



16 November 2017

LGOIMA No. 8140002074
(Please quote this in any correspondence)

Harrison

By email: fyi-request-6720-8c7b6124@requests.fyi.org.nz

Dear Harrison

Local Government Official Information And Meetings Act 1987

Western Springs Stadium

I refer to your email, which we received on 18 October 2017, in which you requested a copy of the Western Springs Stadium lease agreement/contract for speedway, and information on Western Springs Stadium being used for speedway now and in the future.

In 2012, Regional Facilities Auckland (RFA) initiated discussions with a wide range of stakeholders around RFA's Stadiums Strategy. Springs Promotions Ltd (SPL), the speedway operator, was made aware at that time of RFA's intention for speedway activities to cease at Western Springs.

In 2013, RFA and SPL entered into a venue hire agreement (attached) which anticipated speedway activities at Western Springs ceasing in 2017.

That agreement was extended for two years through to the end of March 2019, as per the attached Deed of Variation. The agreement does not permit any further extensions.

In April 2017, the RFA Board resolved that no new agreement will be entered into for speedway to remain at Western Springs. SPL has been advised of this.

Please note some information in the Venue Hire Agreement has been withheld pursuant to section 7(2)(i) of the Local Government Official Information and Meetings Act 1987 as withholding is necessary to enable RFA to carry on negotiations without prejudice or disadvantage.

If you have any further queries please contact me on 09 301 0101 or rosie.judd@aucklandcouncil.govt.nz, quoting LGOIMA No. 8140002074.

Should you believe Auckland Council has not responded appropriately to your request, you have the right by way of complaint, under section 27(3) of the LGOIMA, to apply to the Ombudsman to seek an investigation and review of the decision.

Yours sincerely

Rosemary Judd
Privacy & LGOIMA Business Partner
Privacy & LGOIMA

8140002074

VENUE HIRE AGREEMENT

**REGIONAL FACILITIES AUCKLAND LIMITED as Trustee
of REGIONAL FACILITIES AUCKLAND**

SPRINGS PROMOTIONS LIMITED

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
2. TERM	4
3. THE EVENT AND HIRE OF STADIUM	5
4. BOOKINGS	6
5. OPERATION AND MANAGEMENT OF EVENTS	6
6. OTHER USERS OF THE STADIUM	7
7. PAYMENTS AND PAYMENT METHOD	8
8. USE AND CARE OF THE STADIUM AND FACILITIES	9
9. CAPITAL IMPROVEMENTS	11
10. REPORTING	11
11. SPONSORSHIP	11
12. PROMOTION & ADVERTISING	12
13. INDEMNITY AND INSURANCE	13
14. HEALTH AND SAFETY	14
15. DISPUTE RESOLUTION	16
16. TERMINATION	17
17. NOTICES	18
18. IMPOSSIBILITY OF PERFORMANCE	19
19. RELATIONSHIP	19
20. CONFIDENTIALITY	19
21. DOCUMENT NOT TO ABROGATE COUNCIL'S ROLE AS A REGULATOR	20
22. SEVERABILITY	20
23. LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987	20
24. ASSIGNMENT	20
25. CONTROVERSY	21
26. NO WAIVER	21
27. WARRANTY OF AUTHORITY	21
28. ENTIRE AGREEMENT	21

SCHEDULES

1. FACILITIES	
2. BOOKING APPLICATION FORM	
s 7(2)(i)	
4. PLAN OF STADIUM AND OUTER FIELDS	
s 7(2)(i)	
7. ENFORCEMENT ORDER	
8. CONCEPT PLAN	

AGREEMENT DATED 24th September 2013

PARTIES

1. **REGIONAL FACILITIES AUCKLAND LIMITED** a duly incorporated company having its registered office at Auckland, as trustee of **REGIONAL FACILITIES AUCKLAND (RFA)**
2. **SPRINGS PROMOTIONS LIMITED** a duly incorporated company at Auckland (Hirer)

BACKGROUND

- A. Auckland City Council, the Hirer and Buckley Systems Limited entered into a Promotion Agreement in respect of the Stadium on 13 December 2005, which is due to expire on 30 June 2014.
- B. On 1 November 2010, all assets, liabilities and other matters of Auckland City Council in relation to the Stadium vested in RFA, including the Stadium itself, the Outer Fields and the Promotion Agreement.
- C. The sport of speedway has been held at the Stadium for many years. The number of speedway events historically permitted to operate at the Stadium was 20 per annum. Following the implementation of the Enforcement Order in 2005 the number of events is capped at 12 per annum and the number of practice sessions is capped at 2 per annum.
- D. The Enforcement Order conditions are limiting the business viability of the event operator and restricting the development of the sport. The Hirer wishes to secure an alternative venue for speedway events that allows the sport to develop and allows a sustainable business operation.
- E. In the interim, the Hirer wishes to use the Stadium for the Events during the Term of this Agreement. The Hirer, by signing this Agreement, accepts and agrees to be bound by all the terms of this Agreement on the basis that this Agreement supersedes the Promotion Agreement.
- F. As owner of the Stadium, RFA agrees to hire the Stadium to the Hirer in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Agreement, unless the context indicates otherwise:

Agreement means this Agreement for the use of the Stadium between RFA and the Hirer, as amended from time to time, including any schedules or other attachments to this Agreement;

Business Day means any day (other than a Saturday or a Sunday) upon which registered banks are open for business in Auckland;

Commencement Date means 1 August 2013;

Council means Auckland Council;

Enforcement Order means the Enforcement Order issued by the Environment Court dated 24 November 2005 Decision No.A 189/2005;

Events means the following events held at the Stadium in accordance with the terms of this Agreement and during the period as specified below:

- (a) "Speedway Event" that consists of
 - (i) one day prior to the Speedway Event day itself;
 - (ii) the Speedway Event day itself; and
 - (iii) two days after the Speedway Event day;
- (b) "Speedway Practice Event" that consists of:
 - (i) the day before the Speedway Practice Event day itself; and
 - (ii) the Speedway Practice day itself;
- (c) "International Motorcycle Event" that consists of:
 - (i) the five days prior to the International Motorcycle Event day itself (which includes two practice sessions);
 - (ii) the International Motorcycle Event day itself;
 - (iii) two days after the International Motorcycle Event day.

