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LAWYERS

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MEMORANDUM OF UNDERSTANDING

between

CHAIRMAN OF CITY TATTERSALL'S CLUB
ABN 44 004 054 353
(City Tattersall's)

and

THE CATHOLIC CLUB LTD
ABN 35 000 982 436
(TCCL)

Table of contents

1	Definitions and interpretation.....	1
1.1	Definitions	1
1.2	Interpretation	3
2	Amalgamation.....	4
2.1	Amalgamation	4
2.2	Condition	4
2.3	Condition Precedent for Amalgamation Completion	4
2.4	Relationship with Deed of Amalgamation	4
3	Future management of TCCL Premises	4
3.1	Management of TCCL Premises	4
3.2	Management structure, Secretary/CEO of the Amalgamated Club and Manager of the TCCL Premises	5
3.3	Improvements and renovations.....	6
3.4	Operating Expenses Account	6
3.5	Bank Guarantee	6
4	Continuing traditions, amenities and community support	7
4.1	Traditions and Amenities and sub-clubs.....	7
4.2	Life members of TCCL.....	7
4.3	Community support	7
4.4	Member rewards	7
5	Future direction of the Amalgamated Club.....	8
5.1	General	8
5.2	Specific	8
6	Employees	8
6.1	TCCL employees.....	8
6.2	City Tattersall's employees	9
7	Intentions for TCCL Assets	10
7.1	Core property/Major Assets of TCCL and gaming machines and gaming machine entitlements.....	10
7.2	TCCL Retained Funds and New Constitution	10
7.3	Other assets.....	12
8	Risks of not meeting any specified intentions regarding preservation of the core property of TCCL.....	12
9	Agreement under section 17A(1) of the Registered Clubs Act relating to the period during which the Major Assets of TCCL must not be disposed	12
10	Ceasing to Trade from the TCCL Premises or Changing Objects.....	13
11	Minimum Period.....	16
12	General.....	16
12.1	Stamp duty.....	16
12.2	Legal costs.....	16
12.3	Entire agreement.....	16
12.4	Counterparts	16
12.5	Variation.....	16
12.6	Termination	16

5/6/20

This deed is made on.....2020

Between **Chairman of City Tattersall's Club** ABN 44 004 054 353 of 198-204 Pitt Street, Sydney NSW 2000 (**City Tattersall's**)

And **The Catholic Club Ltd** ABN 35 000 982 436 trading as The Castlereagh Club of 197-199 Castlereagh Street, Sydney NSW 2000 (**TCCL**)

Recitals

- A The parties are both registered clubs and are subject to the Registered Clubs Act.
- B City Tattersall's is an unincorporated association and is subject to the *City Tattersall's Club Act 1912* (NSW) and *City Tattersall's Club Amendment Act 1936* (NSW) and TCCL is a company limited by guarantee and is subject to the *Corporations Act 2001* (Cth).
- C City Tattersall's called for expressions of interest for amalgamation from other registered clubs on 17 December 2019.
- D TCCL submitted an expression of interest which has been accepted by City Tattersall's.
- E The parties propose to amalgamate subject to the terms of this MOU and the Deed of Amalgamation.
- F 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

1.1 Definitions

In this deed, unless the context otherwise requires:

Amalgamation means an amalgamation of City Tattersall's and TCCL pursuant to the Registered Clubs Act and the Liquor Act;

Amalgamated Club means City Tattersall's as the continuing club after Amalgamation Completion;

Amalgamation Completion has the meaning specified in the Deed of Amalgamation;

Asset includes chattels, contract rights, motor vehicles, stock in trade, plant, fixtures and fittings, real property (including the TCCL Premises Lease and any sub-leases under which TCCL is the sub-tenant or sub-lessor), TCCL's Club Licence including gaming machines and gaming machine entitlements, debtors, business names, intellectual property rights, goodwill and all other property, tangible or intangible and cash on hand and cash at bank belonging to TCCL (excluding the TCCL Retained Funds) at the time of Amalgamation Completion;

Authority means the Independent Liquor and Gaming Authority;

Board means the board of directors of City Tattersall's, 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;

CEO means Chief Executive Officer;

City Tattersall's Premises means the premises owned and occupied by City Tattersall's for its registered club business located at 198 Pitt Street, Sydney NSW 2000;

City Tattersall's Rules means the rules of City Tattersall's as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time;

Club Licence means a club licence held 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 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 (including any termination payments) under any industrial instrument or agreement between TCCL and any of its employees;

Financial Year means a financial year of the Amalgamated Club;

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;

Landlord means 197 Castlereagh Street Pty Limited (ACN 636 189 672) or in the case of a sale of the TCCL Premises after Amalgamation Completion, any future registered proprietors of the TCCL Premises;

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

Member means a member of either TCCL, City Tattersall's 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;

New Constitution means the proposed new constitution of TCCL as specified in the Deed of Amalgamation and referred to in clause 7.2(e) of this MOU;

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

Registered Clubs Regulation means the *Registered Clubs Regulation 2015* (NSW); and

City Tattersall's means the unincorporated association of members of the registered club known as "City Tattersall's Club" ABN 44 004 054 353 and where applicable and unless the context otherwise requires, includes the Chairman from time to time of City Tattersall's Club.

