

3.2 The parties agree that the plans and specifications to be approved by Council under clause 3.1(1) will be generally in accordance with the Integrated Transport Plan prepared pursuant to clause 6 of the ACZ, to the satisfaction of Council, unless otherwise agreed.

3.3 The Owner agrees that it will provide the Landscaping Works listed in the Staging Plan:

1. in accordance with plans and specifications approved by Council;
2. at the time specified in the Staging Plan; and
3. to the reasonable satisfaction of Council.

3.4 The parties agree that they will:

1. enter into a long-term lease of no less than 99 years over the land comprising the Tote Building and associated immediately adjacent area of the Park;
2. at the time specified in the Staging Plan; and
3. ensure that the lease provides for the lessee’s obligation to renovate and maintain the Tote Building.

3.5 If the Owner does not meet the timeframes set out in the Staging Plan with respect to the Traffic Mitigation Works and the Public Open Space Contributions, the timeframes may be
extended by approval of the Council following a request by the Owner to extend the time, and such extension must not be unreasonably witheld.

3.6 Council may at its absolute discretion issue a Statement of Compliance for a subdivision of a Stage prior to the provision of the Traffic Mitigation Works, Landscaping Works or Public Open Space Contributions.

3.7 The Traffic Mitigation Works, Landscaping Works and Public Open Space Contributions may be provided as a cash contribution by further agreement.

3.8 The specific Traffic Mitigation Works, Landscaping Works or Public Open Space Contributions to be provided under this Agreement may be amended by agreement between the parties, provided that the amended Traffic Mitigation Works, Landscaping Works or Public Open Space Contributions are generally in accordance with the projects specified in clause 5.9-5 of the ACZ as at the date of this Agreement.

3.9 Any cash amounts paid pursuant to clause 3.7 must be applied by Council for the purpose for which they are collected, and within a timeframe as agreed with the Owner, unless otherwise agreed.

4 Payments by the Owner

4.1 The Owner agrees that, for each Stage, it will pay a percentage of the Financial Contributions to Council. The percentage of the Financial Contributions payable with respect to each Stage is:

(1) to be specified in the Staging Plan; and

(2) payable at the time specified in relation to each Stage in the Staging Plan.

4.2 Amounts payable under clause 4.1 are to be adjusted annually in accordance with Rawlinsons Construction Cost Guide, or in accordance with such other mechanism as agreed from time to time.

4.3 The parties agree that the Owner may provide the Financial Contributions, in whole or in part and as agreed with Council:

(1) as works in kind or land; or

(2) as public art.

4.4 Council must keep proper accounts of any amounts paid to Council under clause 4.1, and must keep those amounts in a separate account.

4.5 Any cash amounts paid to Council under clause 4.1 must be applied for the purpose for which they are collected, and within the timeframe specified in the Staging Plan, unless otherwise agreed.

5 Commencement of Agreement

5.1 The obligations of the Owner under this Agreement shall commence and bind the Owner from the date of this Agreement.
6 Ending of Agreement

6.1 Upon the issue of a Statement of Compliance for any Residential Lot or Commercial Lot on the Land, including a Statement of Compliance for a Residential Lot or Commercial Lot subdivided as part of a Stage, this Agreement will end with respect to the part of the Land comprising the Residential Lot or Commercial Lot.

6.2 For the avoidance of doubt if the land is subdivided into Precincts, or, if a Precinct is subdivided by way of a superlot subdivision, it is not intended that the Agreement will end in respect of a Precinct or superlot subdivision, or that any Financial Contributions will be payable in respect of a Precinct or superlot subdivision.

6.3 This Agreement will end once the Owner has completed, to the satisfaction of Council all of the obligations imposed upon it under or otherwise by agreement between the parties in accordance with Section 177(2) of the Act.

6.4 Once this Agreement ends with respect to part or all of the Land, Council will, within 28 days of the Agreement ending with respect to that part or all of the Land, following a request from the Owner and at the cost of the Owner, complete and execute all documents necessary to make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the register in relation to the relevant land.

7 Further obligations of the Owner

7.1 The Owner must bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

7.2 The Owner must pay immediately on demand the reasonable costs of Council of and incidental to the preparation and execution of this Agreement. Those costs are and remain a charge on the Land until paid.

8 Agreement under section 173 of the Act

The parties acknowledge and agree that this Agreement is made pursuant to Section 173 of the Act and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Land may be used and developed for specified purposes.

9 Owner's warranties

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Land.

10 Planning objectives

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme.
11 Goods and services tax

11.1 In this clause 11:

(1) GST means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (GST Act) or any replacement or other relevant legislation and regulations;

(2) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;

(3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;

(4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and

(5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

11.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

11.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party’s right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

11.4 To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

12 Further assurance

12.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

13 Entire understanding

13.1 This Agreement:

(1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and

(2) supersedes any prior agreement or understanding on anything connected with that subject matter.
14 Counterparts

14.1 This Agreement may be executed in counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. This Agreement is binding on the parties on the exchange of the executed counterparts. A copy of the original executed counterpart sent by facsimile machine or email:

(1) must be treated as an original counterpart;

(2) is sufficient evidence of the execution of the original; and

(3) may be produced in evidence for all purposes in place of the original.

15 Severability

15.1 If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed but the other provisions of this Agreement shall remain operative.