Expiry Date means 31 July 2017;

Facilities means the facilities notified to the Hirer as being at the Stadium currently envisaged to be all of those listed in Schedule 1 as amended from time to time in accordance with RFA's periodic audits;

GST means goods and services tax payable under the Goods and Services Tax Act 1985 and/or any other value added tax on goods and/or services;

Hirer means Springs Promotions Limited together with its subsidiaries, successors and permitted assigns;

Improvements means any capital improvements in respect of the Stadium made under clause 9, or prior to the Commencement Date under clause 8 of the Promotion Agreement;

International Motorcycle Event means an event in relation to the sport of motorcycling usually conducted at the Stadium in March or April each year, and, for the avoidance of doubt, the International Motorcycle Event is not classified as a Speedway Event;

Lease means the lease entered into between RFA and Ponsonby Rugby Club dated on or about October 2012

Offices means the offices specifically described in Schedule 4;

Outer Fields means the playing field area adjacent to Stadium Road, Great North Road and the Bullock Track, as more specifically outlined in the plan attached as Schedule 4

Persons under the Hirer's Control includes all employees, agents, contactors, suppliers, customers, participants, merchandisers, ticket holders and other invitees of the Hirer;

Ponsonby Rugby Club means Ponsonby District Rugby Football Club Inc;

RFA means Regional Facilities Auckland Limited as trustee of Regional Facilities Auckland together with its successors and permitted assigns;

RFA Representative means the officer appointed from time to time by RFA to act as RFA's representative for this Agreement;

RMA means the Resource Management Act 1991;

Speedway Event means an event in relation to the sport of speedway conducted at the Stadium as outlined in the Enforcement Order;

Speedway New Zealand means Speedway New Zealand Incorporated;

Speedway Practice Event means a practice event in relation to the sport of speedway conducted at the Stadium as outlined in the Enforcement Order;

Speedway Season means each six month period from 1 October to 31 March during the Term;

Stadium means Western Springs Stadium (excluding the outer fields as marked on the plan attached as Schedule 4 and includes all Facilities used by the Hirer in association with the holding of Events and as more specifically outlined in the plan attached as Schedule 4;

Stadium Hire Fee means the fee for the hire of the Stadium for the Event as set out in clause 7.1;

Term means subject to earlier termination in accordance with clauses 16 or 26, the term of this Agreement set out in clause 2.1; and

90 Day Bill Rate means the 90 day bill rate on the Business Day following the due date for payment of RFA's bankers from time to time.

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning throughout this Agreement, including the background;
 - (b) **Headings:** clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
 - (c) **Parties:** references to any party include that party's executors, administrators, successors and permitted assigns;
-

-
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
 - (e) **Plural and Singular:** references to the singular include the plural and vice versa;
 - (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Agreement. Each such schedule and attachment forms part of this Agreement;
 - (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
 - (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
 - (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
 - (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

2. TERM

- 2.1 **Term:** Subject to earlier termination pursuant to clause 16 or 26, this Agreement shall commence on the Commencement Date and shall expire on the Expiry Date. There shall be no right of renewal.
 - 2.2 **Subject** to clause 2.3, the Hirer shall have the first right to negotiate a new Venue Hire Agreement for the Stadium with RFA to operate from the expiry of this Agreement. RFA reserves the right to not enter into a new agreement with the Hirer where:
 - (a) agreement on terms cannot be reached within a reasonable period, as determined by RFA in its absolute discretion; or
 - (b) RFA determines to discontinue operating the Stadium as a speedway venue; or
 - (c) the Hirer does not have an ongoing legal right to operate Speedway Events; or
 - (d) the Hirer has acted in breach of this Agreement which includes, as determined by RFA in its absolute discretion, acting reasonably, failing to
-

negotiate in good faith to reach a negotiated agreement pursuant to clause 2.3.

- 2.3** During the term of this Agreement, the parties agree to enter into negotiations to relocate the Speedway Events:
- (a) to Mount Smart Stadium on agreed commercial terms; or
 - (b) to such other suitable venue as mutually agreed between the parties. where Mount Smart Stadium cannot be used for the development of a speedway venue for any reason whatsoever;
- 2.4** For the avoidance of doubt, the Hirer shall not be in breach of this Agreement for the purposes of clause 2.2(d) where no suitable venue within Auckland is available for the development of a speedway venue pursuant to clause 2.3(b).

3. THE EVENT AND HIRE OF STADIUM

- 3.1 Hire of Stadium:** RFA agrees to allow the Hirer to use the Stadium to hold fifteen (15) Events per year during the Term in accordance with the terms of this Agreement. The Events will be allocated as follows:
- (a) twelve (12) Speedway Events;
 - (b) two (2) Speedway Practice Events; and
 - (c) one (1) International Motorcycle Event.
- 3.2 Rights Granted:**
- (a) **During Events:** Subject to the rights granted to Ponsonby Rugby Club pursuant to the Lease, the Hirer has the exclusive right and licence to occupy the Stadium, the Outer Fields and the Facilities for the duration of each Event.
 - (b) **Other Times:** At all other times, the Hirer has the non-exclusive right and licence to occupy and use the Stadium and Facilities for the purpose of storing the Hirer's plant and equipment, undertaking track maintenance, fence maintenance facility maintenance and development and event preparation.
 - (c) **Offices:** the Hirer may use the ticketing Offices for administration purposes during the Term.
- 3.3 No Estate or Interest:** The Hirer acknowledges that nothing in this Agreement confers upon the Hirer any estate or interest in the Stadium, the Outer Fields or Facilities whether by way of lease or otherwise.
- 3.4 RFA Access:** RFA will have unlimited and accredited access to any area within the Stadium at any time (including during Events) for the purpose of conducting its business operations or in the event of an emergency or in other circumstances where RFA believes it necessary to access the Stadium. Any access will need to be cognisant of the health and safety requirements of the Events.
-

4. BOOKINGS

- 4.1 Subject to clause 4.2, all bookings in connection with the Stadium and Outer Fields must be made through RFA and are subject to the consent of RFA, which consent may be granted or withheld, and may be granted subject to such conditions, at RFA's sole discretion.
- (a) **Booking System:** RFA will manage the booking system for the Stadium and the Hirer must give RFA reasonable prior notice in writing of each proposed Event in the form of the booking application process, attached as Schedule 2.
 - (b) **Conditions:** The Hirer agrees to abide by, and agrees that their invitees will abide by, any additional terms and conditions that RFA may require from time to time for the use of or access to the Stadium, such terms and conditions at the date of this Agreement being those attached as part of Schedule 2.
 - (c) **Image:** The Hirer is aware that the Stadium is a RFA facility and must ensure that all Events proposed at the Stadium will be suitable for the image of RFA as a public body.
 - (d) **RFA's Discretion:** RFA may at its absolute and sole discretion have the authority to decline the booking (without any liability or compensation due to the Hirer or any other person) of any Event within 10 Business Days of receipt of the notification, if in its opinion the Event is not suitable for the image of RFA or may have an adverse effect on the Stadium.
 - (e) **Commercially sensitive information:** RFA will not utilise commercially sensitive information it acquires from the Hirer to directly compete with the Hirer.
 - (f) **Liability:** RFA shall not be liable to the Hirer for any loss, loss of profit, liability or breach of obligation, on the part of the Hirer arising as a result of the exercise of RFA's discretion under this clause, including but not limited to clause 4.1 (d).
- 4.2 **Speedway Events.** The booking process set out in clause 4.1 may not apply where an Event is a Speedway Event or Speedway Practice Event. Pursuant to the Enforcement Order the Hirer is required to notify RFA, Auckland Council and the Springs Stadium Residents Association the draft Speedway Event and Speedway Practice Event dates for the forthcoming season by 30 June each year. The Hirer will ensure that RFA has agreed the proposed event schedule prior to this formal notification.