TCCL Retained Funds means the proceeds received by TCCL from the sale of the TCCL Premises plus any additional amounts accruing from the investment of those sale proceeds less any outstanding amounts still payable by TCCL in relation to the sale of the TCCL Premises, any expenses incurred by TCCL before Amalgamation Completion, any expenses or tax payable in respect of the TCCL Retained Funds, the amount to be deposited by TCCL into the Operating Expenses Account, the amount contributed by TCCL toward the bank guarantee under clause 3.5 and any other amount permitted to be paid from the TCCL Retained Funds as set out in this MOU and the Deed of Amalgamation. ;

TCCL means The Catholic Club Ltd ABN 35 000 982 436 trading as The Castlereagh Club;

TCCL Investment Committee means the committee of former TCCL members who shall be responsible for the management and investment of the TCCL Retained Funds if those funds are transferred to the Amalgamated Club on Amalgamation Completion.

TCCL Members means those Members of TCCL who:



- (a) are identified as Members of TCCL for the purposes of section 17AC of the Registered Clubs Act and who join the Amalgamated Club designated as "Catholic Club Members" under the City Tattersall's Rules in accordance with clause 4.1(a) 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 of TCCL;

TCCL Premises means the premises occupied by TCCL for its registered club business located at 197-199 Castlereagh Street, Sydney NSW 2000 (Folio Identifier 1/854342); and

TCCL Premises Lease means the lease over the TCCL Premises dated 6 December 2019, registered number AP831096V between TCCL and the Landlord.

Triennial Rule means the rule for election of the Board as provided for in schedule 4 of the Registered Clubs Act and adopted in clause 6.1A of the City Tattersall's Rules.

Year means a period of twelve (12) months commencing on the anniversary of the date of Amalgamation Completion and concluding on the day immediately before the next anniversary date of Amalgamation Completion.

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

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.

2.3 Condition Precedent for Amalgamation Completion

Unless otherwise agreed by the parties in writing, Amalgamation Completion is conditional upon:

- (a) City Tattersall's having a written legal right to occupy the TCCL Premises as and from Amalgamation Completion on terms acceptable to City Tattersall's and TCCL;
- (b) TCCL ceasing to be the lessee of the TCCL Premises;
- (c) The Landlord and TCCL entering into a written agreement:
 - (i) which contains provisions which provide that, with effect from Amalgamation Completion, TCCL and the Landlord will cease to have any rights against each other under the TCCL Premises Lease and that they release each other from any liabilities and obligations under the TCCL Premises Lease; and
 - (ii) on terms acceptable to TCCL.

2.4 Relationship with Deed of Amalgamation

- (a) This MOU does not become legally binding until and unless TCCL and City Tattersall's enter into the Deed of Amalgamation.
- (b) In the event of any inconsistency between this MOU and the Deed of Amalgamation, the provisions of the MOU shall apply.

3 Future management of TCCL Premises

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

3.1 Management of TCCL Premises

- (a) The TCCL Premises will become additional trading premises of the Amalgamated Club and the Amalgamated Club will trade from the TCCL Premises and the City Tattersall's Premises (subject to any closure of the City Tattersall's Premises during its proposed redevelopment and reconstruction).
- (b) The TCCL Premises and City Tattersall's Premises will be available for the use of all Members of the Amalgamated Club (subject to the City Tattersall's Rules and by-laws and subject to any closure of the City Tattersall's Premises during its proposed redevelopment and reconstruction).
- (c) The TCCL Premises will be named and trade under the name "City Tatts on Castlereagh" 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 TCCL Premises will be named and trade under such name as determined by the Board of the Amalgamated Club.

3.2 Management structure, Secretary/CEO of the Amalgamated Club and Manager of the TCCL Premises

(a) The management structure of the Amalgamated Club will be the management structure of City Tattersall's 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, but subject to clause 4.1(c) of the Deed of Amalgamation which requires an amendment to the City Tattersall's Rules to the effect that, shortly after Amalgamation Completion:

- (i) up to the fifth (5th) anniversary after Amalgamation Completion and any earlier de-amalgamation referred to in clause 10, at least three (3) members on the Board of the Amalgamated Club must be former members of TCCL as at the date of this Memorandum;
- (ii) the Board will comprise 7 elected directors (including appointees to fill casual vacancies), with an ability of the Board to appoint up to 2 members of the Amalgamated Club as additional directors pursuant to section 30(1)(b1) of the Registered Clubs Act and clause 31 of the Registered Clubs Regulation;
- (iii) the required number of Board members holding office as at Amalgamation Completion will cease to hold office on or before Amalgamation Completion so that there will be a total of 6 directors on the Board of the Amalgamated Club and three (3) positions on the Board will be available for former members of TCCL as at the date of the Memorandum. For example:
 - (A) if there are 9 directors on the Board immediately preceding Amalgamation Completion, City Tattersall's must ensure that 3 directors will cease to hold office under the amended City Tattersall's Rules on or before Amalgamation Completion to allow for 3 appointments as set out under clause 3.2(a)(iv); and
 - (B) if there are 8 directors on the Board at the time of Amalgamation Completion, City Tattersall's must ensure 2 directors will cease to hold office under the amended City Tattersall's Rules on or before Amalgamation Completion to allow for 3 appointments as set out under clause 3.2(a)(iv);
- (iv) upon the required number of directors ceasing to hold office as described in clause 3.2(a)(iii), the Board will, with effect from Amalgamation Completion, appoint as directors of the Amalgamated Club:
 - (A) 1 director of TCCL to fill the casual vacancy left on the elected Board of 7 caused by clause 3.2(a)(iii), such appointment being pursuant to clause 5(1) of the Triennial Rule; and
 - (B) 2 directors of TCCL who will hold office until the 2023 election of directors, such appointments being pursuant to section 30(1)(b1) of the Registered Clubs Act and clause 31 of the Registered Clubs Regulation,

with the intent that for up to 5 years after Amalgamation Completion:

- (C) there will be a total of 9 directors on the Board of the Amalgamated Club; and
 - (D) at least 3 of the 9 directors will be former directors of TCCL.
- (v) The Board of TCCL will nominate the directors to be appointed to the Board of the Amalgamated Club and City Tattersall's must appoint those directors of

TCCL to the Board of the Amalgamated Club with effect from Amalgamation Completion. This is subject to those directors of TCCL becoming members of the Amalgamated Club as and from Amalgamation Completion.

- (vi) Any director of the Board of the Amalgamated Club who is also a member of the Board of TCCL or the TCCL Investment Committee will not be entitled to two (2) honorariums each year. As a result of this, the director must elect whether or not he or she wishes to receive an honorarium from the Amalgamated Club or an honorarium from the TCCL/TCCL Investment Committee. For the purposes of the Registered Clubs Act and Liquor Act, the CEO of City Tattersall's will be the Secretary and Chief Executive Officer of the Amalgamated Club.

3.3 Improvements and renovations

Within 12 months after Amalgamation Completion, City Tattersall's will:

- (a) install up to one hundred (100) additional new gaming machines at the TCCL Premises (including transferring to the TCCL Premises an appropriate number of gaming machine entitlements and increasing the gaming machine threshold of the TCCL Premises for that purpose), subject to any approvals required from the landlord and/or Government Agencies, including the Independent Liquor and Gaming Authority; and
- (b) refurbish the interior of the TCCL Premises which may include replacing furniture and furnishings, painting such parts of the TCCL Premises as determined reasonably necessary by the Board of the Amalgamated Club and installing new carpets, subject to any approvals required from the landlord and/or any Government Agencies,

up to a total value of two million five hundred thousand dollars (\$2,500,000) including GST.

For the avoidance of doubt, the expenditure by City Tattersall's in this clause 3.3 on improvements and renovations does not form part of its contribution of four million dollars (\$4,000,000) towards the Operating Expenses Account as set out in clause 3.4.

3.4 Operating Expenses Account

- (a) As and from Amalgamation Completion, the Amalgamated Club will open and maintain a separate bank account for the purposes of operating expenses of the Amalgamated Club at the TCCL Premises (**Operating Expenses Account**), including without limitation the termination payment to TCCL's CEO as referred to in clause 6 and the costs associated with the TCCL Premises Lease and related outgoings.
- (b) The Operating Expenses Account shall remain in force until at least the fifth anniversary of Amalgamation Completion.
- (c) On or before Amalgamation Completion, City Tattersall's shall deposit four million dollars (\$4,000,000) and TCCL shall deposit three million eight hundred thousand dollars (\$3,800,000) into the Operating Expenses Account (total starting amount of seven million eight hundred thousand dollars (\$7,800,000) including GST).

3.5 Bank Guarantee

- (a) Unless otherwise agreed by the parties in writing, if the Landlord requires a bank guarantee in order for City Tattersall's to occupy the TCCL Premises with effect from Amalgamation Completion, the following shall apply:
 - (i) TCCL's existing bank guarantee of \$1.419 million will not remain in place; and
 - (ii) TCCL's existing bank guarantee will be returned to TCCL and those funds will be released to TCCL, upon which those funds will be added to and form part of the TCCL Retained Funds;

- (iii) City Tattersall's will provide a new bank guarantee to the Landlord on or before Amalgamation Completion;
- (iv) TCCL will contribute up to \$1.419 million towards the new bank guarantee and if the new bank guarantee is for an amount greater than \$1.419 million, City Tattersall's will be responsible for the remaining amount.
- (v) The new bank guarantee will be an asset of City Tattersall's Club; however TCCL's contribution towards the new bank guarantee as set out in sub paragraph (iv) above must be transferred to TCCL as part of any De-amalgamation.