16 Variation

16.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

16.2 If the Act requires the approval of the Minister for the amendment of an agreement made under section 173 of the Act, the parties may, subject to the approval of the Minister, amend this Agreement by written agreement.

16.3 If the Act does not require the approval of the Minister for the amendment of an agreement made under section 173 of the Act, the parties may amend this Agreement by written agreement.

17 Disputes

17.1 If there is a dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute may be referred to the Tribunal for resolution to the extent permitted by the Act.

17.2 If there is a dispute concerning any matter which is not referable to the Tribunal under the Act, that dispute may be referred for arbitration by an Arbitrator agreed upon in writing by the parties or, in the absence of such agreement the Chairman of the Victorian Chapter of the Institute of Arbitrators, Australia or his nominee, for arbitration.

17.3 Where provision is made in this Agreement that any matter be done to the satisfaction of Council or must not be done without its consent and a dispute arises in relation to such provision, the dispute may be referred to the Tribunal in accordance with Section 149(1)(b) of the Act.

17.4 The parties are entitled to legal representation for the purposes of any arbitration or referral referred to in Clauses 17.2 and 17.3 above, and unless the Arbitrator, Chairman, nominee or the Tribunal otherwise directs, each party must bear its own costs.
18 No fettering of Responsible Authority's powers

18.1 The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or Certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land.

19 Waiver

19.1 Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgement or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

20 Notices

20.1 A notice or other communication connected with this Agreement (Notice) has no legal effect unless it is in writing.

20.2 In addition to any other method of service provided by law, the Notice may be:

(1) sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;

(2) sent by facsimile to the facsimile number of the addressee; or

(3) delivered at the address of the addressee set out in this Agreement or subsequently notified.

20.3 If the Notice is sent or delivered in a manner provided by clause 20.2, it must be treated as given to and received by the party to which it is addressed:

(1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;

(2) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or

(3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

20.4 Despite clause 20.3(2):

(1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and

(2) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

20.5 A Notice sent or delivered in a manner provided by clause 20.2 must be treated as validly given to and received by the party to which it is addressed even if:
(1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

(2) the Notice is returned unclaimed.

20.6 Any Notice by a party may be given and may be signed by its solicitor.

21 Governing law and jurisdiction

21.1 The law of Victoria governs this Agreement.

21.2 The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.
## Schedule 1 – Financial Contributions, Public Open Space Contributions, and Traffic Mitigation Works

### Moonee Valley City Council - Section 173 Agreement

#### Development Contributions Summary

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<td>Dean St - Signal Intersection</td>
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<td>Alexandra Ave - Pedestrian/Bike Upgrade</td>
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<td>Victoria/Melville - Intro turn phase</td>
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<td>10% Design Fees on Works Only</td>
<td>241,500</td>
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<tr>
<td>15% Contingency</td>
<td>398,400</td>
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| Public Open Space (7,000m²): | 1,766,000 |
| Public Art Contribution: | 400,000 |
| Multi-Purpose Community Facility (30%): | 525,000 |

**TOTAL** 11,131,000
Execution and Attestation

SIGNED by and on behalf, and with the authority, of the Moonee Valley City Council by the Manager Statutory Planning, in the exercise of a power conferred by an Instrument of Delegation dated 14 April 2016:

[Signature]
Manager Statutory Planning

Witness

Executed as a deed and delivered on the date shown on the first page.

The common seal of Moonee Valley Racing Club (Inc.) was affixed in accordance with its constitution in the presence of:

[Signature]
Director/company secretary

[Signature]
Director

[Signature]
Name of director/company secretary
(BLOCK LETTERS)

[Signature]
Name of director
(BLOCK LETTERS)
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Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987

Lodged by: MADDOCKS
Name:    Phone:    03 9258 3555
Address: COLLINS SQUARE, TOWER TWO, LEVEL 25, 727 COLLINS STREET MELBOURNE
VIC 3008
Ref: MYM:BYM:7648760
Customer Code: 1167E

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land: (volume and folio)

VOLUME 9681 FOLIO 752, VOLUME 9681 FOLIO 753, VOLUME 9681 FOLIO 755, VOLUME 9681 FOLIO 756, VOLUME 9067 FOLIO 277, VOLUME 9071 FOLIO 453, VOLUME 11924 FOLIO 501, VOLUME 11924 FOLIO 502, Part of VOLUME 11815 FOLIO 309 and more particularly being Lot C on the Plan of Subdivision, Part of VOLUME 12006 FOLIO 548 and more particularly being Lot C on the Plan of Subdivision, VOLUME 11962 FOLIO 770 and VOLUME 11877 FOLIO 040

Responsible authority: (full name and address, including postcode)
MOONEE VALLEY CITY COUNCIL OF 9 KELLAWAY AVENUE, MOONEE PONDS, VICTORIA

Section and act under which agreement is made:

SECTION 173 OF THE PLANNING AND ENVIRONMENT ACT 1987

A copy of the agreement is attached to this application

Signing:

35271702A

181PEA
Application by a responsible authority for the making of a recording of an agreement
Section 181 Planning and Environment Act 1987

Certifications

1. The Certifier has taken reasonable steps to verify the identity of the applicant.

2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

3. The Certifier has retained the evidence supporting this Registry Instrument or Document.

4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of: MOONEE VALLEY CITY COUNCIL
Signer Name:
Signer Organisation: MADDOCKS
Signer Role: AUSTRALIAN LEGAL PRACTITIONER
Signature: 
Execution Date: 14 December 2018
Agreement under section 173
of the Planning and Environment Act 1987
Subject Land: 33 Dean Street, Moonee Ponds

