

---

# THOMSON GEER

LAWYERS

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

T +61 2 8248 5800 | F +61 2 8248 5899

## DEED OF AMALGAMATION

BETWEEN

**WINDSOR RSL CLUB LTD**  
ABN 87 000 811 290  
(Windsor RSL)

AND

**WINDSOR COUNTRY GOLF CLUB LTD**  
ABN 74 000 386 872  
(Windsor Golf)

## TABLE OF CONTENTS

<b>1</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	4
<b>2</b>	<b>AMALGAMATION.....</b>	<b>4</b>
2.1	Amalgamation .....	4
2.2	Purpose of this Deed.....	5
2.3	Effect of this Deed .....	5
2.4	Effect of the MOU .....	5
<b>3</b>	<b>APPROVALS .....</b>	<b>5</b>
3.1	Windsor Golf Meeting .....	5
3.2	Windsor RSL Meeting .....	5
3.3	Application for Transfer .....	6
<b>4</b>	<b>TRANSFER OF MEMBERS .....</b>	<b>6</b>
<b>5</b>	<b>DUE DILIGENCE .....</b>	<b>7</b>
5.1	Due Diligence enquiries .....	7
5.2	Termination .....	7
5.3	Effect of Termination .....	8
<b>6</b>	<b>WINDSOR GOLF'S OBLIGATIONS.....</b>	<b>8</b>
<b>7</b>	<b>CO-OPERATION BETWEEN THE CLUBS .....</b>	<b>9</b>
<b>8</b>	<b>PUBLICITY .....</b>	<b>9</b>
<b>9</b>	<b>CONFIDENTIALITY .....</b>	<b>9</b>
<b>10</b>	<b>LIABILITIES.....</b>	<b>9</b>
<b>11</b>	<b>TRANSFER OF ASSETS, ASSIGNMENT OR NOVATION OF AGREEMENTS AND PAYMENT OF REMAINING LIABILITIES.....</b>	<b>9</b>
<b>12</b>	<b>DISSOLUTION OF WINDSOR GOLF .....</b>	<b>10</b>
<b>13</b>	<b>FORCE MAJEURE .....</b>	<b>10</b>
<b>14</b>	<b>REPRESENTATIONS AND WARRANTIES.....</b>	<b>10</b>
<b>15</b>	<b>DISPUTE RESOLUTION.....</b>	<b>11</b>
<b>16</b>	<b>TERMINATION.....</b>	<b>11</b>
<b>17</b>	<b>INDEMNITY.....</b>	<b>12</b>
<b>18</b>	<b>COSTS AND EXPENSES .....</b>	<b>12</b>
18.1	Cost and expenses.....	12
18.2	Stamp duty .....	12
<b>19</b>	<b>NOTICES .....</b>	<b>12</b>
<b>20</b>	<b>ASSIGNMENT.....</b>	<b>13</b>
<b>21</b>	<b>GENERAL.....</b>	<b>13</b>
21.1	Governing law and Jurisdiction .....	13
21.2	Service .....	13
21.3	Severability .....	13
21.4	No waiver .....	14
21.5	Variation .....	14
21.6	Further assurances .....	14
21.7	Entire agreement.....	14
21.8	Counterparts.....	14

THIS DEED is made on.....24 SEPTEMBER.....2020

**BETWEEN**      **WINDSOR RSL CLUB LTD** ABN 87 000 811 290 of 36 Argyle Street, South Windsor NSW 2756 (**Windsor RSL**)

**AND**            **WINDSOR COUNTRY GOLF CLUB LTD** ABN 74 000 386 872 of 51 McQuade Avenue, South Windsor NSW 2756 (**Windsor Golf**)

## RECITALS

- A.      The parties are both registered clubs each holding a Club Licence.
- B.      On 10 March 2020 Windsor Golf called for expressions of interest in amalgamation from each other registered club which has premises within a radius of 50 kilometres from its own premises.
- C.      Windsor RSL submitted an expression of interest on 10 March 2020 which was accepted by the Board of Windsor Golf, and Windsor RSL is nominated as the preferred amalgamation partner of Windsor Golf.
- D.      The parties agree to amalgamate subject to the terms of this Deed and the MOU.
- E.      This Deed is supplementary to 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 Regulations, 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 Regulations.

**NOW IT IS AGREED** as follows:

## 1      DEFINITIONS AND INTERPRETATION

---

### 1.1      Definitions

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

**Accounting Standard** means:

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

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

**Amalgamation** means the amalgamation of Windsor Golf and Windsor RSL in accordance with applicable law, the MOU and this Deed;

**Amalgamated Club** means Windsor RSL as the continuing club after Amalgamation Completion;

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

- (a)      the Assets and Club Licence of Windsor Golf are transferred to Windsor RSL; and

- (b) the liabilities of Windsor Golf are paid or discharged by, or transferred to, Windsor RSL.

