MEMORANDUM OF UNDERSTANDING

BETWEEN

WESTERN SUBURBS LEAGUES CLUB LTD TRADING AS WESTS ASHFIELD LEAGUES
ABN 69 000 154 736
(Leagues Club)

AND

WESTERN SUBURBS LEAGUES' CLUB BOWLING CLUB LTD TRADING AS WESTS SPORTS CLUB
ABN 31 000 756 801
(Sports Club)

Sydney
Adelaide
Melbourne

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THIS MEMORANDUM OF UNDERSTANDING is made on...6.....AUGUST.....2010

BETWEEN **WESTERN SUBURBS LEAGUES CLUB LTD TRADING AS WESTS ASHFIELD LEAGUES** ABN 69 000 154 736 of 115 Liverpool Street, Ashfield NSW 2131 (**Leagues Club**)

AND **WESTERN SUBURBS LEAGUES' CLUB BOWLING CLUB LTD TRADING AS WESTS SPORTS CLUB** ABN 31 000 756 801 of 114 Church Street, Croydon NSW 2132 (**Sports Club**)

RECITALS

A. The parties are both registered clubs.

B. The Sports Club has 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. The Leagues Club has submitted an expression of interest which has been accepted by the board of directors of the Sports Club and the Leagues Club is nominated as the preferred amalgamation partner of the Sports Club.

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 6 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 the Leagues Club as the continuing club after Amalgamation Completion;

Amalgamation Completion means the day on which all of:

(a) the Assets and Club Licence of the Sports Club are transferred to the Leagues Club; and

(b) the liabilities of the Sports Club are paid by, or transferred to, the Leagues Club.

Asset includes chattels, stock in trade, plant, fixtures and fittings, real property, poker machines and poker machine entitlements, debtors, intellectual property rights and goodwill;

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Board means the board of directors of the Leagues Club, or, the Amalgamated Club after Amalgamation Completion;

Bowls committee means the committee appointed or elected under clause 3;

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 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;

Economical Feasibility or **Economically Feasible** mean that the Premises must have a minimum EBITARD (Earnings before interest, taxation, amortisation, rent and donations) of 10% for each quarter;

Employee Entitlements means all entitlements to salary or wages, annual leave, long service leave and other entitlements (excluding sick leave) under any industrial instrument or agreement between an employee of the Sports Club and the Sports Club, accrued but not paid by the Sports Club 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;

Leagues Club means Western Suburbs Leagues Club Ltd trading as Wests Ashfield Leagues ABN 69 000 154 736;

Liquor Act means the *Liquor Act 2007*;

Premises means the premises of the Sports Club known as 114 Church Street, Croydon and also known as 72 Queen Street, Croydon (comprising lot 1 in DP554988, lot 5 in DP237006, lot 7 in DP237006, lot 8 in DP237006, lot 1 in DP550694 and lot 3 in DP550694), being premises leased from the Leagues Club which is the registered proprietor of the Premises;

Regulations means the *Registered Clubs Regulation 2009*;

RCA means the *Registered Clubs Act 1976;* and

Sports Club means Western Suburbs Leagues' Club Bowling Club Ltd trading as Wests Sports Club ABN 31 000 756 801.

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 **annexure** is to a clause or annexure 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 6 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 THE SPORTS CLUB PREMISES, FACILITIES AND MANAGEMENT

Clause 6 (2) (a) of the Regulations

3.1 **Premises and Facilities of the Sports Club**

(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 as "Western Suburbs Leagues Club Bowling Club" or "Wests Sports Club" or such other name as the Leagues Club may decide, subject to the Amalgamated Club obtaining any required authorisation or consent from any Government Agency.

3.2 **Future Management**

(a) The Leagues Club may or may not appoint a Manager under section 66 of the Liquor Act as the premises of the Leagues Club and the Premises are within 10 kilometres and pursuant to section 66(3) of the Liquor Act, appointment of a Manager under section 66 is not mandatory.

(b) The Amalgamated Club must establish a bowling section or sub-club of the Amalgamated Club in accordance with the Constitution of the Amalgamated Club (subject always to the Board). The bowling section or sub-club (or the Amalgamated Club) may retain or receive a transfer of any bowling association affiliation held by the Sports Club and in this respect the Sports Club must do all things reasonably necessary to retain and transfer such affiliation, by Amalgamation Completion, to the Amalgamated Club or the bowling club section or sub-club, as may be required by the Leagues Club.

(c) The management structure of the Amalgamated Club will be the management structure of the Leagues Club at the date of Amalgamation Completion as amended according to the operational requirements of the Amalgamated Club, at the discretion of the Board.

(d) The Leagues Club will establish a Bowls Committee in accordance with rule 57 of the Constitution of the Leagues Club and any relevant by-laws passed from time to time by the Board.

(e) The Bowls Committee may make any recommendations it considers appropriate in relation to the conduct of bowls to the Board.

4. CONTINUING TRADITIONS, AMENITIES AND COMMUNITY SUPPORT

Clause 6 (2) (b) of the Regulations

4.1 The Amalgamated Club will:

(a) subject to the continued operation of the Amalgamated Club from the Premises:

(i) maintain the traditions of Sports Club as set out in annexure "A";

(ii) promote activities to maintain, and where possible increase, patronage of members and their guests at the Premises, and

(b) preserve, maintain and improve the Premises and at least 2 of the 3 existing bowling greens located at the Premises for not less than 3 years following the Amalgamation Completion and thereafter use its best endeavours, subject to Economic Feasibility, to preserve, maintain and improve the Premises and at least 2 of the 3 existing bowling greens located at the Premises.

