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MEMORANDUM OF UNDERSTANDING

BETWEEN

EASTERN SUBURBS LEAGUES' CLUB LIMITED
ABN 63 000 249 490
(Easts Leagues)

AND

BONDI GOLF AND DIGGERS CLUB LIMITED
ABN 47 001 066 708
(Bondi Golf and Diggers)

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THIS MEMORANDUM OF UNDERSTANDING is made on 29th JUNE.....2017

BETWEEN EASTERN SUBURBS LEAGUES CLUB LIMITED ABN 63 000 249 490 of 93-97 Spring Street, Bondi Junction NSW 2022 (**Easts Leagues**)

AND BONDY GOLF AND DIGGERS CLUB LIMITED ABN 47 001 066 708 of 5 Military Road, North Bondi NSW 2026 (**Bondi Golf and Diggers**)

RECITALS

- A. The parties are both registered clubs.
- B. Easts Leagues has called for expressions of interest for amalgamation from other registered clubs which have premises in the same area and within a radius of 50 kilometres from its own premises.
- C. Bondi Golf and Diggers has submitted an expression of interest which has been accepted by the board of directors of Easts Leagues and is nominated as a preferred amalgamation partner of Easts Leagues.
- D. The parties propose to amalgamate subject to the terms of this memorandum of understanding and the Deed of Amalgamation.
- E. This memorandum of understanding is entered into in accordance with clause 7 of the Regulations.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in the Recitals and this memorandum of understanding unless the context requires otherwise:

Act means the *Corporations Act 2001*;

Amalgamated Club means Easts Leagues as the continuing club after Amalgamation Completion;

Amalgamation Completion means the day on which all of:

- (a) the Assets and Club Licence of Bondi Golf and Diggers are transferred to Easts Leagues; and
- (b) the liabilities of Bondi Golf and Diggers are paid by, or transferred to, Easts Leagues.

Asset includes chattels, motor vehicles, stock in trade, plant, fixtures and fittings, real property, leases of or other interests in real property, gaming machines and gaming machine entitlements, debtors, intellectual property rights and goodwill;

Board means the board of directors of Easts Leagues, 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;

CEO means Chief Executive Officer;

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

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

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 an employee of Bondi Golf and Diggers and Bondi Golf and Diggers, accrued but not paid by Bondi Golf and Diggers at Amalgamation Completion;

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;

Insolvency Event has the meaning given in the Deed of Amalgamation;

Liquor Act means the *Liquor Act 2007*;

Member means a member of either Bondi Golf and Diggers, Easts Leagues or the Amalgamated Club, as the case may be, as shown on that club's register of members at the relevant time;

Premises means the premises of Bondi Golf and Diggers at 5 Military Road, North Bondi NSW 2026 (being lots 1 and 2 in deposited plan 916095 and lot 7056 in deposited plan 93856);

Regulations means the *Registered Clubs Regulation 2015*; and

RCA means the *Registered Clubs Act 1976*.

1.2 Interpretation

- (a) The following rules of interpretation apply unless the context requires otherwise:
- (i) headings are for convenience only and do not affect interpretation;
 - (ii) the singular includes the plural and conversely;
 - (iii) a gender includes any gender;
 - (iv) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
 - (v) a reference to **person** includes:
 - (A) a body corporate, an unincorporated or other entity and conversely; and
 - (B) 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;
 - (vi) a reference to **clause** or **schedule** is to a clause or schedule to this memorandum of understanding;
- (b) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
- (c) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (d) 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;

- (e) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing; and
- (f) a provision of this memorandum of understanding must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

2. AMALGAMATION – CLAUSE 7 OF THE REGULATIONS

2.1 The parties agree to amalgamate:

- (a) in accordance with the RCA and the Liquor Act; and
- (b) on the terms of this memorandum of understanding and the Deed of Amalgamation.

2.2 This memorandum of understanding is collateral to, and conditional upon execution of, the Deed of Amalgamation by the parties.

3. FUTURE OF BONDI GOLF AND DIGGERS PREMISES, FACILITIES AND MANAGEMENT

Clause 7(2)(a) of the Regulations

3.1 Premises and Facilities of Bondi Golf and Diggers

- (a) The Premises will become additional trading premises of the Amalgamated Club.
- (b) The Premises and any facilities at the Premises will be available for the use of all members of the Amalgamated Club (subject to their rights under its constituent documents).
- (c) The Premises will be named and trade under a name approved by the Board of the Amalgamated Club, subject to the Amalgamated Club obtaining any required authorisation or consent from any Government Agency (if applicable).
- (d) The Amalgamated Club will

maintain the sporting and social activities (subject to the consent of the relevant authorities being obtained).