5. OPERATION AND MANAGEMENT OF EVENTS


- 5.1 **Hirer Responsible for Events:** The Hirer will carry out the Events. The Hirer will be solely responsible in respect of the Events for all activities and associated activities required or desirable in connection with those Events, from the marketing and promotion of the Events, to the operation and management of Events, through to the completion of Events. This responsibility will include as appropriate to each particular Event, but shall not be limited to advertising, ticket sales, catering, security, and parking at Events, managing people and resources associated with an Event, and cleaning or reinstatement of the Stadium required
-

as a result of or in connection with the holding of an Event at the completion of an Event. Subject to 6.3, the Hirer is not responsible for and has no right, title or interest in relation to the operation and management of any other events held at the Stadium and accordingly has no right to offer or grant any rights to any third party in relation to the Stadium or other events. It is acknowledged by both parties that the Hirer has a commitment to Ticketmaster as the exclusive ticketing supplier for the Hirer's Events at the Stadium until 30 June 2014. To avoid doubt, that commitment only relates to the Hirer and the Events and does not in any way impose any restriction or obligation on RFA in respect of ticketing for other events at the Stadium.

- 5.2 RFA Not Responsible for Events:** RFA will not carry out the Events. For the avoidance of doubt, the Events are not undertaken for or on behalf of RFA, and are the sole responsibility of the Hirer.

6. OTHER USERS OF THE STADIUM

s 7(2)(i)



- 6.3 Other Use by Hirer:** If the Hirer wishes to promote other events at the Stadium, other than the Events, such use may be separately negotiated with RFA on an individual event basis and a separate venue hire agreement may be entered into. Subject to any already committed bookings, RFA will use reasonable commercial endeavours and noting clause 4.1 (e) to give priority to the Hirer in respect of any such alternative uses. RFA will grant the Hirer the first right to negotiate to stage motor sport events at the Stadium. RFA will make this offer to negotiate with the
-

Hirer by written notice (First Refusal Notice). The Hirer will have 30 days from the date of the First Refusal Notice in which to accept the offer (during which period RFA will make itself available for such discussions in relation to the offer that the Hirer may reasonably require). If at the end of that period the Hirer does not accept the offer, or has not responded within the 30 day period, RFA is free to negotiate with any third party.

7. PAYMENTS AND PAYMENT METHOD

7.1 Stadium Hire Fee: The Hirer will pay to RFA:

- (a) **S 7(2)(i)** per Speedway Event;
- (b) **s 7(2)(i)** per International Motorcycle Event; and
- (c) **S 7(2)(i)** per Speedway Practice Event.

7.2 Storage Fee: The Hirer will pay **S 7(2)(i)** per annum for the storage of plant, materials and equipment at the Stadium.

7.3 Offices: There is no additional fee payable by the Hirer for using ticketing Offices during the Speedway Season. If the Hirer uses ticketing Offices outside the Speedway Season as an administration base at the Stadium, the Hirer will pay **S 7(2)(i)** per year for use of the ticketing Offices. To the extent that the Hirer's use of the ticketing Offices outside of the Speedway Season is limited or ad hoc in nature, RFA will consider a reduced fee for such use on a prorata basis.

7.4 Payment Terms: RFA will invoice the Hirer twice a year, in June and December, in arrears in respect of:

- (a) Stadium Hire Fee in respect of Events held prior to invoice date;
- (b) Half of the Storage Fee; and
- (c) Administration Offices Fee in accordance with clause 7.3

Each invoice which is received by the Hirer pursuant to this Agreement will be payable on or before the 20th day of the month following the month in which that invoice is dated.

7.5 GST: The Hirer is required to add GST to all payments made to RFA and to make payment of such GST to RFA.

7.6 Interest: Any money not paid within the timeframe specified in clause 7.4 shall be subject to interest based on the 90 day Bill Rate current on the due date plus an additional 5%.

7.7 Payment Requirements: The Hirer must pay all monies due to RFA (to a bank account nominated by RFA) under this Agreement in full without deduction, and the Hirer is not be entitled to apply any set-off, deduction or other claim against any money payable by RFA to the Hirer pursuant to this Agreement or otherwise.

8. USE AND CARE OF THE STADIUM AND FACILITIES

- 8.1 Reasonable Care Required:** The Hirer shall ensure that all reasonable care is taken in the use and occupation of the Stadium by it and its invitees during the holding of Events so that, with the exception of fair wear and tear, the Stadium is left in as good a condition on the expiry of the Agreement as it was on the Commencement Date. In this regard the Hirer shall not mark, paint, drill or otherwise deface any part of the Stadium or make any alteration to the structure, fittings, decorations or furnishings of the Stadium unless with prior consent of RFA.
- 8.2 Role of RFA:** RFA shall be responsible for the general maintenance and upkeep of the land and buildings at the Stadium and shall maintain the Stadium in good condition. RFA is responsible for presenting the Stadium to the Hirer in a condition that is suitable to stage the Events. The Hirer acknowledges and agrees that as of the date of this Agreement that the Stadium is in good condition and such condition is suitable to stage the Events. The Hirer shall be subject to conditions placed on it by RFA as RFA thinks fit to ensure that the integrity and condition of the Stadium is maintained.
- 8.3 Speedway:**
- (a) The Hirer shall at its cost maintain and keep in good condition, the Speedway track, Speedway safety fence and inner field.
 - (b) If required the Hirer shall remove the Speedway safety fence promptly on request from RFA. Such removal(s) will be at the cost of RFA or the third party hirer as the case may be. The costs for such removal are detailed in Schedule 6. The minimum notice period for requesting the Hirer to remove the fence is 10 working days.
- 8.4 Cleaning:** The Hirer shall, at its cost, clean the Stadium and Facilities after every Event in accordance with the standards and practices as would be expected from a good and reputable operator in the same industry from time to time and in accordance with a cleaning programme to be agreed between the Hirer and RFA.
- 8.5 Proper Conduct:** During the Term, the Hirer shall conduct and manage its use of the Stadium in an orderly and lawful manner, and shall remain responsible for the safety and conduct of any Persons under the Hirer's control and shall ensure that none of those persons behave in any riotous, offensive or disorderly manner (including drunken behaviour). The Hirer undertakes that it will eject or refuse admission to any person who fails to behave in accordance with the standards required by this clause.
- (a) any lottery, raffle, betting, gambling or game of chance of any kind is conducted in the Stadium has to be held in accordance with applicable laws and RFA policies.
 - (b) with the exception of a "disability Assist Dog" (as defined in section 75 of the Dog Control Act 1996), no animals are to be brought into the Stadium.
- 8.6 No Smoking:** The Hirer shall ensure all Persons under the Hirer's control:
- (a) strictly adhere to the requirements of the Smoke-free Environments Act 1990 and its amendments at all times. For the avoidance of doubt, any form of smoking in any indoor spaces is not permitted;
-