**Application for Transfer** means an application for transfer of the Club Licence held by Windsor Golf to Windsor RSL (including an application for provisional transfer) in accordance with section 60 of the Liquor Act;

**Asset** includes chattels, motor vehicles, stock in trade, plant, fixtures and fittings, real property, gaming machines, gaming machine entitlements, debtors, intellectual property rights and goodwill (including the Land Assets);

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

**Board** means the board of directors of Windsor RSL, 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;

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

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

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

**Employee Entitlements** means all entitlements to salary or wages, annual leave, long service leave and other entitlements (including paid personal/carer's leave) under any industrial instrument or agreement between Windsor Golf and an employee of Windsor Golf, accrued but not paid by Windsor Golf as at Amalgamation Completion;

**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) pandemic, epidemic or quarantine restriction;

**Insolvency Event** means:

- (a) the happening of any of these events:
- (i) an application is made to a court for an order or an order is made that a party be wound up;
  - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator for a party;
  - (iii) a person is appointed as a liquidator or provisional liquidator for a party;
  - (iv) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;
  - (v) a party proposes a reorganisation, moratorium or other administration involving a class of its creditors;
  - (vi) a party resolves to wind itself up, otherwise dissolve itself, gives notice of intention to do so or is otherwise wound up or dissolved;
  - (vii) a party is or states that it is unable to pay its debts when they fall due;
  - (viii) as a result of the operation of section 459F(1) of the Corporations Act, a party is taken to have failed to comply with a statutory demand;
  - (ix) a party is, or makes a statement from which it may be reasonably deduced that the party is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act;
  - (x) a party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a party;
  - (xi) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
  - (xii) anything analogous or having a substantially similar effect to any event specified in this definition happens under the law of any applicable jurisdiction;
- (b) it does not include something which happens under this clause if the party is solvent and on terms approved by the other party to effect Amalgamation Completion (including without limitation the dissolution of Windsor Golf pursuant to clause 12);

**Land Assets** means the real property owned and occupied by Windsor Golf on property identifiers Lot 6 in Deposited Plan 259534, Lot 4 in Deposited Plan 214147, Lot 2 in Deposited Plan 214147, Lot 1 in Deposited plan 107941;

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

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

**Member** means a member of either Windsor Golf, Windsor RSL or the Amalgamated Club as the case may be, as shown on that club's register of members at the relevant time;

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

**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); and

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

## 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 Deed is novated;
  - (vi) a reference to **clause** or **schedule** is to a clause or schedule to this Deed;
- (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 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 Deed must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

## 2 AMALGAMATION

### 2.1 Amalgamation

- (a) The Amalgamation is intended to enhance the facilities and services available to all Members of the Amalgamated Club.

- (b) The parties agree to amalgamate:
  - (i) in accordance with the RCA and Liquor Act; and
  - (ii) on the terms of this Deed and the MOU.

## 2.2 Purpose of this Deed

This Deed is supplementary to the MOU and provides for:

- (a) commercial terms; and
  - (b) other details agreed by the parties with respect to the Amalgamation,
- which are not required to be included in the MOU under the Regulations.

## 2.3 Effect of this Deed

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

## 2.4 Effect of the MOU

The Clubs agree that:

- (a) the terms of the MOU will be taken to be terms of this Deed and are binding on both parties;
- (b) a breach of the MOU will be taken to be a breach of this Deed; and
- (c) if this Deed imposes an obligation on a party which would result in that party breaching a term of the MOU then:
  - (i) the MOU will prevail to the extent of the inconsistency; and
  - (ii) compliance by that party with the MOU will not be taken to be a breach of this Deed.

# 3 APPROVALS

---

## 3.1 Windsor Golf Meeting

- (a) Unless otherwise agreed by the parties, Windsor Golf will convene a general meeting of its Members entitled to vote under its constituent documents and the RCA to be held as soon as reasonably practicable but within 30 days of the date of this Deed.
- (b) At the meeting convened under clause 3.1(a), the Members will consider and vote on a resolution in accordance with section 17AEB(d) of the RCA to:
  - (i) approve the Amalgamation in principle;
  - (ii) approve the transfer of Assets from Windsor Golf to Windsor RSL in accordance with this Deed;
  - (iii) approve the making of the Application for Transfer; and
  - (iv) approve any other matters required to give effect to this Deed and the MOU.
- (c) The form of the resolution referred to in clause 3.1(b) to be put to Members of Windsor Golf is contained in Schedule 1.

## 3.2 Windsor RSL Meeting

- (a) Unless otherwise agreed by the parties, Windsor RSL will endeavour to convene a general meeting of its Members entitled to vote under its constituent documents and the RCA to be

held as soon as reasonably practicable but no later than 45 days after Windsor Golf passes the resolution referred to in clause 3.1(b) (provided that Windsor RSL is not required to convene or hold such meeting if approval is not given by Windsor Golf's members under subclause 3.1(b)).