Moonee Valley City Council

and

Moonee Valley Racing Club (Incorporated)
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Agreement under section 173 of the Planning and Environment Act 1987

Dated 14/12/15

Parties

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<th>Name</th>
<th>Moonee Valley City Council</th>
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<tr>
<td>Address</td>
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<td>Council</td>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>McPherson Street, Moonee Ponds, Victoria</td>
</tr>
<tr>
<td>Short name</td>
<td>Owner</td>
</tr>
</tbody>
</table>

Background

A. Council is the responsible authority for the Planning Scheme.
B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in condition 3 of the Planning Permit.
D. The Planning Permit authorises a plan that rearranges the lot configuration as a preliminary stage of the proposed redevelopment of the Subject Land. This will facilitate the future staged redevelopment of the Subject Land.
E. The parties anticipate that further agreements may be required to make more detailed provision for delivery of Public Works as part of the development of each Stage, in a manner consistent with this Agreement.
F. As at the date of this Agreement, the Subject Land is encumbered by a mortgage and caveat in favour of the Mortgagee and Caveator. The Mortgagee and Caveator consent to the Owner entering into this Agreement.

The Parties agree

1. Definitions

   In this Agreement unless the context admits otherwise:

Agreement means this Agreement and includes this Agreement as amended from time to time.

Caveator means the person registered as caveator of the Subject Land.

Current Address means:

(a) for Council, the address shown on page one of this Agreement, or any other address listed on Council’s website; and

(b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

(a) for Council, council@mvcc.vic.gov.au, or any other email address listed on Council’s website; and

(b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Current Valuation means the value of the relevant land on the date the Public Open Space Contribution is paid, as obtained by Council from a person who holds the qualifications or experience specified under section 13DA(2) of the Valuation of Land Act 1960.

Drainage Infrastructure includes all infrastructure for conveyance of stormwater flows as described on any Endorsed Plan, and as required by the Planning Permit.

Embellishment Works means the works in respect of the embellishment of the Public Open Space to vest in Council pursuant to the terms of the Subdivision Act.

Encumbered Land means land which has constrained potential for urban development due to the presence of physical or other features. It includes, but is not limited to, areas of land that host significant vegetation, contaminated land and land which is required for drainage, stormwater or flood management purposes. Land within 20 metres of a waterway is Encumbered Land unless otherwise approved by Council.

Endorsed Plan means the plan(s) endorsed with the stamp of Council from time to time as the plan(s) which forms part of the Planning Permit.

Lot means a lot on the Plan of Subdivision.

Lot C means 'lot C' or 'C' on the Plan of Subdivision.

Lot D means 'lot D' or 'D' on the Plan of Subdivision.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.
Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. MV/300/2018, as amended from time to time, issued on 19 July 2018, authorising subdivision on the Subject Land in accordance with the Endorsed Plan.

Plan of Subdivision means the plan showing the subdivision of the Subject Land as approved from time to time by Council under the Planning Permit.

Planning Scheme means the Moonee Valley Planning Scheme and any other planning scheme that applies to the Subject Land.

Public Open Space Contribution means the provision of land or money towards the provision or improvement of public open space, in a form approved by Council.

Residential Lot means a lot which is of a size and dimension such that it is intended to be developed with a single dwelling without further subdivision.

Stage means a specified stage of subdivision of the Subject Land as identified in any staging plan forming part of plans endorsed under a planning permit for the Subject Land.

Staging Plan means an Endorsed Plan providing for the subdivision of land in stages.

Statement of Compliance means a statement of compliance relating to the subdivision of the Subject Land issued in accordance with the Subdivision Act.


Subject Land means part of the land situated at 33 Dean Street, Moonee Ponds being Lots C and D on the Plan of Subdivision, and comprising the certificates of title described in Schedule 1. Any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

2.1 the singular includes the plural and vice versa;

2.2 a reference to a gender includes all genders;

2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;

2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;

2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;

2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;

2.7 the Background forms part of this Agreement;
2.8 the Owner’s obligations take effect as separate and several covenants which are annexed to
and run at law and equity with the Subject Land; and

2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause,
page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

3.1 give effect to the Planning Permit; and

3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning
Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the
following reasons:

4.1 Council would not have issued the Planning Permit without the condition requiring this
Agreement; and

4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the
Planning Permit.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has
complied with all of the Owner’s obligations.

6. Owner’s specific obligations

6.1 The Owner covenants and agrees that:

6.1.1 prior to the further subdivision of Lot C that creates one or more Residential Lots, a
Public Open Space Contribution must be provided in a manner and form approved
by Council;

6.1.2 prior to the further subdivision of Lot D that creates one or more Residential Lots, a
Public Open Space Contribution must be provided in a manner and form approved
by Council;

6.1.3 except by further agreement between the parties, the Public Open Space
Contributions for Lots C and D must collectively provide for the following:

(a) the provision of 10% of the area of Lot C to be set aside as public open
space to vest in Council, including

(i) at least 6% active open space;
(i) not more than 4% of the land to be set aside as passive open space;

(ii) linear accessways for use by pedestrians and cyclists to the satisfaction of Council;