-
- (b) promote compliance with RFA's (or the Council's) smokefree policies.
- 8.7 Compliance with Laws:** As the exclusive occupier of the Stadium during Events, the Hirer will be solely responsible for complying with the relevant laws and for obtaining all necessary resource consents, approvals and permits to undertake the Events. Without limiting the foregoing, the Hirer shall:
- (a) **Observe Statutes etc:** observe and comply with all applicable laws, statutes, ordinances, regulations and bylaws relating to the use of the Stadium as a venue for Events;
 - (b) **Comply with Licences etc:** comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the Stadium or its use;
 - (c) **Obtain and Hold Permits etc:** ensure that it obtains and holds at all times during the Term, all permits, consents and licences (including necessary resource consents) which it requires in order to hold an Event and otherwise perform its obligations under this Agreement; and
 - (d) **Not Invalidate Consents etc:** ensure that it does nothing which may jeopardise or invalidate any consents, permits or licences held either by the Hirer in relation to Events, or separately by RFA in relation to the Stadium.
 - (e) **RMA:** the Hirer shall at all times comply with the terms of the RMA. As exclusive occupier of the Stadium during the Events, the Hirer is solely responsible for, and must observe and comply with any noise controls under the Enforcement Order, any resource consent or noise limitations required under the RMA. Nothing expressed or implied in this clause 8 (or any other clause of this Agreement) in any way imposes any responsibility on RFA in respect of carrying out the Events or complying with noise limitations.
 - (f) **Enforcement Order.** The Hirer must ensure that Event scheduling and frequency complies with the Enforcement Order or any subsequent resource consent granted or authorisation under the RMA.
- 8.8 Speedway Regulations:** Where the regulations of Speedway New Zealand (or a similar recognised organisation responsible for Speedway in New Zealand) apply to the Event, the Hirer shall observe and comply with such regulations.
- 8.9 Notice of Damage:** The Hirer will give RFA prompt notice of damage to or defect in the Stadium or Facilities of which the Hirer may be aware, and in particular in relation to any pipes or fittings used in connection with the water, electrical, gas or drainage services.
- 8.10 Damage:** Where the Hirer causes any damage to the Stadium or Facilities then RFA may, having first given the Hirer the opportunity to repair the damage to an acceptable standard at the Hirer's cost, but shall not be obliged to, make good any such damage at the Hirer's cost. The Hirer shall, upon receiving an invoice from RFA in respect of the cost of making good such damage, make payment to RFA in accordance with the terms of such invoice. RFA shall reimburse the Hirer for the cost of making good the damage to the extent of any insurance money received by RFA in respect of such damage.
-

-
- 8.11 Broadcasting:** The Parties acknowledge that the Events staged by the Hirer can be broadcast.

9. CAPITAL IMPROVEMENTS

- 9.1 RFA's Approval:** The Hirer shall not carry out any capital works or improvements at the Stadium without first obtaining the prior written approval of RFA. All approved works and improvements shall be carried out to RFA's satisfaction in all respects.
- 9.2 Capital Expenditure:** RFA will be responsible for recommending, overseeing and implementing Improvements. Unless agreed otherwise, the Hirer will bear the cost of Improvements that were suggested by the Hirer. The Hirer will also be responsible for obtaining all necessary permits and consents, including building consents and resource consents.
- 9.3 Option to Acquire Improvements:** At the expiry of the Term of this Agreement, RFA shall have the option to take, at no cost to RFA, ownership and possession of any or all of the Improvements, and any or all other capital improvements in relation to the Stadium carried out by the Hirer, or to not take ownership and possession of any or all Improvements carried out by the Hirer, at RFA's sole discretion. RFA shall make its election by giving notice in writing to the Hirer one month prior to the expiry of the Term. If RFA decides not to take ownership and possession of any or all Improvements, the Hirer shall at its cost remove from the Stadium and/or dispose of such Improvements as RFA may direct.
- 9.4 Ownership of Improvements During the Term:** RFA and the Hirer shall have the non-exclusive right to use, the Improvements until the end of the Term.

10. REPORTING

- 10.1 Performance Reports:** On request, the Hirer shall with reasonable notice provide to RFA reports on the performance by the Hirer of its obligations under this Agreement.
- 10.2 Forecasted Events Schedule:** In addition to the reporting obligations pursuant the Enforcement Order, the Hirer shall provide an expected 12 month forward programme of any other events at the Commencement Date, and at intervals of three months thereafter updated 12 monthly forward programmes of other events shall be provided by the Hirer to RFA.
- 10.3 Health and Safety Plan** The Hirer shall provide to RFA Health and Safety Plans in accordance with clause 14.

11. SPONSORSHIP

- 11.1 Stadium Sponsors:** RFA may have arrangements with sponsors, including but not limited to stadium naming rights (Stadium Sponsors). RFA shall have the sole right to consider Stadium Sponsors. The Hirer agrees not do anything to put the RFA in breach of its obligations to the Stadium Sponsors.
-

-
- 11.2 Event Sponsor:** The Hirer must obtain RFA's prior written approval to any proposed sponsorships of any Event, (excluding event sponsorship by the Hirer and / or Buckley Systems Limited) where the Hirer, acting reasonably, considers that such proposed sponsorship has the potential to cause controversy as contemplated under clause 25.2. In such circumstances, RFA may approve or reject a proposal for sponsorship of an Event, such approval not to be unreasonably withheld.
- 11.3 Terms and Conditions:** The terms and conditions of any such sponsorship shall be in accordance with the applicable sponsorship guidelines of RFA and otherwise on terms and conditions negotiated and agreed in writing between the Hirer, RFA and the sponsor. Notwithstanding this clause 11.3 RFA and the Hirer agree that the following provisions shall apply:
- (a) **Term:** The term of the sponsorship shall be no longer than the Term remaining under this Agreement at the commencement of such sponsorship.
 - (b) **Costs:** All costs associated with obtaining sponsorship shall be borne by the Hirer.
- 11.4 Use of Stadium Grounds and Inner Fields:** Subject to clause 12, RFA, Ponsonby Rugby Club, and the Hirer shall have rights to place in the Stadium grounds and inner fields advertising and sponsorship signage for their respective events.
- (a) **Best Endeavours:** RFA and the Hirer shall use their best endeavours to co-ordinate sponsorships to avoid conflict between either of themselves and/or Ponsonby Rugby Club. In the event of any such conflict RFA and the Hirer shall consult with each other and, if the case requires, with Ponsonby Rugby. In the event that such conflict cannot be resolved to all affected parties satisfaction, RFA shall make a determination which the Hirer agrees it shall abide by.
- 11.5 Speedway Sponsorships:** RFA and the Hirer agree that the requirements of clauses 11.1 and 11.2 shall not apply to sponsorships of individual Speedway teams or drivers provided that such sponsorships comply, at all times, with all applicable legislation, regulations, by-laws and codes including (but without limitation) the Advertising Standards Code.