- (b) At that meeting the Members will consider and vote on resolutions in accordance with section 17AEB(d) of the RCA to:
  - (i) approve the Amalgamation in principle;
  - (ii) approve the making of the Application for Transfer;
  - (iii) pass the Special Resolutions referred to in clause 4.1; and
  - (iv) approve any other matters required to give effect to this Deed and the MOU.
- (c) The form of the resolutions referred to in clause 3.2(b) to be put to Members of Windsor RSL is contained in Schedule 2.

### 3.3 Application for Transfer

- (a) Within 10 Business Days of the meeting under clause 3.1, Windsor Golf will give to Windsor RSL:
  - (i) a certified copy of the notice of such meeting and minutes of such meeting; and
  - (ii) certification that the notices required under the RCA and MOU have been displayed as required by the RCA and Regulations.
- (b) Windsor RSL will 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) Windsor Golf agrees to sign all documents and provide all information reasonably necessary for Windsor RSL to complete and lodge the Application for Transfer.

## 4 TRANSFER OF MEMBERS

---

- 4.1 At the meeting under clause 3.2, the Members of Windsor RSL will consider special resolutions as contained in Schedule 2 to this Deed to amend the constituent documents of Windsor RSL (with effect from Amalgamation Completion) to:
  - (a) create a new class of ordinary membership to incorporate all classes of ordinary membership that exist under the constitution of Windsor Golf;
  - (b) add a new rule for identification purposes under section 17AC of the RCA to recognise members of Windsor Golf as at the date of Amalgamation Completion;
  - (c) provide that no member of Windsor Golf (except for any such person who is already a member of Windsor RSL) will be eligible to nominate for the Board of the Amalgamated Club for five (5) years from Amalgamation Completion or five (5) years after the date of that person ceasing employment with Windsor RSL or Windsor Golf (whichever is later);
  - (d) provide that no past employee of Windsor RSL or Windsor Golf will be eligible to nominate for the Board of the Amalgamated Club for five (5) years from Amalgamation Completion;
  - (e) provide that no member (except for any such person who is already a member of Windsor RSL) will be eligible to vote on special resolutions of the Amalgamated Club for five (5) years from Amalgamation Completion;
  - (f) permit all Members of Windsor Golf 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).



- 4.2 As soon as practicable after provisional approval of the Application for Transfer has been given by the Authority, Windsor RSL will send every full Member of Windsor Golf (who is not already a Member of Windsor RSL) an invitation to become a golfing member (or if under the age of 18, to become a junior member) of the Amalgamated Club subject to clause 4.7 which includes the requirements for application for membership.
- 4.3 A Member of Windsor Golf may accept the invitation under clause 4.2 by completing and returning to Windsor RSL the application for membership of the Amalgamated Club (in a class of membership for which they are eligible) to Windsor RSL prior to Amalgamation Completion.
- 4.4 A Member of Windsor Golf who applies for membership of the Amalgamated Club under clause 4.3:
- (a) will have their name displayed on the noticeboard of Windsor RSL for at least 7 days and will not be admitted as a member of the Amalgamated Club until at least 14 days after receipt of their application for membership;
  - (b) during the period set out in clause 4.4(a) will be a provisional member of Windsor RSL; and
  - (c) subject to clauses 4.4(a) and 4.5 and in accordance with section 30(2) of the RCA, will be admitted as a Member of the Amalgamated Club on or before Amalgamation Completion.
- 4.5 Any Member of Windsor Golf who has been suspended or expelled as a Member of Windsor RSL who applies for membership of the Amalgamated Club in accordance with clause 4.3 will only be admitted as a Member of the Amalgamated Club after approval by the Board of Windsor RSL (at its absolute discretion).
- 4.6 Members of Windsor Golf who become Members of the Amalgamated Club will not be required to pay any fee or subscription in addition to any fee or subscription pre-paid to Windsor Golf in respect of their membership for that financial year of Windsor Golf.
- 4.7 Any person who, at Amalgamation Completion, is a life member of Windsor Golf, will be eligible to be recognised and admitted as a life member of the Amalgamated Club.

## 5 DUE DILIGENCE

---

### 5.1 Due Diligence enquiries

- (a) The parties acknowledge that prior to Amalgamation Completion, each party may undertake at its cost a due diligence review of the other party and may appoint a third party consultant or consultants to assist in its review.
- (b) Each party (the **first party**) must make its Records available to the other party (the **other party**) for inspection and copying by that other party or its authorised representatives for the purposes of due diligence, within a reasonable time of receiving a request from that other party.
- (c) Each party must permit the other party and its authorised representatives to enter and access any part of the first party's premises on request, in order to carry out inspections, surveys or any other assessment of those premises (provided that the other party must use reasonable endeavours not to unduly interfere with the trading activities of the first party on the first party's premises).
- (d) Each party agrees to sign all consents or applications that are required to be signed by the first party and reasonably requested by the other party to enable that other party to complete its due diligence (unless it is unreasonable for the first party to do so).