3.2 Bondi Golf and Diggers Sub-Clubs

- (a) The Amalgamated Club will maintain the existing the snooker club of Bondi Golf and Diggers.
- (b) The following will apply in respect of the Bondi Golf and Diggers sub-club referred to in clause 3.1(a):
 - (i) the sub-clubs will be entitled to have their own constitutions, committees and members;
 - (ii) the constitutions of the sub-clubs will be prepared by the Amalgamated Club in conjunction with the relevant committees of the sub-clubs;
 - (iii) all members of the sub-clubs must first be members of the Amalgamated Club;
 - (iv) the sub-clubs may continue to use their existing names;

- (v) the sub-clubs will be entitled to continue using the insignia of Bondi Golf and Diggers which were in use at the date of this memorandum of understanding (subject to any required approval from a Government Agency);
- (vi) the sub-clubs' committees will be elected by members of the sub-clubs;
- (vii) the sub-clubs shall be eligible to affiliate with such bodies controlling their activities on such terms and conditions (not inconsistent with the constitution of the Amalgamated Club or the RCA) as such controlling bodies may from time to time require;
- (viii) the sub-clubs will be created with the relevant persons referred to in clause 4.6 of the Deed of Amalgamation as life members of the relevant sub-clubs; and
- (ix) the subscriptions for membership of the sub-clubs shall be determined by the Board in conjunction with the sub-clubs' committees.

3.3 Future Management

- (a) For the purposes of the RCA, Easts Leagues' CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and a manager will be appointed in accordance with Division 4, Part 4 of the Liquor Act who will be responsible for the Premises.
- (b) The management structure of the Amalgamated Club will be the management structure of Easts Leagues at the date of Amalgamation Completion as amended according to the operational requirements of the Amalgamated Club, at the discretion of the Board.

4. CONTINUING TRADITIONS, AMENITIES AND COMMUNITY SUPPORT

Clause 7(2)(b) of the Regulations

- 4.1 The Amalgamated Club will subject to the continued operation of the Amalgamated Club from the Premises:
 - (a) maintain the traditions of Bondi Golf and Diggers as set out in Schedule 1"; and
 - (b) promote activities to maintain, and where possible increase, patronage of Members and their guests at the Premises.
- 4.2 The Amalgamated Club will continue to support the communities and organisations that were supported by Bondi Golf and Diggers at the date of this memorandum of understanding.

5. FUTURE DIRECTION OF AMALGAMATED CLUB

Clause 7(2)(c) of the Regulations

- 5.1 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 The Amalgamated Club will:
 - (a) promote and develop the Premises and other premises of the Amalgamated Club;
 - (b) provide high quality facilities and services to members of the Amalgamated Club; and

- (c) improve the trading position and increase the value of the Assets of the Amalgamated Club.

6. EMPLOYEES OF THE AMALGAMATED CLUB

Clause 7(2)(d) of the Regulations

- 6.1 The Amalgamated Club will accept the documented and verified Employee Entitlements of Bondi Golf and Diggers employees as at Amalgamation Completion.
- 6.2 Easts Leagues will give each employee of Bondi Golf and Diggers a written offer of employment:
- (a) on terms no less favourable than those under which the person is employed by Bondi Golf and Diggers or provided by an applicable industrial instrument; but
 - (b) otherwise on those terms generally applicable to an employee in a similar role at Easts Leagues,
- no later than 10 Business Days prior to the anticipated date of Amalgamation Completion.
- 6.3 Bondi Golf and Diggers will terminate its employment of all employees in writing on Amalgamation Completion.
- 6.4 Any employee who accepts in writing an offer made under clauses 6.2 will be employed by the Amalgamated Club on Amalgamation Completion on the terms of that offer.
- 6.5 Any employee who does not accept an offer of employment in accordance with clause 6.4:
- (a) will be paid all documented and verified Employee Entitlements (except personal/carer's leave) as at Amalgamation Completion by the Amalgamated Club, on termination of his or her employment by Bondi Golf and Diggers; and
 - (b) will be required by the Amalgamated Club or Bondi Golf and Diggers to provide acknowledgment of receipt of such entitlements, as the case may be.
- 6.6 The continuation of employment of each employee of Bondi Golf and Diggers by the Amalgamated Club after Amalgamation Completion will be subject to the terms and conditions of employment between each employee and Easts Leagues.