4 Continuing traditions, amenities and community support

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

4.1 Traditions and Amenities and sub-clubs

- (a) The Amalgamated Club will maintain TCCL honour rolls and memorabilia in the TCCL Premises. City Tattersall's shall have the option to store the information on the honour rolls electronically provided the information can be viewed by members.
- (b) The Amalgamated Club will maintain the TCCL sub-clubs which exist as at the date of the MOU for as long as the Amalgamated Club trades from the TCCL Premises but for at least 5 years after Amalgamation Completion.
- (c) Subject to clauses 10 and 11, the Amalgamated Club will maintain the squash courts located at the TCCL Premises for as long as the Amalgamated Club trades from those premises but for at least 5 years after Amalgamation Completion.
- (d) Subject to clauses 10 and 11, the Amalgamated Club will continue to hold the traditional Annual Mass at the TCCL Premises at no expense to Members for as long as the Amalgamated Club trades from those premises but for at least 5 years after Amalgamation Completion.

4.2 Life members of TCCL

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

- (a) will become a Life Member of City Tattersall's pursuant to an amendment of City Tattersall's Rules and pursuant to an election by the Board; and
- (b) will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the Registered Clubs Act or if the Amalgamated Club is directed by the Authority to charge an annual subscription, in which case such person will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

4.3 Community support

Subject to overall financial viability of the Amalgamated Club and the Amalgamated Club's policies for community support, the Amalgamated Club will continue to support the communities and organisations that were supported by TCCL at the date of this MOU.

4.4 Member rewards

TCCL Members who become members of the Amalgamated Club will have the opportunity to participate in the Amalgamated Club's Member loyalty program, subject to the terms of the loyalty program.

5 Future direction of the Amalgamated Club

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) maintain and promote the TCCL Premises and the City Tattersall's Premises (subject to any closure of the City Tattersall's Premises during its proposed redevelopment and reconstruction);
- (b) develop a dedicated marketing plan for improving community engagement and membership growth at the TCCL Premises and the City Tattersall's Premises; and
- (c) seek to maintain and improve the trading of the TCCL Premises and the City Tattersall's Premises so that each premises is financially viable without subsidy or financial support from the other premises of the Amalgamated Club (subject to any closure of the City Tattersall's Premises during its proposed redevelopment and reconstruction);

6 Employees

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

6.1 TCCL employees

- (a) Subject to clause 6.1(b), City Tattersall's will give each current employee of TCCL which it seeks to employ, 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 City Tattersall's,
 at least 10 Business Days prior to the anticipated date of Amalgamation Completion.
- (b) Notwithstanding clause 6.1(a) City Tattersall's must give the Operations Manager of TCCL (**Specified Employee**) a written offer of employment at least 10 Business Days prior to the anticipated date of Amalgamation Completion. The remuneration and duties of the Specified Employee with the Amalgamated Club must be the same remuneration and for similar duties that she has with TCCL as at the date of the MOU. This obligation will not apply if the Specified Employee ceases to be an employee of TCCL before Amalgamation Completion.
- (c) City Tattersall's shall provide to TCCL a list of employees that it wishes to employ as soon as reasonably practicable after provisional approval of the Amalgamation.
- (d) TCCL will terminate the employment of all its employees in writing, or accept their written resignation, on Amalgamation Completion.
- (e) Any employee who accepts in writing an offer from City Tattersall's made under clauses 6.1(a) and (b) will be employed by the Amalgamated Club on Amalgamation

Completion on the terms of that offer, and that person's Employee Entitlements accrued with TCCL up to and including Amalgamation Completion will be recognised by the Amalgamated Club.

