

DEED OF AMALGAMATION

between

CHAIRMAN OF CITY TATTERSALL'S CLUB
ABN 44 004 054 353
(City Tattersall's)

and


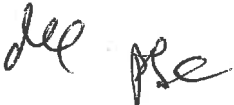
THE CATHOLIC CLUB LTD
ABN 35 000 982 436
(TCCL)



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 **THOMSON GEER**


This deed is made on Tuesday 30th June 2020 2020

Between **Chairman of City Tattersall's Club ABN 44 004 054 353** of 198-204 Pitt Street, Sydney NSW 2000 (City Tattersall's)

And **The Catholic Club Limited ABN 35 000 982 436** trading as The Castlereagh Club of 197-199 Castlereagh Street, Sydney NSW 2000 (TCCL)

Recitals

- A. The parties are both registered clubs each holding Club Licences.
- B. City Tattersall's is an unincorporated association and is subject to the *City Tattersall's Club Act 1912* (NSW) and *City Tattersall's Club Amendment Act 1936* (NSW) and TCCL is a company limited by guarantee and is subject to the *Corporations Act 2001* (Cth).
- C. City Tattersall's called for expressions of interest for amalgamation from other registered clubs on 17 December 2019.
- D. TCCL submitted an expression of interest which has been accepted by City Tattersall's.
- E. The parties agree to amalgamate subject to the terms of this Deed and the MOU.
- F. This Deed is supplementary to the MOU entered into by the parties in accordance with the requirements of Part 2 Division 1A of the Registered Clubs Act and clause 7 of the Registered Clubs Regulation, and is intended to provide for:
 - (a) commercial terms; and
 - (b) other details agreed by the parties with respect to the Amalgamation,which are not required to be included in the MOU under the Registered Clubs Regulation.

Now it is covenanted and agreed as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in the Recitals and this Deed unless the context requires otherwise:

Accounting Standard means:

- (a) the same thing as a reference to an accounting standard in the Act;
- (b) if there is no standard under the Act, then the standard available from the Australian Accounting Standards Board; or
- (c) if there is no standard under subclause (b), then the standard required by a qualified auditor;

Act means the *Corporations Act 2001* (Cth);

Amalgamation means the amalgamation of TCCL and City Tattersall's in accordance with applicable law, the MOU and this Deed;

Amalgamated Club means City Tattersall's as the continuing club after Amalgamation Completion;

Amalgamation Completion means the day on which the Assets (including the TCCL Premises Lease) and TCCL's Club Licence are transferred to City Tattersall's or to Chairman of City Tattersall's to be held for and on behalf of City Tattersall's, or to City Tattersall's as City Tattersall's directs (including a possible assignment or novation of the lease of the TCCL Club Premises);

Application for Transfer means an application for transfer of the Club Licence held by TCCL to City Tattersall's or to the Chairman of City Tattersall's to be held for and on behalf of City Tattersall's, or to City Tattersall's as City Tattersall's directs or as may be accepted by the Independent Liquor and Gaming Authority (including an application for provisional transfer) in accordance with section 60 of the Liquor Act;

Asset includes chattels, contract rights, motor vehicles, stock in trade, plant, fixtures and fittings, real property, (including the TCCL Premises Lease and any sub-leases under which TCCL is the sub-tenant or sub-lessor), TCCL's Club Licence including gaming machines and gaming machine entitlements, debtors, business names, intellectual property rights, goodwill and all other property, tangible or intangible and cash on hand and cash at bank (excluding the TCCL Retained Funds but subject to clauses 7.1(d) and 7.2 of the MOU) belonging to TCCL at the time of Amalgamation Completion;

Associated Entity has the meaning given in section 50AAA of the Corporations Act;

Authority means the Independent Liquor and Gaming Authority;

Board means the board of directors of City Tattersall's, or, the Amalgamated Club after Amalgamation Completion;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney;

City Tattersall's means the unincorporated association of members of the registered club known as "City Tattersall's Club" ABN 44 004 054 353 and where applicable and unless the context otherwise requires, includes the Chairman from time to time of City Tattersall's Club;

City Tattersall's Rules means the rules of City Tattersall's as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time;

Club Licence means a club licence held under section 10 of the Liquor Act;

Confidential Information means all information which a party designates as being confidential, or, which would reasonably be considered to be confidential. This includes but is not limited to:

- (a) financial information;
- (b) business plans and marketing plans;
- (c) terms of agreements with third parties, including the details of those third parties;
- (d) membership records and information about persons which is subject to laws relating to privacy; and
- (e) information recorded in board and committee papers and minutes;

Employee Entitlements means all entitlements to salary or wages, annual leave, long service leave and other entitlements (including paid personal/carer's leave) under any industrial instrument or agreement between TCCL and an employee of TCCL;

Force majeure means:

- (a) an event which is beyond the reasonable control of a party; and
- (b) includes but is not limited to:
 - (i) an act of God;



- (ii) a breakdown or destruction of plant and equipment;
- (iii) a shortage of or inability to secure fuel, power, material or labour;
- (iv) a flood, earthquake, rockfall or landslide;
- (v) a government act or regulation including but not limited to, exchange control by government having jurisdiction over the parties effected;
- (vi) a blockade, riot, civil insurgence, act of terrorism or war;
- (vii) lightning, fire or explosion; or
- (viii) epidemic or quarantine restriction;

Insolvency Event means:

- (a) the happening of any of these events:
 - (i) an application is made to a court for an order or an order is made that a party be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator for a party;
 - (iii) a person is appointed as a liquidator or provisional liquidator for a party;
 - (iv) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;
 - (v) a party proposes a reorganisation, moratorium or other administration involving a class of its creditors;
 - (vi) a party resolves to wind itself up, otherwise dissolve itself, gives notice of intention to do so or is otherwise wound up or dissolved;
 - (vii) a party is or states that it is unable to pay its debts when they fall due;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, a party is taken to have failed to comply with a statutory demand;
 - (ix) a party is, or makes a statement from which it may be reasonably deduced that the party is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act;
 - (x) a party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a party;
 - (xi) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
 - (xii) anything analogous or having a substantially similar effect to any event specified in this definition happens under the law of any applicable jurisdiction;
- (b) it does not include something which happens under this clause if the party is solvent and on terms approved by the other party to effect Amalgamation Completion (including without limitation the dissolution of TCCL pursuant to clause 12.1);

Landlord has the meaning set out in the MOU;

Liquor Act means the *Liquor Act 2007* (NSW);

Loss means all loss, liability, damage, costs and expenses including direct and indirect Loss (on an indemnity basis);

Member means a member of either TCCL, City Tattersall's or the Amalgamated Club as the case may be, as shown on that club's register of members at the relevant time;

MOU means the memorandum of understanding entered into by the parties on or about the date of this Deed for the purposes of the Amalgamation and in accordance with clause 7 of the Registered Clubs Regulation;

Records means all documents, books, files, reports, accounts and plans of a party relating exclusively or substantially to its business including:

- (a) all marketing and member files and member lists;
- (b) promotional and sales literature and other advertising material and catalogues;
- (c) supplier lists;
- (d) all records of debtors and creditor claims;
- (e) wages and other employment benefit and payroll and personnel records of its employees;
- (f) all computer software (including the media on which the same is stored) and computer records;
- (g) financial records; and
- (h) all records of contracts (including contracts of insurance);

Registered Clubs Act means the *Registered Clubs Act 1976* (NSW);

Registered Clubs Regulation means the *Registered Clubs Regulation 2015* (NSW);

Sunset Date means the date which is 15 months after the date of this Deed;

TCCL means the Catholic Club Ltd ABN 35 000 982 436;

TCCL Premises has the meaning contained in the MOU;

TCCL Premises Lease has the meaning contained in the MOU; and.

