

FORGOTTEN WORLD ADVENTURES LIMITED
(NZBN: 9429030971592)

("Assignor")

HARRISON HOLDINGS 2021 LIMITED
(NZBN: 9429050077106)

("Assignee")

KIWIRAIL LIMITED
(("KiwiRail"))

9(2)(a) Privacy

("Current Guarantor")

9(2)(a) Privacy

("Replacement Guarantor")

DEED OF ASSIGNMENT OF LEASE
STRATFORD OKAHUKURA LINE

L64445

KiwiRail 

DEED dated the 17 January 2021

PARTIES

FORGOTTEN WORLD ADVENTURES LIMITED ("Assignor")

HARRISON HOLDINGS 2021 LIMITED ("Assignee")

KIWIRAIL LIMITED ("KiwiRail")

9(2)(a) Privacy ("Current Guarantor")

9(2)(a) Privacy ("Replacement Guarantor")

INTRODUCTION

- A. The New Zealand Railways Corporation ("NZRC") is a statutory corporation established under the New Zealand Railways Corporation Act 1981 ("NZRC Act").
- B. Pursuant to the NZRC Act, NZRC is responsible for and controls the right to grant interests in property vested in the Crown for railway purposes.
- C. By the Core Lease, the Crown and NZRC have granted KiwiRail a lease of New Zealand's railway estate, including the Premises. KiwiRail holds the lessee's interest under that lease.
- D. By an undated lease agreement commencing 1 May 2012 ("Lease") KiwiRail leased to the Assignor the Land on the Stratford to Okahukura Line as more particularly identified in the Lease ("Land") upon the provisions contained in the Lease.
- E. The Assignor has agreed to assign to the Assignee all the Assignor's estate and interest in the Lease and the Assignee has agreed to accept such assignment.
- F. KiwiRail has agreed to the assignment to the Assignee of all the Assignor's estate and interest in the Lease, but without prejudice to KiwiRail's rights, remedies and powers under the Lease and subject to the following provisions.
- G. The performance of the Assignor under the Lease is currently guaranteed by the Current Guarantor.
- H. KiwiRail agrees to release the Current Guarantor from its obligations pursuant to or in connection with the Lease and the parties enter into this deed to give effect to such release.
- I. The Replacement Guarantor has agreed to guarantee the performance of the Assignee to KiwiRail in respect of the Lease on the terms and conditions set out in this deed.

OPERATIVE PROVISIONS

- 1. **Interpretation:** In this Deed, unless the context otherwise requires:

"Assignor", "Assignee", "Current Guarantor", "Replacement Guarantor" and "KiwiRail" include their respective successors, permitted assigns, executors and administrators.

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2

Words denoting the singular shall include the plural and vice versa.

One gender shall include the other genders.


Words denoting persons shall include any firm, company or other body whether incorporated or not.

Where any party comprises more than one person, each person shall be deemed to have entered into this Deed both jointly and severally and the provisions of this Deed shall bind such persons jointly and each of them severally.

2. **Assignment:** In consideration of the sum of \$1.00 paid to the Assignor by the Assignee (the receipt of which sum is acknowledged) the Assignor assigns to the Assignee all the Assignor's estate and interest in the Lease for the remainder of the term of years created by the Lease, but subject to the Assignee paying the rent payable under the Lease ("Rent") and complying with the obligations imposed on the lessee under the Lease.
3. The Assignee accepts the assignment of the Assignor's estate and interest in the Lease.
4. **Date of assignment:** The assignment of the Assignor's estate and interest in the Lease from the Assignor to the Assignee shall take effect from 28 February 2022 ("Date of Assignment").
5. **Assignor's covenants with the Assignee:** The Assignor covenants with the Assignee that:
 - (a) the Lease is valid and subsisting;
 - (b) the Rent and the obligations imposed on the lessee under the Lease have been or will be paid and complied with by the Assignor to the Date of Assignment; and
 - (c) the Assignor shall indemnify the Assignee from and against all actions, proceedings, claims, costs and demands arising through any default by the Assignor to the Date of Assignment in complying with any obligations imposed on the lessee under the Lease.
6. The liability and obligations of the Assignor pursuant to the indemnity contained in clause 5(c) shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:
 - (a) the granting of time or any indulgence or other concession to the Assignor or by any compounding, compromise, agreement, abandonment, waiver, variation or renewal of any of the rights of the Assignee against the Assignor or by any neglect or omission to enforce any rights of the Assignee or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Assignor in whole or in part from the Assignor's obligations under this Deed;
 - (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Assignor; or
 - (c) the Assignee obtaining judgment against the Assignor.
7. **Assignor's covenants with KiwiRail:** The Assignor covenants with KiwiRail that the covenants of the Assignee in this Deed shall not reduce or vary the Assignor's liability to KiwiRail.

8. **Assignor's covenants not conditional:** The covenants and agreements made or given by the Assignor under this Deed, whether expressed or implied, shall not be conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person.
9. **Assignee's covenants with the Assignor:** The Assignee covenants with the Assignor that the Assignee shall:
- (a) from the Date of Assignment and for the remainder of the term created by the Lease pay the Rent and comply with the obligations imposed on the lessee under the Lease; and
 - (b) indemnify the Assignor from and against all actions, proceedings, claims, costs and demands arising through any default by the Assignee from the Date of Assignment in complying with any obligation imposed on the lessee under the Lease.
10. The liability and obligations of the Assignee pursuant to the indemnity contained in clause 9(b) shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:
- (a) the granting of time or any indulgence or other concession to the Assignee or by any compounding, compromise, agreement, abandonment, waiver, variation or renewal of any of the rights of the Assignor against the Assignee or by any neglect or omission to enforce any rights of the Assignor or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Assignee in whole or in part from the Assignee's obligations under this Deed;
 - (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Assignee; or
 - (c) the Assignor obtaining judgment against the Assignee.
11. **Assignee's covenants with KiwiRail:** The Assignee covenants with KiwiRail that the Assignee shall from the Date of Assignment and for the remainder of the term created by the Lease:
- (a) pay the Rent; and
 - (b) comply with the obligations imposed on the lessee under the Lease.
12. **Assignee's covenants not conditional:** The covenants and agreements made or given by the Assignee under this Deed, whether expressed or implied, shall not be conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person.
13. **Acknowledgement by the assignee:** The Assignee acknowledges that the Assignee has executed this Deed with full knowledge of the obligations imposed on the lessee under the Lease.
14. **KiwiRail's consent:** KiwiRail consents to the assignment of the Assignor's estate and interest in the Lease to the Assignee, but without prejudice to KiwiRail's rights, remedies and powers under the Lease and subject to the provisions of this Deed.
15. **Surrender and Release:** With effect from the Date of Assignment, KiwiRail releases the Current Guarantor from its obligations and liabilities under or in connection with the Lease.

2



The release set out above shall be without prejudice to the rights of KiwiRail in respect of any breach of the Lease occurring prior to the Date of Assignment.

16. **Guarantee/Guarantor to Assignor:** In consideration of the Assignor, at the request of the Assignee and Replacement Guarantor, entering into and executing this Deed, the Replacement Guarantor guarantees to the Assignor, from the Date of Assignment and for the remainder of the term created by the Lease, the:

- (a) due and punctual payment to KiwiRail by the Assignee of the Rent; and
- (b) compliance by the Assignee with all the obligations imposed on the lessee under the Lease;

and the Replacement Guarantor shall indemnify the Assignor from and against all actions proceedings, claims, costs and demands arising through default being made by the Assignee from the Date of Assignment in complying with any obligation imposed on the lessee under the Lease.

17. The liability and obligations of the Replacement Guarantor pursuant to the indemnity contained in clause 16 shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:

- (a) the granting of time or any indulgence or other concession to the Replacement Guarantor or by any compounding, compromise, agreement, abandonment, waiver, variation or renewal of any of the rights of the Assignor against the Replacement Guarantor or by any neglect or omission to enforce any rights of the Assignor or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Replacement Guarantor in whole or in part from the Replacement Guarantor's obligations under this Deed;
- (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Replacement Guarantor; or
- (c) the Assignor obtaining judgment against the Replacement Guarantor.

18. **Guarantee/Guarantor to KiwiRail:** In consideration of KiwiRail, at the request of the Assignee and Replacement Guarantor, consenting to the assignment of all of the Assignor's estate and interest in the Lease to the Assignee, the Replacement Guarantor guarantees to KiwiRail, from the date of the Assignment and for the remainder of the term created by the Lease, the:

- (a) due and punctual payment to KiwiRail by the Assignee of the Rent; and
- (b) compliance by the Assignee with all the obligations imposed on the lessee under the Lease;

and the Replacement Guarantor shall indemnify KiwiRail from and against all actions proceedings, claims, costs and demands arising through default being made by the Assignee from the Date of Assignment in complying with any obligation imposed on the lessee under the Lease.

19. The liability and obligations of the Replacement Guarantor pursuant to the indemnity contained in clause 18 shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:

- (a) the granting of time or any indulgence or other concession to the Replacement Guarantor or by any compounding, compromise, agreement, abandonment,

2 

waiver, variation or renewal of any of the rights of KiwiRail against the Replacement Guarantor or by any neglect or omission to enforce any rights of KiwiRail or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Replacement Guarantor in whole or in part from the Replacement Guarantor's obligations under this Deed;

- (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Replacement Guarantor; or
 - (c) KiwiRail obtaining judgment against the Replacement Guarantor.
20. **Costs:** The costs incurred in respect of the preparation and execution by the Assignee and Replacement Guarantor of this Deed shall be paid by the Assignee. The costs incurred in respect of the execution of this Deed by the Assignor and KiwiRail shall be paid by the Assignor.
21. **Counterpart execution:** This Deed may be executed in any number of counterparts (including facsimile or email copies) and provided that each party has executed a counterpart, the counterparts together will constitute a binding and enforceable agreement between the parties.



SIGNATURES

Executed as a deed by KiwiRail Limited
as lessor:

9(2)(a) Privacy

9(2)(a) Privacy

Print Name

Lease Manager

Occupation

Auckland

Address

9(2)(a) Privacy

9(2)(a) Privacy

Print Name

Executive Assistant

Occupation

Wellington

Address

Executed as a deed by FORGOTTEN
WORLD ADVENTURES LIMITED as
Assignor:

9(2)(a) Privacy

9(2)(a) Privacy

9(2)(a) Privacy

Executed as a deed by HARRISON
HOLDINGS 2021 LIMITED as Assignee:

9(2)(a) Privacy

9(2)(a) Privacy

Executed as a deed by 9(2)(a) Privacy
9(2)(a) Privacy as Current Guarantor:

9(2)(a) Privacy

9(2)(a) Privacy

Executed as a deed by 9(2)(a) Privacy
9(2)(a) Privacy as Replacement Guarantor:

9(2)(a) Privacy