

**DEED REGARDING THE SPEEDWAY AT
BAYPARK**

between

Bay Venues Limited

and

Bay of Plenty Speedway Association
Incorporated

SHARP TUDHOPE

TAURANGA

DEED REGARDING THE SPEEDWAY AT BAYPARK

Date:

1st July.

2017

Parties

Bay Venues Limited a company (number 1955233) with its registered office at ASB Baypark Stadium, 81 Truman Lane, RD5, Tauranga 3175 ("BVL")

Bay of Plenty Speedway Association Incorporated an incorporated society (number 213097) with its registered office at 20 Hillcrest Road, Otumoetai, Tauranga 3110 ("the Association")

Background

- A. BVL, the Association, Tauranga City Council ("TCC"), Robert Moncrieff Clarkson and Baypark Speedway Promotions Limited are parties to a deed dated 18 September 2007 in relation to (among other matters) the continuation and operation of speedway meetings at Baypark ("the Original Deed").
- B. The Parties have continuing rights and obligations to each other in relation to speedway meetings at Baypark under the Original Deed which they wish to replace with the respective rights and obligations as set out in this deed.
-

1. Definitions and Interpretation

1.1 In this Deed:

- (a) "**Baypark**" means part of the land containing 19.410 hectares more or less being Lot 1 on Deposited Plan 305608 and being part of the land in Certificates of Title 19365 and SA19A/1129 South Auckland Registry owned by TCC and operated by BVL and the improvements thereon.
- (b) "**Effective Date**" means the date of this deed as set out above.
- (c) "**Financial Year**" means a year commencing on 1 July and ending on 30 June.
- (d) "**Forum**" has the meaning given to it in clause 4.1.
- (e) "**Season**" means a period commencing on 1 October in each year and ending on 31 May in the following year.
- (f) "**Stadium**" means the stadium and other improvements located on Baypark.
- (g) "**Term**" has the meaning given to it in clause 3.1.

1.2 In this deed, unless the context otherwise requires:

- (a) headings are for ease of reference only and do not affect the interpretation of this deed;



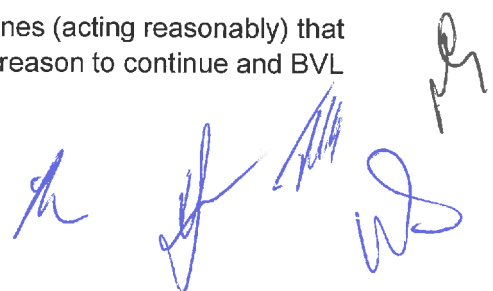
- (b) words importing the singular includes the plural and vice versa;
- (c) reference to a "person" includes a natural person, any company, or other body corporate or organisation; and
- (d) a reference to a "party" means a party to this deed and includes that party's executors, administrators, successors, substitutes and permitted assigns.

2. Termination of Obligations under Original Deed

- 2.1 With effect from the Effective Date, the Parties agree that that any express or implied obligation that BVL has to the Association or that the Association has to BVL arising under or in connection with the Original Deed is terminated and of no further effect. In particular, but without limitation, the Parties agree that the following clauses set out in the Original Deed shall no longer apply as between the Parties: clauses 4, 5, 7, 10, 11, 12, 13, 14.5 and 15.
- 2.2 From the Effective Date:
- (a) BVL discharges and releases the Association from all of its obligations owed to BVL under the Original Deed (whether arising before or after the Effective Date) date; and
 - (b) The Association discharges and releases BVL from all of its obligations owed to the Association under the Original Deed (whether arising before or after the Effective Date).
- 2.3 No party will claim or allege against the other party (or join any other person in claiming or alleging against the other party) that this deed is in breach of, or evidences a breach or intended breach, of a party's obligations under the Original Deed

