

## MEMORANDUM OF UNDERSTANDING

between

**CABRAMATTA BOWLING AND RECREATION CLUB LIMITED**  
ABN 48 000 976 894  
(Cabra Bowls)

and

**MALUA BAY BOWLING AND RECREATION CLUB LIMITED**  
ABN 87 082 572 361  
(Club Malua)

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**This deed** is made on 5 October 2018

Between **Cabramatta Bowling and Recreation Club Limited** ABN 48 000 976 894 of Fairview Road, Cabramatta NSW 2166 (**Cabra Bowls**)

And **Malua Bay Bowling and Recreation Club Limited** ABN 87 082 572 361 of 40 Sylvan Street, Malua Bay NSW 2536 (**Club Malua**)

## **Recitals**

- A The parties are both registered clubs.
- B Club Malua called for expressions of interest for amalgamation from other registered clubs on 13 February 2018.
- C Cabra Bowls submitted an expression of interest which has been accepted by Club Malua.
- D The parties propose to amalgamate subject to the terms of this MOU and the Deed of Amalgamation.
- E This MOU is entered into in accordance with clause 7 of the Registered Clubs Regulation.

**Now it is covenanted and agreed** as follows:

## **1 Definitions and interpretation**

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### **1.1 Definitions**

In this deed, unless the context otherwise requires:

**Advisory Committee** means the committee appointed or elected under clause 3.6;

**Amalgamation** means an amalgamation of Cabra Bowls and Club Malua pursuant to the Registered Clubs Act and the Liquor Act;

**Amalgamated Club** means Cabra Bowls as the continuing club after Amalgamation Completion;

**Amalgamation Completion** means the day on which:

- (a) the Club Malua Club Licence is transferred to Cabra Bowls; and
- (b) all the other Assets of Club Malua have been transferred to Cabra Bowls;

**Asset** includes chattels, contract rights, motor vehicles, stock in trade, plant, fixtures and fittings, real property (including the Land and the Premises), gaming machines and gaming machine entitlements, debtors, intellectual property rights, goodwill and all other property, tangible or intangible belonging to Club Malua at the time of Amalgamation Completion;

**Authority** means the Independent Liquor and Gaming Authority;

**Board** means the board of directors of Cabra Bowls, or, the Amalgamated Club after Amalgamation Completion (as the case may be);

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

**Cabra Bowls Members** are those members of the Amalgamated Club excluding the Club Malua Members;

**CEO** means Chief Executive Officer;

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

**Club Malua Club Licence** means the club licence held by Club Malua in respect of the Premises (being Malua Bay Bowling & Recreation Club Limited - LIQC324007158).

**Club Malua Members** means those Members of Club Malua who:

- (a) are identified as Members of Club Malua for the purposes of section 17AC of the Registered Clubs Act and who join the Amalgamated Club designated as "Club Malua Members" under the Constitution in accordance with clause 4 of the Deed of Amalgamation; or
- (b) join the Amalgamated Club after Amalgamation Completion and fall within the definition of "members of the dissolved club" under section 17AJ of the Registered Clubs Act and includes Members of sub-clubs which are based at the Premises;

**Constitution** means the memorandum and articles of association of Cabra Bowls as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time;

**Deed of Amalgamation** means the deed of amalgamation between the parties dated on or about the date of this MOU;

**EBITDARD** means earnings before interest, taxes, depreciation, amortisation, rent and donations;

**Employee Entitlements** means all entitlements to salary or wages, annual leave, long service leave and other entitlements under any industrial instrument or agreement between Club Malua and any of its employees;

**Financial Year** means a financial year of the Amalgamated Club;

**Gaming Machines Act** means the *Gaming Machines Act 2001* (NSW);

**Gaming Machines Regulation** means the *Gaming Machines Regulation 2010* (NSW);

**Government Agency** means a government or any governmental, semi-governmental or judicial entity or authority, including but not limited to a self-regulating organisation established under statute and includes the Authority;