### 5.2 Termination

Windsor RSL may terminate this Deed and the MOU if it is not satisfied with the outcome of its due diligence review on the other party, provided that it gives written notice to the other party within sixty (60) days of the date of this Deed.

### 5.3 Effect of Termination

Termination of this Deed pursuant to this clause 5 does not affect any right or Liability of a party accrued prior to such termination.

## 6 WINDSOR GOLF'S OBLIGATIONS

---

- 6.1 On and from the date of this Deed up to Amalgamation Completion, Windsor Golf must:
- (a) trade in the ordinary course of business and with due care and skill;
  - (b) maintain the following insurance policies with a reputable insurer in Australia:
    - (i) public liability insurance in the amount of \$20,000,000 for each single claim, and unlimited in aggregate;
    - (ii) property damage insurance to the full replacement value of all Assets insurable under such a policy; and
    - (iii) workers compensation insurance;
  - (c) give Windsor RSL a copy of its certificates of currency for any insurance policy held under subclause (b) on request;
  - (d) immediately notify the other party of anything which may result in a claim on an insurance policy held under subclause (b);
  - (e) comply with any agreement to which it is a party;
  - (f) comply with all applicable laws;
  - (g) not do anything which may damage its reputation or the reputation of Windsor RSL; and
  - (h) not enter into any agreement, memorandum of understanding, arrangement, negotiations, discussions or communications with any other registered club with respect to a possible amalgamation with such a registered club.
- 6.2 On and from the date of this Deed to Amalgamation Completion, Windsor Golf must not without the prior written consent of Windsor RSL:
- (a) incur any single debt or liability in excess of \$5,000 plus goods and services tax (except in the ordinary course of business);
  - (b) purchase any item of capital equipment exceeding \$5,000 plus goods and services tax;
  - (c) vary, enter into, or exercise any option to renew an agreement;
  - (d) enter into, terminate or alter any term of any material contract, arrangement or understanding in relation to its operations or otherwise;
  - (e) engage any consultant, solicitor, auditor, accountant or other professional to assist Windsor Golf with the amalgamation, other than in accordance with a fixed price retainer for an amount to which Windsor RSL has previously consented in writing;
  - (f) employ any person, increase the remuneration or terminate the employment of any person other than in accordance with the MOU; or
  - (g) not dispose of, lease, license, mortgage, charge or otherwise encumber, or permit any encumbrance to arise, over any of its Assets (including but not limited to any real property or gaming machines or gaming entitlements).

## **7 CO-OPERATION BETWEEN THE CLUBS**

---

- 7.1 From the date of this Deed to Amalgamation Completion the parties will each nominate suitably authorised officers to hold regular discussions about:
- (a) the management of Windsor Golf up to Amalgamation Completion;
  - (b) the efficient transfer of the Assets and Club Licence of Windsor Golf to Windsor RSL and efficient payment of liabilities of Windsor Golf by Windsor RSL;
  - (c) management of the transfer of the Members of Windsor Golf to Windsor RSL under this Deed and the MOU; and
  - (d) any other matters considered necessary by the parties.
- 7.2 The parties acknowledge that prior to Amalgamation Completion, Windsor Golf remains under control of its own board and other duly authorised officers, and Windsor RSL will only participate in discussions about the management of Windsor Golf in an advisory capacity or otherwise in accordance with the rights conferred under the MOU and this Deed.
- 7.3 Both parties agree to carry out all acts necessary to give effect to this Deed and the MOU promptly and in good faith.

## **8 PUBLICITY**

---

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 Deed and the MOU;
  - (b) if required by law;
  - (c) if the other party ceases to treat that information as being confidential; or
  - (d) with the prior written consent of the other party.
- 9.2 If this Deed or the MOU is terminated, then a party must return or destroy any Confidential Information of the other party in its possession in any form, at the request of the other party except to the extent it is required to retain such a Record for financial reporting purposes or under any law.

## **10 LIABILITIES**

---

On and from Amalgamation Completion, Windsor RSL will be responsible for and pay when due all debts and liabilities of Windsor Golf:

- (a) as at Amalgamation Completion; and
- (b) reasonably incurred after Amalgamation Completion for the purposes of the winding up of Windsor Golf with the prior written consent of Windsor RSL.

## **11 TRANSFER OF ASSETS, ASSIGNMENT OR NOVATION OF AGREEMENTS AND PAYMENT OF REMAINING LIABILITIES**

---

- 11.1 On the date of transfer of the Windsor Golf Club Licence to Windsor RSL, or as soon as practicable after that, Windsor Golf must do all things necessary:

- (a) to assign to Windsor RSL or assist Windsor RSL to novate those contracts of Windsor Golf with third parties, which both parties have agreed will be assigned to Windsor RSL or will be novated;
  - (b) to assist Windsor RSL in the payment of all liabilities of Windsor Golf not already paid by either Windsor Golf or Windsor RSL; and
  - (c) to transfer to Windsor RSL all Assets of Windsor Golf.
- 11.2 On Amalgamation Completion Windsor Golf must give to Windsor RSL all statutory, membership and other Records of Windsor Golf that it is not required to retain until winding up is completed.
- 11.3 On winding up of Windsor Golf it must give to Windsor RSL the balance of all Records described in clause 11.2.

## **12 DISSOLUTION OF WINDSOR GOLF**

---

- 12.1 After Amalgamation Completion, Windsor Golf will:
- (a) call a general meeting of its Members entitled to vote under its constituent documents to consider and, if thought fit, pass the resolutions required for a members voluntary winding up of Windsor Golf; and
  - (b) carry out all acts necessary to effect such winding up after the approval of those Members has been given.
- 12.2 Windsor RSL shall nominate a liquidator (who is to be approved by the members of Windsor Golf) to be appointed to liquidate Windsor Golf.
- 12.3 The Amalgamated Club will bear the costs of the liquidation of Windsor Golf after the members' approval of the voluntary winding up under clause 12.1(a).
- 12.4 Each of the parties warrant to the other that it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of matters referred to in this clause 12.

## **13 FORCE MAJEURE**

---

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

## **14 REPRESENTATIONS AND WARRANTIES**

---

Each party represents and warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this Deed and the MOU;
- (b) the Records and accounts which it has given to the other party before the execution of this Deed contain all information necessary to give a true and fair view of its financial situation and state of affairs and are prepared in accordance with any applicable Accounting Standard;
- (c) it has complied with all laws relating to payment of taxes and Employee Entitlements;
- (d) each of the representations and warranties it has made in this Deed and the MOU are correct; and

- (e) all information that it has provided to the other party is true and correct in all respects and is not misleading by omission of information.

## 15 DISPUTE RESOLUTION

---

- 15.1 A party must not commence proceedings in relation to a dispute under this Deed or the MOU without first following the procedures in this clause, except to seek urgent injunctive or other interlocutory relief.
- 15.2 If there is a dispute between the parties, then either party may give a notice to the other which must:
- (a) succinctly set out the details of the dispute; and
  - (b) state that it is a dispute notice given under this clause.
- 15.3 The parties must meet within 5 Business Days after the date of delivery of the dispute notice and attempt to resolve the dispute.
- 15.4 Each party must use its best endeavours to resolve the dispute and act in good faith.
- 15.5 If the parties cannot solve the dispute within a further 10 Business Days, either party may refer the dispute for mediation by giving the other party notice.
- 15.6 A mediation conducted under this clause will be in accordance with the mediation rules of the Law Society of New South Wales and the President of the Law Society of NSW (or his or her nominee) will determine the mediator's remuneration.
- 15.7 If a dispute is not resolved by mediation under this clause within 30 Business Days of referral to a mediator, or a longer period agreed by the parties, any party may take any action available to it at law.

## 16 TERMINATION

---

- 16.1 A party may terminate this Deed immediately by giving notice to the other party if:
- (a) the Members of either party do not approve the resolutions proposed under clause 3;
  - (b) the Authority does not approve the transfer of the Club Licence of Windsor Golf to Windsor RSL within twelve (12) months after the date of this Deed (provided that such date shall be extended by the period of any delay in either party holding its meeting in accordance with clause 3.1(a), directly due to any orders in force under the *Public Health Act 2010* (NSW) that prevents that party from operating in a manner that is open to members of the public);
  - (c) Amalgamation Completion does not occur by the date which is three (3) months after the date on which the Authority approves the transfer of the Club Licence of Windsor Golf to Windsor RSL (or such other date which is agreed by the parties);
  - (d) the other party is in breach of an obligation under this Deed or the MOU and:
    - (i) that breach is not capable of rectification; or
    - (ii) the other party fails to rectify that breach within 10 Business Days of being given notice to do so; or
  - (e) the other party suffers an Insolvency Event.
- 16.2 Termination of this Deed by a party under clause 16.1(a) or clause 16.1(b) is without penalty to either party.

## 17 INDEMNITY

---

- 17.1 Windsor Golf indemnifies Windsor RSL against any Loss that Windsor RSL incurs as a result of:
- (a) any breach of this Deed, the MOU or any law by Windsor Golf; and
  - (b) the wilful misconduct, negligence, or fraud of Windsor Golf or its officers, employees, contractors or agents,
- except to the extent such Loss is caused or contributed to by Windsor RSL or its officers, employees, contractors or agents.
- 17.2 The indemnities given under this clause are in addition to any other remedy available to a party at law.

## 18 COSTS AND EXPENSES

---

### 18.1 Cost and expenses

- (a) Subject to clause 18.1(b), the parties agree to bear equally all legal and other costs and expenses relating to:
  - (i) preparation and execution of this Deed and the MOU; and
  - (ii) effecting Amalgamation Completion.
- (b) If Amalgamation Completion is not effected, each party must pay its own legal and other costs and expenses for all steps undertaken relating:
  - (i) preparation and execution of this Deed and the MOU; and
  - (ii) effecting Amalgamation Completion.
- (c) If the MOU or this Deed is terminated as a result of:
  - (i) Windsor Golf purporting to withdraw from the MOU or Deed (other than in accordance with its rights under the MOU or Deed); or
  - (ii) Windsor Golf not presenting the resolutions set out in clause 3.1(b) to its members (except due to Force Majeure),

then Windsor Golf agrees that it must reimburse Windsor RSL for all costs incurred by Windsor RSL in connection with the proposed amalgamation between the parties within 7 days of such termination.

### 18.2 Stamp duty

The parties agree to bear equally the costs of any stamp duty assessable in relation to this Deed. The Amalgamated Club agrees to seek and obtain all stamp duty exemptions for which it is eligible in respect of the transfer of Assets from Windsor Golf to Windsor RSL.

## 19 NOTICES

---

- 19.1 A notice, approval, consent or other communication to a person relating to this Deed:
- (a) must be in legible writing;
  - (b) executed by duly authorised person(s); and

(c) in English.

19.2 If the notice is to Windsor RSL then it must be addressed as follows:

Name: Windsor RSL Club Ltd  
 Attention: Tony Jeffcott – General Manager  
 Address: 36 Argyle Street South Windsor NSW 2756  
 Email: gm@windsorrsl.com.au

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

Name: Windsor Country Golf Club Ltd  
 Attention: Neil Pitt and Gary Chapman  
 Address: 51 McQuade Avenue, South Windsor NSW 2756  
 Email: [ndpitt@internode.on.net](mailto:ndpitt@internode.on.net); gjchap@bigpond.net.au

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

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

## 20 ASSIGNMENT

---

A party cannot assign its rights and obligations under this Deed.

## 21 GENERAL

---

### 21.1 Governing law and Jurisdiction

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

### 21.2 Service

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

### 21.3 Severability

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

**21.4 No waiver**

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

**21.5 Variation**

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

**21.6 Further assurances**

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

**21.7 Entire agreement**

This Deed and the MOU:

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

**21.8 Counterparts**

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



## Schedule 1

Resolution to be put to members of Windsor Golf
---

### Ordinary Resolution

*That the members hereby:*

1. *approve in principle the amalgamation of Windsor Country Golf Club Ltd ABN 74 000 386 872 ("**Windsor Golf**") with Windsor RSL Club Ltd ("**Windsor RSL**") such an amalgamation to be effected by:*
  - (a) *the continuation of Windsor RSL (as the Amalgamated Club) and the dissolution of Windsor Golf;*
  - (b) *the transfer of Windsor Golf's assets to Windsor RSL; and*
  - (c) *the transfer of the club licence of Windsor Golf to Windsor RSL;*

*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 Windsor Golf to Windsor RSL for the purposes of such an amalgamation.*

## Schedule 2

### Resolutions to be put to members of Windsor RSL

#### Ordinary Resolution

*That the members hereby:*

1. *approve in principle the amalgamation of Windsor Country Golf Club Ltd ABN 74 000 386 872 ("**Windsor Golf**") with Windsor RSL Club Ltd ("**Windsor RSL**") such an amalgamation to be effected by:*
  - (a) *the continuation of Windsor RSL (as the Amalgamated Club) and the dissolution of Windsor Golf;*
  - (b) *the transfer of Windsor Golf's assets to Windsor RSL; and*
  - (c) *the transfer of the club licence of Windsor Golf to Windsor RSL;*

*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 Windsor Golf to Windsor RSL for the purposes of such an amalgamation.*

#### Special Resolution (to amend the Windsor RSL Constitution)

*That, on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Windsor Country Golf Club Limited ACN 000 386 872 ("**Windsor Golf**") to Windsor RSL Club Ltd ACN 000 811 290 ("**Windsor RSL**"), the Constitution of Windsor RSL be amended by:*

- 1 *Adding the following definitions in Rule 2 as follows:*

*""Golfing member" means a person elected to that class of membership in accordance with this Constitution."*

*""Junior member" means a person elected to that class of membership in accordance with this Constitution."*

*"Life Member" means a person who:*

- (i) *was listed on the Club's membership register as either an RSL Life member or Club Life member as at [the date of the Club's Extraordinary General Meeting] and whose Life membership has not ceased after that meeting; or*
- (ii) *has been duly elected to Life membership in accordance with Rule 0.*

*""Windsor Golf" means Windsor Country Golf Club Limited ACN 000 386 872, being the registered club that existed prior to its amalgamation with the Club."*

- 2 *Deleting the definitions of "Club Life member" and "RSL Life member" in Rule 2*
- 3 *Amending the definition of "Full member" in Rule 2 by deleting the words "a RSL Life member or a Club Life member" and replacing them with the words "Life member" so that the new definition reads as follows:*

*""Full member" means a person who is an Ordinary member or Life member of the Club."*

- 4 *Amending the definition of "Ordinary member" by deleting the words " RSL Life member Club Life member" and replacing them with the words "Life member" such that the new definition reads as follows:*

*""Ordinary member" means a member of the Club other than a Life member, Honorary member, Temporary member or Provisional member."*

- 5 *Deleting Rule 20 and replacing it with the word "Deleted";*

- 6 *Amending Rule 21 by deleting the words "RSL Life member, Club Life member" and replacing them with the words "Life member"*

- 7 *Inserting at the end of Rule 22 the words "unless admitted as a Junior member of the Club"*

- 8 *Amending Rule 24 by:*

- *inserting the words "Golfing member" as a new paragraph (c); and*
- *inserting the words "Junior member" as a new paragraph (d),*

*so that the new Rule 24 reads as follows:*

*"24. Unless and until otherwise determined by the Board, Ordinary membership of the Club consists of the following classes:*

- (a) RSL member.*
- (b) Club member.*
- (c) Golfing member.*
- (d) Junior member*

- 9 *Adding a new Rule 24A after Rule 24 as follows:*

- 24A. (a) A person who makes application and is elected as a Full member of the Club pursuant to the amalgamation between the Club and Windsor Golf will be given credit for any annual subscription paid in respect of their membership of Windsor Golf, up to the end of the current financial year of the Club in which the club licence of Windsor Golf was transferred to the Club.*
- (b) The Board may by way of by-law from time to time, create sub-categories of Golfing membership or Junior membership to correspond with the former classes of membership at Windsor Golf, and set out the specific social and playing rights and privileges for each such sub-category.*
- (c) All persons who, as at the date on which the Independent Liquor and Gaming Authority transferred the club licence of Windsor Golf to the Club:*

- (i) were financial full members of Windsor Golf; and
- (ii) whose names were entered into the Register of Members of Windsor Golf,

shall, for the purposes of section 17AC(2) of the Registered Clubs Act, be identified in the Club's Register of Members as 'Windsor Golf members'."

10 Amending Rule 25 by:

- inserting a new paragraph (c) with subheading "Golfing member"
- inserting the words "Any person who is at least 18 years of age, who is not eligible to be elected as an RSL member, and who makes application for membership in this class in accordance with this Constitution." in new paragraph (c) under the subheading "Golfing member"
- inserting a new paragraph (d) with subheading "Junior member"
- inserting the following in new paragraph (d) under the subheading "Junior member"

Any person who:

- (i) is under 18 years of age;
- (ii) who satisfies the Board that the person has an interest in taking active part in the sporting activities of the Club on a regular basis;
- (iii) from whose parent or guardian the Board receives written consent to that person becoming a Junior member of the Club and taking part, in the sporting activities of the Club; and
- (iv) who in the opinion of the Board is suitable to be elected to Junior membership.

so that the new Rule 25 reads as follows:

"25. The requirements for eligibility of persons for election to the following classes of Ordinary membership are:

(a) **R.S.L member**

Any person who is a financial member of the Windsor Sub Branch of the State RSL who makes application for membership in this class in accordance with this Constitution.

(b) **Club member**

Any person who is at least 18 years of age, who is not eligible to be elected as an RSL member, and who makes application for membership in this class in accordance with this Constitution.

(c) **Golfing member**

*Any person who is at least 18 years of age, who is not eligible to be elected as an RSL member, and who makes application for membership in this class in accordance with this Constitution."*

**(d) Junior member**

*Any person who:*

- (i) is under 18 years of age;*
- (ii) who satisfies the Board that the person has an interest in taking active part in the sporting activities of the Club on a regular basis;*
- (iii) from whose parent or guardian the Board receives written consent to that person becoming a Junior member of the Club and taking part, in the sporting activities of the Club; and*
- (iv) who in the opinion of the Board is suitable to be elected to Junior membership.*

**11 Deleting existing Rules 26 and 27 and replacing them with the following new Rules 26, 27 and 27A:**

**"26.** *A person may, in recognition of their outstanding service to the Club, be elected to Life membership of the Club at an Annual General Meeting in accordance with Rule 27, and subject to Rule 27A.*

**27.** *In order for a person to be elected as a Life member of the Club:*

- (a) the person must have been an Ordinary member of the Club for a continuous period of at least 10 years;*
- (b) the person must be nominated and seconded for Life membership by 2 financial Full members (excluding Junior members) of the Club;*
- (c) the nomination must be approved by the Board, and the Board shall refer the nomination to the next Annual General Meeting of the Club; and*
- (d) the nomination must be approved by a resolution of at least a 75% majority of those members present and voting on the resolution at that Annual General Meeting,*

**27A.** *The Board shall elect a person to Life membership of the Club if the person has been a life member (within the meaning of the Registered Clubs Act) of Windsor Golf as at the date on which the Independent Liquor and Gaming Authority transferred the club licence of Windsor Golf to the Club."*

**12 Deleting in Rule 28 the words "RSL Life member and Club Life member" and replacing them with the words "Life member"**

**13 Amending Rule 29 by:**

- *Inserting the words "Golfing members" after the words "Club members,"*
- *Deleting the words "RSL Life members and Club Life members" and replacing them with the words "and Life members"*

- *Inserting the words "including under Rule 29A" after the words "subject to any further restrictions in this Constitution"*

*so that the new Rule 29 reads as follows:*

*"29. Financial RSL members, Club members, Golfing members, and Life members are (subject to any further restrictions in this Constitution including under Rule 29A) entitled to:*

- (a) attend or to vote on any matter at any General Meeting;*
- (b) vote at the election of the Board; and*
- (c) be nominated for, elected to and hold office on the Board."*

*14 Inserting a new Rule 29A after Rule 29 as follows:*

- "29A. (a) No Golfing member will be eligible to nominate for, be elected to or hold office on, the Board of the Club for a period of five (5) years from the date on which the Independent Liquor and Gaming Authority transferred the club licence of Windsor Golf to the Club.*
- (b) No member who is a former employee of the Club or Windsor Golf will be eligible to nominate for, be elected to or hold office on the Board of the Club for a period of five (5) years from the date on which the Independent Liquor and Gaming Authority transferred the club licence of Windsor Golf to the Club, or for a period of five (5) years from the date of that person's cessation of employment with either the Club or Windsor Golf (whichever occurs later).*
- (c) No Golfing member will be eligible to vote on a Special Resolution for a period of five (5) years from the date on which the Independent Liquor and Gaming Authority transferred the club licence of Windsor Golf to the Club.*
- (d) No Golfing member will be entitled to transfer to another class of membership of the Club unless they have been a member of the Club for five (5) continuous years."*

*15 Inserting a new Rule 29B after new Rule 29A as follows:*

- "29B. Junior members are only entitled to those playing privileges, facilities and amenities of the Club as determined by the Board from time to time subject to the Registered Clubs Act, but shall not be entitled to:*
- (a) attend or to vote on any matter at any General Meeting;*
  - (b) vote at the election of the Board; and*
  - (c) be nominated for, elected to and hold office on the Board."*

*16 Deleting in Rule 57 the number "60" and replacing it with the number "30"*

*17 Inserting at the end of Rule 60 the words "for service".*

*18 Replacing in Rule 64 the number "4" with the words "ten (10)".*

19 Deleting existing Rule 78 and replacing it with the following new Rule 78:

"78. Subject to Rule 79:

- (a) up until the conclusion of the Annual General Meeting in 2020, the Board shall consist of a President, a Vice President and 6 other Directors; and
- (b) from the conclusion of the Annual General Meeting in 2020, the Board shall consist of a President, a Vice President and 5 other Directors.

20 Inserting at the commencement of Rule 82, the words "Subject to Rule 29A".

21 Replacing the word "section" in Rules 88 to 92 (and the heading above Rule 88) and replacing it with the word "sub-club"

22 Deleting in Rule 97 the words "5 Directors" and replacing it with the words "a majority of the total number of directors on the Board"

23 Inserting at the end of the first sentence in Rule 109 the words "subject to the Act"

24 Deleting Rules 136 and 137 and replacing each of them with the word "Deleted".

25 Deleting in Rule 138 the words "without using the Seal".

26 Amending Rule 139 by:

- deleting the words "whether with or without using the Seal";
- deleting the words "Rule 137 and Rule 138 do not" and replacing them with the words "Rule 138 does not"

so that new Rule 139 reads as follows:

"139. The Club must not execute a document except by the authority of a resolution passed at a meeting of the Board. Rule **Error! Reference source not found.** does not limit the ways in which the Club may execute any document.

**EXECUTED as a DEED**


**Executed by WINDSOR RSL CLUB LTD ABN 87 000 811 290** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

**David Ingram**

Name of Director



Signature of Company Secretary

**Anthony Jeffcott**

Name of Company Secretary

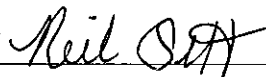
**Executed by WINDSOR COUNTRY GOLF CLUB LTD ABN 74 000 386 872** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

**Gary Chapman**

Name of Director



Signature of Director

**Neil Pitt**

Name of Director