3. Term and Termination

- 3.1 Unless terminated earlier in accordance with clause 3.3 or by the written agreement of the Parties, this deed commences on the Effective Date and shall continue until the earlier of:
- (a) the period of 12 years; or
 - (b) the date that the current Land Use Consent for the speedway activities at Baypark expires without BVL being able to obtain a new consent extending or replacing that consent;
- (the "Term").
- 3.2 Without affecting clause 3.1, the parties agree that at the end of the 10th year of the Term they shall meet and consult with each other in good faith about the possible future direction and provision of speedway at Baypark.
- 3.3 Notwithstanding clause 3.1, BVL shall be entitled to terminate this deed at any time during the Term:
- (a) by giving written notice to the Association if it determines (acting reasonably) that BVL's existing speedway promoter is unable for any reason to continue and BVL



using its best endeavours is unable to arrange a suitable financially sustainable alternative. Prior to making such determination BVL will give notice to the Association of the opportunity to put forward a proposal, including nominating a possible replacement promoter, for consideration by BVL in its sole discretion. Such proposal must be delivered to BVL in writing within 3 months of such notice from BVL.;

(b) immediately on written notice if the Association ceases to exist.

4. **Speedway Forum**

4.1 As soon as possible following the Effective Date, BVL will procure the constitution of a speedway forum ("**Forum**") to meet at least once every four months and comprising the following membership:

- (a) two representatives of the Association (such representatives to hold a governance role within the Association);
- (b) one representative of the drivers contracted to race in the speedway at Baypark;
- (c) the Chairman and CEO (from time to time) of BVL (or their respective representatives).

4.2 BVL shall also extend to a representative of Speedway New Zealand an invitation to each meeting of the Forum and may, if appropriate, invite its speedway promoter to attend as well.

4.3 The purpose of the Forum is to communicate, consult, inform, listen to concerns, and develop strategies and initiatives for the improvement and growth of speedway activity at Baypark, and to discuss issues that arise during the Season related to speedway racing, including (without limitation) stand down dates for classes and ongoing management of the racing track. However, the Parties acknowledge that the Forum is an advisory forum to BVL and is not a decision-making body and no recommendations of, or decisions made by, the Forum will be binding on BVL, TCC or any other person.

4.4 In the event that BVL fails to convene meetings of the Forum with the agreed regularity, the Association shall have access to the Board of BVL to express its concerns in this regard.

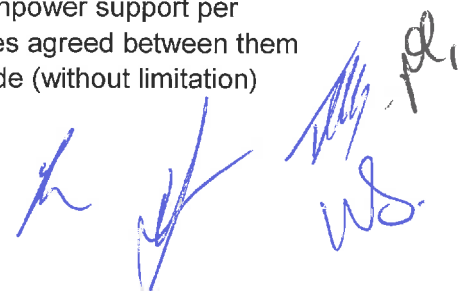
5. **Speedway Events**

5.1 BVL shall hold in each Season no fewer than 10 speedway events plus 1 practice event in the Stadium, but will endeavour, subject to weather and extraneous clauses, to hold not fewer than 16 events in such Season.

5.2 On any application to renew the Land Use Consent for Baypark, BVL shall support the continuation of speedway activities at Baypark.

5.3 BVL will pay to the Association for each speedway meeting carried on by BVL at the Stadium on or after the Effective Date the sum of \$1000.00 plus GST (if any).

5.4 The Association shall provide to BVL at least 50 hours of manpower support per speedway meeting. That support shall comprise those services agreed between them prior to the commencement of each meeting which may include (without limitation)



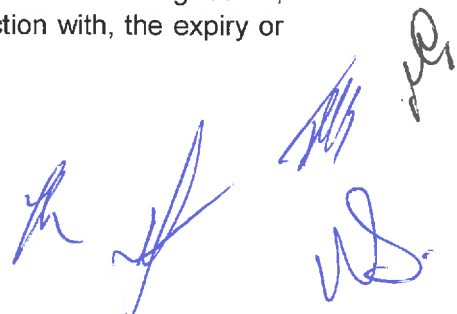
car promotion and/or fence security. The Association shall perform those services properly and efficiently so that they do not give rise to complaints and shall provide sufficient manpower with sufficient skill and expertise to ensure that the services are so performed.