**Land** means the Land on which the Premises are located, being the land known as 40 Sylvan Street, Malua Bay NSW 2536 and being lot 28 in deposited plan 1110553;

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

**Major Assets of Club Malua** means the Land, including the Premises;

**Member** means a member of either Club Malua, Cabra Bowls or the Amalgamated Club as the case may be, as shown on the relevant club's register of members at the relevant time;

**MOU** means this memorandum of understanding for amalgamation;

**Premises** means Club Malua clubhouse, bowling greens and other facilities located on the Land;

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

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

## 1.2 Interpretation

In this MOU, unless the context otherwise requires:

- (a) capitalised words which are not defined in this MOU have the same meaning as defined in the Deed of Amalgamation; and
- (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 memorandum of understanding is novated;
- (g) a reference to **clause** or **schedule** is to a clause or schedule to this MOU;
- (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 law or 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 MOU must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

## **2 Amalgamation**

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### **2.1 Amalgamation**

The parties agree to Amalgamate:

- (a) in accordance with the Registered Clubs Act and the Liquor Act; and
- (b) on the terms of this MOU and the Deed of Amalgamation.

### **2.2 Condition**

This MOU is collateral to, and conditional upon execution of, the Deed of Amalgamation.

## **3 Future management of the Premises**

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[REDACTED] Clause 7(2)(a) of the Registered Clubs Regulation [REDACTED]

### **3.1 General**

- (a) The Premises will become additional trading premises of the Amalgamated Club.

- (b) The Premises will be available for the use of all Members of the Amalgamated Club (subject to its Constitution and by-laws).
- (c) The Premises will be named and trade under the name "Club Malua", subject to the Amalgamated Club obtaining any required authorisation or consent from any Government Agency. If the Amalgamated Club is unable to obtain the necessary authorisation or consent then the Premises will be named and trade under such name as determined by the Board after consultation with the Advisory Committee.

### 3.2 Supporting Bowling at the Premises

The Amalgamated Club will:

- (a) maintain the bowling sub clubs (which exist as at the date of this MOU) and maintain bowling activities at the Premises;
- (b) pay the capitation fees to the Royal NSW Bowling Association Limited or other relevant peak industry body, in respect of that sub club for a period of 5 years from Amalgamation Completion;
- (c) provide appropriate uniforms for Members playing in sub club competitions for a period of 5 years from Amalgamation Completion.

### 3.3 Management structure, Secretary/CEO of the Amalgamated Club and Manager of the Premises

- (a) The management structure of the Amalgamated Club will be the management structure of Cabra Bowls at the date of Amalgamation Completion, amended according to the operational requirements of the Amalgamated Club as determined by the Board from time to time.
- (b) For the purposes of the Registered Clubs Act and Liquor Act:
  - (i) Cabra Bowls' CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club; and
  - (ii) the Secretary and CEO of Club Malua as at the date of Amalgamation Completion will be appointed as the manager of the Premises effective from the date of Amalgamation Completion.

### 3.4 Improvements and renovations

- (a) Within 12 months after Amalgamation Completion, the Amalgamated Club will spend not less than \$500,000 (**Investment Amount**) plus GST on the following:
  - (i) updating the gaming machines installed at the Premises, which may include, at the Board of the Amalgamated Club's discretion, the addition of at least one gaming machine link; and
  - (ii) refurbishing the interior of the clubhouse building at the Premises by replacing furniture and furnishings, painting such parts of the Premises as determined reasonably necessary by the Board of the Amalgamated Club and installing new carpets;
- (b) In addition to the matters referred to in clause 3.4(a) and in addition to the Investment Amount referred to in clause 3.4(a), within 12 months after Amalgamation Completion, the Amalgamated Club will upgrade the Point of Sale System and computers installed at the Premises, install at the Premises a cash redemption terminal (**CRT**) similar to the CRT presently installed in Cabra Bowls' main premises at Cabramatta but only when it is updated so as to be compatible with the gaming system operating at the Premises together with such other peripheral items as determined by the Board and similar to those that are presently installed in the Amalgamated Club's main premises at Cabramatta.

