

## MEMORANDUM OF UNDERSTANDING

DATED 18th day of February 2016

### PARTIES

**ST. GEORGES BASIN COUNTRY CLUB LIMITED**

**(ABN: 54 000 961 008)**

**AND**

**VINCENTIA GOLF CLUB LIMITED**

**(ABN: 80 000 751 324)**

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<b>CONTENTS</b>	<b>PAGE NUMBER</b>
<b>1. DEFINITIONS AND INTERPRETATIONS</b>	<b>3</b>
<b>2. EACH CLUB’S POSITION REGARDING THE PROPOSED AMALGAMATION [Regulation Clause 7(2)]</b>	<b>6</b>
Condition Precedent	6
Clubs position on amalgamation subject to satisfaction of condition precedent	7
<b>3. THE MANNER IN WHICH the PREMISES AND OTHER FACILITIES OF THE GOLF CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE VICENTIA PREMISES AND FACILITIES [Regulation – Clause 7(2)(a)]</b>	<b>8</b>
<b>4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB [REGULATION – CLAUSE 7(2)(B)]</b>	<b>9</b>
Facilities	9
Competitions and Tournaments	9
Support to Golf Club Sub Clubs	10
ClubGRANTS	10
<b>5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [Regulation – Clause 7(2)(c)]</b>	<b>10</b>
<b>6. THE EXTENT TO WHICH the EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED [Regulation – Clause 7(2)(d)]</b>	<b>11</b>
<b>7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE GOLF CLUB: 1. Any core property; 2. Any cash or investments; 3. Any GAMING machine entitlements [Regulation – Clause 7(2)(e)]</b>	<b>12</b>
<b>8. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE GOLF CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB [REGULATION – CLAUSE 7(2)(F)]</b>	<b>12</b>
<b>9. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB MAY CEASE TRADING FROM THE VICENTIA PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE VICENTIA PREMISES [REGULATION – CLAUSE 7(2)(G)]</b>	<b>14</b>
<b>10. BINDING EFFECT OF MEMORANDUM OF UNDERSTANDING</b>	<b>14</b>
<b>11. CALLING OF MEETINGS</b>	<b>14</b>
<b>12. AMENDMENTS TO CONSTITUTION OF THE BASIN COUNTRY CLUB</b>	<b>15</b>
Admission to membership of the Basin Country Club by members of the Golf Club who are not members of the Basin Country Club	15

Life members of Amalgamated Club	16
<b>13. AMENDMENTS TO THE CONSTITUTION OF THE GOLF CLUB</b>	<b>16</b>
<b>14. THE APPLICATION TO ILGA</b>	<b>16</b>
<b>15. ASSURANCES BY THE GOLF CLUB</b>	<b>17</b>
<b>16. PREPARATION FOR COMPLETION OF THE AMALGAMATION</b>	<b>18</b>
<b>17. ACCESS TO RECORDS</b>	<b>18</b>
<b>18. CONFIDENTIALITY</b>	<b>18</b>
<b>19. DISSOLUTION OF THE GOLF CLUB</b>	<b>18</b>
<b>20. RESOLUTION OF DISPUTES ARISING UNDER THIS DEED OR THE MEMORANDUM OF UNDERSTANDING</b>	<b>19</b>
<b>21. COSTS</b>	<b>19</b>
<b>22. STAMP DUTY</b>	<b>19</b>
<b>23. GENERAL</b>	<b>20</b>
<b>24. TERMINATION</b>	<b>20</b>
<b>25. NOTICES</b>	<b>21</b>
<b>26. ACCESS TO THIS MEMORANDUM OF UNDERSTANDING</b>	<b>21</b>

This Memorandum of Understanding is made on 18<sup>th</sup> February 2016.

## **BETWEEN**

**ST. GEORGES BASIN COUNTRY CLUB LIMITED ABN: 54 000 961 008** of 11 Paradise Beach Road Sanctuary Point NSW 2540 ("**THE BASIN COUNTRY CLUB**")

## **AND**

**VINCENTIA GOLF CLUB LIMITED ABN: 80 000 751 324** of 49 Murray Street Vincentia, 2540 ("**THE GOLF CLUB**")

## **BACKGROUND**

- (A) The Basin Country Club and the Golf Club are both registered licensed clubs pursuant to the RCA and the Liquor Act and companies limited by guarantee pursuant to the Corporations Act.
- (B) In accordance with the Regulation, on 28 April 2015, the Golf Club called for expressions of interest for amalgamation from other registered clubs.
- (C) Pursuant to the Regulation, the Basin Country Club submitted an expression of interest and that expression of interest was accepted by the Golf Club.
- (D) In the proposed Amalgamation, the Basin Country Club is the continuing club for the purposes of the RCA to be the corporate vehicle for the Amalgamated Club.
- (E) Clause 7 of the Regulation requires the Clubs to enter into a Memorandum of Understanding to deal with, or include, the matters contained in clauses 3 to 9 inclusive below, which reflect the matters listed in Clause 7(2) (a) through to 7(2) (g) of the Regulation.
- (F) In accordance with the provisions of the RCA, the Regulation, the Liquor Act, and the Corporations Act, and subject to the approval of the ILGA, the Basin Country Club and the Golf Club propose to amalgamate on the terms set out in this Memorandum of Understanding.