6. Clubrooms and Meeting Rooms

- 6.1 BVL shall make available the clubrooms located at [insert] (the “clubrooms”) within the Stadium available for use by the Association in conjunction with speedway events. The clubrooms shall be known as “the Bay of Plenty Speedway Association clubrooms” and the Association may place a sign inside the clubrooms containing that name.
- 6.2 The Association shall be entitled to hold fortnightly meetings in one of the meeting rooms at Baypark nominated by BVL and to hold up to four events in each Financial Year in the clubrooms.
- 6.3 No hire charge shall be made to the Association for its use of the clubrooms and meeting rooms, however the Association shall meet the costs of the attendances of a key holder, cleaning, and other reasonable costs associated with its use of those rooms.
- 6.4 Prior to using the clubrooms or a meeting room, the Association must make a reservation with BVL. BVL shall not decline any such reservation unless all meeting rooms or the club rooms (as the case may be) have been previously reserved.
- 6.5 In using the clubrooms or the meeting rooms, the Association will comply at all times with:
- (a) All rules and regulations relating to the Stadium and the holding of speedway events; and
 - (b) such conditions as to the sale and consumption of food and liquor, cleaning and other matters as BVL may prescribe from time to time.
- 6.6 The Association may place or hang memorabilia on the walls of the clubrooms and may leave in place the speedway trophy cabinet in the clubrooms. However, following consultation with the Association, BVL may cover the memorabilia and/or trophy cabinet or move them to another place nominated by BVL for such periods as BVL, acting reasonably, considers their presence in the clubrooms to be inappropriate.
- 6.7 The Association may utilise the clubrooms on speedway nights for Association activities (including raffles).

7. Consequences of Termination

- 7.1 On the termination or expiry of this deed the Association must (at its own cost) remove the trophy cabinet and any Association memorabilia from the clubrooms (or from such other place as it may have been moved to in accordance with clause 6.6).
- 7.2 The Association agrees that it shall have no claim against BVL for loss of goodwill, profits or other claims or expenses as a result of, or in connection with, the expiry or termination of this deed.

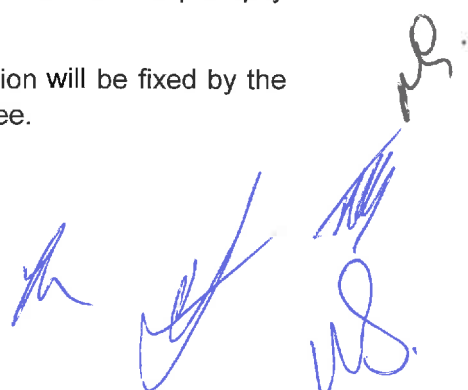


8. Promoter Agreement

- 8.1 Any agreement BVL enters into licensing a promoter to operate speedway events at Baypark shall:
- (a) Include a term requiring the promoter to recognise and assist BVL to undertake all of BVL's obligations to the Association as set out in this deed;
 - (b) Otherwise be on such commercial terms as BVL considers appropriate. But without restricting such terms, BVL may consider CPI adjustments when setting or reviewing any fees or charges set under such agreement.

9. Dispute Resolution

- 9.1 If either party has any dispute with the other in connection with this deed:
- (a) that party will promptly give full written particulars of the dispute to the other; and
 - (b) the Parties will promptly meet together and in good faith try to resolve the dispute prior to commencing any other dispute resolution proceedings.
- 9.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the Parties) the dispute will be referred to mediation by either party giving written notice of such referral to mediation to the other. The mediation will be conducted by a LEADR panel mediator chosen by the Parties or, if they fail to agree on such appointment within 14 days of the notice referring the dispute to mediation being given, the mediator will be appointed on request by either party, by the President of the New Zealand Law Society or the President's nominee. A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.
- 9.3 If the dispute is not resolved by within 20 Business Days of it having been referred to mediation in accordance with clause 9.2, either party may refer the dispute to a single arbitrator by giving written notice to the other party. The single arbitrator will be appointed by the Parties or, if the Parties fail to agree on such appointment within 14 days of the notice referring the dispute to arbitration being given, the arbitrator will be appointed on request by either party by the President of the New Zealand Law Society or the President's nominee. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996. The cost of the arbitrator will be apportioned between the Parties in the manner determined by the arbitrator.
- 9.4 The determination of the arbitrator in accordance with clause 9.3 will be final and binding on the Parties.
- 9.5 The Parties must continue to comply with their obligations under this deed during the dispute resolution process.
- 9.6 The Parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 9.7 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the Parties cannot agree.
- 9.8 This clause will not apply to:



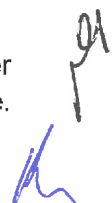
- (a) a dispute arising in connection with any attempted renegotiation of this deed; or
- (b) any application by either party for urgent interlocutory relief.

10. Notices

10.1 Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this deed must be in writing, signed by a person duly authorised to bind the sender and may be:

- (a) served personally to a director, employee or agent of the party at that party's address or to a person who appears to be in charge of that place at the time of delivery or, if such delivery is not practicable at that time, to any person who is named as a director of the company or corporation on the appropriate register of companies at that time;
- (b) sent by registered mail to the registered address of the party or such other address as that party may notify the other party in writing from time to time;
- (c) sent by fax to the fax number of that party specified below or such other fax number as that party may notify the other party in writing from time to time; or
- (d) sent by email to the email address of that party specified below or such other email address as that party may notify the other party in writing from time to time.


If to the **Association**:

Fax Number: ~~[specify preferred contact person fax number]~~ 07578 1355 


Email: ~~[specify preferred contact person email address]~~ max@jkhilton.co.nz

Attention: ~~[specify preferred contact person]~~ Max Hamilton

If to **BVL**:

Fax Number: [07 ~~575 0270~~] 572 4372 

Email: ~~[specify preferred contact person email]~~ ervin.mcsweeney@bayvenues.co.nz

Attention: [Ervin McSweeney] 

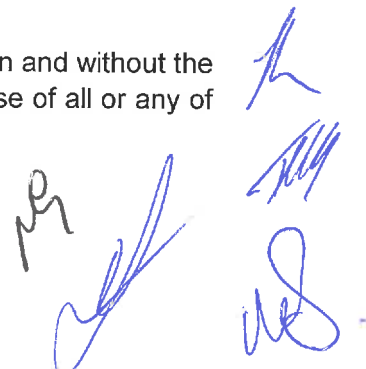
10.2 Notices given:

- (a) personally are served upon delivery;
- (b) by post are served 5 days after posting; and
- (c) by fax or email are served upon receipt of the correct answerback or receipt code, provided that any notice that has been served on a Saturday, Sunday or public holiday is served on the first Business Day after such day.

11. General

11.1 **Assignment:**

- (a) BVL and its successors or assigns may in its absolute discretion and without the consent of the Association assign, transfer, or otherwise dispose of all or any of



its rights or interests in, or any of its obligations or liabilities under or in connection with this deed to any person.

(b) The Association may not directly or indirectly transfer, assign, or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under or in connection with this deed without first obtaining the written consent of BVL (such consent not to be unreasonably or arbitrarily withheld or delayed).

11.2 **Amendments:** No modification or addition to this deed is effective unless it is in writing and signed by each party.

11.3 **No Waiver:** No failure or forbearance by a party to exercise, or delay in exercising (in whole or in part) any right, power or remedy under, or in connection with, this deed will operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this deed will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach of any provision of this deed will not be, or be deemed to be, a waiver of any other or subsequent breach.

11.4 **Further Assurances:** Each party must at its own cost do all things, including execute any document and perform any action reasonably necessary to give full effect to this Deed.

11.5 **Severance:** In the event of the invalidity of any part or provision of this Deed, such provision will be severed from this Deed and shall not affect the enforceability of any other part of this Deed.

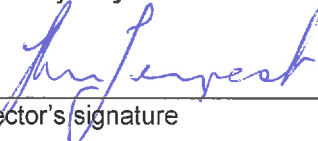
11.6 **Counterparts:** This Deed may be executed and delivered in one or more counterpart copies (including facsimile or pdf email transmission copies) and provided that each party has executed and delivered a counterpart, the counterparts shall together constitute a binding and enforceable deed between the Parties.

11.7 **Costs:** BVL shall pay the costs relating to the preparation and consideration of this Deed.

11.8 **Entire agreement:** This deed constitutes the entire agreement between the parties concerning its subject matter.


Signed

Signed by **Bay Venues Limited** by:



Director's signature

KEITH NEVILLE TEMPEST
Director's full name



Director's signature

MASAM LEWIS GUTTERY
Director's full name



Signed by **Bay of Plenty Speedway Association Incorporated** in the presence of:

Signature of witness

Name of witness

Occupation J. K. Hamilton
Solicitor
Tauranga

Address

President

Bay of Plenty Speedway Association Incorporated

Committee Member

Committee Member