(b) a Public Open Space Contribution equivalent to 5% of Lot D, which may take the form of any combination of land and cash contribution approved by Council;

6.1.4 for the purposes of clauses 6.1.1 and 6.1.2:

(a) Encumbered Land cannot be credited or counted towards the required Public Open Space Contribution;

(b) the Public Open Space Contribution for the future subdivision of Lot C or Lot D may be provided in accordance with a Staging Plan approved by Council;

(c) where the Public Open Space Contribution is provided in accordance with a Staging Plan, the relevant part of the Public Open Space Contribution must be made in accordance with the Staging Plan prior to any request being made for a Statement of Compliance for the relevant Stage;

6.1.5 It is obliged to provide Council with proof demonstrating that any land that is to be vested in Council as Public Open Space will be:

(a) in a condition that is suitable for its intended purpose;

(b) embellished with necessary improvements; and

(c) free from contamination that would adversely affect the use of the land as Public Open Space, or that would require remediation in order to be suitable as public open space.

7. Owner’s further obligations

7.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

7.2.1 must do all things necessary to give effect to this Agreement;

7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and

7.2.3 agree to do all things necessary to enable Council to do so, including:

(a) sign any further agreement, acknowledgment or document; and

(b) obtain all necessary consents to enable the recording to be made.
7.3 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

7.3.1 preparing, drafting, finalising, signing and recording this Agreement;
7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.4 Time for determining satisfaction

If Council makes a request for payment of any costs or expenses under clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the Local Government Act 1989 on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

10.1 give effect to this Agreement, and
10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

11.1.1 personally on the other Party;
11.1.2 by leaving it at the other Party's Current Address;
11.1.3 by posting it by priority prepaid post addressed to the other Party at the other Party's Current Address; or
11.1.4 by email to the other Party's Current Email.

11.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

11.3 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.5 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.6 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.7 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.
12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

13. Ending of Agreement

13.1 This Agreement ends when the Owner has complied with all of the Owner's obligations.

13.2 For the avoidance of doubt, where Council is satisfied that the obligations referable to a Stage have been completely satisfied, the Agreement will come to an end in respect of that Stage.

13.3 The parties may agree to end or vary this Agreement in accordance with the Act.

13.4 After this Agreement has ended in relation to any Lot, Council will, at the Owner's written request, apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of this Agreement.

13.5 If notice of a proposal to amend or end this Agreement is required pursuant to Section 178C of the Act, the parties agree that only Council and the Owner of that part of the Subject Land which is the subject of the proposal to end or amend the Agreement are required to be notified of the proposal.
Schedule 1

Certificates of Title comprising the Subject Land

Volume 9681 Folio 752
Volume 9681 Folio 753
Volume 9681 Folio 755
Volume 9681 Folio 756
Volume 9687 Folio 277
Volume 9071 Folio 453
Volume 11924 Folio 501
Volume 11924 Folio 502
Part of Volume 11815 Folio 309 and more particularly being Lot C on the Plan of Subdivision
Part of Volume 12008 Folio 548 and more particularly being Lot C on the Plan of Subdivision
Volume 11562 Folio 770
Volume 11877 Folio 040
Signing Page

Signed, sealed and delivered as a deed by the Parties.

SIGNED by and on behalf, and with the authority, of the Moonee Valley City Council by the Manager Statutory Planning, in the exercise of a power conferred by an Instrument of Delegation dated 14 November 2017

31 August 2018

Manager Statutory Planning

Witness

Executed by Moonee Valley Racing Club
(Incorporated) in accordance with s 127(1) of the Corporations Act 2001:

[Signature]
[Director]
[Print full name]

[Signature]
[Director or Company Secretary]
[Print full name]

Mortgagees’ Consents

Commonwealth Bank of Australia as Mortgagee under instrument of mortgage no. AQ809297D consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.
Signing Page

Signed, sealed and delivered as a deed by the Parties.

SIGNED by and on behalf, and with the authority, of the
Moonee Valley City Council by the Manager Statutory
Planning, in the exercise of a power conferred by an
Instrument of Delegation dated 10 November 2017:

Manager Statutory Planning

Witness

Executed by Moonee Valley Racing Club
(Incorporated) in accordance with s 127(1) of the
Corporations Act 2001:

Signature of Director

Print full name

Signature of Director (or Company Secretary)

Print full name

Mortgagees' Consents

Commonwealth Bank of Australia as Mortgagee under instrument of mortgage no. AG809297D consents
to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-
possession, agrees to be bound by the covenants and conditions of this Agreement.

Russell Walley
Executive Director
Real Estate Finance
Institutional Banking & Markets
Lvl 21 Tower 1 Collins Square
727 Collins Street Docklands VIC 3008
Hampton Hostplus JVMV Pty Ltd ACN 622 725 508 as Mortgagee under instrument of mortgage no. AR245612F consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

**Executed by Hampton Hostplus JVMV Pty Ltd ACN 622 725 508 in accordance with s 127(1) of the Corporations Act 2001:**

---

Signature of Director  
Print full name

Signature of Director/Company Secretary  
Print full name

---

Caveators' Consents

Telstra Corporation Ltd as Caveator of registered caveat no. AJ972984K consents to the Owner entering into this Agreement.