## **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum unless the context otherwise requires:

- (a) "**Amalgamated Club**" means the amalgamated registered club of the Basin Country Club and The Golf Club.
- (b) "**Amalgamated Club CEO**" means the Basin Country Club CEO.
- (c) "**Amalgamation Application**" means the application to the ILGA for the amalgamation of the Clubs pursuant to the RCA and the Liquor Act.
- (d) "**Amalgamation**" means the amalgamation of the Clubs in accordance with this Memorandum, the RCA, the Liquor Act and the Corporations Act.
- (e) "**Assets**" means without limitation all land owned by the Golf Club and all of the goodwill, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and other property belonging to the

Golf Club.

- (f) **“Business Day”** means a day which is not a Saturday, Sunday or public holiday in New South Wales.
- (g) **“Claim”** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature which either Club becomes aware of prior to the Completion of the Amalgamation.
- (h) **“ClubGRANTS”** means the scheme operated pursuant to the ClubGRANTS guidelines approved under Section 16 of the Gaming Machines Tax Act 2001.
- (i) **“Clubs”** means both the Basin Country Club and the Golf Club.
- (j) **“Completion of the Amalgamation”** means that day on which:
  - (i) as referred to in clause 16.1 all of the Assets are transferred to the Basin Country Club and the Basin Country Club becomes entitled to be registered as the registered proprietor of the Vincentia premises;
  - (ii) the club licence held by the Golf Club is transferred to the Basin Country Club pursuant to section 60 of the Liquor Act;
  - (iii) the Basin Country Club accepts responsibility for the debts and contractual obligations of the Golf Club;
  - (iv) the members of the Golf Club become members of the Basin Country Club.
- (k) **“Confidential Information”** includes but is not limited to any document or information that is marked or stated as being confidential and any information or documents that relate to the finances, business plans, members and employees of a party and which is not publicly available and which is acquired by or made available to a party for the purposes of the Amalgamation of the Basin Country Club and the Golf Club including without limitation information obtained during the due diligence referred to in clause 2.
- (l) **“Corporations Act”** means the *Corporations Act 2001 (Commonwealth)*, including any amendments and Regulation made under it.
- (m) **“Gaming Machines Act”** means the *Gaming Machines Act 2002 (NSW)*, including any amendments and Regulation made under it.
- (n) **“ILGA”** means the New South Wales Independent Liquor and Gaming Authority.
- (o) **“Liabilities”** means all Debts, liabilities, obligations, losses, damages, outgoing, costs and expenses of the Golf Club (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 the Golf Club who do not accept employment with the Basin Country Club.

- (p) “**Liquor Act**” means the *Liquor Act 2007 (NSW)*, including any amendments and Regulation made under it.
- (q) “**The Basin Country Club**” means the St. Georges Basin Country Club Limited.
- (r) “**The Basin Country Club Constitution**” means the Constitution of the Basin Country Club.
- (s) “**The Basin Country Club CEO**” means the individual who fulfils the position of Secretary and Chief Executive Officer of the Basin Country Club and the Amalgamated Club.
- (t) “**The Basin Country Club premises**” means licensed premises of the Basin Country Club situated at 11 Paradise Beach Road Sanctuary Point NSW 2540.
- (u) “**The Golf Club**” means the Vincentia Golf Club Limited“
- (v) **RCA**” means the *Registered Clubs Act 1976 (NSW)* including any amendments and Regulation made under it.
- (w) “**Regulation**” means the *Registered Clubs Regulation 2009 (NSW)* including any amendments made under it.
- (x) “**Vincentia premises**” means the licensed premises of the Golf Club situated at 49 Murray Street Vincentia NSW 2540.

1.2 Except to the extent that such interpretation is excluded by or is repugnant to the context, reference to:

- (a) one gender includes the other.
- (b) the singular includes the plural and the plural includes the singular.
- (c) a person includes:
  - (i) an individual, firm, body corporate, partnership, joint venture, unincorporated body or association or any statutory or government body or agency; and
  - (ii) a person’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
- (d) a statute, ordinance, code or other law includes Regulation and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (e) another grammatical form of a defined term or expression has a corresponding meaning.
- (f) this Memorandum of Understanding includes any annexure, exhibit or schedule to this agreement.
- (g) a notice from, consent or approval of a party and agreement between the parties for the purposes of this Memorandum of Understanding means a

written notice, consent, approval or agreement.

- (h) "including" and similar expressions are not words of limitation.
  - (i) "dollars" or "\$" is to Australian currency.
  - (j) an agreement, representation or warranty:
    - (i) in favour of two or more persons is for the benefit of them jointly and each of them individually; and
    - (ii) by two or more persons binds them jointly and each of them individually.
  - (k) a period of time that is calculated from a given day or the day of an act or event is to be calculated exclusive of that day.
  - (l) time is a reference to Sydney time.
  - (m) a document (including this Memorandum of Understanding) includes any novation, variation or replacement of it.
- 1.3 No provision of this Memorandum of Understanding will be construed adversely to a party on the ground, irrespective of whether or not it is the only ground, that the party was responsible for the preparation of this Memorandum of Understanding or the inclusion of a specific provision in this Memorandum of Understanding.
- 1.4 Where an act must be done or period of time expires on a specified day and that day is not a Business Day, the act must be done instead on the next Business Day.
- 1.5 Headings and underlining are for convenience only and do not affect interpretation.