TCCL Retained Funds has the meaning contained in the MOU.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) capitalised words which are not defined in this Deed have the same meaning as defined in the MOU;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and conversely;
- (d) a gender includes any gender;
- (e) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (f) a reference to **person** includes:
 - (i) a body corporate, an unincorporated or other entity and conversely; and



- (ii) a reference to that person's executors, administrators, successors, permitted assigns and substitutes including but not limited to a person to whom this Deed is novated;
- (g) a reference to **clause** or **schedule** is to a clause or schedule to this Deed;
- (h) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
- (i) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (j) a reference to legislation includes but is not limited to a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;
- (k) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing; and
- (l) a provision of this Deed must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

2 AMALGAMATION

2.1 Amalgamation

- (a) The Amalgamation is intended to enhance the facilities and services available to all Members of the Amalgamated Club.
- (b) The parties agree to amalgamate:
 - (i) in accordance with the Registered Clubs Act and Liquor Act; and
 - (ii) on the terms of this Deed and the MOU.

2.2 Purpose of this Deed

This Deed is supplementary to the MOU and provides for:

- (a) commercial terms; and
- (b) other details agreed by the parties with respect to the Amalgamation,

which are not required to be included in the MOU under the Registered Clubs Regulation.

2.3 Effect of this Deed

This Deed is collateral to, and conditional upon execution of, the MOU and the terms of this Deed are legally binding on both parties

2.4 Effect of the MOU

The Clubs agree that:

- (a) the terms of the MOU will be taken to be terms of this Deed and are binding on both parties;
- (b) a breach of the MOU will be taken to be a breach of this Deed; and
- (c) if this Deed imposes an obligation on a party which would result in that party breaching a term of the MOU then:
 - (i) the MOU will prevail to the extent of the inconsistency; and

- (ii) compliance by that party with the MOU will not be taken to be a breach of this Deed.
- (d) in the event of any inconsistency between the MOU and this Deed, the provisions of the MOU shall apply.

3 APPROVALS

3.1 TCCL Meeting and TCCL Constitution

- (a) Unless otherwise agreed by the parties, TCCL will convene a general meeting of its Members entitled to vote under its constituent documents and the Registered Clubs Act to be held as soon as reasonably practicable after the date of this Deed but within 90 days after the date of this Deed unless otherwise agreed in writing by the parties.
- (b) At that meeting, the Ordinary members of TCCL will consider and vote on resolutions set out in Schedule 1 and in accordance with section 17AEB(d) of the Registered Clubs Act to:
 - (i) approve the Amalgamation in principle;
 - (ii) approve the transfer of Assets from TCCL to City Tattersall's in accordance with this Deed;
 - (iii) declare the TCCL Premises as core property of TCCL;
 - (iv) approve the making of the Application for Transfer; and
 - (v) approve any other matters required to give effect to this Deed and the MOU, including approving the New Constitution (subject to the requirements of this Deed and the MOU).
- (c) At the same meeting, Life members and Catholic members of TCCL will consider and vote on:
 - (i) an ordinary resolution to approve the possible disposal of the TCCL Premises and the TCCL Premises Lease for the purposes of the amalgamation and Rule 38(a)(xii) of TCCL's Constitution; and
 - (ii) a special resolution to adopt a new Constitution for TCCL, with effect from completion of the amalgamation (**New Constitution**). The New Constitution will, amongst other things:
 - (A) only apply if the TCCL Retained Funds are to be retained by TCCL after Amalgamation Completion;
 - (B) deal with the powers, duties and responsibilities of TCCL in relation to the retention, management and investment of the TCCL Retained Funds;
 - (C) include such other matters referred to in clause 7.2(c) of the MOU.
- (d) The form of the resolutions referred to in clauses 3.1(b) and 3.1(c) to be put to Members of TCCL are contained in Schedule 1.
- (e) Without derogating from the matters set out in the MOU, the New Constitution shall be in the form and contain such provisions as agreed in writing by the Board of TCCL and Board of City Tattersall's as at the date of this deed.
- (f) TCCL must comply with the New Constitution as and from Amalgamation Completion and until TCCL is wound up or a De-Amalgamation is completed. The Amalgamated Club may

enforce TCCL's compliance with the New Constitution as and from Amalgamation Completion and until TCCL is wound up or a De-Amalgamation is completed.

3.2 City Tattersall's Meetings

- (a) City Tattersall's will convene two (2) general meetings of its Members entitled to vote under its constituent documents and the Registered Clubs Act (**first and second general meetings**) to be held before or as soon as reasonably practicable after the TCCL meeting referred to in clause 3.1 above. The first and second general meetings shall be held on the same date.
- (b) At the first and second general meetings, the Members will consider and vote on resolutions in accordance with section 17AEB(d) of the Registered Clubs Act to:
 - (i) approve the Amalgamation in principle (to be considered and voted on at the first general meeting);
 - (ii) approve the making of the Application for Transfer (to be considered and voted on at the first general meeting);
 - (iii) pass the second resolution contained in Schedule 2 and referred to in clause 4.1 (to be considered and voted on at the second general meeting); and
 - (iv) approve any other matters required to give effect to this Deed and the MOU (to be considered and voted on at either the first general meeting or the second general meeting).
- (c) The form of the resolutions referred to in clause 3.2(b) to be put to Members of City Tattersall's is contained in Schedule 2.
- (d) City Tattersall's is required under its constituent documents to convene a confirmatory general meeting of its Members entitled to vote under its constituent documents (**confirmatory general meeting**) for the purposes of confirming or rejecting any changes to the City Tattersall's Rule approved at the second general meeting and for that purpose, City Tattersall's will convene the confirmatory general meeting within a period of 60 days after the date of the second general meeting.

3.3 Application for Transfer

- (a) Within 10 Business Days of the meeting under clause 3.1, TCCL will give to City Tattersall's:
 - (i) a certified copy of the notice of meeting and minutes of the meeting; and
 - (ii) certification that the notice of meeting and MOU have been displayed as required by the Registered Clubs Act and Registered Clubs Regulation.
- (b) City Tattersall's will prepare and lodge the Application for Transfer with the Authority as soon as reasonably practicable if approval is given by its members under clause 3.2.
- (c) TCCL agrees to sign all documents and provide all information reasonably necessary for City Tattersall's to complete and lodge the Application for Transfer.

4 TRANSFER OF MEMBERS AND CHANGES TO CITY TATTERSALL'S RULES

- 4.1 At the meetings under clause 3.2, the Members of City Tattersall's will consider the second resolution as contained in Schedule 2 to this Deed to amend the constituent documents of City Tattersall's (with effect from Amalgamation Completion) to:
 - (a) add a new rule for identification purposes under section 17AC of the Registered Clubs Act to identify persons as "Catholic Club Members";