**Executed by Telstra Corporation Limited ACN 051 775 556 in accordance with section 127(1) of the Corporations Act 2001:**

---

Signature of Director  
Print full name

Signature of Director/Company Secretary  
Print full name

---

Date  
28.11.2018

Date  
28.11.2018
Crown Castle Australia Pty Ltd now known as Axcicom Pty Ltd ACN 090 873 019 as Cavesat of registered
cove no. AF099273L associated to the Owner entering into this Agreement with Hawke Valley Racing Cmns.

Executed by Axcicom Pty Ltd ACN 090 873 019 in
accordance with s 127(1) of the Corporations Act
2001:

Signature of Director
Print full name

Signature of Director/Company Secretary
Print full name

EXECUTED for and on behalf of
Axcicom Pty Ltd
ACN 090 873 019 by its
duly appointed attorney Jane Louise Polland
under power of attorney registered No,
dated 8 February 2018

NATASHA SARAH NAIGAE

Level 1, 110 Pacific Highway
St Leonards, NSW, 2065

[Signature]

Position: Director, Property & Asset
Management
LOCATION OF LAND

PARISH: DOUTTA GALLA

TOWNSHIP: -

SECTION: 5

CROWN ALLOTMENT: 2, 3, 4, 5, 6, 7 & 103 (PARTS) AND 5A

CROWN PORTION:

TITLE REFERENCE:

LAST PLAN REFERENCE:
TP107267A, TP 3085089, PS 814752R & PS 8046574R.

POSTAL ADDRESS:
McPHERSON STREET
MOONEE PONDS 3039

WGA 94 N 317900 ZONE: 55

CO-ORDINATES:
(at time of subdivision)

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER ROAD R1

COUNCIL/BODY/PERSON MOONEE VALLEY CITY COUNCIL

STAGING
This is not a staged subdivision
Planning Permit No.

DEPTH LIMITATION 15m for the land In Vol. 9071 Fol.453

TANGENT POINTS ARE SHOWN THUS:

THE UNDERLINED DIMENSIONS HAVE NOT BEEN DETERMINED BY SURVEY.

EASEMENT INFORMATION

LEGEND:
E = Encumbering Easement, Condition in Crown Grant in the Nature of an Easement or Other Encumbrance
A = Appurtenant Easement

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LICENSED SURVEYOR ADRIAN A. THOMAS

DATE 30/07/18 REFERENCE 31379

ORIGINAL SHEET SIZE A3

VERSION F DRAWING 3137900DF

SHEET 1 OF 3 SHEETS
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Lodged at the Land Titles Office by: MADDOCK LONIE & CHISHOLM
Phone: 9288 0558
Address: 140 William Street Melbourne
Ref: MWN:FMM:349591 Customer Code: 1167E

APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A RECORDING OF AN AGREEMENT

Planning and Environment Act 1987

The Authority having made an Agreement requires a recording to be made in the Register for the land.

Land:
Certificate of Title Volume 9681 Folio 754

Authority:
MOONEE VALLEY CITY COUNCIL of Civic Centre, Corner Pascoe Vale Road and Kellaway Avenue, Moonee Ponds 3039

Section and Act under which agreement made:
Section 173 of the Planning and Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority: 
Name of Officer: SALVATORE S. ROSSO CANERO
Date: 6/1/97

[fmn 349591w.37:020197]
Maddock Lonie & Chisholm

DATED 1996

MOONEE VALLEY CITY COUNCIL

- and -

MOONEE VALLEY RACING CLUB INC

SECTION 173 AGREEMENT

Subject land: Moonee Valley Racecourse
McPherson Street, Moonee Ponds
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[Item 3455913m.23:200896]
THIS AGREEMENT is made the 3rd day of November 1996

BETWEEN:

MOONEE VALLEY CITY COUNCIL of Civic Centre, Cnr Pascoe Vale Road and Kellaway Avenue, Moonee Ponds, Victoria 3039 ("the Council")

- and -

MOONEE VALLEY RACING CLUB INC of Moonee Valley Racecourse, McPherston Street, Moonee Ponds, Victoria 3039 ("the Owner")

INTRODUCTION:

A. The Owner is or is entitled to be the registered proprietor of the Racecourse on the Subject Land, and has been conducting thoroughbred horse race meetings there for a number of years.

B. The Council is the Responsible Authority pursuant to the Act for the Scheme.

C. The Owner proposes to conduct Night Racing at the Racecourse and has applied to the Council for a planning permit, to allow the Owner to carry out buildings and works for the erection and use of lighting towers at the Racecourse.

D. In the interests of achieving the objectives of the Scheme and good planning generally, the Owner and the Council have agreed to enter into this Agreement to provide for certain measures to be taken in conjunction with the conduct of Night Racing at the Racecourse, including the preparation of a Night Management Plan and a Traffic Management Plan;

E. The Council and the Owner have also agreed that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to section 173 of the Act.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

"the Act" means the Planning and Environment Act 1987.

"the Agreement" or "this Agreement" means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

"approved" means approved by the Council.
2.

"complete" in respect of any works or any part of any works means the completion of those works or the specified part of those works in accordance with plans and specifications approved by the Council to the satisfaction of the Council.

"the Night Management Plan" means the plan attached to this Agreement in "Schedule 1", as amended from time to time in accordance with this Agreement. It includes the Traffic Management Plan.

"the Night Manager" means the person or persons appointed pursuant to clause 6.3 of this Agreement;

"Night Race" means a thoroughbred gallop horse race or trial meeting commenced after 5 pm at night at the Racecourse, and "Night Racing" shall have a corresponding meaning;

"Owner" means the person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple in the Subject Land or any part of it.