## **2. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION [REGULATION CLAUSE 7(2)]**

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### **Condition Precedent**

- 2.1 The parties acknowledge and agree that:
- (a) The Basin Country Club or consultants engaged by it will conduct a due diligence of the Golf Club for the purposes of the Amalgamation;
  - (b) that due diligence will be completed by 5pm on Monday **15<sup>th</sup> February** 2016;
  - (c) The Basin Country Club will only proceed with the amalgamation if and when it is satisfied with the results of that due diligence in its absolute discretion and the Basin Country Club being satisfied with the results of the due diligence is a condition precedent for the purposes of this Memorandum of Understanding; and
  - (d) within 7 days of 5pm on Friday the 19<sup>th</sup> February 2016, the Basin Country Club must notify the Golf Club whether the Basin Country Club:
    - (i) is satisfied with the results of that due diligence; or

- (ii) is not satisfied with the results of that due diligence and is therefore terminating this MOU and the Amalgamation.

2.2 The parties acknowledge and agree that any information obtained by a party as part of the due diligence referred to in clause 2.1 will be Confidential Information.

**Clubs position on amalgamation subject to satisfaction of condition precedent**

2.3 Subject to satisfaction of the condition precedent in clause 2.1, the Basin Country Club and the Golf Club agree to amalgamate in accordance with this Memorandum of Understanding, the RCA and the Liquor Act

2.4 Subject to satisfaction of the condition precedent in clause 2.1, the Clubs' position on the Amalgamation is as follows:

(a) Pursuant to the Amalgamation and with effect from Completion of the Amalgamation:

- (i) all of the Assets will be transferred to the Basin Country Club;
- (ii) all of the debts and liabilities of the Golf Club will become the responsibility of the Basin Country Club.

(b) The processes for the Amalgamation will be as follows:

- (i) The members of the Basin Country Club and the Golf Club will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club.
- (ii) Those meetings will be called pursuant to clause 11 of this Memorandum of Understanding.
- (iii) Once the approvals referred to in clause 2.4(b)(i) have been obtained the Amalgamation Application will then be made pursuant to clause 1 of this Memorandum of Understanding.
- (iv) The Basin Country Club will assume, and be responsible for, all the debts liabilities of the Golf Club as at the date of Completion of the Amalgamation.
- (v) The Basin Country Club will continue as the body corporate of the Amalgamated Club.

(c) All members of the Golf Club who are not members of the Basin Country Club (other than persons who have been expelled from membership of the Basin Country Club) will, with their consent, be eligible to be admitted as members of the Basin Country Club and will be (but only for the purposes of Section 17AC (2) of the RCA) identified as a separate class of membership called "the Golf Club members".

(d) All the Golf Club members, except Junior golfing members, who accept the offer to become members of the Basin Country Club will have the rights of Ordinary members of the Basin Country Club and all Junior Golfing members who accept the offer to become members will be transferred to the category of Junior membership under the Constitution of the Basin Country Club.



- (e) As at the date of this Memorandum of Understanding the Golf Club has the following categories of membership, Full membership, and Social membership and Junior Golfing membership. Once a Golf Club member becomes a member of the Basin Country Club (and identified as a Golf Club member)\_he or she shall be eligible to transfer to the category of Ordinary member under the Constitution of the Amalgamated Club. In addition, full members of the Golf Club shall have the same rights as golfing members of the Basin Country Club, and vice versa.
- (f) The Clubs acknowledge that the Golf Club has members who have paid their subscriptions for more than one year in advance. The Basin Country Club will honour these subscriptions that are paid in advance provided sufficient evidence is provided of the advance payment.
- (g) After Completion of the Amalgamation the Golf Club will call a general meeting of its members for the purpose of passing a special resolution for the Golf Club go into a members voluntary liquidation of the Golf Club.
- (h) At Completion of the Amalgamation the Vincentia premises will become additional licensed premises of the Amalgamated Club and will be available to all members of the Amalgamated Club.

**3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE GOLF CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE VINCENTIA PREMISES AND FACILITIES**  
**[REGULATION – CLAUSE 7(2)(A)]**

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- 3.1 The Vincentia premises and facilities will become additional premises and facilities of the Amalgamated Club.
- 3.2 The Amalgamated Club will operate from two (2) premises being the St. Georges Basin premises and the Vincentia premises on the terms set out in this Memorandum of Understanding.
- 3.3 For the purposes of the RCA and the Liquor Act, the Basin Country Club CEO will be the Amalgamated Club CEO and will be responsible for the operations at both the Basin Country Club premises and the Vincentia premises.
- 3.4 The Amalgamated Club is not required to appoint a manager to the Vincentia premises pursuant to Section 66 of the Liquor Act.
- 3.5 The Board of the Basin Country Club will be the Board of the Amalgamated Club.
- 3.6 The day to day operations of the Vincentia premises following Completion of the Amalgamation will be undertaken by the Amalgamated Club CEO.
- 3.7 From an operational perspective, it is intended that:
  - (a) a venue manager will be engaged for the Vincentia premises; and
  - (b) the existing groundsman at the Vincentia Premises will be retained;

- (c) where possible, the discounts and benefits offered to members of the Basin Country Club will be offered to and or made available to members at the Vincentia premises
- (d) existing WHS Systems, employee manuals and risk management systems at the Basin Country Club premises will be implemented at the Vincentia Premises.

3.8 The Clubs will form an amalgamation committee to assist the Boards of both clubs during the amalgamation process. The amalgamation committee will then continue for a period of twelve (12) months after Completion of the Amalgamation in order to provide assistance and feedback during the amalgamation settling in period and also to be the vehicle for keeping members of both Clubs updated and informed about the amalgamation and the Vincentia premises.

3.9 The amalgamation committee will consist of 3 Directors from the Basin Country Club and 3 representatives from the Golf Club as appointed by the respective Boards of both Clubs.

3.10 The chair of the amalgamation committee shall be one of the 3 representatives from the Golf Club and he or she shall attend board meetings of the Amalgamated Club to report on the amalgamation.

3.11 The amalgamation committee will undertake such tasks, roles and functions as determined by, and delegated to it by, the Board of Directors of the Amalgamated Club.

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

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4.1 Subject at all times to the continued operation of a registered club facility at the site of the Vincentia premises, the Amalgamated Club will do the following:

- (a) maintain the traditions and ethos of the Golf Club at the Vincentia premises as observed and performed by the Golf Club as at the date of this Memorandum of Understanding;
- (b) maintain the Golf Club’s memorabilia and honour boards which are in place at the Vincentia premises as at the date of this Memorandum of Understanding either in their current format or some other format (such as an electronic format) as approved by the Board of Amalgamated Club;

**Facilities**

- (c) maintain at the Vincentia premises appropriate facilities and amenities for responsible gaming, dining and food service, reasonable and responsible service of alcohol and private and community functions;
- (d) maintain the existing golf course and golfing members facilities including change rooms and lockers;

**Competitions and Tournaments**

- (e) allow all the current regular member competitions to continue at the Vincentia

premises.

### **Support to Golf Club Sub Clubs**

- (f) allow for the continuation of all golfing sub clubs currently operating at the Golf Club and will allow them to maintain their own rules subject to the Constitution of the Amalgamated Club and any direction of the Board of the Amalgamated Club and to conduct and administer the game of golf at the Vincentia premises on behalf of the amalgamated Club.

### **Support to other Golf Club sub clubs**

- (g) allow for the continuation of all sporting sub clubs currently operating at the Golf Club and will establish those sub clubs or incorporate them into existing sub clubs at the Basin Country Club. For the avoidance of doubt the only sporting non golf sub club is the Fisho's however it is currently not operating.

### **ClubGRANTS**

- (h) provide support to the community as part of ClubGRANTS from gaming revenue derived from the Vincentia premises.

## **5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [REGULATION – CLAUSE 7(2)(C)]**

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- 5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances.
- 5.2 Subject to obtaining all the necessary approvals, the name of the Vincentia premises will be "*The Vincentia Golf Club*" or other such similar name.
- 5.3 Subject to clauses 8 and 9 of this Memorandum of Understanding and subject to the continued operation of a registered club facility at the Vincentia premises, the Basin Country Club will:
  - maintain and revitalize the Vincentia club house and licensed premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Vincentia premises with all the usual facilities and amenities of a registered club; and
  - maintain the Golf Club's golf course;
  - promote the game of golf at the Vincentia premises through training, competitions, tournaments and social golf;
  - hold and arrange golf competitions and provide prizes including monies for achievement in tournaments, club championships and other competitions;
  - invest in the food and catering at the Vincentia premises to attract more patronage and offer to the members of the Golf Club the same discounts and benefits afforded to the Basin Country Club members;
  - use all reasonable endeavours to ensure that a valuable amenity in the community is preserved for all into the future;

- establish and promote sub clubs and all sports in the community in a mutually beneficial manner.

**6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED  
[REGULATION – CLAUSE 7(2)(D)]**

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- 6.1 From the date of this Memorandum of Understanding until Completion of the Amalgamation, the Golf Club will not without the prior written consent of the Basin Country Club CEO engage any new employee on a full-time or part-time or casual basis.
- 6.2 Before Completion of the Amalgamation, the Basin Country Club will establish a management and employment structure for the Vincentia premises, which will take effect on Completion of the Amalgamation.
- 6.3 Prior to Completion of the Amalgamation, but subject at all times to the provisions of clause 6.4 below, the Basin Country Club will offer employment to employees of the Golf Club.
- 6.4 If the Golf Club employs a person as the approved Secretary Manager of the Golf Club on a paid basis before Completion of the Amalgamation then the Basin Country Club shall not be obliged to offer that person any form of employment with the Amalgamated Club. However if after consideration of the person's performance the Board and management may offer that person the role of venue manager at the Vincentia premises on terms generally applicable to an employee in that role.
- 6.5 The offers of employment pursuant to clause 6.3 will be on terms and conditions substantially similar to, and considered on an overall basis, no less favourable than the employee's terms and conditions of employment with the Golf Club as at the date of Completion of the Amalgamation.
- 6.6 Any Golf Club employee who does not accept an offer of employment on terms and conditions substantially similar to, and considered on an overall basis, no less favourable than the employee's terms and conditions of employment with the Golf Club as at the date of Completion of the Amalgamation, will have her/his employment terminated because of a redundancy and be paid all entitlements due on a redundancy by the Golf Club or the Amalgamated Club.
- 6.7 On Completion of the Amalgamation the Golf Club must deliver to the Basin Country Club a statement setting out full details of any and all accrued entitlements of its employees up to Completion of the Amalgamation and which the Golf Club warrants to the Basin Country Club as being true and correct in all material particulars in relation to each of the employees of the Golf Club who continue in employment with the Amalgamated Club.
- 6.8 The Amalgamated Club must treat those employees of the Golf Club who continue employment with the Amalgamated Club, and deal with all of their entitlements, as if the entitlements accrued during employment with the Golf Club had been accrued whilst in the employment of the Amalgamated Club.
- 6.9 If an employee of the Golf Club who becomes an employee of the Basin Country Club pursuant to the Amalgamation does not wish to remain in employment with the Amalgamated Club then that employee will give the appropriate notice of termination of employment to the Amalgamated Club and that employee will be paid out all

entitlements including those accrued during her/his employment with the Golf Club.

6.10 The Clubs acknowledge that the employment of all employees of the Amalgamated Club is subject to:

(a) the satisfactory performance of their duties; and

(b) the operational needs and requirements of the Amalgamated Club.

**7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE GOLF CLUB:**

**1. ANY CORE PROPERTY;**

**2. ANY CASH OR INVESTMENTS;**

**3. ANY GAMING MACHINE ENTITLEMENTS**

**[REGULATION – CLAUSE 7(2)(E)]**

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7.1 For the purposes of the RCA, the “core property” of the Golf Club consists of the land on which the Vincentia premises is located.

7.2 The intentions of the Amalgamated Club in relation to the core property of the Golf Club are stated in clauses 8 and 9.

7.3 The Golf Club owns property adjoining Knowles Street Vincentia which encompasses part of the sixth fairway and green which is on the same title as the golf course. This land which the Golf Club has identified for possible development shall be considered non-core property for the purposes of the RCA. It is proposed that this property will be retained and form part of the Amalgamated Club’s investment portfolio. Any disposal of the property in the future will be on the basis that it is non-core property of the Amalgamated Club.

7.4 The cash and investments (if any), of the Golf Club on Completion of the Amalgamation will be transferred to the general reserves of the Amalgamated Club.

7.5 The Golf Club has 23 gaming machine entitlements attached to its Club Licence.

7.6 Ownership of the gaming machine entitlements and the gaming machines held by the Golf Club will be transferred to the Amalgamated Club with effect from Completion of the Amalgamation.

7.7 The Basin Country Club intends to maintain at a minimum 23 gaming machine entitlements and authorised gaming machines at the Vincentia premises for a period of at least 3 years from Completion of the Amalgamation and will then assess the ongoing requirements for the Vincentia premises. The Basin Country Club does propose to increase gaming revenue at the Vincentia premises by updating and improving the current gaming installation.

7.8 Subject to clause 7.7 above the Amalgamated Club will ensure that a sufficient number of gaming machines are operated at the Vincentia premises to meet demand from members and guests and the financial needs of those premises.

**8. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE GOLF CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB**  
**[REGULATION – CLAUSE 7(2)(F)]**

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8.1 The Basin Country Club does NOT intend to:

- (a) cease trading from the Vincentia premises; and/or
- (b) substantially change the objects of the Vincentia premises; or
- (c) cease the sporting activities conducted at the Vincentia premises.

However, for the purposes of clause 7(2) (f) of the Regulation, the Basin Country Club and the Golf Club are required to agree to these matters.

8.2 Therefore, for the purposes of clause 7(2)(f) of the Regulation, the Basin Country Club would either cease trading from, change the objects of or cease the sporting activities at the Vincentia premises only in the following circumstances:

- (a) upon the order of any court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs, or;
- (b) upon the lawful order of any government authority;
- (c) if the premises were destroyed or partially destroyed by fire, flood, storm etc., except where appropriate insurance cover is available to reinstate the premises or where it is otherwise economically viable to do so, or;
- (d) if there was any significant change in legislation that adversely impacted on the viability of the Amalgamated Club;
- (e) if at any time after three (3) years following Amalgamation Completion, it is not financially viable for the Amalgamated Club to continue to trade from the Vincentia premises or, continue the objects of, or continue the sporting activities at, the Vincentia premises.

8.3 For the purposes of 8.2(e) above, trading from the Vincentia premises will be deemed to be not financially viable if, in any 3 consecutive Quarters (commencing after the initial three (3) year period after Amalgamation Completion), the EBITDARD percentage for the Vincentia premises is less than 15% or the net profit for the Vincentia premises is below breakeven point (that is, operating at a net loss), taking the Vincentia premises operation as a stand-alone operation without any charge for administrative or other general expenses of the Amalgamated Club.

8.4 The term, "Quarter" in clause 8.3 means a three-month period on the financial calendar year. The four Quarters that make up the year are January, February and March (the First Quarter), April, May and June (the Second Quarter), July, August and September (the Third Quarter) and October, November and December (the Fourth Quarter).

8.5 The acronym, "EBITDARD" referred to in clause 8.3 stands for Earnings before Interest, Tax, Depreciation, Amortisation, Rent and Donations. EBITDARD is a recognised financial tool to measure a company's cash flow and financial viability

8.6 The corporate entity of the Golf Club is to be liquidated or dissolved after Amalgamation Completion at the cost of the Amalgamated Club.

8.7 If the Amalgamated Club ceases to trade from the Vincentia premises, the Amalgamated Club may after that time dispose of those premises subject to compliance with the RCA and Regulation (where applicable).

**9. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB MAY CEASE TRADING FROM THE VICENTIA PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE VICENTIA PREMISES [REGULATION – CLAUSE 7(2)(G)]**

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9.1 The Basin Country Club does not intend to cease trading from the Vicentia premises or substantially change the objects of the Vicentia premises. The Basin Country Club intends to operate the Vicentia premises and would only cease to do so in the circumstances referred to above.

9.2 The Basin Country Club agrees that the Amalgamated Club will continue:

- (a) to trade from the Vicentia premises;
- (b) the objects of the Vicentia premises; and
- (c) the sporting activities at the Vicentia premises,

for at least three (3) years after Amalgamation Completion and thereafter for as long as the Vicentia premises remain financially viable as determined in accordance with clause 8 above (except in the circumstances referred to above in clauses 8.2(a) to (d) in this Memorandum of Understanding).

**10. BINDING EFFECT OF MEMORANDUM OF UNDERSTANDING**

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For the avoidance of doubt the Basin Country Club and the Golf Club agree that the Memorandum of Understanding is binding on them and for that purpose is executed as a Deed.

**11. CALLING OF MEETINGS**

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11.1 The Golf Club will call a general meeting of the ordinary members of the Golf Club for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.

11.2 The meeting referred to in clause 11.1 will be held on or before Sunday 9<sup>th</sup> April 2016 or such further time as the parties may agree on.

11.3 Subject to the Golf Club passing the resolutions referred to in clause 11.1 the Basin Country Club will call a general meeting of the ordinary members of the Basin Country Club for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.

11.4 The meeting referred to in clause 11.3 will be held within three months of the meeting referred to in clause 11.1 or such further time as the Clubs may agree on.

11.5 Subject to clause 11.6 and 11.7, the resolution which will be submitted to the meetings referred to in this clause 11 will be as follows:

**ORDINARY RESOLUTION**

“That the members hereby approve in principle:

1. The amalgamation of St Georges Basin Country Club ABN: 54 000 961 008 with the Vincentia Golf Club Limited ABN: 80 000 751 324, such an amalgamation to be effected by:
    - (a) the continuation of the St, Georges Basin Country Club (as the amalgamated club) and the dissolution of the Vincentia Golf Club Limited; and
    - (b) the transfer of the club licence of the Vincentia Golf Club Limited to the St. Georges Basin Country Club; and
  2. The making of an application to the ILGA for the transfer of the club licence of the Vincentia Golf Club Limited to the St. Georges Basin Country Club for the purposes of such amalgamation.”
- 11.6 The resolution referred to in clauses 11.5 to be considered at the meeting of the Golf Club will provide that it is subject to the Basin Country Club:
- (a) passing the resolution at the meeting of the Basin Country Club held pursuant to clause 11.3; and
  - (b) passing the special resolution to amend its Constitution as required by clause 12 of this Memorandum of Understanding.
- 11.7 The resolution referred to in clause 11.5 to be considered at the meeting of the Basin Country Club will provide that it is subject to:
- (a) The Golf Club having passed the resolution referred to in clauses 11.5; and
  - (b) the members of the Basin Country Club passing the special resolution to amend its Constitution as required by clause 12 of this Memorandum of Understanding.
- 11.8 The Golf Club can terminate this Memorandum of Understanding and the Amalgamation immediately by notice in writing to the Basin Country Club if at the meeting of the Basin Country Club held pursuant to clause 11.3, either the resolution approving the amalgamation referred to in clause 11.5 or the special resolution referred to in clause 12 are not passed.
- 11.9 The Basin Country Club can terminate this MOU and the Amalgamation immediately by notice in writing to the Golf Club if at the meeting of the Golf Club held pursuant to clause 11.1, the resolution approving the amalgamation referred to in clause 11.5 not passed.

## **12. AMENDMENTS TO CONSTITUTION OF THE BASIN COUNTRY CLUB**

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- 12.1 In addition to the resolution referred to in clause 11.5 the Basin Country Club will at the meeting referred to in clause 11.3 submit to those members eligible to attend and vote a special resolution to amend the Basin Country Club Constitution with effect from Completion of the Amalgamation as follows:

Admission to membership of the Basin Country Club by members of the Golf Club who are not members of the Basin Country Club

- (a) All members of the Golf Club, other than any person who has been expelled



from membership of the Basin Country Club, who apply to become members of the Basin Country Club pursuant to the Amalgamation, will be admitted to membership of the Basin Country Club.

- (b) All members of the Golf Club, other than any person who has been expelled from membership of the Basin Country Club, will be able to apply for membership of the Basin Country Club in the manner referred to in sub paragraphs (c) to (e) of this clause 12.1.
- (c) A member of the Golf Club will not be required to be proposed or seconded for membership of the Basin Country Club.
- (d) After the Basin Country Club and the Golf Club have passed the resolutions approving in principle the Amalgamation, the Basin Country Club will forward to each member of the Golf Club, other than any person who has been expelled from membership of the Basin Country Club, who is then not currently a member of the Basin Country Club a written invitation to become a member of the Basin Country Club.
- (e) Any member of the Golf Club who accepts the invitation referred to in clause 12.2(d) and agrees in writing to be bound by the Basin Country Club Constitution will, (subject to the name of that person being displayed on the noticeboard of the Basin Country Club 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 the Basin Country Club) be elected by a resolution of the Board of the Basin Country Club to membership of the Basin Country Club with effect from the date of Completion of the Amalgamation.
- (f) The Golf Club members who are admitted to membership of the Basin Country Club will be identified as a separate class called the Golf Club Members but may transfer to any other class of membership of the Basin Country Club for which they are eligible to join but will also still retain and be recorded as the Vincentia Golf Club members.

#### Life members of Amalgamated Club

- (g) All Life members of the Golf Club will be admitted to "Vincentia Life membership" of the Basin Country Club.
- (h) All members will be able to nominate any eligible member for Life membership.

### **13. AMENDMENTS TO THE CONSTITUTION OF THE GOLF CLUB**

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The Constitution of the Golf Club does not require amendment for the purposes of the Amalgamation.

### **14. THE APPLICATION TO ILGA**

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14.1 Within ten (10) business days of the meetings referred to in clauses 11.1 and 11.3 each Club must forward to the lawyers for the Basin Country Club true copies of the:

- (a) notice of the meeting;
- (b) minutes of the meeting which will include the number of members present at

the meeting and whether or not the resolutions were passed.

- 14.2 The Basin Country Club and its lawyers will be responsible for the preparation and filing of the Amalgamation Application to transfer the Club licence held by the Golf Club to the Basin Country Club which transfer will be affected on the date of Completion of the Amalgamation.
- 14.3 The Golf Club will co-operate with the Basin Country Club and the lawyers for the Basin Country Club 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 Manager of the Golf Club to sign the Amalgamation Application if required to do so.
- 14.4 Nothing herein will prevent the Golf Club having its own advisors and legal representation in relation to the application.

## **15. ASSURANCES BY THE GOLF CLUB**

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- 15.1 The Golf Club assures the Basin Country Club that from the date of this Memorandum of Understanding to the date of Completion of the Amalgamation the Golf Club:
- (a) will carry on its business in the usual and ordinary course and in a diligent manner;
  - (b) will not employ a new employee without the consent of the Basin Country Club;
  - (c) will not purchase any good or service or enter into any agreement, arrangement or understanding where the cost to the Golf Club is greater than \$3,000;
  - (d) will not enter into any loan, finance or rental agreement without the prior consent of the Basin Country Club, such consent not to be unreasonably withheld;
  - (e) will not do anything which may damage the goodwill of its business or that of the Basin Country Club;
  - (f) will keep all its assets insured in amounts representing their full replaceable or reinstatement value against fire and other risks normally insured;
  - (g) has 23 gaming machine entitlements in respect of the club licence for the Vincentia premises pursuant to the Gaming Machines Act;
  - (h) will not sell, transfer, dispose of, encumber, grant an option over, or grant any interest in, or enter into any agreement to sell, transfer dispose of, encumber, grant an option over, or grant any interest in, any of the Assets except any interest granted by the Golf Club to the Basin Country Club;
  - (i) will consult with the Basin Country Club in relation to accounting matters and records of the Golf Club including in relation to the transfer of Assets to the Basin Country Club and the proposed lodgement of any taxation returns;
  - (j) will not trade if it becomes insolvent.

- 15.2 The Basin Country Club CEO and the President of the Golf Club will have regular discussions about the management and operations of the Golf Club with the objects of (but without limitation):
- (a) providing for an orderly transfer of the management and operations of the Golf Club to the Basin Country Club on Completion of the Amalgamation;
  - (b) achieving efficiencies and cost savings in the Golf Club.

## **16. PREPARATION FOR COMPLETION OF THE AMALGAMATION**

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- 16.1 On or before Completion of the Amalgamation the Golf Club will do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to the Basin Country Club with effect from the date of Completion of the Amalgamation.
- 16.2 The transfers and assignments referred to in clause 16.1 will be executed by The Golf Club in escrow pending Completion of the Amalgamation.

## **17. ACCESS TO RECORDS**

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From the date of this Memorandum of Understanding the Golf Club will provide to the Basin Country Club at all reasonable times access to the Vincentia premises, its records and assets and other information and material reasonably required by the Basin Country Club.

## **18. CONFIDENTIALITY**

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- 18.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 18.2 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.
- 18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum of Understanding.
- 18.4 This clause 18 survives termination of this Memorandum of Understanding and the Amalgamation.

## **19. DISSOLUTION OF THE GOLF CLUB**

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Promptly after Completion of the Amalgamation the Golf Club will do all things necessary and take all steps to:

- (a) nominate a registered liquidator approved by the Basin Country Club to be appointed as the liquidator of the Golf Club;
- (b) call a general meeting of the members of the Golf Club for the purposes of considering and if thought fit passing all appropriate resolutions for the liquidation of the Golf Club and the appointment of the liquidator referred to in paragraph (a) and will assist the liquidator to wind up the Golf Club.

## **20. RESOLUTION OF DISPUTES ARISING UNDER THIS DEED OR THE MEMORANDUM OF UNDERSTANDING**

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- 20.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 20.2 A party claiming a dispute has arisen under or in relation to this Memorandum of Understanding or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- 20.3 On receipt of that notice by the other party pursuant to clause 20.2 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.
- 20.4 If the parties do not agree within seven (7) days of the receipt by the other party of the notice referred to in clause 20.2 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,

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.

- 20.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 20.2 a party which has complied with the provisions of this clause 20 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.
- 20.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 20 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.

## **21. COSTS**

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

## **22. STAMP DUTY**

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The parties acknowledge that section 65(3) of the *Duties Act (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.

## **23. GENERAL**

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- 23.1 This Memorandum of Understanding constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum of Understanding is of no force or effect.
- 23.2 If any provision of this Memorandum of Understanding is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement are and continue to be valid and enforceable in accordance with their terms.
- 23.3 Neither party may assign this Memorandum of Understanding or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.
- 23.4 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum of Understanding.
- 23.5 This Memorandum of Understanding is governed by and is to be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Court hearing appeals from those Courts.

## **24. TERMINATION**

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- 24.1 Notwithstanding anything contained in this Memorandum of Understanding but subject to clause 24.2 if Completion of the Amalgamation has not occurred within 1 year of the date of this Memorandum of Understanding either party in its absolute discretion and without penalty may terminate this Memorandum of Understanding and thereby terminate the Amalgamation.
- 24.2 Termination pursuant to clause 24.1 cannot be effected unless the party terminating this Memorandum of Understanding has given the other party not less than twenty-one (21) days' notice in writing of its intention to terminate.
- 24.3 The Basin Country Club may terminate the Memorandum of Understanding and this Amalgamation immediately by notice in writing to the Golf Club:
- (a) if the Golf Club breaches any of the assurances given by clause 15.1;
  - (b) if the Golf Club becomes insolvent;
  - (c) in accordance with clause 11.8 if at the meeting of the Golf Club held pursuant to clause 11.1 the resolution approving the amalgamation referred to in clause 11.5 not passed; or
  - (d) if the Basin Country Club is not satisfied in its absolute discretion with the results of the due diligence to be conducted pursuant to clause 2.1.
- 24.4 The Golf Club may terminate this Memorandum of Understanding and this Amalgamation immediately by notice in writing to the Golf Club:
- (a) if the Basin Country Club becomes insolvent; or

- (b) in accordance with clause 11.9, if at the meeting of the Basin Country Club held pursuant to clause 11.3, either the resolution approving the amalgamation referred to in clause 11.5 or the special resolution referred to in clause 12 are not passed.

## **25. NOTICES**

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25.1 A notice to be given by one club to the other pursuant to this Memorandum of Understanding must be:

- (a) in writing;
- (b) directed to the recipients address specified in this Memorandum of Understanding or as varied by written notice;
- (c) left at, or sent by pre-paid registered post, hand delivery to that address;

25.2 A notice given in accordance with clause 25.1 will be deemed to be duly given:

- (a) on the day of delivery;
- (b) two days after the date of posting by pre-paid post;

as the case may be.

## **26. ACCESS TO THIS MEMORANDUM OF UNDERSTANDING**

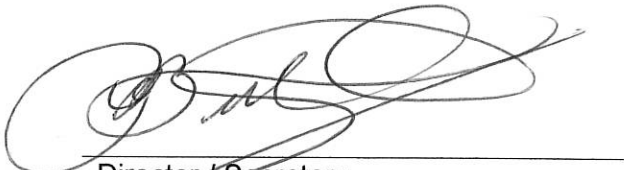
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The Parties acknowledge and agree that this Memorandum of Understanding is to be:

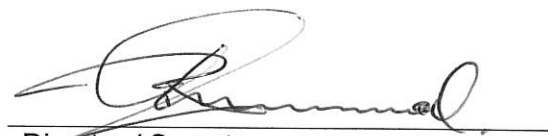
- (a) made available to the ordinary members of the Basin Country Club and the Golf Club at least 21 days before the meetings of the members of each club for the purpose of voting on whether to approve the proposed amalgamation;
- (b) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting as referred to in paragraph (a) is held; and
- (c) lodged with any application under section 60 of the Liquor Act to transfer the club licence held by the Golf Club to the Basin Country Club.

EXECUTED AS A DEED

Executed by **ST. GEORGES BASIN** )  
**COUNTRY CLUB LIMITED ABN 54** )  
**000 961 008** pursuant to Section 127 of )  
the Corporations Act 2001 )


  
\_\_\_\_\_  
Director / Secretary

GARRY BUCKLEY  
Name of Director/Secretary  
(print name) 18/2/16

  
\_\_\_\_\_  
Director / Secretary

PETER THORNCROFT  
Name of Director/Secretary  
(print name) 18/2/16

Executed by **VINCENTIA GOLF CLUB** )  
**LIMITED ABN 80 000 751 324** )  
pursuant to Section 127 of the )  
Corporations Act 2001 )

  
\_\_\_\_\_  
Director / Secretary

NP BURKE  
Name of Director/Secretary  
(print name)  
11/2/16

  
\_\_\_\_\_  
Director / Secretary

KEITH PINKARD  
Name of Director/Secretary  
(print name) 11/2/2016.