4.2 For the purposes of clause 6(2) of the Regulations, there are no specific contributions for community support. Annexure "B" has been completed accordingly.

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5. FUTURE DIRECTION OF AMALGAMATED CLUB

Clause 6 (2) (c) of the Regulations

5.1 The future direction of the Amalgamated Club is intended to be to:

(a) promote and develop the Premises and all other premises of the Amalgamated Club;

(b) provide high quality facilities and services to members of the Amalgamated Club;

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

(d) preserve, maintain and improve the Premises and at least 2 of the 3 existing bowling greens located at the Premises for not less than 3 years following the Amalgamation Completion and thereafter use its best endeavours, subject to Economic Feasibility, to preserve, maintain and improve the Premises and at least 2 of the 3 existing bowling greens located at the Premises.

6. EMPLOYEES OF THE AMALGAMATED CLUB

Clause 6 (2) (d) of the Regulations

6.1 The Amalgamated Club will accept the documented Employee Entitlements of the Sports Club employees as at Amalgamation Completion.

6.2 The Leagues Club will give each employee of the Sports Club who is required for employment by the Amalgamated Club a written offer of employment on terms no less favourable than those under which the person is employed by the Sports Club or provided by an applicable industrial instrument, no later than 10 Business Days prior to the anticipated date of Amalgamation Completion.

6.3 The Sports Club will terminate its employment of all employees in writing on Amalgamation Completion.

6.4 Any employee who accepts in writing an offer made under clause 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 or who is not offered employment by the Leagues Club:

(a) will be paid all documented Employee Entitlements as at Amalgamation Completion by the Amalgamated Club, on termination of his or her employment by the Sports Club; and

(b) will be required by the Amalgamated Club or the Sports Club to provide acknowledgment of receipt of such entitlements, as the case may be.

6.6 The continuation of employment of each employee of the Sports Club by the Amalgamated Club after Amalgamation Completion will be subject to the terms and conditions of employment between each employee and the Leagues Club.

7. INTENTIONS FOR ASSETS OF THE SPORTS CLUB

Clause 6 (2) (e) of the Regulations

7.1 The core property of the Sports Club within the meaning of section 41J of the RCA is the Premises.

7.2 The poker machine entitlements and poker machines of the Sports Club will continue to be kept at the Premises after Amalgamation Completion, subject to any future decision of the Amalgamated Club to:

(a) dispose of any excess number of such entitlements and/or machines; or

(b) transfer any such entitlements and/or machines to other premises operated by the Amalgamated Club,

in accordance with the *Gaming Machines Act 2001 (NSW)*.

7.3 There is presently no intention to reduce the number of poker machine entitlements or poker machines at the Premises. The intention with respect to the Premises is as contained in clauses 4.1(b) and 5.1(d).

7.4 Any cash Assets and other investments of the Sports Club 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 6 (2) (f) of the Regulations

8.1 For the purposes of clause 6 (2)(f) of the Regulations:

(a) the objects of the Sports Club will cease to have effect on dissolution or winding up of the Sports Club; and

(b) on and from Amalgamation Completion, the objects of the Amalgamated Club will be the objects of the Leagues Club.

8.2 The Amalgamated Club may 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, after the expiry of the period in clause 9.2, that trading at the Premises is not Economically Feasible;

(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 6 (2) (g) of the Regulations

9.1 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 3 years following Amalgamation Completion, except as permitted under section 17AI of the RCA.

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:

(i) are the entire agreement between the parties in relation to the proposed amalgamation of the parties; and

(ii) supersede all previous agreements.

10.3 Counterparts

(a) A party may execute this memorandum of understanding by signing any counterpart.

(b) All counterparts constitute one document when taken together.

10.4 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.

10.5 Termination

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

EXECUTED as a **DEED**

EXECUTED by **WESTERN SUBURBS LEAGUES CLUB LTD ABN 69 000 154 736** in accordance with Section 127 of the Corporations Act 2001:

*Director/*Company Secretary

Director

ANDREW TIMBS

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

PETER DAVID HARGRAVE

Name of Director
(BLOCK LETTERS)

EXECUTED by **WESTERN SUBURBS LEAGUES' CLUB BOWLING CLUB LTD ABN 31 000 756 801** in accordance with Section 127 of the Corporations Act 2001:

*Director/*Company Secretary

Director

Mark Bottell

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

ALAN SPOONER

Name of Director
(BLOCK LETTERS)

Annexure A

Traditions of the Sports Club

Memorabilia, artefacts and honour boards

1. Honour Boards.
2. Trophies, plaques and shields with a bowling nature.
3. Flags relating to bowls.
4. Pictures relating to bowls and bowlers.
5. Bowls related memorabilia egg "statues" of bowls with club mascots.
6. The stone located at the entrance to the Sports Club which has a "plate" attached to it commemorating the opening of the Sports Club which may be relocated at the Premises from time to time.

Annexure B

Proposed Community Support Contributions
Not applicable

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