- (b) permit all Members of TCCL who make application under this clause to be admitted as Members of the Amalgamated Club (without the need for a proposer and seconder to sign their application);
- (c) make Life Members of TCCL Life Members of the Amalgamated Club (pursuant to a resolution of the Board and subject to the TCCL Life Member completing and submitting an application form); and
- (d) provide for:
 - (i) up to the fifth (5th) anniversary after Amalgamation Completion and any earlier de-amalgamation referred to in clause 10 of the MOU, at least three (3) members on the Board of the Amalgamated Club must be former members of TCCL as at the date of this Memorandum;
 - (ii) a Board comprising of 7 elected directors (including appointees to fill casual vacancies), with an ability of the Board to appoint up to 2 members of the Amalgamated Club as additional directors pursuant to section 30(1)(b1) of the Registered Clubs Act and clause 31 of the Registered Clubs Regulation;
 - (iii) the required number of Board members holding office as at Amalgamation Completion ceasing to hold office on or before Amalgamation Completion so that there will be a total of 6 directors on the Board of the Amalgamated Club and three (3) positions on the Board will be available for former members of TCCL as at the date of the Memorandum. For example:
 - (A) if there are 9 directors on the Board immediately preceding Amalgamation Completion, City Tattersall must ensure that 3 directors will cease to hold office under the amended City Tattersall's Rules on or before Amalgamation Completion to allow for 3 appointments as set out under clause 4.1(d)(iv); and
 - (B) if there are 8 directors on the Board immediately Amalgamation Completion, City Tattersall's must ensure that 2 directors will cease to hold office under the amended City Tattersall's Rules on or before Amalgamation Completion to allow for 3 appointments as set out under clause 4.1(d)(iv).
 - (iv) upon the required number of directors ceasing to hold office as described in clause 4.1(d)(iii), the Board will, with effect from Amalgamation Completion, appoint as directors of the Amalgamated Club:
 - (A) 1 director of TCCL to fill the casual vacancy left on the elected Board of 7 caused by clause 4.1(d)(iii), such appointment being pursuant to clause 5(1) of the Triennial Rule; and
 - (B) 2 directors of TCCL who will hold office until the 2023 election of directors, such appointments being pursuant to section 30(1)(b1) of the Registered Clubs Act and clause 31 of the Registered Clubs Regulation,
 with the intent that for up to 5 years after Amalgamation Completion:
 - (C) there will be a total of 9 directors on the Board of the Amalgamated Club; and
 - (D) at least 3 of the 9 directors will be former members of TCCL.

4.2 The Board of TCCL will nominate the director of TCCL who will fill the casual vacancy referred to in sub paragraph (iv)(A) above and the two (2) directors of TCCL who will be appointed to the Board pursuant to sub paragraph (iv)(B) above and City Tattersall's must appoint those nominees to the Board of the Amalgamated Club with effect from Amalgamation Completion. This is subject

- to the nominees becoming members of the Amalgamated Club as and from Amalgamation Completion.
- 4.3 As soon as practicable after provisional approval of the Application for Transfer has been given by the Authority, City Tattersall's will send every Member of TCCL (who is not already a Member of City Tattersall's) an invitation to become a Gold Member of the Amalgamated Club for a period of 3 years (and following expiry may be renewed by each Member in accordance with the City Tattersall's Rules' requirements) which includes the requirements for application for membership, except for any Life Member of TCCL who instead will be sent an invitation to become a Life Member of the Amalgamated Club (which will include an application for membership).
- 4.4 A Member of TCCL may accept the invitation by completing and returning the application for membership of the Amalgamated Club (in a class of membership for which they are eligible) to City Tattersall's prior to Amalgamation Completion.
- 4.5 A Member of TCCL who applies for membership of the Amalgamated Club under this clause will, subject to any restrictions contained in the constituent documents of City Tattersall's and the requirements of section 30(2) of Registered Clubs Act, be admitted to membership of the Amalgamated Club with effect from Amalgamation Completion.
- 4.6 Members of TCCL who become Gold Members of the Amalgamated Club will not be required to pay any fee or subscription for a period of 3 years after Amalgamation Completion, subject to any minimum fee required under the Registered Clubs Act (presently being \$2 per annum) which may be required by the Independent Liquor and Gaming Authority.
- 4.7 Any person who, at Amalgamation Completion, is a Life Member of TCCL, and becomes a member of the Amalgamated Club:
- (a) will become a Life Member of the Amalgamated Club pursuant to an amendment of City Tattersall's Rules and pursuant to a resolution of the Board as specified in clause 4.1(c); and
 - (b) will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the Registered Clubs Act or if the Amalgamated Club is directed by the Authority to charge an annual subscription, in which case such person will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

5 OBLIGATIONS OF TCCL AND CITY TATTERSALL'S

- 5.1 On and from the date of this Deed up to Amalgamation Completion TCCL must:
- (a) commence, facilitate and assist in negotiations with the registered proprietor of the TCCL Premises to enable City Tattersall's to become the bona fide occupier and lessee of those premises as and from Amalgamation Completion;
 - (b) trade in the ordinary course of business and with due care and skill;
 - (c) maintain the following insurance policies with a reputable insurer in Australia:
 - (i) public liability insurance in the amount of \$20,000,000 for each single claim, and unlimited in aggregate;
 - (ii) property damage insurance to the full replacement value of all Assets insurable under such a policy; and
 - (iii) workers compensation insurance;
 - (d) maintain the Assets in the same state of repair as at the date of this Deed (subject to reasonable wear and tear) and keep the Assets insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;

- (e) give City Tattersall's a copy of its certificates of currency for any insurance policy held under subclauses (c) and (d) on request;
- (f) immediately notify City Tattersall's of anything which may result in a claim on an insurance policy held under subclauses (c) and (d);
- (g) comply with any agreement to which it is a party;
- (h) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets;
- (i) provide City Tattersall's each week (or at such other times as requested) any details or documents relating to the operation and financial position of TCCL;
- (j) comply with all applicable laws;
- (k) not do anything which may damage its reputation or the reputation of City Tattersall's; and
- (l) not enter into any negotiations, discussions or communications with any other registered club with respect to a possible amalgamation with such a registered club.

5.2 On and from the date of this Deed up to Amalgamation Completion, City Tattersall's must:

- (a) do all things reasonably necessary to become the bona fide occupier and lessee of the TCCL Premises as and from Amalgamation Completion;
- (b) trade in the ordinary course of business and with due care and skill;
- (c) maintain the following insurance policies with a reputable insurer in Australia:
 - (i) public liability insurance in the amount of \$20,000,000 for each single claim, and unlimited in aggregate;
 - (ii) property damage insurance to the full replacement value of all its assets insurable under such a policy; and
 - (iii) workers compensation insurance;
- (d) maintain City Tattersall's assets in the same state of repair as at the date of this Deed (subject to reasonable wear and tear) and keep its assets insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (e) give TCCL a copy of its certificates of currency for any insurance policy held under subclauses 5.1(c) and 5.1(d) on request;
- (f) immediately notify TCCL of anything which may result in a claim on an insurance policy held under subclauses 5.1(c) and 5.1(d);
- (g) comply with any agreement to which it is a party;
- (h) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of its assets;
- (i) provide TCCL each week (or at such other times as requested) any details or documents relating to the operation and financial position of City Tattersall's;
- (j) comply with all applicable laws;
- (k) not do anything which may damage its reputation or the reputation of TCCL; and

- (l) not enter into any negotiations, discussions or communications with any other registered club with respect to a possible amalgamation with such a registered club.

5.3 Subject to clause 6.1(g) of the MOU, on and from the date of this Deed to Amalgamation Completion TCCL must not without the prior written consent of City Tattersall's:

- (a) incur any single actual debt or liability in excess of ten thousand dollars (\$10,000) plus goods and services tax outside the usual ordinary course of business;
- (b) incur any contingent liabilities whether in relation to those operations or otherwise;
- (c) vary, enter into, or exercise any option to renew an agreement except in the ordinary course of its business;
- (d) enter into, terminate or alter any term of any material contract, arrangement or understanding including a lease, licence or easement in relation to its operations or otherwise except in the ordinary course of its business;
- (e) employ any person (other than a casual employee);
- (f) terminate the employment of any employee (other than a casual employee);
- (g) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
- (h) seek to borrow or borrow money from any third party; or
- (i) except in the usual and routine conduct of its operations, dispose of, lease, license, mortgage, charge or otherwise encumber, or permit any encumbrance to arise, over any of its Assets.