- (f) If any employee of TCCL does not accept an offer of employment from City Tattersall's in accordance with clause 6.1(e) or is not offered employment by City Tattersall's, then:
- (i) TCCL must pay that employee all accrued Employee Entitlements as at Amalgamation Completion, which will be the end date of that employee's employment by TCCL;
 - (ii) TCCL must make all superannuation contributions it is obliged to make for that employee up to the date of Amalgamation Completion; and
 - (iii) TCCL will use its reasonable endeavours to obtain written acknowledgment of receipt of such payments from that employee as at Amalgamation Completion.
- (g) Notwithstanding anything contained in this clause 6.1, the parties agree that:
- (i) TCCL's CEO will not be offered employment by City Tattersall's; and
 - (ii) The existing employment contract of TCCL's CEO will be terminated by TCCL on Amalgamation Completion in accordance with the terms of that contract.
 - (iii) All Employment Entitlements (including any termination payment) owed to the TCCL CEO on the termination of his employment with TCCL will be paid from the Operating Expense Account on Amalgamation Completion (being the date that TCCL's Club Licence is transferred to City Tattersall's).
 - (iv) TCCL must use its reasonable endeavours to obtain a written release from TCCL's CEO (in a form acceptable to City Tattersall's and TCCL) which releases TCCL and City Tattersall's from all possible claims that he has or may have against either party in respect of his employment with TCCL, his termination and his employment contract.;
 - (v) If clause 7.2(a)(i) of this MOU applies (that is, the TCCL Retained Funds are retained by TCCL), TCCL will engage a management consultant to assist with the transition from two (2) clubs into one (1) amalgamated club. TCCL currently intends to offer this role to TCCL's CEO. The offer of engagement for the management consultant will be made prior to Amalgamation Completion and the terms and conditions of such offer shall be determined by TCCL in its absolute discretion (notwithstanding clause 5.3 of the Deed of Amalgamation).
 - (vi) If clause 7.2(a)(ii) of this MOU applies (that is, the TCCL Retained Funds are transferred to City Tattersall's on Amalgamation Completion), City Tattersall's will engage a management consultant to assist with the transition from two (2) clubs into one (1) amalgamated club. City Tattersall's currently intends to offer this role to TCCL's CEO. The proposed management consultant must be approved by TCCL prior to Amalgamation Completion. The offer of engagement for the management consultant will be made prior to Amalgamation Completion and the terms and conditions of that offer shall be agreed by City Tattersall's and the TCCL both acting reasonably.
 - (vii) Any payments to management consultants referred to in sub paragraphs (v) and (vi) will be paid from the TCCL Retained Funds.

6.2 City Tattersall's employees

Each employee of City Tattersall's 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 City Tattersall's.

7 Intentions for TCCL Assets

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

7.1 Core property/Major Assets of TCCL and gaming machines and gaming machine entitlements

- (a) The TCCL Premises is currently non-core property of TCCL for the purposes of section 41E of the Registered Clubs Act and it is not currently a major asset of TCCL for the purposes of section 17A(3) of the Registered Clubs Act and clause 8 of the Registered Clubs Regulation.
- (b) However, the ordinary members of TCCL will be asked to consider and vote on a resolution to, amongst other things, declare the TCCL Premises as core property of TCCL for the purposes of section 41E of the Registered Clubs Act, section 17A(3) of the Registered Clubs Act and clause 8 of the Registered Clubs Regulation.
- (c) If the resolution referred to in clause 7.1(b) above is passed, the TCCL Premises will become core property and a major asset of TCCL for the purposes of section 41E of the Registered Clubs Act, section 17A(3) of the Registered Clubs Act and clause 8 of the Registered Clubs Regulation.
- (d) As at the date of this MOU, the number of gaming machine entitlements held for the TCCL's Club Licence and for the TCCL Premises is eighteen (18) and TCCL must ensure that all of the eighteen (18) gaming machine entitlements held in respect of the TCCL's Club Licence and all its other Assets (which excludes the TCCL Retained Funds unless the TCCL Retained Funds are to be transferred to City Tattersall's pursuant to clause 7.2(b)(ii), in which case the TCCL Retained Funds will be transferred to City Tattersall's subject to that clause) are transferred to the Amalgamated Club as part of the amalgamation.
- (e) City Tattersall's must:
 - (i) retain occupation of and trade from the TCCL Premises;
 - (ii) retain not less than eighteen (18) gaming machine entitlements at the TCCL Premises;
 - (iii) operate not less than eighteen (18) gaming machines at the TCCL Premises; and
 - (iv) operate the TCCL Club 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.
- (f) Subject to clauses 10 and 11 of this MOU, TCCL and City Tattersall's intend that the Amalgamated Club will continue to trade from the TCCL Premises and for the core property of TCCL and the TCCL Premises gaming machine entitlements to be retained indefinitely but for at least 5 years after Amalgamation Completion.

7.2 TCCL Retained Funds and New Constitution

- (a) To the best of its knowledge, information and belief, TCCL anticipates that the amount of the TCCL Retained Funds will be between \$16.5 million to \$17.5 million as at Amalgamation Completion.
- (b) Subject to clause this 7.2 (including any De-Amalgamation), the TCCL Retained Funds will be either:
 - (i) if permitted by the Authority, initially retained and managed by TCCL for a minimum period of 5 years after Amalgamation Completion and those funds

will not be transferred to the Amalgamated Club on Amalgamation Completion but until the expiry of 5 years after Amalgamation Completion remain the property of TCCL; or