12. PROMOTION & ADVERTISING

- 12.1 Hirer's Responsibilities:** The Hirer will be responsible for all aspects of the promotion of Events, unless otherwise agreed with RFA. The Hirer undertakes to ensure in all cases that:
- (a) **Quality of Advertising & Promotional Material:** the advertising and promotional material for the Events is carried out for the Event in accordance with best industry practice as reasonably determined by RFA; and
 - (b) **Accurate Information:** all information contained in its advertisements and other published information, including Stadium descriptions and logos, is factually correct and does not and is not likely to mislead any person or bring the Stadium or RFA into disrepute.
-

12.2 No Modification, Copying etc: The Hirer shall not:

- (a) **Modification:** modify the RFA logo in any respect whatsoever without RFA's prior written consent other than by way of reduction or enlargement strictly in proportion to the existing specification;
- (b) **Copying:** copy or adapt RFA logo directly or indirectly for use on its own products; or
- (c) **Registration:** undertake any action with respect to the registration or renewal of registration, or the infringement of RFA logo and/or any other intellectual property of RFA without the prior written consent of RFA.

12.3 Compliance with Law: All advertisements or other forms of promotion of the Events must comply with New Zealand law in all respects and the Hirer shall indemnify RFA in respect of any liability it may incur as a result of any non-compliance.

12.4 Western Springs Names: At any time, including upon termination of this Agreement, the Hirer shall not assert ownership or any other proprietary right to use the names "Western Springs Stadium", or any other name similar to, or an abbreviation of, such names (the "Names"). The Hirer will, upon termination, immediately cease all use of the Names and will do all things necessary to remove the Names from its letterhead, signage, vehicles and promotional or other such materials.

13. INDEMNITY AND INSURANCE

13.1 Indemnity: The Hirer shall indemnify RFA and its respective officers, employees, contractors, agents and advisers ("the Indemnified Persons") against any costs, losses, liabilities, claims, charges, demands, expenses or proceedings suffered or incurred by or brought against any of the Indemnified Persons:

- (a) **This Agreement:** in relation to or in consequence of this Agreement; or
- (b) **Hirer's Actions:** in relation to or in consequence of any action or inaction by the Hirer pursuant to the terms of this Agreement; or
- (c) **Hirer's Materials:** pursuant to or in respect of anything included in or omitted from any promotional material distributed by or for the Hirer; or
- (d) **Damage etc to Stadium:** any damage or injury to the Stadium or its contents caused by or resulting from any act or omission of the Hirer or any other person on or in the Stadium at the request or with the consent, express or implied, of the Hirer.

13.2 Public Liability Insurance: Immediately upon signing of this Agreement by the parties, the Hirer shall at its cost, effect public liability insurance in relation to the Hirer's business at or from the Stadium and Outer Fields for an amount not less than \$10,000,000 or such higher amount as RFA may from time to time reasonably require, and that covers RFA for its vicarious liability.

-
- 13.3 Subject to Approval:** The insurance arranged by the Hirer shall be subject to the approval of RFA as to the adequacy of insurance protection, and the Hirer shall provide all such documentation, information and assistance as may be required by RFA.
- 13.4 Evidence of Policies:** Copies or evidence of all insurance policies shall be supplied by the Hirer to RFA prior to the Hirer commencing any work under this Agreement, and from time to time during the Term upon RFA requesting evidence of the currency of such policies.
- 13.5 Hirer not to Prejudice Insurance:** The Hirer shall not do or permit to be done anything in or about the Stadium which may cause any insurance effected by RFA or any other person to be rendered void or voidable or which causes the premium payable on any such insurance to be liable to increase.
- 13.6 Insurance for the Hirer's Property Brought onto the Stadium:** Where any of the Hirers property of any value is brought into or left at the Stadium, it will be the Hirer's responsibility to arrange and have in place adequate insurance for the property at all times. RFA shall not be liable for any loss or damage to any property brought into the Stadium by virtue of RFA being or being deemed to be bailee of the property, whether such loss or damage arises through the negligence of RFA, its officers, employees, agent or otherwise.
- 13.7 Indirect/Consequential Loss:** Neither party shall be liable to the other under contract or tort or otherwise, for any indirect or consequential loss or loss of profit arising under or in connection with this Agreement.

14. HEALTH AND SAFETY

- 14.1 Health and Safety Policy:** The Hirer shall have a health and safety policy that is compliant with relevant health and safety laws and any reasonable safety rules or policies issued by RFA from time to time implemented at all times during the Term of the Agreement.
- 14.2 Compliance:** The Hirer will comply with the requirements of the current New Zealand Health and Safety legislation, associated regulations and the Stadium health and safety policies and procedures. The Hirer will ensure that every employee, contractor, performer, agent or invitee of the Hirer working or otherwise at the Stadium or Outer Fields during the Term acts in accordance with and at all times complies with:
- (a) the Event Health & Safety Plans provided by the Hirer which outlines the hazards and their controls for the Events;
 - (b) the EIAP;
 - (c) RFA's "no smoking policy" and the Hirer's obligations under the Smoke-Free Environments Act 1990 (and its amendments). The Hirer must obtain RFA's prior written agreement to amending RFA policy, such approval not to be unreasonably withheld.
-

