

Memorandum of Understanding

between

ST JOHNS PARK BOWLING CLUB LIMITED

ABN 65 823 421 682

and

BALMAIN BOWLING CLUB LIMITED

ABN 82 000 091 609

**MEMORANDUM OF UNDERSTANDING
BETWEEN PROPOSED AMALGAMATING CLUBS**

DATE: 24th July 2019

PARTIES:

St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682 of 93 Edensor Road, St Johns Park NSW 2176 (SJPBC)

and

Balmain Bowling Club Limited ACN 000 091 609 ABN 82 000 091 609 of 156 Darling Street, Balmain NSW 2041 (Balmain)

BACKGROUND

- A. SJPBC is a registered club under the Registered Clubs Act and holds a club licence (No: LIQC300230481) under the Liquor Act in NSW.
- B. Balmain is a registered club under the Registered Clubs Act and holds a club licence (No: LIQC300225445) under the Liquor Act in NSW.
- C. SJPBC called for expressions of interest for amalgamation from other registered clubs on 18 March 2019 by way of ClubsNSW Circular (19-026).
- D. Balmain submitted an expression of interest in pursuing an amalgamation with SJPBC.
- E. Both SJPBC and Balmain are proposing to amalgamate in accordance with the provisions of the Corporations Act, Liquor Act, Registered Clubs Act, including any amendments made to these Acts, and subject to the approval of its members and subject to the approval of the Independent Liquor and Gaming Authority.
- F. In accordance with clause 7(1) of the Regulation, the registered clubs proposing to amalgamate must enter into a Memorandum of Understanding with respect to the proposed amalgamation.
- G. In accordance with clause 7(2) of the Regulation, the Memorandum of Understanding must state each club's position regarding the proposed amalgamation and deal with (or include) matters specified in clauses 7(2)(a) to 7(2)(g). However, there are other matters of importance to the clubs that are also included in this Memorandum.

- H. It is proposed that this amalgamation will be effected under section 17AB(2)(b) by the transfer, under section 60 of the Liquor Act, of the Club Licence of Balmain (**the dissolving club**) to SJPBC (**the continuing club**).
- I. SJPBC and Balmain enter into this Memorandum of Understanding to state each club's position regarding the proposed amalgamation, as required by clause 7 of the Regulation.

1. DEFINITIONS

1.1 Definitions

The following definitions apply in the Recitals and this Memorandum of Understanding (**Memorandum**) unless the context requires otherwise:

Amalgamated Club means SJPBC as the parent/continuing club after Completion of the Amalgamation.

Amalgamation means the amalgamation of the Clubs in accordance with this Memorandum, the Registered Clubs Act, the Liquor Act and the Corporations Act.

Amalgamation Application means the provisional application for the transfer of Balmain's Licence to SJPBC pursuant to sections 60(6) and (7) of the Liquor Act by Balmain's Secretary and SJPBC's CEO.

Amalgamation Completion means the day on which all of:

- (a) the Assets and Club Licence of Balmain are transferred to SJPBC; and
- (b) the liabilities of Balmain are paid by, or transferred to, SJPBC,

in accordance with clause 19.

Assets means the Real Property and Balmain Premises and all of the goodwill, personal property, plant, equipment, fixtures and fittings, stock in trade, intellectual property, fourteen (14) gaming machines and fifteen (15) gaming machine entitlements, cash at hand and cash at bank and includes the assets specified in the Schedule.

Authority means the Independent Liquor and Gaming Authority of NSW.

Balmain means Balmain Bowling Club Limited ACN 000 091 609 ABN 82 000 091 609 of 156 Darling Street, Balmain NSW 2041.

Balmain Premises means the building comprising the licensed premises of Balmain located on the Real Property and known as 156 Darling Street, Balmain NSW 2041.

Club Licence means a club licence granted or held under section 10 of the Liquor Act.

Corporations Act means the *Corporations Act 2001 (Cth)* including any amendments and regulations made under it.

Deed of Assignment means the Deed of Assignment between Balmain, Telstra Corporation Limited ACN 051 775 556 and Landmark whereby the Lease was assigned from Telstra Corporation Limited ACN 051 775 556 to Landmark.

Final Order means the confirmation of the Order by the Authority pursuant to Section 60(8) of the Liquor Act.

Financially Viable means a finding that the trading at Balmain Premises is financially viable after assessment by an independent company auditor or accountant appointed by the Amalgamated Club for this purpose.

Landmark means Landmark Dividend (Australia) Pty Ltd ACN 166 645 503 c/- of Seed Outsourcing, Level 7, 122 Arthur Street, North Sydney NSW 2060.

Lease means the lease between Balmain and Telstra Corporation Limited ACN 051 775 556 dated 6 September 2014 (registered number AJ200088) or any lease that comes into existence on the execution of the options contained in registered lease AJ200088 in respect of Part of the Real Property comprising Auto Consol 504-200 (Lots 13-14 DP396 and Lot 1 DP1100877).