- (ii) if the Authority does not permit the TCCL Retained Funds being held by TCCL as specified in clause 7.2(b)(i) but requires the TCCL Retained Funds to be transferred to the Amalgamated Club on Amalgamation Completion, the TCCL Retained Funds will be held by the Amalgamated Club and managed and invested by the TCCL Investment Committee pursuant to the TCCL Retained Funds provision which will be added to City Tattersall's Rules as specified in Schedule 2 of the Deed of Amalgamation. For the avoidance of doubt, TCCL Investment Committee will be permitted to incur expenses of up to \$250,000 per annum (such expenses to include the payment of honorariums to the TCCL Investment Committee and the engagement of the management consultant under clause 6.1(g)(vi)) without the prior written approval of the Board of the Amalgamated Club
- (c) Assuming there is no De-Amalgamation in process as specified under clause 10, the TCCL Retained Funds will be:
 - (i) In the case of the TCCL Retained Funds being held by TCCL under clause 7.2(b)(i) as permitted by the Authority – unconditionally and immediately transferred to the Amalgamated Club on the fifth anniversary of Amalgamation Completion and the corporate entity of TCCL shall be voluntarily wound up in accordance with the Deed of Amalgamation; or
 - (ii) in the case of the TCCL Retained Funds being held by the Amalgamated Club under clause 7.2(b)(ii) – available for use by the Amalgamated Club and will no longer be subject to the TCCL Retained Funds provision which will be added to the City Tattersall's Rules as specified in Schedule 2 of the Deed of Amalgamation.
- (d) For the avoidance of doubt, the TCCL Retained Funds will become the property of the Amalgamated Club and available for its use if there is no de-amalgamation as specified in clause 10.
- (e) If the TCCL Retained Funds are permitted by the Authority to be held in accordance with clause 7.2(b)(i), the New Constitution of TCCL must at all times until the date of completion of any de-amalgamation as specified in clause 10:
 - (i) include a provision that no resolution to amend the New Constitution will be of any effect unless first approved by the Board of the Amalgamated Club, evidence of such approval being provided in writing by the Amalgamated Club's CEO and attaching a minute of the relevant Board resolution;
 - (ii) provide that the Board of TCCL must include at least one (1) director who is also a director of the Board of the Amalgamated Club. For the avoidance of a doubt:
 - (1) a director of the Board of the Amalgamated Club will only be eligible to be on the Board of TCCL if he or she is a member of TCCL; and
 - (2) the Board of the Amalgamated Club will not nominate or appoint directors to the Board of TCCL (that is, all directors of TCCL must be elected by members of TCCL or be appointed by the Board of TCCL to fill casual vacancies).
 - (iii) specify the powers, duties and responsibilities of TCCL in relation to the retention, management and investment of the TCCL Retained Funds;
 - (iv) specify that TCCL can incur expenses of up to \$250,000 per annum without the prior written approval of the Board of the Amalgamated Club

- (v) prohibit TCCL from borrowing funds granting liens, debentures, securities or security interests or mortgages;
 - (vi) specify that, subject to any De-Amalgamation, the TCCL Retained Funds to be transferred unconditionally and without demand to the Amalgamated Club immediately following expiry of 5 years from Amalgamation Completion;
 - (vii) include such other provisions which City Tattersall's, acting reasonably and in good faith, requires for the protection of its legitimate interest in the TCCL Retained Funds under this MOU and the Deed, including preservation and protection of the TCCL Retained Funds pending any transfer of the TCCL Retained Funds to City Tattersall's in accordance with this MOU and the Deed.
- (f) City Tattersall's will have members consider and vote on a special resolution to amend the Rules of City Tattersall's to give effect to the above provisions. This special resolution will be considered at the same meetings at which the members of City Tattersall's are to be asked to approve the Amalgamation between the clubs.

7.3 Other assets

The 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 TTCL Premises and the gaming machine entitlements attached to TCCL's Club Licence 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 TCCL

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

- (a) TCCL does not currently have any core property or major assets for the purposes of the Registered Clubs Act. However, in accordance with clause 7.1 of this MOU, the TCCL Premises will be core property and major assets of TCCL on Amalgamation Completion.
- (b) The risks of the Amalgamated Club not meeting the intentions to preserve the core property of TCCL include that:
 - (i) the only core property of TCCL will be the TCCL Premises. City Tattersall's has no intention of terminating the TCCL Premises Lease and in any event, it will be bound by the lease as the Amalgamated Club;
 - (ii) if the core property/lease of the TCCL Premises is disposed, then the ability to use the TCCL Premises as a registered club will cease unless a new lease agreement is entered into between the then registered proprietor of the TCCL Premises and the Amalgamated Club.
- (c) The likelihood that the risks outlined in clause 8(b) will be realised are mitigated because of the restrictions on disposal of the TTCL Premises (as the major assets of TCCL) 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 TCCL must not be disposed

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

The Amalgamated Club may not dispose of the Major Assets of TCCL except in accordance with clauses 10 and 11.

10 Ceasing to Trade from the TCCL Premises or Changing Objects

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

- (a) City Tattersall's does not intend to cease trading from the TCCL Premises. However, with effect from Amalgamation Completion, the objects of the Amalgamated Club will be the objects of City Tattersall's.
- (b) City Tattersall's 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, City Tattersall's and TCCL have agreed that the Amalgamated Club may cease trading at the TCCL 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 which orders the permanent closure of the TCCL Premises;
 - (ii) if the TCCL Premises are destroyed or partially destroyed by fire, flood, storm, etc. and the insurance cover held by the Club and Landlord and the sum of \$500,000 from the TCCL Retained Funds is insufficient to repair the premises or the affected part of the premises.
 - (iii) upon the lawful order of any Government Agency which orders the permanent closure of the TCCL Premises;
 - (iv) if the lease for the TCCL Premises expires or is terminated by the Landlord and/or the Landlord does not grant a new lease of those premises on terms acceptable to the Amalgamated Club. For the avoidance of doubt, this clause does not permit City Tattersall's to terminate the lease for the TCCL Premises or mutually terminate the Lease unless the circumstances in sub paragraphs (c)(i), (ii), (iii) or (v) apply; or
 - (v) subject to clauses 10 (e) and (f), below, if it is not financially viable for the Amalgamated Club to continue to trade at the TCCL Premises but only after the expiry of 5 years after Amalgamation Completion.
- (d) For the purposes of clauses 10(c)(i) and 10(c)(iii), an order which requires the Amalgamated Club to temporarily cease trading from the TCCL Premises for up to 12 months shall not constitute grounds for City Tattersall's to immediately cease trading from the TCCL Premises on a permanent basis. However, an order which:
 - (i) specifically states that the TCCL Premises must be closed more than 12 months; and/or
 - (ii) requires expenditure of more than \$500,000 by the Amalgamated Club in order to comply with the order,

shall be deemed to be an order for permanent closure of the TCCL Premises under clauses 10(c)(i) and 10(c)(iii).

For the avoidance of doubt, it will not be deemed to be a permanent closure of the TCCL Premises if there is an order which does not specify a closure period but the period of time to comply with that order will exceed or exceeds 12 months.

For example, it will not be deemed to be a permanent closure of the TCCL Premises if there is an order requiring the Amalgamated Club to undertake remedial works at the premises before it can re-commence trading and the timeframe for those works exceeds twelve (12) months.

- (e) For the purposes of clause 10(c)(v), after Amalgamation Completion the TCCL Premises will not be financially viable if the TCCL Premises return an audited financial result or threshold of less than twelve percent (12%) EBITDARD (**Minimum EBITDARD**) in any 12 month period which ends on or after the fifth (5th) anniversary after Amalgamation Completion.
- (f) For the purposes of clauses 10(c)(v) and (e):
- (ii) City Tattersall's must prepare separate financial reports for the TCCL Premises and those reports must be disclosed in the financial reports of City Tattersall's.
 - (ii) City Tattersall's must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon the TCCL Premises' ability to achieve the Minimum EBITDARD.
 - (iii) If City Tattersall's has knowingly or wilfully done anything or omitted doing anything which adversely impacts upon the TCCL Premises' ability to achieve the Minimum EBITDARD, it is prevented from closing the TCCL Premises and must continue to trade from those premises for a further (5) years.
 - (iv) If City Tattersall's wishes to cease trading from the TCCL Premises:
 - (1) City Tattersall's must engage an independent third party (and not the Club's auditor or accountant) to prepare a report on the EBITDARD of the TCCL Premises; and
 - (2) City Tattersall's can only cease trading from the TCCL if the report (which is to be made publicly available) contains a statutory declaration from the third party stating the TCCL Premises did not achieve the Minimum EBITDARD in that Year and City Tattersall's did not knowingly or wilfully do anything or omit doing anything which adversely affected the TCCL's Premises' ability to achieve the Minimum EBITDARD.
- (g) Notwithstanding anything else contained in this MOU, at any time after the fourth (4th) and before the fifth (5th) anniversaries of Amalgamation Completion, TCCL's Board or the TCCL Investment Committee may submit a formal written request to City Tattersall's (as the Amalgamated Club) for a de-amalgamation of the clubs (**De-Amalgamation**). The following shall apply in respect of the De-Amalgamation:
- (i) As part of the De-Amalgamation, the Amalgamated Club must transfer the following assets to TCCL (or the new company formed as the corporate vehicle of TCCL for the purposes of the De-Amalgamation which is to be known as **TCCL No 2**):
 - (A) the club licence for the TCCL Premises; and
 - (B) the lease for the TCCL Premises (unless the landlord agrees to enter into new lease for the TCCL Premises with TCCL or TCCL No 2);
 - (C) any sub-leases or service agreements associated with the TCCL Premises;
 - (D) the eighteen (18) gaming machine entitlements and comparable gaming machines held by TCCL and transferred to the Amalgamated Club as part of the Amalgamation;