"planning approval" shall mean and include any planning permit issued in accordance with the Act.

"the Racecourse" means the Moonee Valley Racecourse, located on the Subject Land.

"the Scheme" means the Moonee Valley Planning Scheme.

"the Subject Land" means the whole of the land described in Certificate of Title Volume 968/1 Folio 754 being situated at McPherson Street, Moonee Ponds or any part of that land.

"the Traffic Management Plan" means the Traffic Management Plan referred to in the Night Management Plan and forming part of "Schedule 1" to this Agreement.

INTERPRETATION

All provisions of this Agreement are to be interpreted in the following manner unless otherwise indicated by the context:

2.1 Undefined terms or words shall have the meanings given in the Act or the Scheme.

2.2 The singular includes the plural and the plural includes the singular.

2.3 A reference to a gender includes a reference to each other gender.
3.

2.4 A reference to a person includes a reference to a firm, corporation or other corporate body.

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

2.6 A reference to a "planning scheme" or "the Scheme" shall include any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme.

2.7 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.

2.8 Where in this agreement the Council may exercise any power, duty or function, that power may be exercised on behalf of the Council by an authorised or delegated officer.

2.9 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.

2.10 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

3. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

4. EFFECT OF AGREEMENT

4.1 This Agreement shall be deemed to come into force and effect from the issue of planning approval allowing the carrying out of buildings and works for the erection and use of lighting towers at the Racecourse.

4.2 The obligations of the Owner under this Agreement, being obligations intended to achieve or advance the objectives of the Scheme, will take effect as separate and several covenants which shall be annexed to and run at law and equity with the Subject Land to bind the Owner and each successor, assign or transferee of the Owner including the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Subject Land.

4.3 The parties acknowledge and agree that except in relation to Night Racing, this Agreement will not and is not intended to alter, extinguish or otherwise
4. prejudice the rights of the Owner in respect to the existing use of the Racecourse or restrict the Owner from making any future application under the Planning Scheme for permission to alter the existing use or to carry out buildings and works at the Racecourse.

4.4 The parties acknowledge and agree that if the provisions of the Night Management Plan are subsequently inconsistent with the provisions of the Planning Scheme or any planning approval issued under that Planning Scheme in relation to the use or development of the Racecourse, including any use or development in conjunction with or ancillary to the Racecourse, the provisions of the Planning Scheme or planning approval will take preference and prevail over any inconsistent provisions of the Night Management Plan.

4.5 The parties acknowledge and agree that if the provisions of this Agreement or the Night Management Plan are subsequently inconsistent with the provisions of the Planning Scheme or any planning approval, they will amend the Agreement or the Night Management Plan as necessary to remedy the inconsistency.

5. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall ensure that, until this Agreement is recorded on the folio of the register which relates to the Subject Land, the Owner’s successors in title will:

5.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and

5.2 execute under seal a deed agreeing to be bound by the terms of this Agreement.

6. COVENANTS OF OWNER

The Owner covenants and agrees that it will to the satisfaction of the Responsible Authority:

Night Management Plan

6.1 implement and comply with the Night Management Plan;

6.2 participate in any liaison meetings convened by the Council from time to time with residents of properties in the vicinity of the Subject Land to review the operation of the Night Management Plan;
Night Manager

6.3 appoint a person or persons to be the manager of the Racecourse for the purposes of Night Racing and all activities associated with Night Racing and notify the Council of the name and contact details of the person or persons;

No racing without Manager

6.4 not allow a Night Race at the Racecourse to occur without the Night Manager being present at the Racecourse;

Notice

6.5 bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

Compliance

6.6 take all necessary steps to comply with its obligations under this Agreement and the Night Management Plan;

Registration

6.7 consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the folio of the Register which relates to the Subject Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section;

Council’s Costs to be Paid

6.8 forthwith pay on demand to the Council the Council’s agreed costs, disbursements and expenses (including legal expenses) of and incidental to the preparation, drafting, negotiation, finalisation, engrossment, execution, registration and enforcement of this Agreement which (until paid) are and shall remain a charge on the Subject Land;

Council Access

6.9 allow the Council and/or its officers, employees, contractors or agents (at any reasonable time) to enter the Subject Land after the giving of not less
6.

than 24 hours notice to assess compliance with this Agreement and the
Night Management Plan.

7. REVIEW OF NIGHT MANAGEMENT PLAN AND TRAFFIC MANAGEMENT PLAN

7.1 Need for Review

If the Owner or the Council form the view from time to time, that the
Night Management Plan requires updating, amending or review, either
party may notify the other in order that a review be undertaken.

7.2 Amendment

The parties acknowledge and agree that no variation may be made to the
Night Management Plan unless both the Owner and Council have consented
in writing.

7.3 Council to Keep Plan

Council will hold and make available to all members of the public the most
recent version of the Night Management Plan and the Traffic Management
Plan.

8. RESIDENT OBJECTIONS

If the Council receives any complaint or objection from any resident or other person
regarding any Night Race, it must consult with the Owner before instituting any legal
action in relation to the complaint.