6 CO-OPERATION BETWEEN THE CLUBS

6.1 From the date of this Deed to Amalgamation Completion the parties will each nominate suitably authorised officers to hold regular discussions about:

- (a) the management of TCCL up to Amalgamation Completion;
- (b) the efficient transfer of the Assets and Club Licence of TCCL to City Tattersall's and efficient payment of liabilities of TCCL by City Tattersall's;
- (c) management of the transfer of the Members of TCCL to City Tattersall's under this Deed and the MOU; and
- (d) City Tattersall's becoming the bona fide occupier and lessee of the TCCL Premises as and from Amalgamation Completion;
- (e) the names of the directors of TCCL to be appointed to the Board pursuant to section 30(1)(b1) of the Registered Clubs Act and clause 31 of the Registered Clubs Regulation and the name of the director of TCCL to be appointed to the Board to fill the casual vacancy referred to in clause 4.1(d)(iv), together with written consents signed by each nominee to be appointed as a director of the Amalgamated Club; and
- (f) any other matters considered necessary by the parties.

6.2 Both parties agree to carry out all acts necessary to give effect to this Deed and the MOU promptly and in good faith.

7 TCCL PREMISES LEASE

The provisions of clause 2.3 of the MOU shall apply to the TCCL Premises Lease.

8 DUE DILIGENCE

8.1 Due Diligence investigations

Amalgamation Completion is subject to, and conditional upon:

- (a) each party making its Records available to the other party for inspection and copying by the other party or its authorised representatives for the purposes of due diligence, within a reasonable time of receiving a request from the other party;
- (b) TCCL permitting City Tattersall's and its authorised representatives to enter and access any part of the land occupied by TCCL for the conduct of its business(es) on request, in order to carry out inspections, surveys or any other assessment of the land (provided that City Tattersall's must use reasonable endeavours not to unduly interfere with the trading activities of TCCL on the land);
- (c) City Tattersall's permitting TCCL and its authorised representatives to enter and access any part of the land occupied by City Tattersall's for the conduct of its business(es) on request, in order to carry out inspections, surveys or any other assessment of its premises and buildings (provided that TCCL must use reasonable endeavours not to unduly interfere with the trading activities of City Tattersall's on the land);
- (d) each party signing all consents or applications (if necessary) as requested by the other party to enable the other party to complete its due diligence; and
- (e) each party being satisfied (at its sole discretion) with the outcome of its legal, accounting, taxation, commercial, financial/funding, insurance, and management due diligence investigations into the other party and its business and not giving a notice of termination under clause 8.3.

8.2 Due Diligence timing

Each party agrees that its due diligence including legal, accounting, financial, taxation, commercial, insurance, and management due diligence investigations under clause 8.1 must be completed within 30 Business Days of the date of this Deed.

8.3 Termination

Despite anything else in this Deed, if a party is not satisfied (in its sole discretion) with the outcome of its legal, accounting, taxation, commercial, financial/funding, insurance, and management due diligence investigations under clause 8.1, the party may within 30 Business Days after the date of this Deed give written notice of termination of this Deed with immediate effect to the other party without penalty.

8.4 Effect of termination

Termination of this Deed pursuant to this clause 8 does not affect any right or Liability of a party accrued prior to such termination.

8.5 Confidentiality

Each party must comply with the terms of the Exclusivity and Confidentiality Deed and clause 10 of this Deed in respect of any information that is provided to it by the other club as part of the due diligence process.

9 PUBLICITY

Except to the extent necessary to disclose the proposed Amalgamation to their respective members and to seek member approval, a party must not make any public announcement or statement relating to the Amalgamation without the prior written consent of the other party (which must not be unreasonably withheld).

10 CONFIDENTIALITY

- 10.1 A party must not, and must ensure that its employees, agents and contractors do not, disclose any Confidential Information of the other party to any person except:
- (a) as required to carry out its obligations under this Deed and the MOU;
 - (b) if required by law;
 - (c) if the other party ceases to treat that information as being confidential; or
 - (d) with the prior written consent of the other party.
- 10.2 If this Deed or the MOU is terminated, then a party must return or destroy any Confidential Information of the other party in its possession in any form, at the request of the other party except to the extent it is required to retain such a Record for financial reporting purposes or under any law.

11 LIABILITIES

- (a) Subject to clauses 6.1(f) and (g) of the MOU (regarding payment of Employee Entitlements by TCCL in respect of those employees who do not accept employment by City Tattersall's or who are not offered employment by City Tattersall's) and clause 11(b), City Tattersall's will be responsible for and pay when due all debts and other liabilities of TCCL:
 - (i) which have not been paid or discharged in full as at Amalgamation Completion; and
 - (ii) which are reasonably incurred after Amalgamation Completion, including without limitation the costs of the winding up of TCCL.
- (b) Notwithstanding clause 11(a), the TCCL Retained Funds shall be used to pay for the following:
 - (i) all taxes payable in relation to the TCCL Retained Funds; and
 - (ii) in the event the TCCL Retained Funds are retained by TCCL after Amalgamation Completion, statutory compliance and operating costs of TCCL as a continuing corporate entity (such as but not limited to directors' expenses and honorariums, employee salaries, consultancy fees, accounting, investment and filing fees with regulatory and investment bodies and insurance costs), any loss arising from any liability or claim by or against TCCL, including legal costs, made, accrued or arising after Amalgamation Completion.
 - (iii) in the event the TCCL Retained Funds are transferred to the Amalgamated Club but managed by the TCCL Investment Committee, statutory compliance and operating costs of the TCCL Investment Committee (such as but not limited to committee members' expenses and honorariums, consultancy fees, accounting, investment and filing fees with regulatory and investment bodies and insurance costs).

12 TRANSFER OF ASSETS

12.1 Risk, title and insurance

The parties agree and acknowledge:

- (a) unencumbered legal and beneficial title to the business and in the Assets of TCCL will pass to the Chairman of City Tattersall's for and on behalf of City Tattersall's (or to City Tattersall's, as City Tattersall's directs) on Amalgamation Completion;

- (b) until Amalgamation Completion, TCCL remains the owner of, and bears all risk in connection with, its business and the Assets; and
- (c) from Amalgamation Completion, the Chairman of City Tattersall's for and on behalf of City Tattersall's (or City Tattersall's, as City Tattersall's directs) becomes the owner of and bears all risk in connection with such business and the Assets;
- (d) except in the circumstances set out in the MOU, the TCCL Retained Funds do not form part of the Assets which will be transferred to City Tattersall's on Amalgamation Completion.

12.2 Benefit of contracts

If the Assets include the benefit of contracts with TCCL which cannot effectively be assigned to City Tattersall's without the consent of a third party or except by an agreement or novation:

- (a) prior to and after Amalgamation Completion, the parties will use all reasonable endeavours to obtain consent to assignment or to procure a novation of particular contracts specified by City Tattersall's; and
- (b) unless and until consent is obtained or such contracts are novated City Tattersall's (or the Chairman of City Tattersall's, as City Tattersall's directs) will for its own benefit and to the extent that the contracts permit, perform on behalf of TCCL (but at City Tattersall's' expense) all the obligations of TCCL arising after Amalgamation Completion.