### 3.5 Site Master Plan

- (a) The Amalgamated Club will use all reasonable endeavours to develop a site master plan for the Premises (which will chiefly aim to identify areas that require capital investment, increase patronage of the Premises and extend and/or improve the clubhouse) and obtain a development consent for that purpose within a period of four (4) years after Amalgamation Completion.
- (b) If a development consent is obtained, the Amalgamated Club must physically commence works within a period of five (5) years after Amalgamation Completion.
- (c) In carrying out its obligations under clauses 3.5(a) and 3.5(b), the Amalgamated Club must use all reasonable endeavours to obtain necessary finance and engage appropriate consultants and builders to implement the site master plan and development consent.

### 3.6 Advisory Committee

- (a) The Board will create an Advisory Committee in respect of the Premises within one (1) month after Amalgamation Completion.
- (b) The Advisory Committee:
  - (i) will be established as a committee under Cabra Bowls' Articles of Association;
  - (ii) will comprise:
    - (A) all members of the board of Club Malua as at Amalgamation Completion for the period from Amalgamation Completion to the date of the Amalgamated Club's second annual general meeting which occurs after Amalgamation Completion; and
    - (B) thereafter not less than 5 members;
  - (iii) will be chaired for the first 2 years of its term by the President of Club Malua as at Amalgamation Completion, and thereafter a chairperson shall be elected by the members of the Advisory Committee from amongst its members at the first meeting of the Advisory Committee held after each election;
  - (iv) in the first instance will be appointed by the Board, being the members of the board of Club Malua as at Amalgamation Completion, and after that will comprise Advisory Committee members elected by the Club Malua Members from among those Club Malua Members who:
    - (A) reside in Eurobodalla Shire; and
    - (B) nominate for a position on the Advisory Committee and are approved by the Board of the Amalgamated Club in conjunction with the usual cycle of elections of the Advisory Committee; and
  - (v) will meet at such intervals as may be determined by the Advisory Committee from time to time or as directed by the Board.
- (c) Subject to earlier resignation or removal from the Advisory Committee in accordance with the Constitution and by-laws of the Amalgamated Club:
  - (i) the term of office for the first Advisory Committee members will end on the conclusion of the second annual general meeting of the Amalgamated Club or of the relevant Club Malua sub-club following their appointment; and
  - (ii) thereafter the term of office of the elected Advisory Committee members will end on the conclusion of the second annual general meeting of the

Amalgamated Club or of the relevant Club Malua sub-club following their election.

- (d) The Advisory Committee's role will be set out in Advisory Committee Rules drafted by Cabra Bowls prior to Amalgamation Completion and approved by the Amalgamated Club after Amalgamation Completion, which will include the ability to make recommendations to the Board regarding:
- (i) membership matters at the Premises;
  - (ii) conduct of bowls at the Premises;
  - (iii) maintenance of the Premises and the Land;
  - (iv) engagement with the local community;
  - (v) the Premises generally after Amalgamation Completion; and
  - (vi) Club Grants to be made by the Amalgamated Club that are attributable to the Premises, subject to consultation by the Advisory Committee with the CEO of the Amalgamated Club or his/her authorised representative, or such other senior employee nominated by the Board from time to time,
- but it will not have any governance or management powers in the Amalgamated Club (except if specifically delegated to it by resolution of the Board) and it shall be subject to the overall control and direction of the Board and management of the Amalgamated Club.
- (e) Notwithstanding clause 3.6(d), the Advisory Committee will have sole discretion in respect of any decision made on behalf of the Club Malua Members or New Club Malua under clause 10(e) in respect of any proposed Simultaneous De-Amalgamation and Amalgamation and De-Amalgamation.
- (f) Cabra Bowls' CEO or his delegate (being the manager of the Premises) shall be entitled to attend and participate in all meetings of the Advisory Committee but will not have any voting rights at those meetings.
- (g) The Advisory Committee shall be in force for as long as the Premises continue to trade as a separate set of premises of the Amalgamated Club after Amalgamation Completion.
- (h) A person will cease to be a member of the Advisory Committee immediately if he or she:
- (i) ceases to be a Member of the Amalgamated Club;
  - (ii) ceases to hold a qualification required for membership of the Advisory Committee; or
  - (iii) is removed as a member of the Advisory Committee by resolution of the Board, following an adverse finding against that person in disciplinary proceedings by the Amalgamated Club; or
  - (iv) resigns or is not re-elected or re-appointed, as the case may be.