7. INTENTIONS FOR ASSETS OF BONDI GOLF AND DIGGERS

Clause 7(2)(e) of the Regulations

- 7.1 The core property of Bondi Golf and Diggers within the meaning of section 41J of the RCA is the Premises. Easts Leagues intends to retain the core property/Premises and operate them as a separate set of registered club premises of the Amalgamated Club in the manner referred to in clause 5.2, subject to clauses 8.2 and 9.
- 7.2 Any cash Assets and other investments of Bondi Golf and Diggers 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.

8. CEASING TO TRADE FROM THE PREMISES OR CHANGING OBJECTS

Clause 7(2)(f) of the Regulations

- 8.1 For the purposes of clause 7(2)(f) of the Regulations:
- (a) the objects of Bondi Golf and Diggers will cease to have effect on dissolution or winding up of Bondi Golf and Diggers; and
 - (b) on and from Amalgamation Completion, the objects of the Amalgamated Club will be the objects of Easts Leagues.
- 8.2 The Amalgamated Club will cease trading from the Premises, and may dispose of the Premises:
- (a) in accordance with the RCA and any other applicable law, after expiry of the period in clause 9.2;
 - (b) if the Board determines that continued trading from the Premises is not in the best interests of the Amalgamated Club, after expiry of the period in clause 9.2 or if no further Crown lease for the Premises is granted by the lessor of the Premises following expiry of the current Crown lease which is due to expire on 31 December 2018;
 - (c) if required by any Government Agency or the order of any court of competent jurisdiction compelling the Amalgamated Club to cease trading in the ordinary course of its business from the Premises;
 - (d) if the Premises are destroyed, or partially destroyed, and it is not commercially viable to reconstruct or repair the Premises in the opinion of the Board; or
 - (e) if required to avoid an Insolvency Event occurring in respect of the Amalgamated Club, in the reasonable opinion of the Board.

9. MINIMUM PERIOD

Clause 7(2)(g) of the Regulations

- 9.1 The Constitution and by-laws of Easts Leagues will be Amalgamated Club's Constitution and by-laws. The Members of the Amalgamated Club may amend the objects of the Amalgamated Club at any time, subject to the requirements of the Act, the RCA and the constituent documents of the Amalgamated Club.
- 9.2 The Amalgamated Club will continue to trade from the Premises for a period of at least three (3) years after Amalgamation Completion, except as permitted under section 17AI of the RCA and clause 8.2 and subject to any new Crown lease granted to the Amalgamated Club following expiry of the existing Crown lease which is due to expire 31 December 2018.

10. GENERAL

10.1 Further assurances

Each party must do everything necessary to give full effect to this memorandum of understanding in good faith.

10.2 Entire agreement

- (a) This memorandum of understanding and the Deed of Amalgamation:

Schedule 1

Traditions of Bondi Golf and Diggers

The traditions and amenities of Bondi Golf and Diggers which will be maintained by the Amalgamated Club include:

1. Preservation of all memorabilia, historical items and information and honour boards in a manner deemed appropriate by the Board of the Amalgamated Club; and
2. Maintaining of annual presentations for the members of Bondi Golf and Diggers (and members of the sub-clubs of the Premises)

EXECUTED as a DEED

EXECUTED by **EASTERN SUBURBS LEAGUES' CLUB LIMITED ABN 63 000 249 490** in accordance with Section 127 of the Corporations Act 2001:



*Director/*Company Secretary



Name of *Director/*Company Secretary

(BLOCK LETTERS)
*please delete as appropriate



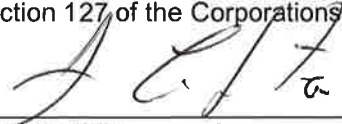
Director



Name of Director

(BLOCK LETTERS)

EXECUTED by **BONDI GOLF AND DIGGERS CLUB LIMITED ABN 47 001 066 708** in accordance with Section 127 of the Corporations Act 2001:




*Director/*Company Secretary




Name of *Director/*Company Secretary

(BLOCK LETTERS)
*please delete as appropriate



Director



Name of Director

(BLOCK LETTERS)