9. NOTICES

9.1 Service of Notice

A notice or other communication required or permitted to be served by a
party on another party shall be in writing and may be served:

9.1.1 personally to the party; or

9.1.2 by sending it by pre-paid post, addressed to that party at the
address for service specified in this document or subsequently notified to each party; or

9.1.3 by facsimile to the person’s number for service specified in
this document or subsequently notified to each party.
7.

9.2 Time of Service

A notice or other communication is deemed served;

9.2.1 if served personally, upon service;

9.2.2 if posted within Australia to an Australian address, two business days after posting and in any other case, seven business days after posting; or

9.2.3 if served by facsimile, 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;

9.2.4 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.

10. GENERAL

10.1 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

10.2 No Waiver

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

10.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.
8.

10.4 No Fettering of Council’s Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of the Council to make or impose requirements or conditions in connection with any use or development of the Subject Land or the granting of any planning approval, except in relation to the subject matter of this Agreement.

11. ENDING OF AGREEMENT

11.1 This Agreement shall end if:

11.1.1 a planning approval for the carrying out of buildings and works for the erection of lighting towers at the Racecourse is not obtained within 12 months of this Agreement; or

11.1.2 any planning approval that is obtained for the carrying out of buildings and works for the erection of lighting towers is surrendered, cancelled or lapses pursuant to the provisions of the Act.

11.2 As soon as reasonably practicable after this Agreement has ended, the Council will, at the request and at the cost of the Owner, issue a Notice of Release to the Owner confirming the ending of this Agreement, and make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the register.

EXECUTED by the parties on the date set out at the commencement of this Agreement.
THE COMMON SEAL of MOONEE VALLEY CITY COUNCIL was hereunto affixed in the presence of:

William J. Crofts .................. Commissioner

[Signature]
Commissioner

[Signature]
Chief Executive Officer

THE COMMON SEAL of MOONEE VALLEY RACING CLUB INC was hereunto affixed by authority of the Committee in the presence of:

[Signature]
Committee Member

[Signature]
Committee Member / Public Officer of the Association

N.B. Mortgagee consent if applicable.
SCHEDULE 1

MOONEE VALLEY RACECOURSE
NIGHT THOROUGHBRED RACING

NIGHT MANAGEMENT PLAN

1. Night Manager

   The Moonee Valley Racing Club will appoint a person to the position of Night Manager. The Night Manager will have the responsibility of the management of the course and all activities associated with Night Racing including those duties specified in this night management plan.

2. Hotline

   The Night Manager must be available to receive calls from local residents on a designated phone line and respond to any reported incident as appropriate.

   The Night Manager will be available for at least one hour after the designated closing time of the premises on any particular evening of Night Racing.

   The Night Manager will keep a written record of:

   • Details of complaints and/or telephone calls received from local residents, and
   • Details of the action taken to investigate and resolve complaints.

   Written records of complaints and/or other matters raised by residents will be made available to the Moonee Valley City Council on request.

3. Availability of Council Traffic and Local Laws Officers

   The Council is responsible for arrangements for its Traffic and Local Laws Officers to be on duty on evenings during which Night Racing is conducted. Council will provide relevant telephone numbers to enable Traffic and Local Laws Officers to be contacted by the Night Manager so that complaints relating to illegally parked vehicles in residential streets can be investigated. The absence of Council Traffic and Local Laws Officers will not preclude the conduct of Night Racing on any particular night.

   The Moonee Valley Racing Club agrees to compensate Council its reasonable costs for the services of Traffic and Local Laws Officers on evenings during which Night Racing is conducted. These costs will generally be based on the direct salary and associated on-costs to Council for one officer to be available for the duration of a Night Racing meeting and one hour after the completion of the meeting.
4. Traffic Management Plan

The Club will engage at its own reasonable expense an expert traffic consultant to work in conjunction with the Council to develop a Traffic Management Plan to the reasonable satisfaction of Council. The Traffic Management Plan will address the control and movement of vehicular traffic to and from the Racecourse and the management of on-site car parking areas.

The preparation of the Traffic Management Plan must be completed before Night Racing commences.

The Traffic Management Plan will minimise traffic movements to and from the Racecourse along local residential streets to the north, south and west of the Racecourse. The preparation of the Plan will have regard to the need to concentrate traffic movements along:

- Dean Street (west of McPherson Street and east of the racecourse);
- Wilson Street (east of the racecourse);
- Pattison Street;
- McPherson Street (south of Coates Street);
- Mt Alexander Road, and
- Pascoe Vale Road.

The preparation of the Traffic Management Plan will also have regard to issues relating to the control and movement of vehicular traffic to and from the Racecourse and car parking including the following:

- Use, management and access to on site car parking areas including the members car park;
- Co-ordination/modifications to traffic signals in the area;
- Implementation of traffic restrictions (eg: turn bans) in the area to minimise/prevent traffic infiltrating into surrounding residential streets;
- Truck/horse float movements, and
- Management strategies which will provide instructions to attendants directing vehicle movements within and from the Racecourse.