- (E) subject to paragraph (F) below, fifty per cent (50%) of any additional gaming machine entitlements purchased by the Amalgamated Club after Amalgamation Completion and before the completion of the De-amalgamation. For the purposes of this clause, City Tattersall's Club will have 302 gaming machine entitlements as at Amalgamation Completion and TCCL will have 18 gaming machine entitlements as at Amalgamation Completion.
 - (F) the TCCL Retained Funds and any assets purchased using the TCCL Retained Funds;
 - (G) TCCL's contribution towards the bank guarantee referred to in clause 3.5;
 - (H) any personal property at the TCCL Premises at the completion of the De-Amalgamation;
 - (I) the improvements and renovations to the TCCL Premises as set out in this MOU (including without limitation, gaming hardware).
- (ii) The Amalgamated Club can immediately cease trading from the TCCL Premises and not proceed with the De-amalgamation if:
- (A) The necessary members approvals for the De-Amalgamation are not obtained by the clubs;
 - (B) The De-Amalgamation is not approved by the Authority;
 - (C) The owner of the TCCL Premises does not agree to provide TCCL or TCCL No 2 with a legal right to occupy the TCCL Premises and it does not release the Amalgamated Club from ongoing or future obligations under the TCCL Lease or any new lease for the TCCL Premises.
 - (D) TCCL or TCCL No 2 notifies the Amalgamated Club in writing that it no longer wishes to proceed with the De-Amalgamation.
- (h) The De-Amalgamation does not need to be completed before the fifth (5th) anniversary of the Amalgamation Completion but the De-Amalgamation process must be commenced before that time. For the avoidance of doubt, the De-Amalgamation process will be deemed to have commenced as soon as the TCCL's Board or the TCCL Investment Committee has submitted the formal written request for a De-Amalgamation to City Tattersall's (as the Amalgamated Club). City Tattersall's warrants that the Amalgamated Club will retain the club licences for and remain the bona fide occupier of the TCCL Premises and City Tattersall's Premises for at least 5 years after Amalgamation Completion or such longer period as may be required in order to complete the De-Amalgamation.
- (i) Nothing in this MOU prevents City Tattersall's (as the Amalgamated Club) from offering a de-amalgamation to TCCL at any time. The provisions of clauses 10(g) and (h) above will apply to such a de-amalgamation which is effected under this clause but only if such a de-amalgamation is offered by City Tattersall's (as the Amalgamated Club) before expiry of 5 years after Amalgamation Completion. For the avoidance of doubt, the provisions of clauses 10(g) and (h) above will apply if the De-amalgamation process is commenced by City Tattersall's before the fifth anniversary of Amalgamation Completion but the Amalgamation is completed after the fifth anniversary of Amalgamation Completion.

11 Minimum Period

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

City Tattersall's does not intend to cease trading from the TCCL Premises. City Tattersall's intends to operate the TCCL Premises in the manner referred to in clause 5 for a minimum period of 5 years after Amalgamation Completion and would only cease to trade in the circumstances referred to in clause 10.

12 General

12.1 Stamp duty

City Tattersall's 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

Each party will pay its own legal and other costs and expenses of negotiating, preparing and executing 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 a document approving the variation.

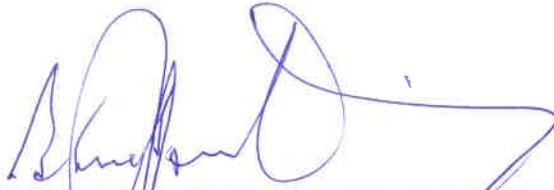
12.6 Termination

This MOU is terminated immediately on termination of the Deed of Amalgamation and clause 17 of the Deed of Amalgamation will apply to termination of this MOU.

Executed as a deed by the Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club.

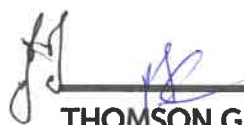
Executed as a deed by the **Chairman of City Tattersall's Club for and on behalf of City Tattersall's Club ABN 44 004 054 353:**

Steph Lowe
Signature of Witness


Signature of Patrick Campion, Chairman and Director

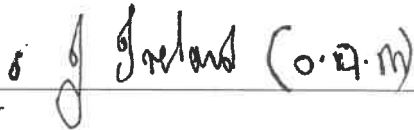
Stephanie Lowe
Name of Witness
BLOCK LETTERS

Unit 5C 2 Distillery Drive, Pyrmont 2009
Address of Witness
BLOCK LETTERS



Executed as a deed by The Catholic Club Ltd.

Executed as a deed by **The Catholic Club Ltd**
ABN 35 000 982 436 in accordance with
section 127 of the *Corporations Act 2001* (Cth):



Director

John Ireland

Name of Director
BLOCK LETTERS



*Director/*Company Secretary

BRIAN K PATTERSON

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate