

Deed of Amalgamation

Chairman of City Tattersalls Club on behalf of City Tattersall's Club
ABN 44 004 054 353

**Combined Services RSL Club Co-operative Limited (subject to Deed
of Company Arrangement)**
ABN 13 485 506 734 trading as Barracks on Barrack

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Date

20th May 2021

Parties

CTC	Chairman of City Tattersall's Club ABN 44 004 054 353
Address	198-204 Pitt Street, Sydney NSW 2000
Attention	Marcelo Veloz
Email	mveloz@citytatts.com.au
BoB	Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack.
Address	5-7 Barrack Street, Sydney NSW 2000
Attention	Carl Dumbrell
Email	carl@cdtl.com.au

Background

- A. Each of CTC and BoB are a registered club holding a Licence subject to the RCA.
- B. CTC 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)*.
- C. BoB is a co-operative subject to the *Co-operatives National Law (NSW)* (as adopted by *Co-operatives (Adopting of National Law) Act 2012 (NSW)*).
- D. BoB requested ClubsNSW to issue a circular to its members, inviting expressions of interest for amalgamation from other registered clubs on 24 November 2020 in Circular 20-208.
- E. CTC submitted an expression of interest which has been accepted by the board of BoB and subsequently by the Administrator and CTC is nominated as the preferred amalgamation partner of BoB.
- F. The Administrator was appointed in accordance with section 41 of the RCA.
- G. The parties propose to amalgamate subject to the terms of this MOU and this document.
- H. This document supplements the MOU entered into by the parties in accordance with the requirements of Part 2 Division 1A of the RCA and clause 7 of the RCR, 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 RCR.

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

The following definitions apply this document 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).

Administrator means the Administrator of BoB appointed under section 41 of the RCA, who at the date of signing this MOU is David Hurst and David Sampson of BPS Recovery at Level 18/ 201 Kent Street, Sydney NSW 2000.

Amalgamation means the amalgamation of BoB and CTC in accordance with applicable law, the MOU and this document.

Amalgamated Club means CTC as the continuing club after Amalgamation Completion.

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

Application for Transfer means an application for transfer of BoB Licence held by BoB to CTC or to the Chairman of CTC to be held for and on behalf of CTC, or to CTC as CTC 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 BoB Premises Lease and any sub-leases under which BoB is the sub-tenant or sub-lessor), BoB's 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 belonging to BoB 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 CTC board of directors, or, the Amalgamated Club after Amalgamation Completion.

BoB means the Combined Services RSL Club Co-operative Limited ABN 13 485 506 734 trading as Barracks on Barrack.

BoB Premises has the meaning contained in the MOU.

BoB Premises Lease has the meaning contained in the MOU.

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

CTC 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 the City Tattersall's Club.

CTC Rules means the rules of CTC as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time.

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 has the meaning contained in the MOU.

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.

Indirect Loss means any one or more of the following:

- (a) economic loss, loss of actual or anticipated profits, loss of revenue, loss of savings, loss of production, loss of business, loss of opportunity, loss of access to markets, loss of goodwill, loss of reputation, loss of credit, loss of publicity, loss of data, loss of use, loss of interest or loss arising from business interruption; and

- (b) any special, indirect, consequential, incidental, punitive, exemplary or unforeseeable loss or any similar loss.

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 BoB pursuant to clause 14).

Landlord has the meaning contained in the MOU.

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

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).

Management Agreement means the management agreement entered into by the parties dated 12 April 2021, under which BoB engages CTC to manage the business conducted by BoB.

Member means a member of either BoB, CTC 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 document for the purposes of the Amalgamation and in accordance with clause 7 of the RCR.

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).

RCA means the *Registered Clubs Act 1976* (NSW).

RCR means the *Registered Clubs Regulation 2015* (NSW).

Sunset Date means the date which is 12 months after the date of this document.

1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule or annexure attached to this document forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (h) an obligation or liability assumed by two or more persons binds them jointly and separately;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;
- (j) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (k) a reference to this document means this document and includes any variation or replacement of this document.

2 Amalgamation

2.1 General

- (a) The Amalgamation is intended to improve and enhance the facilities and services available to all Members of the Amalgamated Club.
- (b) Each of CTC and BoB agree to amalgamate:
 - (i) in accordance with the RCA and Liquor Act; and
 - (ii) on the terms of this document and the MOU.

2.2 Nature of this document

This document:

- (a) is supplementary to the MOU and provides for commercial terms and other details agreed by the parties in relation to the Amalgamation which are not required to be included in the MOU under the RCR; and
- (b) is collateral to, and conditional upon execution of, the MOU.

2.3 Effect of the MOU

- (a) The Parties agree that:
 - (i) the terms of the MOU will be taken to be terms of this document and are binding on both parties;
 - (ii) a breach of the MOU will be taken to be a breach of this document.
- (b) If this document imposes an obligation on a party which would result in that party breaching a term of the MOU then compliance by that party with the MOU will not be taken to be a breach of this document.
- (c) If there is any inconsistency between the MOU and this document, the provisions of the MOU prevail.

3 Approvals

3.1 BoB Meeting

- (a) BoB will conduct a special postal ballot in accordance with Schedule 2 of the *Co-operatives Regulation 1997* (NSW) as soon as reasonably practicable, but within no more than 60 days, after the date of this document unless otherwise agreed in writing by the parties (**BoB Meeting**).
- (b) In this special postal ballot, the Members of BoB entitled to vote under its constituent documents and the RCA will consider and vote on resolutions set out in Schedule 1 and in accordance with section 17AEB(d) of the RCA to:
 - (i) approve the Amalgamation in principle;
 - (ii) approve the transfer of Assets from BoB to CTC in accordance with this document;
 - (iii) approve the making of the Application for Transfer; and
 - (iv) approve any other matters required to give effect to this document and the MOU.
- (c) The form of the resolutions referred to in clause 3.1(b) to be put to Members of BoB are contained in Schedule 1.

3.2 CTC Meetings

- (a) CTC will convene two general meetings of its Members entitled to vote under its constituent documents and the RCA to be held as soon as reasonably practicable, but within no more than 60 days, after the date of this document unless otherwise agreed in writing by the parties (**CTC Meetings**). The two meetings will be held on the same day.
- (b) At the CTC Meetings, the Members will consider and vote on resolutions in accordance with section 17AEB(d) of the RCA to:
 - (i) approve the Amalgamation in principle (to be considered and voted on at the first meeting);
 - (ii) approve the making of the Application for Transfer (to be considered and voted on at the first 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 meeting); and
 - (iv) approve any other matters required to give effect to this document and the MOU (to be considered and voted on at either the first meeting or the second meeting).
- (c) The form of the resolutions referred to in clause 3.2(b) to be put to Members of CTC are set out in Schedule 2.
- (d) CTC is required to convene a confirmatory general meeting of its Members entitled to vote under its constituent documents (**Confirmatory Meeting**) for the purposes of confirming or rejecting any changes to the CTC Rules approved at the second meeting and for that purpose, CTC will convene the General Meeting within a period of 60 days after the date of the second meeting.

3.3 Application for Transfer

- (a) Within 10 Business Days after the meeting under clause 3.1, BoB will give to CTC:
 - (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 RCA and RCR.
- (b) CTC 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) BoB must sign all documents and provide all information reasonably necessary for CTC to complete and lodge the Application for Transfer.

4 Members and CTC Rules

- 4.1 At the meetings under clause 3.2, the Members of CTC will consider the second and third resolutions as contained in Schedule 2 to this document to amend the constituent documents of CTC (with effect from Amalgamation Completion) to:
 - (a) add a new rule for identification purposes under section 17AC of the RCA to identify persons as 'BoB Members';
 - (b) permit all Members of BoB 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); and
 - (c) make Life Members of BoB, Life Members of the Amalgamated Club (pursuant to a resolution of the Board and subject to BoB Life Member completing and submitting an application form).
- 4.2 As soon as practicable after provisional approval of the Application for Transfer has been given by the Authority, BoB will, on behalf of CTC, send to each BoB Member (who is not already a CTC Member) an invitation (**Invitation**) to become a:
 - (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 CTC Rules) which includes a request for consent to the terms of that membership;
 - (b) Life Member of the Amalgamated Club (which will include a request for consent to the terms of that membership) to Life Members of BoB.
- 4.3 Each Member of BoB:
 - (a) may accept the Invitation by consenting to become a member of the Amalgamated Club (in a class of membership for which they are eligible) before Amalgamation Completion;
 - (b) who consents to become a member of the Amalgamated Club under this clause will, subject to any restrictions contained in the constituent documents of CTC and the requirements of section 30(2) of RCA, be admitted to membership of the Amalgamated Club with effect from Amalgamation Completion;
 - (c) 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 RCA (presently being \$2 per annum) which may be required by the Independent Liquor and Gaming Authority;

- (d) who, at Amalgamation Completion, is a Life Member of BoB, and becomes a member of the Amalgamated Club:
 - (i) will become a Life Member of the Amalgamated Club pursuant to an amendment of CTC Rules and pursuant to a resolution of the Board as specified in clause 1.1(c); and
 - (ii) will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the RCA 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 RCA.

5 Obligations

5.1 BoB Obligations

On and from the date of this document up to Amalgamation Completion, BoB must:

- (a) commence, facilitate and assist in negotiations with the registered proprietor of BoB Premises to enable CTC to become, as and from Amalgamation Completion, the bona fide occupier and lessee of BoB Premises with an option to purchase BoB Premises on expiry of the lease;
- (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 and provide certificates of currency on request from the CTC:
 - (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 document (subject to reasonable wear and tear);
- (e) immediately notify CTC of anything which may result in a claim on an insurance policy held under subclause (c);
- (f) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability;
- (g) provide CTC each week (or at such other times as requested) any details or documents relating to the operation and financial position of BoB;
- (h) comply with all applicable laws;
- (i) not do anything which may damage its reputation or the reputation of CTC; and

- (j) 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 document to Amalgamation Completion BoB must not without the prior written consent of CTC:

- (a) incur any single actual debt or liability in excess of one thousand dollars (\$1,000) 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.

5.3 **Management Services**

BoB has engaged CTC to manage the BoB Premises (**Management Services**) on the terms set out in the Management Agreement dated 12 April 2021. CTC acknowledges BoB's obligations under clause 5.1 and 5.2 in that regard.

6 **Co-operation**

6.1 From the date of this document to Amalgamation Completion each of CTC and BoB will nominate suitably authorised officers to hold regular discussions about:

- (a) the efficient transfer of the Assets and Licence of BoB to CTC and efficient payment of liabilities of BoB by CTC;
- (b) management of the transfer of the Members of BoB to CTC under this document and the MOU; and
- (c) any other matters considered necessary by the parties.

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

7 Due Diligence

7.1 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) BoB permitting CTC and its authorised representatives to enter and access any part of BoB Premises on request, in order to carry out inspections, surveys or any other assessment of BoB Premises (provided that CTC must use reasonable endeavours not to unduly interfere with the trading activities of BoB);
- (c) CTC permitting BoB and its authorised representatives to enter and access any part of the land occupied by CTC for the conduct of its business on request, in order to carry out inspections, surveys or any other assessment of its premises and buildings (provided that BoB must use reasonable endeavours not to unduly interfere with the trading activities of CTC);
- (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 7.3.

7.2 Due Diligence timing

Each party agrees that its due diligence including legal, accounting, financial, taxation, commercial, insurance, and management due diligence investigations under clause 7.1 must be completed within 20 Business Days after the date of this document.

7.3 Termination

Despite anything else in this document, 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 7.1, the party may within 20 Business Days after the date of this document give written notice of termination of this document with immediate effect to the other party without penalty.

7.4 Effect of termination

Termination of this document under this clause 7 does not affect any right or Liability of a party accrued before such termination.

8 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).

9 Confidentiality

- 9.1 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 document 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.
- 9.2 If this document or the MOU is terminated, then each 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.

10 Liabilities

- 10.1 Subject to clause 6.1(f) of the MOU (regarding payment of Employee Entitlements by BoB for employees who do not accept an offer of employment from CTC or who are not offered employment by CTC) and clause 11(b), from Amalgamation Completion, CTC will be responsible for, and pay when due, all debts and other liabilities of BoB:
- (a) which have not been paid or discharged in full as at Amalgamation Completion; and
 - (b) which are reasonably incurred after Amalgamation Completion, including without limitation the costs of the winding up of BoB.

11 Transfer of assets

The parties agree and acknowledge:

- (a) unencumbered legal and beneficial title to the business and Assets of BoB will pass to the Chairman of CTC for and on behalf of CTC (or as CTC otherwise directs) on Amalgamation Completion;
- (b) until Amalgamation Completion, BoB remains the owner of, and bears all risk in connection with, its business and the Assets; and
- (c) from Amalgamation Completion, the Chairman of CTC for and on behalf of CTC (or as CTC otherwise directs) becomes the owner of and bears all risk in connection with such business and the Assets.

12 Benefit of contracts

If the Assets include the benefit of contracts with BoB which cannot effectively be assigned to CTC without the consent of a third party or except by an agreement or novation:

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

13 Amalgamation completion

13.1 BoB must on Amalgamation Completion deliver to CTC:

- (a) a duly executed transfer of the BoB Premises Lease (in registrable form) and any deed of assignment or novation of the BoB Premises Lease;
- (b) control of the Assets;
- (c) all documents of title relating to the Assets;
- (d) control of the Records;
- (e) executed releases of any encumbrances over the Assets;
- (f) copies of all back ups of IT Systems;
- (g) all user manuals, passwords and access codes for any IT Systems or electronic systems included in the Assets;
- (h) signed deeds of assignment for all intellectual property rights owned by BoB in form and substance reasonably required by CTC, together with any certificates of registration for them;
- (i) the ASIC consent and transfer number for CTC to become the registered holder of the 'Barracks on Barrack' business name;
- (j) duly executed forms or passwords to transfer the domain names of BoB to CTC;
- (k) deeds of novation signed by BoB and the counterparty for each contract;
- (l) duly executed transfers or assignments of any other Assets for which an assignment or novation is required;
- (m) duly executed copies of all required Government Agency and regulatory approvals or other third party approvals and consents to the actions required by this document;
- (n) all other documents and things which CTC reasonably requires to acquire the benefit of the Assets.

13.2 BoB must give CTC or its solicitors all such documents within a reasonable period before Amalgamation Completion for stamping where necessary. All such documents will be held by CTC or its solicitors in escrow pending Amalgamation Completion.

13.3 For the purposes of clause 13.1(e):

- (a) as soon as reasonably practicable after the provisional approval of the Amalgamation, BoB must provide to CTC a list of known encumbrances (including personal property securities) over its Assets; and
- (b) within 5 Business Days after receiving the list of encumbrances referred to in sub paragraph (a) above, CTC must provide to BoB a list of encumbrances (including personal property securities) which must be released by BoB on or before Amalgamation Completion.

14 Dissolution of BoB

14.1 Following Amalgamation Completion, BoB will:

- (a) conduct a special postal ballot in accordance with Schedule 2 of the *Co-operatives Regulation 1997 (NSW)* for its Members entitled to vote under its constituent documents to consider and, if appropriate, pass the resolutions required for a members voluntary winding up of BoB; and
- (b) carry out all acts necessary to effect such winding up after the approval of those Members has been given.

15 Force majeure

- 15.1 A party is deemed not to be in breach of an obligation under this document or the MOU if it cannot comply with its obligations because of a Force Majeure event.
- 15.2 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 document and the MOU.

16 Representations and warranties

- 16.1 Each party represents and warrants that it has full power and authority to enter into and perform its obligations under this document and the MOU.
- 16.2 BoB represents and warrants to CTC that:
 - (a) the Records and accounts which it has given to CTC before the execution of this document 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;
 - (b) it has complied with all laws relating to payment of taxes and Employee Entitlements;
 - (c) each of the representations and warranties it has made in this document and the MOU are correct; and
 - (d) all information that it has provided to CTC is true and correct in all respects and is not misleading by omission of information.
- 16.3 CTC represents and warrants to BoB that:

- (a) each of the representations and warranties it has made in this document and the MOU are correct; and
- (b) all information that it has provided to BoB is true and correct in all respects and is not misleading by omission of information.

17 Dispute resolution

- 17.1 A party must not commence proceedings in relation to a dispute under this document or the MOU without first following the procedures in this clause, except to seek urgent injunctive or other interlocutory relief.
- 17.2 A party claiming that a dispute has arisen under, or in connection with, this document must give to the other party a notice identifying precisely, and providing full particulars of, that dispute.
- 17.3 Each party must use its best endeavours to resolve the dispute and act in good faith.
- 17.4 If the parties cannot solve the dispute under clause 17.3 within 10 Business Days after the date of the notice (or a longer period as agreed by the parties), either party may refer the dispute for mediation by giving the other party notice.
- 17.5 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.
- 17.6 If a dispute is not resolved by mediation under this clause within 30 Business Days after referral to a mediator (or a longer period as agreed by the parties), any party may take any action available to it at law.

18 Termination

- 18.1 In addition to the termination right contained in clause 7.3, a party may terminate this document 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 does not approve 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);
 - (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 document (including without limitation, any obligation set out in clause 5 of this document) 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 after being given notice to do so; or

(f) the other party suffers an Insolvency Event, subject to the Act.

18.2 Termination of this document by a party under clauses 18.1(a) to (d) inclusive is without penalty to either party.

19 Notices

19.1 A notice, approval, consent or other communication to a person relating to this document or the MOU:

- (a) must be in legible writing;
- (b) executed by duly authorised person(s); and
- (c) in English.

19.2 If the notice is to CTC 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 BoB then it must be addressed as follows:

Name: Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack
 Attention: Carl Dumbrell, Chairman
 Address: 5-7 Barrack Street, Sydney NSW 2000
 Email: carl@cdtl.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 General

20.1 Cost and expenses

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

- (a) negotiation, preparation and execution of this document and the MOU; and

(b) effecting Amalgamation Completion.

20.2 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

20.3 Assignment

Neither party may assign or transfer its rights or obligations under this MOU without the prior written consent of the other party.

20.4 Entire agreement

This document and the MOU record the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this document and the MOU.

20.5 Further assurance

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this document.

20.6 Counterparts

This document and any variation of this document may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

20.7 Survival

All warranties, releases, exclusions and limitations of liability, indemnities, terms with respect to intellectual property and confidential information in this document will remain valid and binding following expiry or termination of this document. Any other provision by its nature intended to survive expiry or termination of this document survives expiry or termination of this document.

20.8 No waiver

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this document does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

20.9 Cumulative rights

The rights, powers, authorities, discretions and remedies of a party under this document do not exclude any other right, power, authority, discretion or remedy.

20.10 Severability

If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.

20.11 **Variation**

This document can only be amended, supplemented or replaced by another document signed by the parties.

20.12 **Governing law and jurisdiction**

This document is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this document.

Schedule 1 - Resolutions to be put to Members of BoB

First Ordinary Resolution

That the members hereby:

1. *approve in principle the amalgamation of the Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack (BoB) with City Tattersall's Club ABN 44 004 054 353 (CTC), such an amalgamation to be effected by:*
 - (a) *the continuation of CTC (as the amalgamated club) and the dissolution of BoB;*
 - (b) *the transfer of BoB's assets to Chairman of City Tattersall's Club for an on behalf of City Tattersalls Club; and*
 - (c) *the transfer of the club licence of BoB to the Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club (or to the CTC, as may be accepted by the Independent Liquor and Gaming Authority);*

and
2. *declare the premises of BoB not to be core property for the purposes of section 17AI and 41E of the Registered Clubs Act;*

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

Schedule 2 - Resolutions to be put to Members of CTC

First Resolution

"That the members hereby:

1. approve in principle the amalgamation of Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack (**BoB**) with City Tattersall's Club ABN 44 004 054 353 (**CTC**), such an amalgamation to be effected by:
 - (a) the continuation of CTC (as the amalgamated club) and the dissolution of BoB, such dissolution being subject to the terms of the memorandum of understanding and deed of amalgamation signed by the parties;
 - (b) the transfer of BoB's assets (as defined in the memorandum of understanding and deed of amalgamation signed by the parties) to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club; and
 - (c) the transfer of the club licence of BoB to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club (or to CTC, 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 BoB to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club (or to CTC, 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 Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack 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 definition in clause 3.1 in alphabetical order:

"**BoB** means Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack.

BoB Amalgamation Documents means the Memorandum of Understanding and Deed of Amalgamation between the Club and BoB which sets out the agreement to amalgamate BoB and the Club."
- **inserting** the following new clause 33.3 after 33.3:

"33.2 Those members who were financial full members of BoB and whose names were entered in the Register of Members of BoB on the date on which the Independent Liquor and Gaming Authority transfers the club licence of BoB 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 Barracks on Barrack Members
- **amending** clause 40.15 to read:

"40.15 Clauses 40.1 to 40.14 shall not apply in respect of the election of TCCL's members or BoB's members to membership of the Club and TCCL's members and BoB's members will be elected to membership of the Club in accordance with the procedure

set out in the TCCL Amalgamation Documents or the BoB Amalgamation Documents (as appropriate) and the requirements of the Act”.

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 Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack to Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club (**BoB Amalgamation Date**):*

- (a) *the appointment of each person who:*
 - (i) *was a life member of Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 trading as Barracks on Barrack immediately before the BoB Amalgamation Date; and*
 - (ii) *has provided to the Club their consent to become a Life Member of the Club,*
- and*
- (b) *approve for the Club to present these Life Members with their Life Membership.”*

Executed as a deed

Signed sealed and delivered by the Chairman of City Tattersall's Club on behalf of City Tattersall's Club in in the presence of:

Signature of Patrick Campion

Signature of Witness

Stephanie Lowe

Name of Witness

196-204 Pitt St Sydney NSW 2000

Address of Witness

Executed as a deed by Combined Services RSL Club Co-operative Limited (subject to Deed of Company Arrangement) ABN 13 485 506 734 in accordance with section 49 of the *Co-operatives National Law 2012* by its authorised officers:

Signature of director

Carl Dumbrell

Name

Signature of director ~~secretary~~

Liam Williams

Name