-
- 14.3 Speedway Event Specific Plan:** the Hirer shall ensure that a Speedway Event specific Health & Safety plan is provided to RFA at least 10 business days prior to the commencement of the Speedway Season (and prior to each Event to the extent that such plan changes during the Speedway Season) and the Hirer shall ensure that such Events are conducted in accordance with such plan.
- 14.4 Speedway Practice Event Specific Plan:** The Hirer shall ensure that a Speedway Practice Event specific Health & Safety plan is provided to RFA at least 10 business days prior to the commencement of the first Speedway Practice Event (and prior to each Event to the extent that such plan changes during the Speedway Season) and the Hirer shall ensure that such Events are conducted in accordance with such plan.
- 14.5 International Motorcycle Event Specific Plan:** The Hirer shall ensure that a International Motorcycle Event specific Health & Safety plan is provided to RFA at least 10 business days prior to the commencement of the International Motorcycle Event and the Hirer shall ensure that such Events are conducted in accordance with such plan.
- 14.6 Notification:** In addition to any obligations the Hirer has to the sports governing body as noted in clause 8.8 the Hirer will immediately notify RFA of :
- (a) any significant Stadium hazards to RFA which the Hirer observes or becomes aware of at the Stadium and Outer Fields.
 - (b) any incident or accident to RFA the Hirer becomes aware of at the Stadium and Outer Fields and the Hirer will provide RFA with such assistance as may be necessary to conduct any incident or accident investigation.
- 14.7 Contractors:** RFA reserves the right to refuse external contractors and equipment into the Stadium and Outer Fields if they do not meet the requirements of this clause 14. All contractors must follow RFA's contractor safety management procedure as provided to the Hirer by RFA.
- 14.8 Erections or Scaffoldings:** If the Hirer and/or the Hirer's Representatives construct or erect any rigging or scaffolding or suspend any object from the ceiling of any part of the Stadium, such rigging or scaffolding or suspension must be safely constructed or carried out and not damage the Stadium or any of its contents. The Hirer will ensure that all relevant certifications and/or notifications to the Ministry of Business, Innovation and Employment are undertaken as per current legislative requirements.
- 14.9 Electrical Use and Installation:** The Hirer will not bring or permit any electrical devices to be brought into the Stadium and Outer Fields unless such devices has been inspected by a suitably qualified electrician or trained person and complies with New Zealand standards. The Hirer will be liable for any costs or damages that arise out of the use of electrical devices or any electrical installation or connection.
- 14.10 Prohibited Goods/Activities:** The Hirer must ensure that:
- (a) firearms, explosives, flammable liquids or other dangerous substances or articles which may cause damage or injury to property or persons are not brought into the Stadium, except with RFA's prior written agreement and
-

then only in accordance with the specific safety event plans provided by the Hirer and the terms and conditions that RFA impose;

- (b) emergency exits and exit signs in the Stadium are not obscured and that at least 3 metres clearance is maintained at all times in respect of any egress;
- (c) fire hoses, alarms and switches remain visible and accessible at all times; and

14.11 Open Flames: The Hirer must ensure that the use of open flames complies with the Hazardous Substances and New Organisms Act 1996, associated Regulations, Codes of Practice and RFA policies and procedures. All use of open flame must be approved in writing by RFA.

14.12 Enforcement: During the Term, RFA reserve the right to audit the Hirers compliance, and the compliance of the Hirer's representatives, with this clause 14. RFA may take any action that RFA deem appropriate, acting reasonably, to ensure that this clause 14 is not breached. RFA will accept no responsibility for the consequences of any such action. RFA will not exercise its rights under this clause 14 in an unreasonable manner or in any way to deliberately disrupt the Hirer's ability to hold the Event.

15. DISPUTE RESOLUTION

15.1 Disagreements: In the event of any disagreement between the parties, either party may give written notification to the other detailing the nature of the dispute.

15.2 Resolution Between Parties: Within five Business Days upon receiving a notice under clause 15.1 each party shall nominate one person who will have authority to settle the dispute. The nominated persons shall hold discussions and genuinely attempt to resolve the dispute within ten Business Days of their nomination.

15.3 Mediation: If the dispute is not resolved under clause 15.2 then any party may at any time in the next five (5) Business Days give written notice of its intention to refer such dispute to mediation. The parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. If the parties cannot agree on a mediator within five Business Days of the notice the mediator shall be selected by the President for the time being of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or its successors. The mediator shall discuss the matter with the parties (separately or jointly in the discretion of the mediator) and endeavour to resolve it by agreement. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings. The parties will bear their own costs in the mediation and each party shall pay half the costs of the mediator. Subject to this clause 15 the parties shall continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to in mediation.

15.4 Arbitration: If the dispute is not resolved under clause 15.3 within a further twenty Business Days after the appointment of a mediator, any party may then require the dispute to be referred to arbitration. If this clause is invoked:

- (a) **Arbitration Act:** the dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996;
-

-
- (b) **Arbitration in New Zealand:** the arbitration will take place in New Zealand;
 - (c) **Continuance of Obligations:** the parties shall continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to arbitration; and
 - (d) **Award Final:** the award in the arbitration will be final and binding on the parties.

16. TERMINATION

- 16.1 Termination for Cause:** RFA may terminate this Agreement immediately by notice in writing to the Hirer if:
- (a) **Failure to Pay:** from any cause whatsoever (save the default of RFA) the Hirer fails to pay any moneys payable under this Agreement to RFA upon the due date for payment, and following notice in writing by RFA of such default, the Hirer has failed within a period of twenty Business Days of the date of its deemed receipt of such notice to rectify such default; or
 - (b) **Breach of Agreement:** the Hirer fails in any material respect to comply with its obligations under this Agreement and following notice in writing by RFA of such default, the Hirer has failed within a period of ten Business Days of the date of its deemed receipt of such notice to rectify such default; or
 - (c) **Liquidation, Insolvency etc:** the Hirer is:
 - (i) unable to pay its debts as they fall due for the purposes of section 287 of the Companies Act 1993; or
 - (ii) removed from the Register of Companies or is subject to liquidation (namely an application for or an order is made for or an effective resolution is passed for its liquidation), or a receiver is appointed, or a petition for winding up of the Hirer is made except for the purposes of a solvent reconstruction or amalgamation.
- 16.2 Termination Without Cause:** The Hirer may terminate this Agreement at any time by giving to RFA no less than 60 Business Days' prior written notice to this effect.
- 16.3 Removal:** If the Hirer does not remove all of the Hirer's property or give up possession of the Stadium within 10 Business Days after Termination of this Agreement, RFA may arrange for removal of such property and the Hirer will be liable for the cost of removal.
- 16.4 No Prejudice:** Termination of this Agreement by RFA shall not prejudice any other rights or remedies which RFA may have against the Hirer or the liabilities of the Hirer, existing at or before the expiry of the notice of termination.
-

17. NOTICES

17.1 Form of Notice: All notices required to be given under this Agreement must be in writing and may be personally delivered, posted, faxed or emailed to the addresses set out below or to such other addresses as agreed between the parties.

(a) RFA: If to RFA, to:

Director, Stadium Partnerships
Level 4, Aotea Centre, 50 Mayoral Drive, Auckland 1010
Private Bag 92 340, Victoria Street West, Auckland 1142, New Zealand

Email: Doug Cole doug.cole@aucklandstadiums.co.nz

with a copy to:

Simpson Grierson
88 Shortland Street
Private Bag 92518
Wellesley Street
Auckland

For: Craig Nelson
Email: craig.nelson@simpsongrierson.com
Facsimile: (09) 977 5185

(b) The Hirer: If to the Hirer, to:

Springs Promotions Ltd
Attention Bill Buckley
9 Bowden Road, Mt Wellington
P O Box 51 376 Pakuranga, Manukau 2140

with a copy to:

Ulrich Milne Lawyers
P O Box 56 309
Dominion Road
Auckland 1446

For: Janice Ulrich
Email: janice.urlich@uml.co.nz
Facsimile: (09) 623 7413

17.2 Time of Receipt: Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be deemed to be duly received:

- (a) Personal Delivery:** if sent by hand, if left with an apparently responsible person at the address of the recipient;
 - (b) Pre-paid Post:** if sent by pre-paid post, three Business Days; or
 - (c) Facsimile or email:** where served by facsimile or email, upon receipt of the correct facsimile or email receipt confirmation.
-

provided that if any communication is received after 5.00pm on a Business Day or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

18. IMPOSSIBILITY OF PERFORMANCE

In the event that RFA or the Hirer, is unable to perform or discharge their respective obligations arising out of this Agreement by reason of any fire, flood, earthquake or similar catastrophic event, armed conflict, riots or other civil disturbances, embargoes, blockades or acts of any government or its agencies, strikes or industrial action, or any other event of similar gravity which is beyond the reasonable control of the party effected, then the parties' respective rights and obligations for the duration of such event shall be suspended and each of the parties shall be relieved of their respective obligations during that time, provided always that:

- (a) each party exercises reasonable diligence to put itself again in a position to carry out its obligations hereunder; and
- (b) the dates and times for the Event shall not be varied or extended except with the written agreement of both parties;
- (c) the Hirer shall immediately notify RFA of the circumstances of an event under this clause 18 and therefore advise RFA in writing within 24 hours of the reasons for its failure to perform obligations under this Agreement and the effect of such failure.

For the purposes of this clause the solvency of a party shall not be beyond its reasonable control, and nothing in this clause shall require either party to settle any strike or industrial disturbance where it is against its better judgment to do so.

19. RELATIONSHIP

Nothing contained in this Agreement shall be construed as creating an employer-employee relationship, a partnership, an agency or a joint venture between the parties. Neither party shall have the authority to make any statements, representation or commitments, to take any action binding the other, except as provided in this Agreement or as authorised in writing by the other.

20. CONFIDENTIALITY

Subject to clause 23, neither the Hirer nor RFA shall disclose to any third party any part of this Agreement or any of the details of its dealings with RFA or the Hirer except with RFA's or Hirer's consent or except as may be required by law. Every media release or promotional material released by the Hirer or RFA relating to the relationship between RFA and the Hirer shall be in a form first approved by the other party, which approval shall not be unreasonably withheld. The terms of this clause will continue to bind the Hirer and RFA, notwithstanding the termination or expiry of this Agreement.

21. DOCUMENT NOT TO ABROGATE COUNCIL'S ROLE AS A REGULATOR

Nothing express or implied in this Agreement shall constrain or restrain the Council's powers and obligations under statute or by law as a regulator.

22. SEVERABILITY

If at any time any part of this Agreement is held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that term will be enforced to the maximum extent permissible so as to effect the parties' intent, and the remainder of the Agreement will continue in full force and effect.

23. LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

The Hirer acknowledges that RFA is subject to the provisions of the Local Government Official Information and Meetings Act 1987.

24. ASSIGNMENT

- 24.1 Personal to Hirer:** This Agreement is strictly personal to the Hirer and the Hirer shall not assign any of its rights or obligations under this Agreement wholly or in part without RFA's consent. RFA's costs associated with considering any request by the Hirer under this clause 24, whether or not consent is granted, shall be paid by the Hirer.
- 24.2 Change in Ownership or Control:** Any change in the ownership structure or the management or control structure of the Hirer which has the effect of changing the person or persons in effective control of the Hirer shall be deemed an assignment by the Hirer for the purposes of this Agreement.
- 24.3 Conditional Consent:** Without limiting RFA's discretion under clause 24.1 RFA may make it a condition of consenting to an assignment by the Hirer that RFA is completely satisfied that the assignee will stage the Events to the standards set out under this Agreement. The Hirer shall at its cost provide any information which RFA may reasonably require to make a determination pursuant to this clause 24. RFA may further make it a condition of consenting to an assignment that RFA receive from the assignee such assurances in such form as RFA may reasonably require regarding the ability of the assignee to stage the Events to the standards set out under this Agreement and that the assignee shall comply with the applicable terms of this Agreement. Without limiting the generality of the foregoing, RFA may require the assignee to enter into a written agreement with RFA regarding the promotion of the Events upon such terms as RFA may reasonably require.

25. CONTROVERSY

- 25.1 Public statements:** The Hirer may not make any public statements relating to RFA or Auckland Council without RFA's prior written agreement.
- 25.2 Harming reputation:** Without limiting clause 25.1, the Hirer must ensure that they or their Representatives do not become involved in any act, situation or event
-

which may (in RFA's reasonable opinion) harm RFA's reputation or the reputation of the Stadium or Auckland Council. If RFA considers that the Hirer has breached or is likely to breach this clause, the Hirer's nominated representative will meet with RFA's nominated representative to discuss the relevant situation in good faith and use all reasonable endeavours to agree what steps should be taken to avoid harming RFA's reputation or the reputation of the Stadium or Auckland Council or remedy any such harm that has already been caused. The Hirer agrees to comply with any such mutually agreed steps. If, after such meeting RFA is of the view that such act, situation or occurrence materially reduces the benefit of this Agreement, or materially increases the burden of this Agreement to RFA then without prejudice to any of its other rights or remedies, RFA may cancel this Agreement forthwith by notice in writing. RFA shall not exercise its right to cancel this Agreement under this clause unreasonably.

26. NO WAIVER

No waiver or any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way effect, limit or waive such party's right to enforce and compel strict performance with the provisions of this Agreement.

27. WARRANTY OF AUTHORITY

Each person signing this Agreement as an authorised officer, agent or trustee of any party warrants to the other party that at the date of execution by him or her, he or she has full authority to execute this Agreement in that capacity.

28. ENTIRE AGREEMENT

- 28.1 Supersedes:** This Agreement contains all the terms of the agreement between the parties and supersedes and replaces any prior agreements and understandings between the parties. For the avoidance of doubt, upon execution of this Agreement, the Promotion Agreement will be terminated with immediate effect.
- 28.2 Amendment:** This Agreement may only be modified in writing, executed by the parties.
-

SIGNATURES

SIGNED on behalf of REGIONAL FACILITIES AUCKLAND LIMITED as Trustee of REGIONAL FACILITIES AUCKLAND by:



Signature of authorised signatory

ROBERT DOMM

Name of authorised signatory

Witness:*



Signature of witness

D. J. Cole

Full name of witness

~~Director~~ Douglas J Cole

Occupation of witness

Director

Address of witness

PO Box 33127 Takapuna

*The witness must not be a party to this agreement.

SIGNED on behalf of SPRINGS PROMOTIONS LIMITED as Hirer by:



Signature of authorised signatory

STEWART BUCKLEY

Name of authorised signatory

Witness:*



Signature of witness

Full name of witness

Graeme Running

Occupation of witness

Manager

Address of witness

Auckland

*The witness must not be a party to this agreement.

DEED OF VARIATION OF VENUE HIRE AGREEMENT

**REGIONAL FACILITIES AUCKLAND LIMITED as Trustee of
REGIONAL FACILITIES AUCKLAND**

SPRINGS PROMOTIONS LIMITED

 **Simpson Grierson**

Barristers & Solicitors
Auckland, Wellington & Christchurch
New Zealand
www.simpsongrierson.com

DEED DATED

14 July

2016

PARTIES

1. **REGIONAL FACILITIES AUCKLAND LIMITED** a duly incorporated company having its registered office at Auckland, as trustee of **REGIONAL FACILITIES AUCKLAND (RFA)**
2. **SPRINGS PROMOTIONS LIMITED**, a duly incorporated company at Auckland (Hirer)

BACKGROUND

- A. RFA and the Hirer are parties to the Venue Hire Agreement dated 24 September 2013 (**Venue Hire Agreement**).
- B. The Venue Hire Agreement is due to expire on 31 July 2017.
- C. RFA and the Hirer wish to vary the Venue Hire Agreement to extend the term of the Venue Hire Agreement and to allow RFA to carry out facility upgrade construction works during the extended term.
- D. RFA and the Hirer have agreed to amend the Venue Hire Agreement, on the terms set out in this deed.

THIS DEED RECORDS THAT:

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this deed, unless the context indicates otherwise:
Venue Hire Agreement is defined in paragraph A of the background to this deed, and words and expressions defined in the Venue Hire Agreement have the same meaning when used in this deed.
- 1.2 **Interpretation:** In this deed, unless the context indicates otherwise, the interpretation provisions of the Venue Hire Agreement apply as if they were set out in this deed.

2. EFFECTIVE DATE, OBJECTIVES AND CONFIRMATION

- 2.1 **Effective Date:** The variations to the Venue Hire Agreement set out in this deed have effect on and from the execution of this deed by both parties (**Effective Date**).
- 2.2 **Confirmation:** Each of the parties confirms and acknowledges that, except as expressly agreed in this deed, its obligations under, and the terms of, the Venue Hire Agreement continue and remain in full force and effect.

3. AMENDMENTS TO THE VENUE HIRE AGREEMENT

- 3.1 **Expiry Date:** The definition of Expiry Date under Clause 1.1 of the Venue Hire Agreement is deleted and replaced with the following:

Expiry Date means 31 March 2019;

- 3.2 **Facility Upgrade Construction Works:** The following new clause will be added as Clause 29:

29 FACILITY UPGRADE CONSTRUCTION WORKS

The Hirer agrees that RFA will be entitled, at its cost, to undertake "facility upgrade construction works" during the extended term of the Agreement; subject to RFA consulting with the Hirer in advance, and such works not materially adversely impacting on the Hirer's ability to use the Stadium for Speedway Events during the Speedway Season. Attached to the Agreement as Schedule 9 are plans indicating the areas where work is to be carried out (being a toilet upgrade and an upgrade to Stadium Road), along with indicative dates of when the said works will be carried out.

- 3.3 **Notices:** Clause 17.1(a) is deleted and replaced with the following:

RFA: If to RFA, to:

*Director, Auckland Stadiums
Regional Facilities Auckland
Level 5, Suite 4
Ironbank Building
501/150 Karangahape Road
Auckland 1010*

Private Bag 92340, Victoria Street West, Auckland 1142

Email: Paul Nisbet paul.nisbet@aucklandstadiums.co.nz

- 3.6 **New Schedule:** The plans set out in Appendix A of this deed are added as a new Schedule 9 to the Agreement.

4. GENERAL


- 4.1 **Costs:** Unless otherwise stated in this deed, each party will bear its own costs and expenses in connection with the negotiation, preparation and implementation of this deed.
- 4.2 **Partial Invalidity:** If any provision of this deed is or becomes invalid or unenforceable, that provision will be deemed deleted from this deed. The invalidity or unenforceability of that provision will not affect the other provisions of this deed, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- 4.3 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this deed.
- 4.4 **Waiver:** Any waiver by a party of any of its rights or remedies under this deed will be effective only if it is recorded in writing and signed by a duly authorised representative of that party. If the waiver relates to a breach of any provision of this deed, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any

provision, of this deed at any time by either party will in any way affect limit or waive that party's right to subsequently require strict compliance with this deed.

- 4.5 **Counterparts:** This deed may be signed in counterparts. All executed counterparts will together constitute one document.
- 4.6 **Copies:** Any copy of this deed that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this deed) may be relied on by any party and presented in evidence in any legal proceedings as though it were an original copy of this deed. This deed may be entered into on the basis of an exchange of facsimile, PDF or other document reproduction format.
- 4.7 **Amendment:** No amendment to this deed will be effective unless it is in writing and signed by a duly authorised senior representative of each party.
- 4.8 **Governing Law and Jurisdiction:** This deed is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this deed.

EXECUTED AND DELIVERED AS A DEED

SIGNED on behalf of **REGIONAL FACILITIES AUCKLAND LIMITED** as Trustee of **REGIONAL FACILITIES AUCKLAND** by:



Paul Brewer, Acting Chief Executive

Witness*:



Signature of witness



Full name of witness



Occupation of witness



Address of witness

*The witness must not be a party to this agreement.

SIGNED on behalf of SPRINGS
PROMOTIONS LIMITED as Hirer by:


Signature of authorised signatory

STEWART IAN BUCKLEY
Name of authorised signatory

Witness*:


Signature of witness

Signature of witness

CHERYL BARNETT

Full name of witness

EXECUTIVE ASSISTANT

Occupation of witness

2/36 CLYDESDALE AVE, SOMERVILLE, MANUKAU 2014

Address of witness

*The witness must not be a party to this agreement.

APPENDIX A
New Schedule 9

1. Toilet upgrade works



2. Stadium Road upgrade works