Liabilities means all liabilities, obligations, losses, damages, outgoing, costs and expenses of Balmain (by whatever description) whether or not presently known and whether arising before or after the date of this Memorandum including all necessary or reasonably incurred costs and expenses in proceeding to Amalgamation Completion and subsequent dissolution, and including all amounts payable to employees of Balmain who do not accept employment with SJPBC, except for loans to directors referred to in clause 4.1(c).

Liquidator means a liquidator to be:

- approved by SJPBC (such approval not to be unreasonably withheld); and
- to be approved by the Authority to act as a Liquidator of Balmain.

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

Order means the provisional approval of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act.

Parent Club means SJPBC.

Real Property means Balmain's land located the premises at 156 Darling Street, Balmain NSW 2041 comprising Lot 12 Sec B DP 396, Auto Consol 504-200 (Lot 13 - 14 Sec B DP 396 and Lot 1 DP 1100877), Auto Consol 508-111 (Lot 16 Sec B DP 396 and Lot 2 DP 1100877).

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

Regulation means the *Registered Clubs Regulation 2009 (NSW)*.

SJPBC means St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682 of 93 Edensor Road, St Johns Park NSW 2176.

2. CONDITIONS PRECEDENT

- 2.1 Amalgamation Completion is subject to and conditional upon each of the following:
- (a) Balmain or SJPBC obtaining consent to the Amalgamation, including the transfer of Real Property from Balmain to SJPBC, from Landmark in accordance with clause 8(c) of the Deed of Assignment;
 - (b) Balmain's members passing the ordinary resolution approving in principle the Amalgamation in accordance with Section 17AEB(d) of the Registered Clubs Act and clause 3.9(b) and (c);
 - (c) the Authority not imposing any conditions on the Amalgamated Club that are more onerous or materially adverse beyond those currently contained in Balmain's Club Licence;
 - (d) SJPBC being satisfied of the results of its due diligence under clause 3.10(a);
 - (e) Balmain being satisfied of the results of its due diligence under clause 3.10(b);
 - (f) the Authority giving provisional approval of the Amalgamation Application under section 60(7) of the Liquor Act; and
 - (g) the Authority transferring Balmain's Club Licence to SJPBC pursuant to section 60(6) of the Liquor Act which transfer is to occur on Amalgamation Completion.
- 2.2 If the conditions precedent are not satisfied within 12 months of the date of this Memorandum then either party may terminate this Deed by notice given not less than 21 days to the other party.

3. EACH CLUB'S POSITION IN RELATION TO DIVISION 1A OF PART 2 OF THE REGISTERED CLUBS ACT AND SECTION 60 OF THE LIQUOR ACT 2007 AND THE AMALGAMATION

- 3.1 The proposed amalgamation will involve the continuation of SJPBC as the Amalgamated Club and the dissolution of Balmain.
- 3.2 The Amalgamated Club and continuing club will be SJPBC.
- 3.3 The dissolving club will be Balmain.
- 3.4 Upon Amalgamation Completion:
- (a) the Club Licence of Balmain (No: LIQC300225445) will be transferred to SJPBC; and
 - (b) the Assets and liabilities of Balmain will be transferred to SJPBC.
- 3.5 The premises of the Amalgamated Club are proposed to be:
- (a) SJPBC's current premises at:
 - (i) St Johns Park;

- (ii) Tuncurry;
 - (iii) Wallacia Bowling Club; and
 - (iv) Wallacia Golf Club; and
 - (b) the Balmain Premises.
- 3.6 SJPBC agrees that prior to Amalgamation Completion it will:
- (a) invite all full members of Balmain to become full members of SJPBC as the Amalgamated Club; and
 - (b) at the meeting held by SJPBC to pass a resolution approving the Amalgamation in principle and authorising the making of the Amalgamation Application, ask the members of SJPBC to consider, and if thought fit, to pass a resolution to amend the constituent documents of SJPBC, (if considered necessary) with effect from Amalgamation Completion, to add the following new classes of membership:
 - (i) "Balmain Bowling Full Playing Members", who will have the same rights and privileges as SJPBC Full Playing members (except the right to nominate or second any person for election to the Board, be elected or appointed to the Board of SJPBC, vote on any special resolution or take part in any reward or payment scheme applicable to selected SJPBC Full Playing members); and
 - (ii) "Balmain Bowling Life Members" and "Balmain Bowling Club Members", who will have the same rights and privileges as SJPBC Club members.
- 3.7 Those persons who are Life members of Balmain as at the date of this Memorandum will be identified as Balmain Bowling Club Life Members in the Amalgamated Club's records and will continue to have the rights of Life Membership conferred upon them but only in relation to the Balmain Premises.
- 3.8 The Amalgamation will be subject to the approval of:
- (a) the ordinary members of each of Balmain and SJPBC at separately convened General Meetings; and
 - (b) the Authority.
- 3.9 The process for the Amalgamation will be as follows:
- (a) The parties entering into this Memorandum.
 - (b) The members of Balmain being asked to:
 - (i) approve the Amalgamation; and
 - (ii) approve the clubs making the Amalgamation Application,at a general meeting of the ordinary members and life members of Balmain.
 - (c) The members of SJPBC being asked to:

- (iii) approve the Amalgamation; and
- (iv) approve the clubs making the Amalgamation Application,
at a general meeting of the ordinary members and life members of SJPBC.
- (d) The general meetings referred to in clauses 3.9(b) and (c) will be called and held in the manner referred to in clause 14 below.
- (e) At the meeting of SJPBC referred to in 3.9(c) the members of SJPBC will (if considered necessary) be asked to consider, and if thought fit, pass a special resolution to amend the Constitution of SJPBC (with effect from Amalgamation Completion) to give effect to clause 3.6(b).
- (f) The Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 15 below.
- (g) After the Order is made by the Authority all members of Balmain, who are not already members of SJPBC, will be invited to become ordinary members of SJPBC.
- (h) On Amalgamation Completion:
 - (i) all of the Assets and Liabilities of Balmain are transferred to SJPBC; and
 - (ii) all members of Balmain who have accepted the invitation to become ordinary members of SJPBC will become members of the Amalgamated Club.
- (i) From Amalgamation Completion the Amalgamated Club will be available to all members of the Amalgamated Club.
- (j) After Amalgamation Completion, SJPBC will continue as the body corporate of the Amalgamated Club.

3.10 Due Diligence

- (a) SJPBC may, at its own expense, undertake a due diligence review of Balmain's business and assets including its financial position and operations.
- (b) Balmain may, at its own expense, undertake a due diligence review of SJPBC's business and assets including its financial position and operations.
- (c) Balmain will, if required, provide to SJPBC a list of information (including, but not limited to, details of all Balmain's debts and liabilities) and will also provide reasonable assistance to SJPBC in order for SJPBC to properly carry out and complete the due diligence review.

4. SJPBC'S UNDERTAKINGS

4.1 SJPBC undertakes:

- (a) subject to Balmain agreeing to enter into formal documentation providing security to SJPBC as considered reasonably necessary by SJPBC, to inject two hundred thousand dollars (\$200,000.00) into the business of Balmain within 7 days from the date of execution of this Memorandum by the parties;
- (b) following Amalgamation Completion, to spend four million dollars (\$4,000,000.00) in capital investment including renovations to the Balmain Premises over a ten (10) year period from Amalgamation Completion; and
- (c) to repay, in full on the date of the Order, to directors who have loaned monies to Balmain, subject to the provision of documentary evidence satisfactory to SJPBC, those loan monies.

5. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE DISSOLVING CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THOSE PREMISES AND FACILITIES – [CLAUSE 7(2)(A) OF THE REGISTERED CLUBS REGULATION]

- 5.1 The Real Property and the Balmain Premises are owned by Balmain.
- 5.2 The Amalgamated Club will operate from the following premises:
 - (a) 93 Edensor Road, St Johns Park NSW 2176;
 - (b) 21 Parkes Street, Tuncurry NSW 2428;
 - (c) 1 Roma Avenue, Wallacia New South Wales 2745;
 - (d) 13 Park Road, Wallacia New South Wales 2745; and
 - (e) the Balmain Premises.
- 5.3 The Board of Directors of SJPBC will be the governing body of the Amalgamated Club.
- 5.4 The SJPBC Chief Executive Officer will be the Chief Executive Officer of the Amalgamated Club.

Bowling Greens

- 5.5 Both SJPBC and Balmain agree that:
 - (a) SJPBC intends to provide lawn bowling at the Balmain Premises for at least ten (10) years from the date of the Order; and
 - (b) after five (5) years from the date of the Order, the Amalgamated Club's Board may, following consultation with the Advisory Committee, review the operations of the Balmain Premises if the Balmain Premises are not Financially Viable.

Advisory Committee

- 5.6 SJPBC and Balmain agree that, as and from the date of the Order, the Board of SJPBC shall form a committee (**Advisory Committee**) in accordance with the terms of clauses 5.7 to 5.14 below.
- 5.7 The initial Advisory Committee shall consist of the following four (4) directors of Balmain:
- (a) John Blunt;
 - (b) Matthew Hearne;
 - (c) Paul Cooper; and
 - (d) Ross Craig.
- 5.8 The initial Advisory Committee will sit until the first election of the Advisory Committee in 2021.
- 5.9 From the first election of the Advisory Committee in 2021, the Advisory Committee shall consist of three (3) members all of whom will be Balmain Bowling Full Playing Members and shall comprise:
- (a) the Advisory Committee Chairperson who will be appointed by the Board of Directors of SJPBC after seeking Expressions of Interest from Balmain Bowling Full Playing Members; and
 - (b) two (2) Balmain Bowling Full Playing Members elected by Balmain Bowling Full Playing Members of Balmain in such manner as determined by the Board of SJPBC by way of By-Law.
- 5.10 The position of Advisory Committee Chairperson will be open to Expressions of Interest every two (2) years and will be selected by the Board of SJPBC in accordance with the provisions of clause 5.9
- 5.11 The other two (2) members will be elected by Balmain Bowling Club Full Members from amongst the Balmain Bowling Club Full Members every two (2) years.
- 5.12 The Advisory Committee will be required to meet monthly and forward any recommendations and progress reports to the SJPBC Board.
- 5.13 Subject at all times to the approval of the Board of SJPBC, it is envisaged that the Advisory Committee will:
- (a) assist with the management of bowls activities at the Balmain Premises;
 - (b) make recommendations about the Balmain Premises for consideration by the Board of SJPBC; and
 - (c) provide advice to the CEO and Board of the Amalgamated Club in relation to bowling activities at the Balmain Premises.
- 5.14 The Advisory Committee:
- (a) is subject to the overall control and direction of the Board and management of the Amalgamated Club;

- (b) will have no function in the governance or management of the Amalgamated Club or the Balmain Premises; and
- (c) may be wound up at any time if determined appropriate by the Board of the Amalgamated Club.

6. A LIST OF TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB – [CLAUSE 7(2)(B) OF THE REGISTERED CLUBS REGULATION]

- 6.1 The Amalgamated Club will preserve and maintain the traditions and ethos of Balmain at the Balmain Premises.
- 6.2 The Amalgamated Club will maintain the appropriate facilities and amenities for responsible gaming and responsible service of alcohol, dining facilities and members' activities at the Balmain Premises.

7. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB – [CLAUSE 7(2)(C) OF THE REGISTERED CLUBS REGULATION]

- 7.1 SJPBC intends that the Amalgamated Club will continue to trade the Balmain Premises for at least five (5) years from Amalgamation Completion.
 - 7.2 From the fifth anniversary of Amalgamation Completion, SJPBC will continue to trade the Balmain Premises on a year to year basis subject to the Balmain Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
 - 7.3 It is the intention of SJPBC to operate the Amalgamated Club and Balmain Premises in accordance with this clause 7.
 - 7.4 The Amalgamated Club will trade from:
 - (a) the current premises of SJPBC at:
 - (i) 93 Edensor Road, St Johns Park NSW 2176;
 - (ii) 21 Parkes Street, Tuncurry NSW 2428;
 - (iii) 1 Roma Avenue, Wallacia New South Wales 2745; and
 - (iv) 13 Park Road, Wallacia New South Wales 2745; and
 - (b) the Balmain Premises.
 - 7.5 The future direction of the Amalgamated Club generally will be subject to the overall strategic plan of the Amalgamated Club and its finances.
- 8. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED – [CLAUSE 7(2)(D) REGISTERED CLUBS REGULATION]**
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- 8.1 All current employees of Balmain will initially be offered continuing employment by the Amalgamated Club.

- 8.2 Following Amalgamation Completion, the Balmain business will be monitored and reviewed and changes in the structure of the staffing and roles performed within the business may be required to ensure the Amalgamated Club can meet the required level of service standards and at the same time remain Financially Viable.
- 8.3 As a part of the Amalgamation transition process, all Balmain staff will be given the opportunity to discuss with SJPBC their concerns and provide input into the business through SJPBC's existing human resources department. Development of staff will be offered, if required.
- 8.4 Balmain Premises staff will be given access to the SJPBC group staff rewards program, collective union agreement, if requested and agreed, as well as the in-house training department.
- 8.5 Fundamental administrative functions including payroll, accounts, finance, marketing, gaming and human resources will be conducted from the SJPBC St Johns Park premises. There will be no St Johns Park premises cost allocation to Balmain Premises.
- 8.6 Employees that do not accept an offer of employment with the Amalgamated Club will be terminated on Amalgamation Completion and those employees will be entitled to be paid the balance of their accrued entitlements by Balmain.
- 8.7 SJPBC will recognise the amount of all employee entitlements, including amounts for accrued sick leave, annual leave and long service leave of those employees that accept an offer of employment with the Amalgamated Club.
9. **INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE DISSOLVED CLUB – [CLAUSE 7(2)(E) OF THE REGISTERED CLUBS REGULATION]**
 - (i) **ANY CORE PROPERTY OF THE CLUB**
 - (ii) **ANY CASH OR INVESTMENTS HELD BY THE CLUB**
 - (iii) **ANY GAMING MACHINE ENTITLEMENTS ALLOCATED UNDER THE GAMING MACHINES ACT 2001 IN RESPECT OF THE PREMISES OF THE CLUB**

Core Property

- 9.1 The Real Property and the Balmain Premises are "core property" as defined in section 41E of the Registered Clubs Act.

Cash and Investments

- 9.2 The cash and investments of Balmain will form part of the Assets and will be transferred to the Amalgamated Club in accordance with this Memorandum.

Gaming Machine Entitlements

- 9.3 The gaming machine entitlements held by the Balmain upon amalgamation will be an Asset of the Amalgamated Club and will be transferred to the Amalgamated Club.
- 9.4 SJPBC expects and requires that the Balmain will:
- (a) be the holder of fifteen (15) transferable gaming machine entitlements at the date of this Memorandum but will still be held by the Balmain on Amalgamation Completion;
 - (b) will continue to also be the owner of fourteen (14) gaming machines at Amalgamation Completion; and
 - (c) have a gaming machine threshold of fifteen (15) at Amalgamation Completion.

10. THE RISKS OF NOT MEETING ANY SPECIFIED INTENTIONS REGARDING THE PRESERVATION OF THE CORE PROPERTY OF THE DISSOLVED CLUB AND HOW THOSE RISKS ARE TO BE ADDRESSED IF REALISED [CLAUSE 7(2)(E1) OF THE REGISTERED CLUBS REGULATION]

- 10.1 The continuation of the Balmain Premises after five (5) years from the date of the Order, is subject, on a year to year basis, to the Balmain Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 10.2 Despite clause 10.1, SJPBC is confident that it will be able to improve and operate the Balmain Premises in a manner consistent with the requirements of clause 10.1 after that five (5) years.
- 10.3 If the Balmain Premises are not operating to the requirement after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Balmain Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability to play lawn bowls for a period of ten (10) years.
- 10.4 Accordingly, these are the risks to the core property that SJPBC and Balmain acknowledge and agree.

11. ANY AGREEMENT UNDER SECTION 17AI (1) OF THE REGISTERED CLUBS ACT RELATING TO THE PERIOD DURING WHICH THE MAJOR ASSETS OF THE DISSOLVED CLUB MUST NOT BE DISPOSED OF [CLAUSE 7(2)(E2) OF THE REGISTERED CLUBS REGULATION]

- 11.1 SJPBC and Balmain have not made any agreement altering the requirements of section 17AI(1) of the Registered Clubs Act.
- 11.2 SJPBC and Balmain have agreed that the Amalgamated Club will operate the Balmain Premises for at least five (5) years from Amalgamation Completion.

12. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE DISSOLVING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE DISSOLVING CLUB- [CLAUSE 7(2)(F) OF THE REGISTERED CLUBS REGULATION]

- 12.1 SJPBC intends to continue to trade the Balmain Premises indefinitely and in any case at least for a period of five (5) years after Amalgamation Completion.
- 12.2 The continuation of the Balmain Premises after five (5) years from the date of the Order, is subject, on a year to year basis, to the Balmain Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 12.3 If the Balmain Premises are not operating to that requirement after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Balmain Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability to lawn bowls for a period of ten (10) years.
- 12.4 Following the ten (10) year period referred to in clause 12.3, if the Balmain Premises is not Financially Viable, the Board of the Amalgamated Club will be entitled to determine whether to cease trading and dispose of the Balmain Premises.
- 12.5 For the purposes of clause 6(2)(f) of the Regulation:
- (a) the objects of the Balmain will cease to have effect on dissolution or winding up of that club; and
 - (b) on and from Amalgamation Completion, the objects of SJPBC will be the objects of the Amalgamated Club.

13. AN AGREED PERIOD OF TIME BEFORE ANY ACTION REFERRED TO IN CLAUSE 7(2)(F) CAN BE UNDERTAKEN BY THE AMALGAMATED CLUB- [CLAUSE 7(2)(G) OF THE REGISTERED CLUBS REGULATION]

- 13.1 SJPBC intends to continue to trade the Balmain Premises indefinitely and in any case for a period of at least five (5) years after Amalgamation Completion.
- 13.2 The continuation of the Balmain Premises after five (5) years from the date of the Order, is subject, on a year to year basis, to the Balmain Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 13.3 If the Balmain Premises are not operating to the requirement after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Balmain Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability to lawn bowls for a period of ten (10) years.
- 13.4 Following the ten (10) year period referred to in clause 13.3, if the Balmain Premises is not Financially Viable, the Board of the Amalgamated Club will be entitled to determine whether to cease trading and dispose of the Balmain Premises.

13.5 The members of the Amalgamated Club may amend the objects of the Amalgamated Club at any time, subject to the requirements of the Corporations Act, the Registered Clubs Act and the constituent documents of the Amalgamated Club.

14. CALLING OF MEETINGS AND ADMISSION OF BALMAIN MEMBERS TO MEMBERSHIP OF SJPBC

- 14.1 Balmain will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle, the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act; and
 - (b) approve the Clubs making the Amalgamation Application.
- 14.2 The meeting referred to in clause 14.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 14.3 SJPBC will call a general meeting of its ordinary members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act;
 - (b) approve the Clubs making the Amalgamation Application; and
 - (c) amending the Constitution of SJPBC as provided in clause 14.5.
- 14.4 The meeting referred to in clause 14.3 will be held as soon as reasonably practicable after Balmain passes the resolution referred to in clause 14.1 (or at such prior time as may be determined by SJPBC in its absolute discretion).
- 14.5 At the general meeting of SJPBC referred to in clause 14.3 the members of SJPBC will be asked to consider and if thought fit pass a special resolution to amend the Constitution of SJPBC to insert new membership categories in conformity with clause 3.9(e) above.
- 14.6 The Board of SJPBC will, subject to the general meeting of SJPBC referred to in clause 14.3 passing the special resolution, introduce By-Laws to give effect to the provisions of clause 3.9(e).
- 14.7 All members of Balmain who apply to become members Balmain Bowling Full Playing Members or Balmain Bowling Club Members of SJPBC will, subject to meeting the membership eligibility criteria for those classes of membership, be admitted to membership of SJPBC in those classes of Ordinary membership.
- 14.8 Subject to:
- (a) a person being a Life Member of Balmain at the date of this Memorandum, those persons will be able to apply for Balmain Bowling Life Membership of SJPBC; or

- (b) meeting the membership eligibility criteria, all members of Balmain will be able to apply for Balmain Full Playing Membership or Balmain Club Membership of SJPBC,

in the manner referred to in clauses 14.9 and 14.10.

- 14.9 Prior to Amalgamation Completion, SJPBC will forward to each member of Balmain, who is not already a member of SJPBC, a written invitation to become a member either a Balmain Bowling Life Member, Balmain Bowling Full Playing Member or Balmain Bowling Club Member of SJPBC.
- 14.10 Any member of Balmain who meets the relevant eligibility criteria, accepts the invitation and agrees in writing to be bound by the Constitution of SJPBC will (subject to the name of that person being displayed on the noticeboard of SJPBC for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by SJPBC) be elected by a resolution of the Board of SJPBC to Balmain Bowling Life Membership, Balmain Bowling Full Playing Membership or Balmain Bowling Club Membership of SJPBC with effect from the date of Amalgamation Completion.
- 14.11 Subject to clause 14.12, the resolution which will be submitted to the meetings referred to in this clause 14 will be as follows:

ORDINARY RESOLUTION

"That the members hereby approve in principle:

- 1. *The amalgamation of St Johns Park Bowling Club ACN 001 067 241 with Balmain Bowling Club Limited ABN 82 000 091 609, such an amalgamation to be effected by:*
 - (a) *the continuation of St Johns Park Bowling Club ACN 001 067 241 (as the amalgamated club) and the dissolution of Balmain Bowling Club Limited ABN 82 000 091 609; and*
 - (b) *the transfer of the club licence of Balmain Bowling Club Limited ABN 82 000 091 609 to St Johns Park Bowling Club ACN 001 067 241; and*
- 2. *The making of an application to the Authority for the transfer of the club licence of Balmain Bowling Club Limited ABN 82 000 091 609 to St Johns Park Bowling Club ACN 001 067 241 for the purposes of such amalgamation."*

- 14.12 The resolution referred to in clause 14.1 to be considered at the meeting of Balmain may provide that it is subject to SJPBC passing the:

- (a) resolutions referred to in clauses 14.3; and
- (b) if necessary, the special resolution to amend the SJPBC Constitution as foreshadowed by clause 14.5 of this Memorandum.

15. AMALGAMATION APPLICATION TO THE AUTHORITY

- 15.1 As soon as reasonably practicable after the meetings referred to in clauses 14.1 and 14.3, Balmain and SJPBC must forward to the lawyers for SJPBC such of the following documents relevant to it, including but not limited to:
- (a) a true copy of the Notice provided to members of each Club under clause 5 of the Regulation;
 - (b) a true copy of the Notice of General Meeting issued by each Club under clause 14 of this Memorandum;
 - (c) copies of the financial reports of each Club for the last three (3) financial years;
 - (d) a true copy of the minutes of the General Meeting of each Club which will include the number of members present at the meeting and whether or not the resolution was passed;
 - (e) true copies of the registers of directors' disclosures made in accordance with the Registered Clubs Accountability Code;
 - (f) a true copy of the advertisement in which SJPBC called for expressions of interest;
 - (g) a copy of the Expression of Interest submitted by Balmain to SJPBC; and
 - (h) such other documents requested by the lawyers for SJPBC to give effect to the Amalgamation Application.
- 15.2 SJPBC and its lawyers will prepare and file the Amalgamation Application. SJPBC will provide Balmain with a copy of the Amalgamation Application.

Balmain will co-operate with SJPBC and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the approved Secretary of Balmain to sign the Amalgamation Application if required to do so.

16. ACCESS TO RECORDS

- 16.1 From the date of this Memorandum and on a confidential basis, Balmain will provide to SJPBC at all reasonable times access to such records and Assets at and relating to the Real Property and Balmain Premises and other information and material reasonably required by SJPBC, including for the purpose of any due diligence referred to in clause 3.10.
- 16.2 From the date of this Memorandum and on a confidential basis, SJPBC will provide to Balmain at all reasonable times access to the SJPBC records and other information and material reasonably required by Balmain, including for the purpose of any due diligence referred to in clause 3.10.

17. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 17.1 Balmain warrants to SJPBC that from the date of this Memorandum to the date of Amalgamation Completion, Balmain will:

- (a) Carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of \$5,000.00 plus GST without the prior approval of SJPBC's CEO or their delegate.
- (b) Keep the Assets of Balmain insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured.
- (c) Carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability.
- (d) Ensure that Balmain's Board or Board representative has regular discussions with SJPBC's CEO regarding the management of the Balmain Premises with the object of:
 - (i) providing for an orderly transfer of the management and operations of Balmain to SJPBC on the date of Completion of the Amalgamation; and
 - (ii) reducing losses, increasing profitability and achieving efficiencies and cost savings at the Balmain Premises.
- (e) Provide the SJPBC CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Balmain Premises.
- (f) Not do anything which may damage the goodwill of its business or that of SJPBC.
- (g) Not without the prior written consent of SJPBC:
 - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (ii) except in the usual and routine conduct of its operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
 - (iii) otherwise than in the usual and routine conduct of its operations, dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of Balmain's Assets;
 - (iv) employ any employee;
 - (v) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (vi) seek to borrow or borrow money from any third party except from SJPBC; or

- (vii) engage in discussions or negotiations with anyone other than SJPBC concerning a possible amalgamation and/or the sale of all or any part of Balmain's Assets, and Balmain must advise SJPBC of any solicitation by any third party in respect of any such discussion or negotiation.
- 17.2 Each of Balmain's warranties contained in clause 17.1 remain in full force and effect notwithstanding Amalgamation Completion.
- 17.3 As an inducement to Balmain to enter into this Memorandum, SJPBC represents and warrants as essential conditions that:
 - (a) SJPBC is a company duly incorporated under the provisions of the *Corporations Act 2001 (Cth)* in good standing with the Australian Securities and Investment Commission;
 - (b) except as expressly stated in this Memorandum, no other corporate act or proceeding on the part of SJPBC or its members or directors is necessary to authorise this Memorandum or the transactions contemplated;
 - (c) neither the signing of this Memorandum nor the consummation of the proposed Amalgamation will conflict with or constitute a default under any term or provision of the Constitution of SJPBC or of any agreement, arrangement, commitment, understanding or restriction of any kind to which SJPBC is a party or by which SJPBC is bound nor any law;
 - (d) there are no Claims (for amounts in aggregate in excess of \$50,000) or investigations pending or threatened by or against SJPBC of any nature; and
 - (e) SJPBC is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum.
- 17.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, SJPBC may terminate this Memorandum and the Amalgamation at any time prior to Amalgamation Completion if there is any material breach of any of Balmain's warranties set out in clause 17.1.
- 17.5 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, Balmain may terminate this Memorandum and the Amalgamation at any time prior to Amalgamation Completion if there is any material breach of any of SJPBC's warranties set out in clause 17.3.
- 17.6 If, before Amalgamation Completion:
 - (a) an event occurs which has or may have a material effect on the profitability of the Balmain Premises or value of any of the Assets;
 - (b) an event occurs which makes any warranty, or any of the other warranties made or given by Balmain untrue or misleading;
 - (c) any Claim of any nature is threatened or asserted by or against Balmain; or

- (d) there is any material adverse change in the condition (financial or otherwise) or prospects of Balmain or of its operations,

then Balmain must within a reasonable time on becoming aware of the circumstances, give notice to SJPBC fully describing the circumstances.

- 17.7 Title to, property in and risk of Balmain's Assets remain solely with Balmain until such time as they are passed to the Amalgamated Club in accordance with clause 19.
- 17.8 For the avoidance of doubt it is acknowledged that no liability is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the relevant club.
- 17.9 Subject to Balmain complying with clauses 17.1 and 17.5, SJPBC warrants to Balmain that from the date the Assets of Balmain are transferred to SJPBC, SJPBC will:
 - (a) accept full responsibility for Balmain's Debts and Liabilities; and
 - (b) indemnify and keep indemnified the directors of Balmain in respect of any Claims made against them by creditors of the Balmain.

18. TERMINATION

- 18.1 This Memorandum may be terminated by either Balmain or SJPBC if they are not satisfied with the outcome of the due diligence referred to in clause 3.10 of this Memorandum.
- 18.2 This Memorandum may be terminated by SJPBC if the members of Balmain do not pass the resolutions referred to in clause 14.1 of this Memorandum.
- 18.3 This Memorandum may be terminated by Balmain or SJPBC if the members of SJPBC do not pass the resolutions referred to in clause 14.3 of this Memorandum.
- 18.4 This Memorandum may be terminated by either party without cause on the giving of ten (10) business days' notice to the other party.
- 18.5 This Memorandum may be terminated immediately by any party if the Authority declines to approve the Amalgamation Application and the party reasonably determines that it is unlikely the Authority will grant the Amalgamation Application at any future date.
- 18.6 The termination of this Memorandum on any ground specified in this clause 18 shall (except as specified in clause 17.4 and 17.5) not give rise to any right of the non-terminating party to claim any costs, losses or damages in connection with, arising from or consequential on the termination howsoever arising.

19. AMALGAMATION COMPLETION

- 19.1 As soon as practicable after the Order, but subject to the Final Order, Balmain must ensure the Assets, Debts and Liabilities of Balmain are transferred to SJPBC Club (less the amount referred to in clause 20.2 for the purposes of liquidating Balmain in the manner referred to in clause 20).

- 19.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 19.1 to occur on the date of the Final Order.
- 19.3 For the purposes of clause 19.1, Balmain must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to SJPBC with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:
- (a) all real property;
 - (b) all poker machines and all poker machine entitlements;
 - (c) all contract rights including hire purchase agreements;
 - (d) all intellectual property rights; and
 - (e) all physical assets, furniture and fittings and stock in trade, owned or entered into by the Balmain.
- 19.4 The transfers and assignments referred to in clause 19.3 must be executed by Balmain and/or Balmain and held in escrow by SJPBC pending Completion of the Amalgamation.

20. DISSOLUTION OF BALMAIN

- 20.1 As soon as practicable after Amalgamation Completion, Balmain must ensure that it is liquidated. In order to facilitate the liquidation, as soon as practical after Amalgamation Completion, the Balmain Board must:
- (a) do all things necessary to liquidate Balmain which may include calling a general meeting of Balmain's members at which such members will consider and if thought fit, pass all the appropriate resolutions to:
 - (i) liquidate Balmain;
 - (ii) appoint the Liquidator (approved by SJPBC) for the purpose of liquidation; and
 - (iii) approve of any remaining assets of the Balmain after liquidation, being transferred to SJPBC.
 - (b) thereafter permit Balmain to be liquidated and after payments of any remaining debts and liabilities of Balmain resulting from the liquidation, permit the Liquidator to transfer any remaining assets of the Balmain to SJPBC.
- 20.2 For the purpose of clause 20.1(a)(ii), Balmain agrees to indemnify Balmain and SJPBC for the costs of the Liquidator and the liquidation of Balmain.
- 20.3 Each of the parties warrants to the other 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 the matters referred to this clause 20.

21. CONFIDENTIALITY

- 21.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 21.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 21.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 21.4 This clause 21 survives completion of this Memorandum.

22. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 22.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 22.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- 22.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.
- 22.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 22.2 or any extended period agreed in writing between the parties as to:
 - (a) the dispute resolution technique or procedures to be adopted;
 - (b) the timetable for steps in those procedures; and
 - (c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,
 - (d) the parties must mediate the dispute in accordance with the mediation rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.
- 22.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 22.2 a party which has complied with the provisions of this clause 22 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- 22.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 22 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

23. COSTS

Each party shall pay its own costs of and in relation to the preparation, execution and completion of this Memorandum.

24. STAMP DUTY

- 24.1 The parties acknowledge that section 65(3) of the *Duties Act 1997* (NSW) provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- 24.2 Despite the exemption from duty referred to in clause 24.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by SJPBC.

25. GENERAL

25.1 Further assurances

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

25.2 Entire agreement

This Memorandum and any other deed or agreement entered into pursuant to this Memorandum:

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

25.3 Counterparts

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

25.4 Variation

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

NOTES

This Memorandum is to be:

1. Made available to the ordinary members of the Balmain and SJPBC at least 21 days before any meeting of the members of each club referred to in clause 14 for the purpose of voting on whether to approve the proposed amalgamation;

2. Made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting contemplated by clause 14 of this Memorandum is held; and
3. Be lodged with any Amalgamation Application under section 60 of the Liquor Act 2007 to transfer the Club Licence held by the Balmain to SJPBC.

EXECUTED BY:

Executed as a deed by **St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director

PAUL NORRIS

Name of Director

BLOCK LETTERS



*Director/*Company Secretary

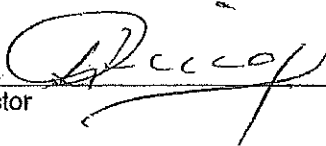
DAVID MARSH

Name of Director/*Company Secretary

BLOCK LETTERS

*please strike out as appropriate

Executed as a deed by **Balmain Bowling Club Limited ABN 82 000 091 609** in accordance with section 127 of the *Corporations Act 2001* (Cth)

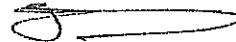


Director

ROSS CRAIG

Name of Director

BLOCK LETTERS



Director

JOHN N. BROWN

Name of Director

BLOCK LETTERS

ASSETS

- o All assets located at the Real Property and Balmain Premises and used in connection with the business of Balmain at the Balmain Premises including, without limitation:
 - o cash at hand,
 - o fourteen (14) gaming machines
 - o fifteen (15) gaming machine entitlements
 - o debtors
 - o creditors
 - o intellectual property rights
 - o goodwill
 - o insurance policies
 - o physical assets including furniture and fittings
 - o machinery
 - o plant