## 4 Continuing traditions, amenities and community support

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### Clause 7(2)(b) of the Registered Clubs Regulation

#### 4.1 Traditions and Amenities

The Amalgamated Club will maintain Club Malua honour rolls and memorabilia in a suitable location at the Premises; however the Board of the Amalgamated Club will have the option to store the information on the honour rolls electronically provided the information can be viewed by members.

#### 4.2 Sub-clubs

- (a) The Amalgamated Club will maintain the Club Malua sub-clubs which exist as at the date of the MOU.
- (b) Life members of the Club-Malua sub-clubs must be recognised as such in each of the relevant sub-club constitutions.

#### 4.3 Life members of Club Malua

Any person who, at Amalgamation Completion, is a life member of Club Malua and who becomes a Member of the Amalgamated Club:

- (a) will continue to be recognised as a life member in respect of the Premises; and
- (b) will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

#### 4.4 Perpetual members of Club Malua

Any person who, at Amalgamation Completion, is a perpetual member of Club Malua and who becomes a member of the Amalgamated Club:

- (a) will continue to be recognised as a perpetual member in respect of the Premises; and
- (b) will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

#### 4.5 Community support

Cabra Bowls participates in the ClubGrants program and has a community support program. Community organisations currently supported by Club Malua may apply for ongoing support and/or funding from those programs but the Amalgamated Club:

- (a) must maintain at least the same level of community support which was provided by Club Malua immediately prior to Amalgamation Completion, unless the Board, following consultation with the Advisory Committee, determines that the level of community support needs to be appropriately reduced in any Financial Year because the overall financial viability of the Amalgamated Club will be threatened unless there is an appropriate reduction for the relevant Financial Year; and
- (b) subject to the reasonable processes and policies of the Amalgamated Club, the Amalgamated Club must explore opportunities to expand the level of community support pertaining to or local to the Premises.

#### 4.6 Member rewards

Club Malua Members will have the opportunity to participate in the Amalgamated Club's Member loyalty program.

## 5 Future direction of the Amalgamated Club

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### Clause 7(2) (c) of the Registered Clubs Regulation

#### 5.1 General

The future direction of the Amalgamated Club will be subject to the overall general strategic plan of the Amalgamated Club and its finances.

#### 5.2 Specific

The Amalgamated Club will:

- (a) promote the game of bowls at the Premises;
- (b) maintain and promote the Premises and the Land, including bowling activities and bowling greens;
- (c) promote the Premises as a community focused venue;
- (d) develop a dedicated marketing plan for improving community engagement and membership growth at the Premises; and
- (e) seek to maintain and improve the trading of the Premises so that the Premises remain financially viable without subsidy or financial support from the other premises of the Amalgamated Club.