12.3 Amalgamation completion

- (a) TCCL must on Amalgamation Completion (unless it is required to retain such items by law until completion of the winding up and de-registration of TCCL):
 - (i) **(Assets)** deliver to City Tattersall's duly signed transfer and similar forms in respect of all Assets that require such forms for their transfer. For the avoidance of doubt, this does not include the TCCL Retained Funds;
 - (ii) **(Lease)** deliver to City Tattersall's a duly executed transfer of the Lease (in registrable form) and any deed of assignment or novation of the Lease in a form reasonably required by City Tattersall's provided that this obligation shall not apply if City Tattersall's enters into a new lease for the TCCL Premises with the registered proprietor of those premises;
 - (iii) **(intellectual property rights)** assign and transfer absolutely all its right, title and interest in all intellectual property rights by delivering to City Tattersall's deeds of assignment or transfers of such Assets all in form and substance reasonably required by City Tattersall's;
 - (iv) **(delivery)** deliver to City Tattersall's those Assets, including plant and equipment, capable of transfer by leaving those Assets in situ at the TCCL Premises;
 - (v) **(possession)** permit City Tattersall's to take possession of all those Assets which are not on the TCCL Premises, at the location where they are usually retained;
 - (vi) **(Records)** deliver to City Tattersall's the Records;
 - (vii) **(IT Asset licences)** deliver to City Tattersall's executed transfers or assignments in favour of City Tattersall's of all information technology Asset licences;
 - (viii) **(deeds of assignment or novation)** deliver to City Tattersall's duly executed deeds of assignment or novation, all in form and substance as reasonably required by City Tattersall's in respect of all contracts;

- (ix) **(release of encumbrances)** deliver evidence satisfactory to City Tattersall's of the release of all known encumbrances (if any) over its business and the Assets;
 - (x) **(consents and approvals)** deliver to City Tattersall's signed copies of all required Government Agency and regulatory approvals or other third party approvals and consents to the actions required by this Deed;
 - (xi) **(utilities)** surrender or cause to be surrendered all telephone and related lines, electricity, gas and other utility services as relate to the TCCL Premises
 - (xii) **(general)** deliver to City Tattersall's such other documents and material and do all other things reasonably required to effect the transfer of the business of TCCL and the Assets to City Tattersall's on Amalgamation Completion and perform all other obligations to be performed by TCCL on Amalgamation Completion under this Deed.
- (b) TCCL must give City Tattersall's or its solicitors all such documents within a reasonable period prior to Amalgamation Completion for stamping where necessary. All such documents must be held by City Tattersall's or its solicitors in escrow pending Amalgamation Completion.
- (c) On winding up of TCCL it must give to City Tattersall's the balance of all records described in clause 12.3(a).
- (d) For the purposes of clause 12.3(a)(ix):
- (i) TCCL shall, as soon as reasonably practicable after the provisional approval of the Amalgamation provide to City Tattersall's a list of known encumbrances (including personal property securities) over its Assets; and
 - (ii) within 5 Business Days of receiving the list of encumbrances referred to in sub paragraph (i) above, City Tattersall's must provide to TCCL a list of encumbrances (including personal property securities) which must be released by TCCL on or before Amalgamation Completion.

13 DISSOLUTION OF TCCL

- 13.1 Subject to clause 13.2 and the terms of the MOU, after Amalgamation Completion at such time as agreed between TCCL and City Tattersall's, TCCL will:
- (a) call a general meeting of its Members entitled to vote under its constituent documents to consider and, if thought fit, pass the resolutions required for a members voluntary winding up of TCCL; and
 - (b) carry out all acts necessary to effect such winding up after the approval of those Members has been given.
- 13.2 The parties acknowledge and agree that, subject to the terms of the MOU:
- (a) TCCL will, subject to clauses 13.2(b) to (d) inclusive below, continue as a company until the fifth anniversary of Amalgamation Completion for the purposes of managing and investing the TCCL Retained Funds; and
 - (b) assuming there is no de-amalgamation between City Tattersall's and TCCL in process, TCCL will be voluntarily wound up as soon as reasonably practicable after the fifth anniversary of Amalgamation Completion;
 - (c) TCCL will not be wound up if there is a de-amalgamation between City Tattersall's and TCCL as contemplated in the MOU;

- (d) the person to be appointed to liquidate TCCL will be selected by TCCL and must be approved by City Tattersall's.

- 13.3 Each of the parties warrant to the other that it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of matters referred to in this clause 13.
- 13.4 This clause 13 survives Amalgamation Completion.

14 FORCE MAJEURE

- 14.1 A party is deemed not to be in breach of an obligation under this Deed or the MOU if it cannot comply with its obligations because of a Force Majeure event.
- 14.2 A party which is subject to a Force Majeure event must take all reasonable steps to mitigate the effects of that event, keep the other party notified of progress of mitigation actions, and comply with its obligations under this Deed and the MOU.

15 REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this Deed and the MOU;
- (b) the Records and accounts which it has given to the other party before the execution of this Deed contain all information necessary to give a true and fair view of its financial situation and state of affairs and are prepared in accordance with any applicable Accounting Standard;
- (c) it has complied with all laws relating to payment of taxes and Employee Entitlements;
- (d) each of the representations and warranties it has made in this Deed and the MOU are correct; and
- (e) all information that it has provided to the other party is true and correct in all respects and is not misleading by omission of information.

16 DISPUTE RESOLUTION

- 16.1 A party must not commence proceedings in relation to a dispute under this Deed or the MOU without first following the procedures in this clause, except to seek urgent injunctive or other interlocutory relief.
- 16.2 If there is a dispute between the parties, then either party may give a notice to the other which must:
- (a) succinctly set out the details of the dispute; and
- (b) state that it is a dispute notice given under this clause.
- 16.3 The parties must meet within 5 Business Days after the date of delivery of the dispute notice and attempt to resolve the dispute.
- 16.4 Each party must use its best endeavours to resolve the dispute and act in good faith.
- 16.5 If the parties cannot solve the dispute within a further 10 Business Days, either party may refer the dispute for mediation by giving the other party notice.

- 16.6 A mediation conducted under this clause will be in accordance with the mediation rules of the Law Society of New South Wales and the President of the Law Society of NSW (or his or her nominee) will determine the mediator's remuneration.
- 16.7 If a dispute is not resolved by mediation under this clause within 30 Business Days of referral to a mediator, or a longer period agreed by the parties, any party may take any action available to it at law.

17 TERMINATION

- 17.1 In addition to the termination right contained in clause 8.3, a party may terminate this Deed immediately by giving notice to the other party if:
- (a) the Members of either party do not approve the resolutions proposed under clause 3;
 - (b) the Authority refuses the Application for Transfer;
 - (c) Amalgamation Completion does not occur by the Sunset Date (or such later date as may be agreed by the parties in writing);
 - (d) the Landlord has provided written notice to one or both of the parties that it is unwilling or unable to do anything which is required to allow the parties to satisfy the Conditions Precedent for Amalgamation as set out in clause 2.3 of the MOU;
 - (e) the other party is in breach of an obligation under this Deed (including without limitation, any obligation set out in clause 5 of this Deed) or the MOU and:
 - (i) that breach is not capable of rectification; or
 - (ii) the other party fails to rectify that breach within 10 Business Days of being given notice to do so; or
 - (f) the other party suffers an Insolvency Event, subject to the Act.
- 17.2 Termination of this Deed by a party under clauses 17.1(a) to (d) inclusive is without penalty to either party.

18 COSTS AND EXPENSES

18.1 Cost and expenses

Subject to any other express provision of this Deed, each party must pay its own legal and other costs and expenses relating to:

- (a) negotiation, preparation and execution of this Deed and the MOU; and
- (b) effecting Amalgamation Completion.

18.2 Stamp duty

City Tattersall's must pay any stamp duty assessable in relation to this Deed.

19 NOTICES

- 19.1 A notice, approval, consent or other communication to a person relating to this Deed:
- (a) must be in legible writing;

- (b) executed by duly authorised person(s); and
- (c) in English.

19.2 If the notice is to City Tattersall's then it must be addressed as follows:

Name: City Tattersall's Club ABN 44 004 054 353
Attention: Marcelo Veloz, Chief Executive Officer
Address: 198-204 Pitt Street, Sydney NSW 2000
Email: mveloz@citytatts.com.au

19.3 If the notice is to TCCL then it must be addressed as follows:

Name: The Catholic Club Ltd ABN 35 000 982 436
Attention: Gordon Phillips, Chief Executive Officer
Address: 199 Castlereagh Street, Sydney NSW 2000
Email: ceo@castlereaghclub.com.au

19.4 Notice is sent by the sender and received by the receiver:

- (a) if the notice is hand delivered, upon delivery to the receiving party;
- (b) if the notice is sent by email, upon the successful completion of the relevant transmission;
- (c) if the notice is sent by pre-paid registered mail within Australia, 2 Business Days after the registration of the notice of posting.

20 ASSIGNMENT

A party can not assign its rights and obligations under this Deed.

21 GENERAL

21.1 Governing law and Jurisdiction

- (a) This Deed is governed by the laws of New South Wales.
- (b) The parties submit to the New South Wales. The parties' submission to the jurisdiction includes submission to a court of appeal.

21.2 Service

A document may be served on a party by delivering it to that party in accordance with the notice provisions of clause 19.

21.3 Severability

- (a) If a provision of this Deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this Deed.
- (b) All the other provisions of this Deed remain in full force and effect.



21.4 No waiver

- (a) A party's agreement to waive a right or entitlement under this Deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- (b) Waiver by a party of anything required to be done under this Deed is not a waiver of any other thing required to be done under this Deed.
- (c) A failure or delay in exercising a right arising from a breach of this Deed is not a waiver of that right.

21.5 Variation

The parties can only vary a term of this Deed if the variation is in writing and both parties sign.

21.6 Further assurances

Each party must do everything necessary in good faith to give full effect to this Deed.

21.7 Entire agreement

This Deed and the MOU:

- (a) are the entire agreement between the parties with respect to the Amalgamation; and
- (b) supersede all previous agreements.

21.8 Counterparts

- (a) A party may execute this Deed by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

Handwritten signatures in blue ink, appearing to be three distinct signatures, located at the bottom right of the page.

Schedule 1

Resolutions to be put to members of TCCL

First Ordinary Resolution

"That the members hereby:

1. approve in principle the amalgamation of The Catholic Club Ltd ABN 35 000 982 436 ("TCCL") with City Tattersall's Club ABN 44 004 054 353 ("City Tattersall's"), such an amalgamation to be effected by:
 - (a) the continuation of City Tattersall's (as the amalgamated club) and the dissolution of TCCL;
 - (b) the transfer of TCCL's assets to Chairman of City Tattersall's for and on behalf of City Tattersall's; and
 - (c) the transfer of the club licence of TCCL to the Chairman of City Tattersall's for and on behalf of City Tattersall's (or to City Tattersall's, as may be accepted by the Independent Liquor and Gaming Authority);

and

2. declare the premises of TCCL to be core property for the purposes of section 17A1 and 41E of Registered Clubs Act;
3. approve in principle the making of an application to the Independent Liquor and Gaming Authority for the transfer of the club licence of TCCL to Chairman of City Tattersall's for and on behalf of City Tattersall's (or to City Tattersall's, as may be accepted by the Independent Liquor and Gaming Authority) for the purposes of such an amalgamation."

Second Ordinary Resolution (only to be considered if the First Ordinary Resolution is passed)

"That, subject to the completion of the amalgamation with City Tattersall's and for the purposes of Article 38(a)(xii) of the Club's Articles of Association, Life members and Catholic members of the Club approve the disposal of the lease currently held by the Club in respect of the Club's premises

Special Resolution (only to be considered if the First and Second Ordinary Resolutions are passed)

"Conditional on the amalgamation with City Tattersall's Club being completed and subject to the Club retaining the TCCL Retained Funds (as defined in the Memorandum of Understanding) as part of the amalgamation, the New Constitution (as defined in the Memorandum of Understanding) in the form presented to the meeting (and having previously been made available to members) be adopted as the Constitution of the Club as and from Amalgamation Completion."

Schedule 2

Resolutions to be put to members of City Tattersall's at its general meetings

First Resolution

"That the members hereby:

1. approve in principle the amalgamation of The Catholic' Club Ltd ABN 35 000 982 436 ("TCCL") with City Tattersall's Club ABN 44 004 054 353 ("City Tattersall's"), such an amalgamation to be effected by:
 - (a) the continuation of City Tattersall's (as the amalgamated club) and the dissolution of TCCL, such dissolution being subject to the terms of the memorandum of understanding and deed of amalgamation signed by the parties;
 - (b) the transfer of TCCL's assets (as defined in the memorandum of understanding and deed of amalgamation signed by the parties) to Chairman of City Tattersall's for and on behalf of City Tattersall's; and
 - (c) the transfer of the club licence of TCCL to Chairman of City Tattersall's for and on behalf of City Tattersall's (or to City Tattersall's, as may be accepted by the Independent Liquor and Gaming Authority),

and

2. approve in principle the making of an application to the Independent Liquor and Gaming Authority for the transfer of the club licence of TCCL to Chairman of City Tattersall's for and on behalf of City Tattersall's (or to City Tattersall's, as may be accepted by the Independent Liquor and Gaming Authority) for the purposes of such an amalgamation."

Second Resolution (to be considered only if the First Resolution is passed)

"That on the date on which the Independent Liquor and Gaming Authority transfers the club licence of The Catholic Club Ltd to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club the Rules of City Tattersall's Club be amended by:

- **inserting** the following definitions in clause 3.1 in alphabetical order:
 - TCCL** means The Catholic Club Ltd ABN 35 000 982 436 trading as The Castlereagh Club.
 - TCCL Amalgamation** means the amalgamation between the Club and TCCL as specified in the Amalgamation Documents.
 - TCCL Amalgamation Date** means the date on which the Independent Liquor and Gaming Authority transfers the club licence of TCCL to the Club (or to the Chairman of the Club to be held for and on behalf of the Club).
 - TCCL Amalgamation Documents** means the Memorandum of Understanding and Deed of Amalgamation between the Club and TCCL which sets out the agreement to amalgamate TCCL and the Club.
 - TCCL De-Amalgamation** means any possible de-amalgamation between the Club and TCCL as specified in the Amalgamation Documents.
 - TCCL Retained Funds** has the meaning given to it in the TCCL Amalgamation Documents."
- **amending** the definition of **Act** by adding the following words at the end of the definition:
 - " ... and its associated regulations"
- **amending** clause 5.2 to read as follows (strikeout means deleted, underlined means added):

- "5.2 The Board comprises up to nine members, namely the Chair, the Vice-Chair, and up to seven other Directors. Up to seven members of the Board are to be elected and two members of the Board may be appointed by the Board under the Act or these Rules."
- **amending** clause 5.4 to read as follows (strikeout means deleted, underlined means added):

"5.4 Subject to any appointment of a Director by the Board under the Act or these Rules. All up to seven Directors must be elected to their office as a director by the Voting Members as provided in these Rules. Each Director will serve a term of approximately three years commencing from the meeting at which the Director was elected, but, subject to clause 6.2, will be eligible to offer himself or herself for re-election at the end of each three-year term."
 - Inserting the following new clauses 5.6 and 5.7 after clause 5.5:

"5.6 Up to the fifth (5th) anniversary after the TCCL Amalgamation Date but subject to an earlier De-amalgamation, at least three (3) members on the Board of the Club must be former members of TCCL as at the date of the Amalgamation Documents.

5.7 The Board must not appoint any eligible Member to the Board under clause 31 of the Regulation before the TCCL Amalgamation Date"
 - **inserting** into clause 6.16 the words "provided that this restriction only applies in respect of the Board filling casual vacancies under this clause and it does not apply in respect of any appointments to be made by the Board under the Act" after the words "However a Board must not appoint more than two eligible members to the Board before the next Annual General Meeting".
 - **inserting** the following new clause 6.18 after 6.17:

"6.18 Despite any other clause of these Rules, provided that:

 - (a) TCCL has notified the Club in writing, before the TCCL Amalgamation Date, of the names of up to three directors of TCCL who wish to be directors of the Club;
 - (b) each director named in the notice referred to in paragraph (a), has become a member of the Club as and from the TCCL Amalgamation Date; and
 - (c) TCCL has provided the Club with a consent to act signed by each director named in the notice referred to in paragraph (a), such consent being in the form required by the Board,

the Board must procure the following on or before the TCCL Amalgamation Date:

 - (c) the Directors must select from among themselves up to three members of the Board who will resign as a Director of the Club, to make room for the directors of TCCL named in the notice referred to in paragraph (a). If the Directors cannot select from among themselves up to three members of the Board who will resign as Directors of the Club and there are insufficient resignations to make room for the directors of TCCL named in the notice referred to in paragraph (a), then:
 - (i) the Board may by resolution or resolutions carried by a simple majority of those voting, resolve up to the required number of identified members of the Board who will cease to be Directors of the Club; and
 - (ii) such resolution or resolutions shall be effective to remove those identified members of the Board from office as Directors and such resolution or resolutions shall be final;
 - (d) in respect of the vacancies created by the resignation of three Directors under paragraph (c), the Board will, on the TCCL Amalgamation Date, appoint:
 - (i) one of the directors of TCCL named in the notice referred to in paragraph (a) will be appointed by the Board to fill a vacancy as a casual vacancy.

The director appointed will hold office until the next succeeding Annual General Meeting and he or she will be eligible to be elected into that office in accordance with paragraph 5(1) of the triennial rule; and

- (ii) *two of the directors of TCCL named in the notice referred to in paragraph (a) will be appointed by the Board under regulation 31 of the Registered Clubs Regulation 2015 and will hold office for a period of three (3) years, with the intent that for up to 5 years after the TCCL Amalgamation Date:*
- (iii) *there will be a total of 9 directors on the Board; and*
- (iv) *at least 3 of the 9 directors will be former directors of TCCL.*

This clause 6.18 ceases to apply on the earlier of the fifth (5th) anniversary after the TCCL Amalgamation Date Completion and any De-amalgamation with TCCL."

- **inserting** the following new clause 17.3:
 "17.3 Notwithstanding anything else contained in these Rules, the Board must ensure that the Club complies with all of its promises, warranties and obligations under the Amalgamation Documents".
- **inserting** the following new clause 33.2 after 33.1:
 "33.2 Those members who were financial full members of TCCL and whose names were entered in the Register of Members of TCCL on the date on which the Independent Liquor and Gaming Authority transfers the club licence of TCCL to the Club (or to the Chairman of the Club to be held for and on behalf of the Club) shall, for the purposes of section 17AC(2) of the Registered Clubs Act, be identified in the Club's Register of Members as Catholic Club Members"
- **renumbering** clause 37.1(b) to be 37.1(c) and inserting the following new clause 37.1(b):
 "(b) he or she is a life member of TCCL on the day immediately before the TCCL Amalgamation Date and submits an application to be a member of the Club; or"
- **inserting** the following new clause 40.15:
 "40.15 Clauses 40.1 to 40.14 shall not apply in respect of the election of TCCL's members to membership of the Club and TCCL's members will be elected to membership of the Club in accordance with the procedure set out in the Amalgamation Documents and the requirements of the Act".
- **inserting** the following new clause 58 after clause 57, but only if the Independent Liquor and Gaming Authority does not permit the TCCL Retained Funds being held by TCCL but instead requires the TCCL Retained Funds to be transferred to the Club on the TCCL Amalgamation Date:
 "**58, TCCL Retained Funds**
 58.1 This clause 58 shall only apply from the TCCL Amalgamation Date if the TCCL Retained Funds is transferred to the Club by TCCL on or about the TCCL Amalgamation Date in accordance with the TCCL Amalgamation Documents.
 58.2 The TCCL Retained Funds will not form part of the usual cash reserves of the Club.
 58.3 On the TCCL Amalgamation Date, the members hereby agree that a committee, comprised of the seven (7) individuals who are the Directors of TCCL immediately before the TCCL Amalgamation Date (**TCCL Investment Committee**) will be automatically established by the inclusion of this clause 58 and clause 13 of these Rules will not apply to the TCCL Investment Committee. The TCCL Investment Committee will have the power to manage and invest the TCCL Retained Funds, is solely responsible for the retention, management and investment of the TCCL Retained Funds and must comply with this clause 58. A minute of all proceedings and decisions of the TCCL Investment Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by these Rules to be made entered and

signed, and a copy of the minute must be presented at the next meeting of the Board after the meeting of the TCCL Investment Committee takes place.

- 58.4 A person will cease to be a member of the TCCL Investment Committee immediately if he or she ceases to be a member of the Club.
- 58.5 If any vacancy occurs on the TCCL Investment Committee or (for example, because a member of the TCCL Investment Committee ceases to be a member of the Club, or dies or becomes unable or unwilling to perform their duties as a member of the TCCL Investment Committee, or resigns), the TCCL Investment Committee may appoint by way of replacement, one or more members of the Club who were a former member of TCCL as at the TCCL Amalgamation Date to fill that vacancy. This is subject to the requirement that the number of members of the committee shall not be less than four (4) at any time.
- 58.6 The proposed honorarium for the members of the TCCL Advisory Committee shall be determined by the Advisory Committee in its absolute discretion provided that the total combined amount of the honorariums payable to members of the Committee shall not exceed fifty thousand dollars (\$50,000.00) unless approved by the Board. Any member of the TCCL Investment Committee who is also a member of the Board, will not be entitled to receive an honorarium in their capacity as a member of the Board for the period they receive an honorarium as a member of the TCCL Investment Committee.
- 58.7 The TCCL Investment Committee shall use its best endeavours to increase the value of the TCCL Retained Funds to at least a level equivalent to the increase in the Consumer Price Index (Sydney – All Groups) plus 1.0% to 3% per annum, net of costs, in each financial year and, subject to clause 58.9, the TCCL Investment Committee must not commit, spend, dispose, mortgage or charge any of the TCCL Retained Funds.
- 58.8 The TCCL Investment Committee must seek to maximise the return earned on the TCCL Retained Funds over the medium term (ie at least 5 years), consistent with international best practice for institutional investment.
- 58.9 In constructing an investment portfolio, the TCCL Investment Committee must determine a return profile that is predominantly comprised of income and distributions that will enable the value of the TCCL Retained Funds to increase in the manner specified in clause 58.7 and must have regard to the following:
- (a) The TCCL Retained Funds may be invested in the following assets classes:
- (i) an at call or term deposit account (with a term ending no more than 5 years after the date of this deed) with an authorised deposit-taking institution in Australia;
 - (ii) Australian government bonds, corporate bonds with a S&P credit rating of at least AA and maturity date falling on or before the fifth anniversary of the Amalgamation, or asset-backed securities with a S&P credit rating of at least AA;
 - (iii) shares in any ASX 100 company (any share portfolio to be diversified);
 - (iv) amalgamation opportunities presented by the Board; and
 - (v) any other asset class approved in writing by the Board.
- (b) For the purposes of clause 58.9(a)(iv), the TCCL Investment Committee:
- (i) may provide funding to the Club for amalgamation opportunities but it is not legally obliged to do so; and
 - (ii) cannot provide funding to the Club for amalgamation opportunities unless prior approval has been obtained from Catholic Club members in general meeting (ordinary resolution only).

- (c) *The investments may be direct or indirect, provided that any indirect investment is in a fund which has been operational for at least five (5) years and holds all licenses required at law;*
 - (d) *The TCCL Investment Committee must not make any direct investment in real estate, derivatives or structured products, without the prior written approval of the Board; and*
 - (e) *The TCCL Investment Committee must use reasonable endeavours to ensure the investment of the TCCL Retained Funds is diversified.*
 - (f) *Unless prior written approval has been obtained from the Board, the TCCL Investment Committee must not:*
 - (i) *spend more than two hundred and fifty thousand dollars (\$250,000.00) per annum (including the honorariums payable under clause 58.6); and*
 - (ii) *borrow funds, grant liens, debentures, securities, security interests and mortgages.*
 - (g) *In addition to the investment of the TCCL Retained Funds, the TCCL Investment Committee can use the TCCL Retained Funds for the expenses specified in the Amalgamation Documents.*
- 58.10 *The Board shall not be involved in the day-to-day management and investment of the TCCL Retained Funds. However:*
- (a) *the Board may conduct an investigation into the affairs of the TCCL Advisory Committee if it reasonably believes that there has been or will be a serious material breach of this clause 58 by the TCCL Investment Committee or there has been or will be a fraud, misappropriation of funds, or negligent act or omission by any member of the TCCL Investment Committee; and*
 - (b) *If an actual serious material breach of this clause 58 by the TCCL Investment Committee or an actual instance of fraud, misappropriation of funds, or an actual negligent act or omission by any member of the TCCL Investment Committee has occurred, the Board may take such action as it deems necessary provided that the Board cannot assume responsibility for the management and investment of the TCCL Retained Funds.*
 - (c) *If the Board resolves to remove one or more members of the TCCL Advisory Committee pursuant to its powers under sub paragraph (b), the Board or the remaining committee members as the case may be shall appoint former members of TCCL as at the TCCL Amalgamation Date to fill those vacancies.*
- 58.11 *The TCCL Investment Committee must prepare regular financial reports and report to the Board in such manner and at such times as determined by the Board acting reasonably.*
- 58.12 *If there is a De-amalgamation which is completed pursuant to the requirements of the Registered Clubs Act following either:*
- (a) *a request made by TCCL's Board for de-amalgamation to the Board after the expiry of 4 years but before the expiry of 5 years after the TCCL Amalgamation Date; or*
 - (b) *a decision by the Board to offer to de-amalgamate with TCCL at any time before expiry of 5 years after the TCCL Amalgamation Date,*
- the TCCL Retained Funds will be transferred by the Club to TCCL (or the new company formed as part of the corporate vehicle for the purposes of the de-amalgamation which is to be known as TCCL No. 2). This clause 58 shall cease to apply and be automatically repealed after the TCCL Retained Funds are transferred to TCCL (or TCCL No. 2) as part of the TCCL De-amalgamation.*

- 58.13 *In the event of there being no De-amalgamation, the TCCL Retained Funds may be used by the Club for its own purposes and this clause 58 will cease to apply and will be automatically repealed.*
- 58.14 *This clause 58 shall also not apply and will be automatically repealed if the TCCL Retained Funds are not transferred to the Club in accordance with the TCCL Amalgamation Documents.*
- 58.15 *Other than automatic repeal of this clause under clauses 58.12 to 58.14 inclusive and despite any other clause of these Rules, this clause 58 or any other clauses in these Rules passed at the same general meeting as clause 58 (**the protected rules**) may not be amended if such amendments will be inconsistent with the TCCL Amalgamation Documents as determined by the TCCL Investment Committee. Despite any other clause in these Rules, any resolution to amend this clause 58 and any of the other protected rules will also be subject to the following:*
- (a) *a resolution has been passed by Voting Members by a majority of not less than 75% present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 58.15); and*
 - (b) *a separate resolution has been passed by Catholic Club Members referred to in clause 33.2 (who are members of the Club) by a majority of not less than 75% of present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 58.15); and*
 - (c) *the requirements of clauses 23 and 24 are otherwise met (as modified by this clause 58.15), including the requirement for a second general meeting of Voting Members under clause 23.3 to confirm or reject any change or repeal.*
- 58.16 *If the Club wishes to replace these rules with new rules before the automatic repeal of this rule 58, it must include rules in the new rules which are identical to (or give the same effect to) this clause 58 and the protected rules, and the new rules must be approved by the TCCL Investment Committee in writing before they can be adopted.*
- *inserting the following new clause 58 after clause 57, but only if the Independent Liquor and Gaming Authority permits the TCCL Retained Funds to be held by TCCL on and after the TCCL Amalgamation Date:*

"58. PROTECTED RULES

- 58.1 *Notwithstanding anything contained in these Rules, this clause 58 or any other clauses in these Rules passed at the same general meeting as clause 58 (**the protected rules**) may not be amended if such amendments will be inconsistent with the TCCL Amalgamation Documents as determined by TCCL. Despite any other clause in these Rules, any resolution to amend this clause 58 and any of the other protected rules will also be subject to the following:*
- (a) *a resolution has been passed by Voting Members by a majority of not less than 75% present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 58.1); and*
 - (b) *a separate resolution has been passed by Catholic Club Members referred to in clause 33.2 (who are members of the Club) by a majority of not less than 75% of present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 58.1); and*
 - (c) *the requirements of clauses 23 and 24 are otherwise met (as modified by this clause 58.11), including the requirement for a second general meeting of Voting Members under clause 23.3 to confirm or reject any change or repeal.*
- 58.2 *If the Club wishes to replace these rules with new rules before the fifth anniversary of the TCCL Amalgamation Date (subject to any De-amalgamation), it must include rules in the new rules which are identical to (or give the same effect to) this clause 58 and the protected rules, and the new rules must be approved by TCCL in writing before they can be adopted.*

Third Resolution (to be considered only if the First and Second Resolution are passed)

"That the members hereby ratify, with effect on date on which the Independent Liquor and Gaming Authority transfers the club licence of The Catholic Club Ltd to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club (TCCL Amalgamation Date), the appointment of each person who was a life member of The Catholic Club Ltd immediately before TCCL Amalgamation Date and who has provided to the Club a completed membership form as a Life Member of the Club, and approve for the Club to present these members with their Life Membership and a gift, at a catered event."

 **THOMSON GEER**
 

Executed as a deed by City Tattersall's.

Executed as a deed by the Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club ABN 44 004 054 353:

[Handwritten signature]

Signature of Witness

[Handwritten signature]

*Signature of Patrick Campion, Chairman and Director

Michael Cossetto

Name of Witness

BLOCK LETTERS

*Level 10, 77 Castlereagh St
Sydney*

Address of Witness
BLOCK LETTERS

[Handwritten initials]

Executed as a deed by TCCL


Executed as a deed by **The Catholic Club Ltd**
ABN 35 000 982 436 in accordance with
section 127 of the *Corporations Act 2001* (Cth):



Director



Name of Director
BLOCK LETTERS



*Director/*Company Secretary



Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate



