

FIRST AGREEMENT TO VARY (in respect of an Agreement to Lease and Licence to Occupy) FOR PREMISES AT NGAHUE RESERVE, ST JOHNS, AUCKLAND

between

AUCKLAND COUNCIL

and

OCEANIA FOOTBALL CONFEDERATION INCORPORATED



AGREEMENT dated the 30th day of AUGUST 2016

PARTIES:

1. AUCKLAND COUNCIL (Council)
2. OCEANIA FOOTBALL CONFEDERATION INCORPORATED (Lessee)

INTRODUCTION:

- A. By the Agreement to Lease the Council granted the Lessee access to the Premises to undertake the Project.
- B. The Agreement to Lease contemplates the grant of the Lease upon completion of Stage One.
- C. Notwithstanding Stage One is not yet completed and therefore the Lease not yet granted, Council granted the Lessee a Licence to Occupy for the interim occupation and use of the Premises.
- D. The Council and the Lessee remain respectively the parties under the Agreement to Lease and the Licence to Occupy.
- E. The parties have agreed to vary the terms of the Licence to Occupy and the Agreement to Lease as set out in this Agreement.

COVENANTS:

1. INTERPRETATION

In this Agreement unless the context otherwise requires:

1.1 Definitions:

Agreement to Lease means the agreement to lease dated 13 September 2013 entered into between the Council and the Lessee;

Condition means the condition to be satisfied as specified in clause 2;

Council includes any successor of Auckland Council and, as required, includes the Orakei Local Board;

GST means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax; and

Lessee includes its executors, administrators, successors, permitted assigns and (as applicable) any person for whose acts or omissions the Lessee is responsible;

 K5

Licence to Occupy means the licence to occupy dated 26 August 2015 entered into between the Council and the Lessee; and

Orakei Local Board means the local board for the Orakei area, including that of the Presmies, being an unincorporated body under the Local Government (Auckland Council) Act 2009.

- 1.2 **Incorporated Terms:** Capitalised expressions, unless defined within this Agreement, have the same defined meaning as in the Agreement to Lease;
- 1.3 **Defined Expressions:** Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;
- 1.4 **Headings:** Section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Agreement's interpretation;
- 1.5 **Joint and Several Liability:** An obligation by two or more persons binds those persons jointly and each of them severally;
- 1.6 **Negative Obligations:** Any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **Parties:** References to parties are references to parties to this Agreement;
- 1.8 **Persons:** References to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.9 **Singular and Plural:** The singular words include the plural and vice versa;
- 1.10 **Schedules:** The schedules to this Agreement and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this Agreement;
- 1.11 **Sections, Clauses and Schedules:** References to sections, clauses and schedules are references to this Agreement's sections, clauses and schedules; and
- 1.12 **Statutes and Regulations:** References to any statutory provision will include any statutory provision, which amends or replaces it, and any subordinate legislation made under it.

2. VARIATION TO LICENCE

The Licence to Occupy is varied as follows:

- 2.1 by amending the definition of "Expiry Date" in the Reference Schedule to read:



"The earlier of:

- (a) the date immediately preceding the date of Stage One and the grant of the Lease (as provided for within the Agreement to Lease); and
- (b) the date this Licence is terminated as provided for in clause 2.2."

2.2 by amending the definition of "Fields" in clause 1.1 to read:

"Fields means:

- (a) two (2) full size FIFA two-star artificial football fields; and
- (b) one (1) 900m2 artificial practice/warm-up football turf;"

3. **CONDITIONS**

3.1 The variations to the Agreement to Lease detailed in clause 4 of this Agreement are conditional upon the Council via the Orakei Local Board confirming its approval to the variations to the Agreement to Lease contemplated herein (such approval to be given or withheld at the board's sole discretion and without giving any reason). This condition to be satisfied by 5pm on Friday 9 September 2016.

3.2 If the Condition is not satisfied within the specified period, then the Council or the Lessee may terminate this Agreement as it relates to the variations to the Agreement to Lease by giving written notice to the other party to that effect and the relevant part of this Agreement shall be immediately at an end without affecting the balance. Termination is without prejudice to the Agreement to Lease and the Licence to Occupy and any claim the Council or the Lessee may have arising from the non compliance by the other of any of its obligations under this Agreement.

4. **VARIATION TO AGREEMENT**

Upon the satisfaction of the Condition, the Agreement to Lease is varied as follows:

4.1 by amending the definition of "Community" in clause 1.1 to read:

"Community means people in the local Stonefields, St Johns, Glen Innes and wider Auckland community excluding the Tenant;"

~~4.2 by amending the definition of "Fields" in clause 1.1 to read:~~

~~"Fields means:~~

- ~~(a) two (2) full size FIFA two-star artificial football fields; and~~
- ~~(b) two (2) 900m2 artificial practice/warm up football turfs;"~~

4.3 by amending the definition of "Stage One" in clause 1.1 and Schedule 1 to read:

“**Stage One** means that work undertaken by the Tenant on the Premises comprising two (2) full size FIFA two-star artificial football fields, one (1) 900m² artificial practice/warm-up football turf, changing rooms, public toilets, eighty (80) carparks, flood lighting (200 Lux), and landscaping of the land;” and

4.4 by amending the definition of “Stage Two” in clause 1.1 and Schedule 1 to read:

“**Stage Two** means associated buildings comprising the office, sports club, changing rooms, café, gym, Futsal facility (1050m²), one (1) 900m² artificial practice/warm-up football turf, two hundred and ten (210) carparks, maintenance yard (400m²) and a maintenance building;”.

5. CONTINUANCE

The covenants in the Agreement to Lease expressed or implied except as expressly modified or varied by this Agreement shall continue to be in full force and effect after the execution of this Agreement.

6. COSTS

Each party must pay all of its own costs and expenses (including those on a solicitor-client basis) for the preparation and completion of this Agreement.



EXECUTION BY THE PARTIES:

SIGNED for and on behalf of the **AUCKLAND COUNCIL** under delegated authority in the presence of:

[Signature]
Regional Operations Manager *ko*
Head of Community Relations

[Signature]
Witness signature

TDTO W-DUC
Full Name

MANAGER COMMUNITY LEASES
Occupation

24 WELLESLEY ST, AUCKLAND
Address

SIGNED by **OCEANIA FOOTBALL CONFEDERATION INCORPORATED** as Lessee in the presence of:

Tai Nicholas
Full name of authorised signatory

[Signature]
Signature of authorised signatory

Full name of authorised signatory

Signature of authorised signatory

Witness:

[Signature]
Signature of witness

Sarai Rawson
Full name of witness

Deputy General Secretary
Occupation of witness

8 Hanson Place, West Harbour
Address of witness