## 6 Employees

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### Clause 7(2) (d) of the Registered Clubs Regulation

#### 6.1 Club Malua employees

- (a) Cabra Bowls will give each current employee of Club Malua, including the Secretary and CEO of Club Malua, a written offer of employment:
  - (i) on terms no less favourable than those provided by an applicable industrial instrument; and
  - (ii) otherwise on those terms generally applicable to an employee in a similar role at Cabra Bowls (provided that the Secretary and CEO of Club Malua will be offered employment as the manager of the Premises in accordance with clause 3.3(b)(ii) and pursuant to a written agreement between the CEO of Club Malua and the Amalgamated Club),

at least 10 Business Days prior to the anticipated date of Amalgamation Completion.
- (b) Club Malua will terminate the employment of all its employees in writing, or accept their written resignation, on Amalgamation Completion.
- (c) Any employee who accepts in writing an offer from Cabra Bowls made under clause 6.1(a) will be employed by the Amalgamated Club on Amalgamation Completion on the terms of that offer, and that person's Employee Entitlements accrued with Club Malua up to and including Amalgamation Completion will be recognised by the Amalgamated Club.
- (d) If any employee of Club Malua does not accept an offer of employment from Cabra Bowls in accordance with clause 6.1(c), then:

- (i) that employee will be paid all accrued Employee Entitlements by Club Malua as at Amalgamation Completion, which will be the end date of that employee's employment by Club Malua;
- (ii) Club Malua must make all superannuation contributions it is obliged to make for that employee up to the date of Amalgamation Completion; and
- (iii) Club Malua will obtain written acknowledgment of receipt of such payments from that employee as at Amalgamation Completion.

## 6.2 Cabra Bowls employees

Each employee of Cabra Bowls will continue to be employed by the Amalgamated Club after Amalgamation Completion, subject to the terms and conditions of employment between each such employee and Cabra Bowls.

## 7 Intentions for Club Malua Assets

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Clause 7(2) (e) of the Registered Clubs Regulation

### 7.1 Core property/Major Assets of Club Malua and gaming machines and gaming machine entitlements

- (a) The Land and the Premises are core property of Club Malua for the purposes of section 41E of the Registered Clubs Act and are major assets of Club Malua for the purposes of section 17AI(3) of the Registered Clubs Act and clause 8 of the Registered Clubs Regulation.
- (b) As at the date of this MOU, the number of gaming machine entitlements held for the Club Malua Club Licence and for the Premises is thirty (30) and Club Malua must ensure that all of the thirty (30) gaming machine entitlements held in respect of the Club Malua Club Licence are transferred to the Amalgamated Club as part of the amalgamation.
- (c) Cabra Bowls must:
  - (i) retain ownership and occupation of the Major Assets of Club Malua;
  - (ii) retain not less than 30 gaming machine entitlements for the Club Malua Club Licence and at the Premises;
  - (iii) operate not less than 30 gaming machines at the Premises; and
  - (iv) operate the Premises as a separate set of registered club premises of the Amalgamated Club,

in the manner referred to in clause 5.2 but subject to clauses 10 and 11.
- (d) Subject to clauses 10 and 11 of this MOU, Club Malua and Cabra Bowls intend that the Amalgamated Club will continue to trade from the Premises and for the core property of Club Malua/Major Assets of Club Malua and gaming machine entitlements of Club Malua to be retained indefinitely.

### 7.2 Cash and other Assets

Any cash and other Assets will form part of the assets of the Amalgamated Club on Amalgamation Completion and may be used, maintained or disposed of in the ordinary course of its business, but the Major Assets of Club Malua and the gaming machine entitlements of Club Malua must be retained in accordance with clause 7 and subject to clauses 10 and 11.

## 8 Risks of not meeting any specified intentions regarding preservation of the core property of Club Malua

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Clause 7(2)(e1) of the Registered Clubs Regulation

- (a) The risks of the Amalgamated Club not meeting the intentions to preserve the core property of Club Malua include that:
- (i) the Amalgamated Club may no longer be able to operate the Premises if the core property is sold to a third party and the Amalgamated Club is not granted any lease in respect of the Premises;
  - (ii) if the core property is disposed, then the ability to use the Premises as a registered club will be subject to the terms of any lease agreement between any new registered proprietor of the Land and the Amalgamated Club.
- (b) The likelihood that the risks outlined in clause 8(a) will be realised are mitigated because of the restrictions on disposal of the Major Assets of Club Malua contained in the Registered Clubs Act and the additional restrictions set out in clauses 10 and 11 of this MOU.