5. Implementation of Traffic Management Plan

The Night Manager is responsible for the implementation of the Club’s obligations in the Traffic Management Plan including as appropriate:

- Providing sufficient staff to implement the requirements of the Traffic Management Plan;
- The use of car park areas in accordance with the Traffic Management Plan;
- Ensuring that members, guests and other patrons are directed to park in designated car park areas;
• The direction of vehicles to leave car parks by designated exits which are identified in the Traffic Management Plan;

• The provision of parking attendants (including police officers if required by the Traffic Management Plan and if available, the Club having made reasonable endeavours to obtain their attendance) in sufficient numbers to ensure proper management of parking and vehicle movements to and from and within the Racecourse in accordance with the Traffic Management Plan (The absence of police will not preclude the conduct of Night Racing but the Club must inform Council that no police are available as soon as reasonably possible);

• Directing the loading of horses to occur as soon as possible after the conclusion of a Night Race meeting;

• Instructing drivers of horse floats or horse transport vehicles to not leave vehicle engines running during loading;

• Directing that trucks using pneumatic starting systems must not park within 20 metres of the parking area at the north east corner of McPherson Street and Dean Street, and

• Directing attendants to manage horse float and horse transport vehicle parking and loading/unloading operations in accordance with the Traffic Management Plan.

6. Lighting

The Night Manager must ensure that the Racecourse lighting system must only operate during the hours allowed by the planning permit and that it is switched off as soon as practicable, with at least 50% of the lighting system switched off within 15 minutes of the last Night Race being completed.

7. Closing Time

The Night Manager must ensure that staff are aware of the closing time of all meal and drinks service areas and that patrons are notified in advance of the impending closing time.

Signs/notices which advise patrons of closing times will be displayed at all meal and drinks service areas.

The Club will provide Council with details of the signs/notices to be displayed and their location.

8. Noise Management

The existing public address system will be assessed and modified, if necessary, so that it operates generally in compliance with the Environment Protection Authority “Noise Control Guidelines” TG 302/92 July 1992, to minimise broadcast noise outside the Racecourse during the conduct of Night Racing.
The Club will implement the recommendations made by the Burton Acoustic Group in their report “Proposed Night Racing at Moonee Valley Racecourse” dated the 23 March 1996 or alternative measures approved in writing by Council.

9. Litter

The Night Manager is responsible for inspecting and making arrangements to collect any litter around the outside of the Racecourse, with any collection to take place the morning after each Night Racing meeting.

10. Advice to residents

A notice is to be placed by the Club in a local newspaper nominated by Council prior to the commencement of each season of races advising locals residents of the dates or expected dates of each Night Racing meeting and the name and contact number for the Night Manager. This information will also be provided by a letter drop to households surrounding the Racecourse.

11. Loitering

The Club will liaise with the Council and the police to engage police to attend the Racecourse during the conduct of Night Racing including where consistent with police resources and operating procedures, surveillance of surrounding residential areas and streets during and after the conduct of Night Racing.

12. Garbage Collection

The Club will make arrangements so that bulk garbage collection from the Racecourse is conducted between 7.00 am and 8.00 pm on any weekday or 9.00 am and 7.00 pm on any weekend or public holiday.

13. Miscellaneous works

The Club will ensure that works carried out in relation to preparing the Racecourse for any external entertainment activities in association with the conduct of Night Racing are not carried out between the hours of 11.00 pm and 7.00 am, unless otherwise approved in writing by Council. This includes works associated with the dismantling of entertainment equipment, stages, marquees etc.
DATED 1997

MOONEE VALLEY CITY COUNCIL
Responsible Authority

and

MOONEE VALLEY RACING CLUB
Other Party

APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A RECORDING OF AN AGREEMENT

MADDOCK LONIE & CHISHOLM
Solicitors
140 William Street
MELBOURNE VIC 3000

Tel: 9288 0555
Fax: 9288 0666
DX: 259 Melbourne
Ref: MWN:FMM:349591
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## PLAN OF SUBDIVISION

**LOCATION OF LAND**

**PARISH:** DOUTTA GALLA  
**TOWNSHIP:** –  
**SECTION:** 5  
**CROWN ALLOTMENT:** 2, 3, 4, 5, 6, 7 & 103 (PARTS) AND SA  
**TITLE REFERENCE:** TP107267A, TP 308589F, PS 814752R & PS 804574R.  
**POSTAL ADDRESS:** MCFHERSON STREET, MOONEE PONDS 3059  
**MGA 94** E 317900 ZONE: 55  
**CO-ORDINATES:** N 5818200  
(Received date of subdivision)

### VESTING OF ROADS AND/or RESERVES

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<tr>
<td>ROAD R1</td>
<td>MOONEE VALLEY CITY COUNCIL</td>
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### STAGING

This is not a Staged Subdivision

**DEPT LIMITATION** 15m for the land in Vol. 9071 Fol. 453

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**TANGENT POINTS ARE SHOWN AS:**

THE UNDERLINED DIMENSIONS HAVE NOT BEEN DETERMINED BY SURVEY.

### EASEMENT INFORMATION

**LEGEND:**  
E = Encumbering Easement, Condition in Crown Grant in the Nature of an Easement or Other Encumbrance  
A = Appurtenant Easement

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<th>WIDTH (METERS)</th>
<th>ORIGIN</th>
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**LICENSED SURVEYOR** ADRIAN A. THOMAS  
**DATE** 30/07/18  
**REFERENCE** 31379  
**VERSIO**N F  
**DRAWING** 3137900DF  
**ORIGINAL SHEET SIZE** A3

Digitaly signed by: Adrian A Thomas, Licensed Surveyor.  
Surveyor's Plan Version (F), 31/07/2018, SPEAR Ref: S121459H

**PLAN REGISTERED**  
**TIME:** 1:09pm **DATE:** 25/03/2019  
**H.T.** Assistant Registrar of Titles