## 9 Agreement under section 17A(1) of the Registered Clubs Act relating to the period during which the Major Assets of Club Malua must not be disposed

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Clause 7(2)(e2) of the Registered Clubs Regulation

The Amalgamated Club may not dispose of the Major Assets of Club Malua or the gaming machine entitlements of Club Malua except in accordance with clauses 10 and 11.

## 10 Ceasing to Trade from the Premises or Changing Objects

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Clause 7(2) (f) of the Registered Clubs Regulation

- (a) Cabra Bowls does not intend to cease trading from the Club Malua Premises or cease the sporting (bowling) activities conducted at the Club Malua Premises. However, with effect from Amalgamation Completion, the objects of the Amalgamated Club will be the objects of Cabra Bowls.
- (b) Cabra Bowls intends to operate the Amalgamated Club in the manner referred to in clause 5.
- (c) For the purposes of clause 7(2)(f) of the Registered Clubs Regulation, Cabra Bowls and Club Malua have agreed that the Amalgamated Club may cease trading from or cease the sporting (bowling) activities at the Club Malua Premises in the following circumstances:
- (i) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
  - (ii) upon the lawful order of any Government Agency;
  - (iii) if the Premises were destroyed or partially destroyed by fire, flood, storm etc., except where appropriate insurance cover is available to reinstate the Premises or where it is otherwise economically viable to do so; or

- (iv) if it is not financially viable for the Amalgamated Club (as defined in clause 10(d)) to continue to trade with sporting (bowling) activities at the Premises. This is subject to clause 10(e) below.
- (d) For the purposes of clause 10(c)(iv), trading from the Premises will be deemed to be not financially viable if, for not less than 3 quarters in a Financial Year (commencing immediately on expiry of the minimum period specified in section 17A1 of the Registered Clubs Act), the EBITDARD percentage for the Club Malua Premises is zero per cent (0%) or less, with such EBITDARD percentage to be determined by an independent company auditor.
- (e) If the Amalgamated Club wishes to:
  - (i) cease trading from the Premises (except for the reasons set out in clauses 10(c)(i) , 10(c)(ii) and 10(c)(iii)); or
  - (ii) dispose of the Major Assets of Club Malua; or
  - (iii) dispose of or transfer the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club,

then the following will apply:

#### **Step 1 – Simultaneous De-Amalgamation and Amalgamation**

- (iv) The Amalgamated Club must call for expressions of interests from other registered clubs for an amalgamation with the Premises (which will entail creation of a new registered club at the Premises, being New Club Malua referred to in clause 10(e)(v), with such amalgamation being subject to a successful de-amalgamation between the Amalgamated Club and the Premises/New Club Malua (**Simultaneous De-amalgamation and Amalgamation**); and
- (v) The Simultaneous De-Amalgamation and Amalgamation must be effected on terms which are acceptable to the Amalgamated Club but, amongst other things, must involve:
  - (A) the formation of a new company for the "de-amalgamated registered club" (**New Club Malua**) and the Amalgamated Club successfully de-amalgamating from the Premises/New Club Malua; and
  - (B) New Club Malua successfully amalgamating with another registered club (**Amalgamation Partner**);
  - (C) New Club Malua being the "dissolving club" or the "parent club" in the amalgamation;
  - (D) the Amalgamated Club transferring the Club Malua Club Licence and ownership of the assets of Club Malua as agreed between the Amalgamated Club and Club Malua (which must include the Major Assets of Club Malua and no less than thirty (30) gaming machine entitlements) (**Agreed Assets**) to New Club Malua, and in the event the Amalgamation Partner is the parent club, ultimately a transfer of Agreed Assets to the Amalgamation Partner;
  - (E) the Amalgamation Partner making a payment to the Amalgamated Club for an amount which is acceptable to the Board of the Amalgamated Club (in its sole and absolute discretion).
- (vi) If the call for expressions of interest referred to in clause 10(e)(iv) was issued by the Amalgamated Club because the Premises is not financially viable (as determined under clause 10(d)) and the Simultaneous De-Amalgamation and

Amalgamation does not occur for any reason, the Amalgamated Club must proceed to Step 2.

- (vii) If the call for expressions of interest referred to in clause 10(e)(iv) was issued by the Amalgamated Club whilst the Premises are financially viable and the Simultaneous De-Amalgamation and Amalgamation does not occur for any reason, the Amalgamated Club shall not be required to proceed to Step 2 but it must continue trading from the Premises for as long as it is financially viable to do so (as determined under clause 10(d)), and in that event, the provisions contained in this clause 10 shall continue to apply.

#### Step 2 – De-Amalgamation

- (viii) The Amalgamated Club must make an offer (**De-Amalgamation Offer**) to the Advisory Committee (as representatives of the Premises) for a de-amalgamation between the Amalgamated Club and the Premises/New Club Malua (**De-amalgamation**); and
- (ix) The De-amalgamation must be effected on terms which are acceptable to the Amalgamated Club but, amongst other things, must involve:
- (1) the formation of a new company for the “de-amalgamated registered club”, being New Club Malua;
  - (2) the Club Malua/New Club Malua members, Cabra Bowls members and the Authority approving the De-amalgamation;
  - (3) the Amalgamated Club transferring the Club Malua Club Licence and ownership to the Agreed Assets to New Club Malua; and
  - (4) the Amalgamated Club providing initial “start-up funding” to New Club Malua in the form of an “interest free loan” (**Loan**). The amount of the Loan shall be negotiated by the Amalgamated Club and the Advisory Committee on behalf of New Club Malua acting reasonably and in good faith;
  - (5) In relation to the Loan, New Club Malua entering into a loan agreement with the Amalgamated Club which will involve the New Club Malua:
    - (A) repaying the Loan (or such lesser amount which is acceptable to the Amalgamated Club) within ten (10) years or such longer period acceptable to the Amalgamated Club; and
    - (B) repaying seventy five percent (75%) of the net loss from trading incurred at the Premises, incurred in the Financial Year referred to in clause 10(d), such amount to be determined by an independent company auditor (or such lesser amount acceptable to the Board of the Amalgamated Club) within ten (10) years or such longer period acceptable to the Amalgamated Club;
    - (C) providing the Amalgamated Club with first ranking securities over all of Club Malua’s assets, including but not limited to all of its real property and gaming machine entitlements.
    - (D) agreeing to not dispose of, encumber or grant an option over, or grant any interest in any of its assets, including but not limited to all of its real property and gaming machine entitlements without the prior written approval of the Amalgamated Club which shall not be unreasonably withheld.

- (x) If the De-amalgamation does not occur due to:
- (1) Cabra Bowls members not approving the De-amalgamation, then the Amalgamated Club must continue trading from the Premises for as long as it is financially viable to do so (as determined under clause 10(d)). However, if the Premises ceases to be financially viable (as determined under clause 10(d) and commencing from the date that Cabra Bowls' members did not approve the De-Amalgamation), then the Amalgamated Club may:
    - (A) cease trading from the Premises;
    - (B) dispose of the Major Assets of Club Malua; or
    - (C) dispose of or transfer the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club
  - (2) Club Malua/New Club Malua members or the Authority not approving the De-amalgamation, then the Amalgamated Club may immediately:
    - (A) cease trading from the Premises; and
    - (B) dispose of the Major Assets of Club Malua; and
    - (C) dispose of or transfer the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club.
  - (3) The Advisory Committee rejecting the De-Amalgamation Offer, then the Amalgamated Club may immediately:
    - (A) cease trading from the Premises; and
    - (B) dispose of the Major Assets of Club Malua; and
    - (C) dispose of or transfer the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club.
  - (4) The Advisory Committee and the Amalgamated Club failing to enter into an agreement for the De-Amalgamation (on terms acceptable to the Amalgamated Club) within six (6) months of receiving the De-Amalgamation Offer, then the Amalgamated Club may immediately:
    - (A) cease trading from the Premises; and
    - (B) dispose of the Major Assets of Club Malua; and
    - (C) dispose of or transfer the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club.
- (f) Notwithstanding clause 10(e), if the Amalgamated Club ceases to trade from the Premises pursuant to clauses 10(c)(i), 10(c)(ii) or 10(c)(iii), the Amalgamated Club does not need to comply with the steps set out in clause 10(e) before:
- (i) disposing of the Major Assets of Club Malua; and
  - (ii) disposing of or transferring the gaming machine entitlements of Club Malua to another registered club or to other premises of the Amalgamated Club

## 11 Minimum Period

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### Clause 7(2)(g) of the Registered Clubs Regulation

- (a) Cabra Bowls does not intend to cease trading from the Premises. Cabra Bowls intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.
- (b) In addition to the minimum period specified in section 17A(1) of the Registered Clubs Act, for the purposes of clause 7(2)(g) of the Registered Club Regulation, Cabra Bowls and Club Malua have agreed that the Amalgamated Club will continue to trade from the Premises with sporting (bowling) activities at the Premises, for as long as it remains financially viable (pursuant to clause 10(d)) and subject to the procedure in clause 10(e) (except in the circumstances referred to in clauses 10(c)(i), 10(c)(ii) and 10(c)(iii)).

## 12 General

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### 12.1 Stamp duty

Cabra Bowls must pay all stamp duty (including any penalties) payable or assessed in connection with this MOU and any document required by or contemplated under this MOU.

### 12.2 Legal costs

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this MOU.

### 12.3 Entire agreement

This MOU and the Deed of Amalgamation:

- (a) are the entire agreement between the parties in relation to the proposed amalgamation of the parties; and
- (b) supersede all previous agreements.

### 12.4 Counterparts

A party may execute this MOU by signing any counterpart. All counterparts constitute one document when taken together.

### 12.5 Variation

The parties can only vary a term of this MOU if the variation is in writing and both parties sign, and approval is given by the Members of both parties in general meeting.


### 12.6 Termination

This MOU is terminated immediately on termination of the Deed of Amalgamation and clause 16 of the Deed of Amalgamation will apply to termination of this MOU.



Executed as a deed by Cabra Bowls

Executed as a deed by Cabramatta Bowling  
and Recreation Club Limited ABN 48 000 976  
894 in accordance with section 127 of the  
Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Director

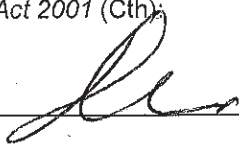
COLIN STRUDWICK  
\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

  
\_\_\_\_\_  
\*Director/\*Company Secretary

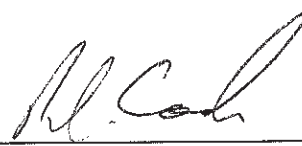
JAY PORTER  
\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Executed** as a deed by Club Malua

**Executed** as a deed by **Malua Bay Bowling and Recreation Club Limited ABN 87 082 572 361** in accordance with section 127 of the *Corporations Act 2001 (Cth)*;

  
\_\_\_\_\_  
Director

DENIS ALLAN J BEAUVAN.  
Name of Director  
BLOCK LETTERS

  
\_\_\_\_\_  
Director SECRETARY

PETER WILLIAM COOK  
Name of Director SECRETARY  
BLOCK LETTERS