



# Memorandum of Understanding

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Parkes Services & Citizens Club Co-Operative Ltd ABN 19 681 339 813  
("Parkes Services Club")

Parkes Railway Institute Bowling Club Ltd ACN 001 059 310  
("Parkes Railway Bowling Club")

This Memorandum of Understanding is made on 15 November

2024.

**BETWEEN:**                    **Parkes Services & Citizens Club Co-Operative Ltd ABN 19 681 339 813 (NSWC00490)** of 9-17 Short Street, Parkes NSW 2870 (“Parkes Services Club”)

**AND**                            **Parkes Railway Institute Bowling Club Ltd ACN 001 059 310** of 4 Hooley Street, Parkes, NSW 2870 (“Parkes Railway Bowling Club”)

## **RECITALS**

- (A)** Parkes Services Club and Parkes Railway Bowling Club are both registered clubs under the Registered Clubs Act.
- (B)** On 22 February 2024 Parkes Services Club called for expressions of interest to amalgamate from other clubs.
- (C)** Parkes Railway Bowling Club submitted an expression of interest to Parkes Services Club on 19 March 2024 indicating an interest in amalgamating with Parkes Services Club.
- (D)** Parkes Services Club accepted the expression of interest from Parkes Railway Bowling Club referred to in Recital (C) and Parkes Services Club and Parkes Railway Bowling Club have agreed to amalgamate in accordance with the terms set out in this Memorandum of Understanding.
- (E)** The amalgamation between Parkes Services Club and Parkes Railway Bowling Club is also subject to the approval of both Clubs’ members and the Authority as required by the Registered Clubs Act.
- (F)** The Amalgamation is always subject to compliance with the requirements of the Registered Clubs Act, the Registered Clubs Regulation 2015, the Liquor Act and the Corporations Act.
- (G)** This Memorandum of Understanding satisfies the requirements of the Registered Clubs Regulations in that it deals with and legally binds Parkes Services Club and Parkes Railway Bowling Club to all matters relating to the Amalgamation as required by Regulation 7 of the Registered Clubs Regulations.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum of Understanding unless the context otherwise requires:

“**Amalgamated Club**” means the amalgamated registered club of Parkes Services Club and Parkes Railway Bowling Club, the continuing vehicle of which will be Parkes Services Club after Completion;

**“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum of Understanding;

**“Amalgamation Application”** means the application, or applications as the context may require, for the transfer of the Club Licence of Parkes Railway Bowling Club (LIQC300241572) to Parkes Services Club (including an application for provisional transfer) pursuant to sections 60(6) and (7) of the Liquor Act;

**“Approved Secretary”** means a person approved by the Authority under section 33 of the Registered Clubs Act to act as secretary of a club.

**“Assets”** means all of the assets of Parkes Railway Bowling Club as at Completion including without limitation the Land and those other assets listed in Schedule 1;

**“Authority”** means the Independent Liquor and Gaming Authority constituted under the *Gaming and Liquor Administration Act 2007* (NSW);

**“Board and Board of Directors”** means the board of directors of Parkes Services Club, or, the Amalgamated Club after Completion (as the context may require);

**“Business”** means the business of Parkes Railway Bowling Club or Parkes Services Club (as the context may require);

**“Business Day”** means a day that is not a Saturday, Sunday or public holiday or a bank holiday in New South Wales;

**“Business Records”** means all records relating exclusively to the Assets or the Business and, whether in paper or electronic form, other than those records which the Parkes Railway Bowling Club is required by law to keep;

**“Claim”** means any claim, cost, damages, debt, expense, Tax, Liability, loss, allegation, suit, action, demand, cause of action or proceeding of any kind irrespective of:

- (i) how or when it arises;
- (ii) whether it is actual or contingent;
- (iii) whether or not it is in respect of legal or other costs, damages, expenses, fees or losses;
- (iv) whether or not it is in respect of a breach of trust or of a fiduciary or other duty or obligation; and
- (v) whether or not it arises at law or in any other way.

**“Clubs”** means both Parkes Services Club and Parkes Railway Bowling Club;

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

**“Club Premises”** means a licensed premises owned or controlled by Parkes Railway Bowling Club or Parkes Services Club (as the context may require).

**“Completion”** means the day on which:

- (i) the Assets, Land, Liabilities and Club Licence of Parkes Railway Bowling Club are transferred to Parkes Services Club as referred to in clause 18; and
- (ii) Parkes Services Club takes over responsibility for the management, business and affairs of the Club Premises of Parkes Railway Bowling Club.

**“Conditions Precedent”** means the conditions precedent to Completion as set out in clause 17 of this Memorandum of Understanding.

**“Confidential Information”** means all trade secrets and all financial, marketing and technical information, ideas, concepts, know-how, technology, business plans, strategic plans, member lists, gaming machine information, processes and knowledge which is confidential or of a sensitive nature but excludes that which is in the public domain.

**“Consideration”** for the purposes of clause 20 of this Memorandum of Understanding has the meaning given to that term by the GST law;

**“Corporations Act”** means the *Corporations Act* 2001 (Cth) and the regulations made thereunder;

**“Encumbrance”** means any:

- (a) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the *Personal Property Securities Act* 2009 (Cth); or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment.

**“Employee Entitlements”** means all entitlements to salary or wages, annual leave, long service leave and other entitlements (including paid personal/carer’s leave) under any industrial instrument or agreement between Parkes Railway Bowling Club and an employee of Parkes Railway Bowling Club;

**“Final Approval”** means the confirmation pursuant to section 60(8) of the *Liquor Act* by the

Authority whereby Parkes Railway Bowling Club's Club Licence will be approved to be transferred to Parkes Services Club;

**"Gaming Machines Act"** means the *Gaming Machines Act 2001 (NSW)* and the regulations made thereunder;

**"GME"** means a gaming machine entitlement;

**"Government Agency"** means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, the Authority, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not.

**"GST"** means the goods and services tax as imposed by the GST Law.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition of a goods and services tax in Australia.

**"GST Amount"** means in relation to a Taxable Supply the amount of GST for which the maker of the Taxable Supply (**"Supplier"**) is liable in respect of the Taxable Supply.

**"GST-Free"** has the meaning given to that term by the GST Law.

**"GST Group"** has the meaning given to that term by the GST Law.

**"GST Law"** has the meaning given to that term in the GST Act.

**"Insolvency Event"** means the occurrence of any of the following events in relation to a party to this Memorandum of Understanding:

- (a) the party becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable law;
- (b) the party is wound up, dissolved or declared bankrupt or proposes its winding up or dissolution;
- (c) the party becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the party's assets or undertaking;
- (e) the party enters into or becomes subject to:

- (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
- (ii) it enters into or proposes to enter into any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) the party is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (g) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business (otherwise than in compliance with any order made by a Government Agency) or becomes unable to pay its debts when they fall due;
- (h) the party is insolvent as disclosed in its accounts or otherwise states that it is insolvent or it is presumed to be insolvent under an applicable law.

**“Land”** means all land which Parkes Railway Bowling Club owns, has an interest in or contractual entitlement to, as at Completion, and must include, without limitation Lot 1092 in Deposited Plan 750152;

**“Land Purchase Contracts”** means the contracts for sale of unencumbered title to all Land including without limitation with respect to the titles detailed in the definition of Land above;

**“Liabilities”** means all liabilities (actual or contingent), losses, damages, debts, outgoing, costs and expenses of Parkes Railway Bowling Club (whatever description) as set out in Schedule 2 or incurred between the date of this MOU and Completion in accordance with clause 16.1 and 16.2;

**“Liquor Act”** means the *Liquor Act 2007* (NSW) and the regulations made thereunder;

**“Material Adverse Event”** means any event, condition or change which:

- (a) materially and adversely affects; or
- (b) could reasonably be expected to affect materially and adversely;

the Business or Club Premises of Parkes Railway Bowling Club.

**“Material Adverse Regulatory Event”** means any ruling or decision by the Authority:

- (i) in which the Authority refuses to give the Final Approval, or rejects any application for which approval would be, required in order to effect Completion; or
- (ii) grants, or indicates that it will only grant, a Final Approval on conditions which are inconsistent with the rights and obligations of a party under this Memorandum of Understanding.

**“Member”** means a member of either Parkes Services Club or Parkes Railway Bowling Club (as the case maybe) as shown on the relevant club’s register of members at the relevant time;

**“Memorandum of Understanding” “Memorandum” or “MOU”** means this Memorandum of Understanding and it includes any attachments or annexures to it;

**“Parkes Railway Bowling Club CEO”** means the Approved Secretary of Parkes Railway Bowling Club;

**“Parkes Railway Bowling Club Premises”** means the approved licensed premises of Parkes Railway Institute Bowling Club Ltd known as Parkes Railway Bowling Club in respect of Club Licence LIQC300241572 as at the date of this Memorandum situated at 4 Hooley Street, Parkes, NSW 2870 and as otherwise approved by the Authority from time to time and includes any future approved licensed premises on the Land (as the context may require);

**“Parkes Services Club CEO”** means Approved Secretary of Parkes Services Club;

**“Party”** means Parkes Railway Bowling Club and Parkes Services Club;

**“Payment”** means any amount payable under or in connection with this Memorandum of Understanding including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration;

**“Plant and Equipment”** means all plant, equipment, furniture, fixtures and fittings, tools and other maintenance items, appliances, freehold or other improvements, and information technology items owned by Parkes Railway Bowling Club;

**“Recipient”** for the purposes of clause 20 of this Memorandum of Understanding, has the meaning given to that term by the GST Law;

**“Records”** means all originals and copies in machine readable or printed form of all books, registers, files, accounts, records, reports, correspondence, files, manuals and other documents and information and materials created by, owned by, or under the control of Parkes Railway Bowling Club;

**“RCA or Registered Clubs Act”** means the *Registered Clubs Act 1976* (NSW);

**“Registered”** for the purposes of clause 20 of this Memorandum of Understanding, has the meaning given to that term by the GST Law;

**“RCR or Registered Club Regulations”** means the regulations to the Registered Clubs Act.

**“Stock”** means all food and beverage stock and any other trading stock and consumables.

**“Tax”** means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty and goods and services, (value added) or similar tax) at any time:

- (a) imposed or levied by any Government Agency; or
- (b) required to be remitted to, or collected, withheld or assessed by, any Government Agency; and

any related interest, expense, fine, penalty or other charge on those amounts;

**“Tax Invoice”** has the meaning given to that term by the GST Law; and

**“Taxable Supply”** has the meaning given to that term by the GST Law.

**1.1 Business days**

If the day on which any act is to be done under this document is a day other than a Business Day, that act must be done on the immediately following Business Day except where this document expressly specifies otherwise.

**1.2 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Sydney, New South Wales;
  - (vii) “\$” or “dollars” is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;



- (g) a reference to legislation is to be construed as a reference to that legislation and any regulation made under it, any subordinate legislation under it and any regulation made under that subordinate legislation, and that legislation and regulations and subordinate legislation and regulations as amended, re-enacted or replaced for the time being;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

### 1.3 Headings

Headings do not affect the interpretation of this document.

## 2. AMALGAMATION

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- 2.1 Parkes Services Club and Parkes Railway Bowling Club agree to amalgamate in accordance with this Memorandum of Understanding, the Registered Clubs Act, the Registered Clubs Regulation, the Liquor Act and the Corporations Act subject to the provisions of this document.
- 2.2 The Amalgamation will be effected by the continuation of Parkes Services Club and the dissolution of Parkes Railway Bowling Club.
- 2.3 The Amalgamation is intended to preserve the existing facilities and amenities of Parkes Services Club and Parkes Railway Bowling Club Premises.

## 3. THE AGREED STEPS TO ACHIEVE AMALGAMATION OF THE CLUBS

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- 3.1 The steps that will be undertaken to achieve Completion of the Amalgamation will be as follows:
  - (i) The Clubs entering this Memorandum of Understanding which addresses both:
    - (A) The matters required to be addressed between the Clubs by Regulation 7(2) of the Registered Clubs Regulation in a memorandum of understanding stating each club's position on certain matters relating to the amalgamation; and
    - (B) The due diligence process, member approval processes, Authority approval process and the processes and condition precedents including those related to the transfer of Assets including the Club Licence, and the transfer of Land, to complete the Amalgamation.
  - (ii) Parkes Services Club, at its own expense, undertaking a due diligence review of Parkes Railway Bowling Club's Assets including the Club Licence, liabilities, Land, and business operations and to give effect to this Parkes Railway Bowling Club

will, acting reasonably, as soon as reasonably practicable and up and until the sooner of Completion or termination of this Memorandum of Understanding:

- (A) make available to Parkes Services Club its Records in any reasonably required formats;
  - (B) provide further information, responses to queries and additional assistance to allow Parkes Services Club to complete its due diligence properly to its satisfaction; and
  - (C) provide reasonable access to the Parkes Railway Bowling Club Premises, the Land and any other premises of Parkes Railway Bowling Club, as required to view Records, conduct inspections and due diligence, view Assets and/or review business operations.
- (iii) In accordance with clause 14, Parkes Railway Bowling Club will call and hold a general meeting of the ordinary members of Parkes Railway Bowling Club to approve in principle, the Amalgamation (which includes without limitation the transfer of all Assets including the Club Licence, Liabilities and Land to Parkes Services Club.
- (iv) In accordance with clause 14, the Board of Parkes Services Club will call and hold a separate general meeting of the ordinary members of Parkes Services Club to approve all of the following:
- (A) in principle, the Amalgamation; and
  - (B) amendments to the Parkes Services Club's Rules required to accommodate the transfer of members from Parkes Railway Bowling Club to Parkes Services Club in the manner set out in this Memorandum and to deal with any other matters required by this Memorandum.
- (v) In accordance with clause 15 after the necessary member approvals as set out in paragraphs (iii) and (iv) above have been obtained, the Amalgamation Application will then be made by Parkes Services Club. The Amalgamation Application will be made in the manner provided for in clause 15 below.
- (vi) In accordance with clause 16, the Clubs respectively warrant certain matters and Parkes Railway Bowling Club agrees to conduct its Business in a particular manner and subject to specific restrictions until Completion.
- (vii) In accordance with clause 19, after provisional approval of the Amalgamation Application is granted and the Conditions Precedent of Completion have either been achieved or waived as permitted by clause 17.3 then Completion will occur on that day in accordance with the terms and conditions of clauses 18 and 19 of this Memorandum of Understanding.
- (viii) At the time or immediately after the Amalgamation Application is granted, but

subject to prior or concurrent satisfaction of the Condition Precedents:

- (A) The Assets will be transferred to Parkes Services Club;
  - (B) The Liabilities will be transferred to Parkes Services Club; and
  - (C) The premises of Parkes Railway Bowling Club including without limitation the Parkes Railway Bowling Club Premises, will become the additional licensed premises of Parkes Services Club and be available to all members of the Amalgamated Club; and
  - (D) All financial members of Parkes Railway Bowling Club will be invited to become ordinary members of Parkes Services Club and will for the purposes of section 17AC(2) of the Registered Clubs Act all be identified in the separate class of membership called "Parkes Railway Bowling Club Members".
- (ix) After Completion:
- (A) Parkes Services Club will continue as the body corporate of the Amalgamated Club; and
  - (B) Parkes Railway Bowling Club will be wound up in accordance with the law and the requirement of clause 18.4.

**4. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF PARKES RAILWAY BOWLING CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF PARKES RAILWAY BOWLING CLUB PREMISES AND FACILITIES [REGULATIONS – CLAUSE 7(2)(A)]**

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**4.1 Premises and Facilities**

- (i) The Parkes Railway Bowling Club Premises and its associated facilities will become additional premises of Parkes Services Club.
- (ii) Parkes Services Club will take over responsibility and control of all Parkes Railway Bowling Club Premises from Completion.
- (iii) The cash balance of Parkes Railway Bowling Club will be transferred to Parkes Services Club on Completion and will be allocated to the cash balance of the Amalgamated Club.
- (iv) After Completion, the Club Premises of Parkes Services Club and the Club Premises of Parkes Railway Bowling Club will be made available for the use of all members of the Amalgamated Club (subject to their rights and restrictions under its Rules and by-laws).

**4.2 Name and Branding**

- (i) The Parkes Railway Bowling Club Premises will become known as “Parkes Services Bowling Club” and the logo incorporating the name will be altered to show an affiliation with Parkes Services Club.

**4.3 Management**

- (i) The Parkes Services Club CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- (ii) The Board of the Amalgamated Club will be the Board of Parkes Services Club consistent with Parkes Services Club being the continuing club upon Amalgamation.
- (iii) For the purposes of section 66 of the Liquor Act, the Chief Executive Officer of the Amalgamated Club will also be the Manager for the Parkes Railway Bowling Club Premises as permitted by section 66(3)(a)(i) of the Liquor Act.

**4.4 Bowling Sub-Club**

- (i) On or before Completion the Parkes Services Club will establish a Parkes Services Bowling Sub-Club to manage, conduct and administer bowling at the Parkes Railway Bowling Club Premises on behalf of the Amalgamated Club.
- (ii) The rules of the Parkes Services Bowling Sub-Club will be prepared by Parkes Services Club, generally in a standard format for sub-clubs of this kind and developed in consultation with Parkes Railway Bowling Club prior to Completion.
- (iii) The rules of the Parkes Services Bowling Sub-Club will include without limitation the following membership classes with the specified eligibility criteria:

<b>Sub-Club Membership Class</b>	<b>Eligibility Criteria</b>
<ul style="list-style-type: none"> <li>• Ordinary</li> </ul>	<ul style="list-style-type: none"> <li>• A person who was a member of Parkes Railway Bowling Club on Completion and who transfers to Parkes Services Club under the terms of this Memorandum of Understanding.</li> <li>• Any member of the Amalgamated Club who joins the Parkes Services Bowling Club Sub-Club after Completion.</li> </ul>
<ul style="list-style-type: none"> <li>• Life</li> </ul>	<ul style="list-style-type: none"> <li>• A person who was a Life Member of Parkes Railway Bowling Club on Completion and who</li> </ul>

	transfers to Parkes Services Club under the terms of the Memorandum of Understanding will become a Life Member of the Sub-Club.
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- (iv) The committee of the Parkes Services Bowling Club Sub-Club will initially consist of up to seven (7) members of the Board of Parkes Railway Bowling Club as nominated by such Board immediately prior to Completion.
- (v) The committee of the Parkes Services Bowling Sub-Club will consist at all times of not less than four (4) and not more than seven (7) members.
- (vi) All committee members of the Parkes Services Bowling Club Sub-Club must be active bowling members who are registered with Bowls NSW, and who bowl at the Parkes Services Bowling Club Premises, except if there are insufficient number of such active bowling members willing to nominate for election to the committee in which case any member of the Amalgamated Club may nominate for election to the Parkes Services Bowling Club Sub Club committee.
- (vii) The Amalgamated Club will each year within it yearly budget make a bowls budget allocation for the Parkes Services Bowling Club Premises for greens upkeep, presentation night, pennants allowance and to specify the green fees required to be charged to offset additional costs.
- (viii) Parkes Services Bowling Sub-Club committee will be responsible for the continuation of bowling operations at the Parkes Railway Bowling Club Premises following Completion.
- (ix) Parkes Services Bowling Sub-Club will, and for as long as the Amalgamated Club trades from the Parkes Railway Bowling Club Premise, by way of volunteer work to be completed by its member, continue maintenance and capital works with respect of the Parkes Railway Bowling Club.

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

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**5.1 Traditions, Amenities and Community Support**

- (i) The Amalgamated Club from Completion will subject to the terms and conditions of this Memorandum of Understanding:
  - (A) maintain the amenities of the Parkes Railway Bowling Club Premises in place as at the date of this Memorandum of Understanding;
  - (B) maintain the following traditions of Parkes Railway Bowling Club:
    - (a) President’s Day;
    - (b) Presentation Day; and

(c) Old Bowls Day;

(C) continue to contribute community support donations to the same extent as Parkes Railway Bowling Club did prior to the date of this Memorandum of Understanding for the following local community groups:

(a) One (1) Cricket Club;

(b) Two (2) Pool Clubs; and

(c) Two (2) Darts Clubs.

## 5.2 Memorabilia

(i) The memorabilia of the Parkes Railway Bowling Club, being the honour boards at the Parkes Railway Bowling Club Premises, will for as long as the Amalgamated Club trades from the Parkes Railway Bowling Club, continue to be displayed in their present form, electronically or in such other manner as determined by the Amalgamated Club.

## 6. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [REGULATIONS – CLAUSE 7(2) (C)]

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### 6.1 Future Direction

(i) The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances as determined by its Board of Directors.

(ii) The Board of Directors of the Amalgamated Club intend to be financially prudent at all times to ensure continuity of the Amalgamated Club and all decisions are subject to available finances on an ongoing basis.

### 6.2 Club Operations

(i) Parkes Services Club intends to continue to trade from the Parkes Railway Bowling Club Premises subject to the terms and conditions of the Memorandum of Understanding.

(ii) Parkes Services Club intends to open the Parkes Railway Bowling Club Premises when competition and social bowls are being played (as per open schedule determined by the Amalgamated Club in consultation with the Bowls Sub-Club Committee).

(iii) Parkes Services Club will continue to offer bowling facilities for use by the Parkes Bowling Sub-Club's at the Parkes Railway Bowling Club Premises subject to the terms and conditions of this Memorandum of Understanding.

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

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- 7.1 Prior to Completion, Parkes Services Club will offer employment to all of Parkes Railway Bowling Club's employees on terms no less favourable than their existing terms of employment.
- 7.2 Any employee of Parkes Railway Bowling Club who accepts in writing the offer of employment with Parkes Services Club will become an employee of the Amalgamated Club on Completion and receive continuity of employment with Parkes Services Club and their Employee Entitlements as employees of Parkes Railway Bowling Club will be honoured by Parkes Services Club.
- 7.3 Any employee of Parkes Railway Bowling Club who does not accept the offer of employment with Parkes Services Club will be paid their full Employee Entitlements by Parkes Railway Bowling Club on Completion when their employment with Parkes Railway Bowling Club comes to an end.

**8. INTENTIONS REGARDING THE FOLLOWING ASSETS OF PARKES RAILWAY BOWLING CLUB:**

- 1. ANY CORE PROPERTY OF PARKES RAILWAY BOWLING CLUB;**
  - 2. ANY CASH OR INVESTMENTS HELD BY PARKES RAILWAY BOWLING CLUB;**
  - 3. ANY GAMING MACHINE ENTITLEMENTS HELD BY PARKES RAILWAY BOWLING CLUB [REGULATIONS – CLAUSE 7(2) (E)]**
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**Core Property**

- 8.1 For the purposes of the Registered Clubs Act, the Land (including the Parkes Railway Bowling Club Premises) is currently "core property" of Parkes Railway Bowling Club.
- 8.2 As at Completion of the Amalgamation, the Land (including the Parkes Railway Bowling Club Premises) shall be core property of the Amalgamated Club and it will, subject to any member resolution declaring it non-core, remain core property.

**Cash and Investments**

- 8.3 The cash and investments (if any) of Parkes Railway Bowling Club will be transferred to the general reserves of the Amalgamated Club.

**Gaming Machine Entitlements**

- 8.4 Parkes Railway Bowling Club has four (4) GMEs as recorded on the Parkes Railway Bowling Club licence for the Parkes Railway Bowling Club Premises issued pursuant to the Liquor Act.
  - 8.5 The Amalgamated Club intends to retain the four (4) GMEs at the Parkes Railway Bowling Club Premises for as long as it trades from the Parkes Railway Bowling Club Premises.
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**9. 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 [REGULATIONS – CLAUSE 7(2)(E1)]**

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**Risks**

- 9.1 The amalgamation as set out in this Memorandum of Understanding will see the Parkes Railway Bowling Club Premises become premises of a larger Registered Club of financial standing and net asset value.
- 9.2 The “core property” of Parkes Railway Bowling Club as set out in clause 8.1 above will, following Completion, be wholly owned by the Amalgamated Club. Other than unlikely risks associated with material changes in laws which may affect Registered Clubs, and the risks set out in clause 11.4(i)-(iv), there is no other material risks that the Amalgamated Club will not be in control of the core property post Completion.
- 9.3 The risks identified in clause 9.2 are set out in order to comply with the requirements of the Registered Club Regulations only. The likelihood that those risks will be realised is low and such risks are mitigated because there are restrictions on disposal of core property of Parkes Railway Bowling Club contained in the Registered Clubs Act.

**10. ANY AGREEMENT UNDER SECTION 17A(1) OF THE ACT RELATING TO THE PERIOD DURING WHICH THE MAJOR ASSETS OF THE DISSOLVED CLUB MUST NOT BE DISPOSED OF [REGULATIONS – CLAUSE 7(2) (E2)]**

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**Disposal of the Major Assets of the Dissolved Club**

- 10.1 For the purposes of section 17A(1) of the RCA, the Clubs agree that the major assets of Parkes Railway Bowling Club are the “core property” of Parkes Railway Bowling Club as set out in clause 8.1 above being the Land and subject to the Registered Clubs Act and the provisions of this Memorandum of Understanding, the major assets of Parkes Railway Bowling Club cannot be disposed of within five (5) years from Completion.

**11. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF PARKES RAILWAY BOWLING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF PARKES RAILWAY BOWLING CLUB [REGULATIONS – CLAUSE 7(2)(F)]**

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**Premises**

- 11.1 Parkes Services Club does not intend to cease trading from the Parkes Railway Bowling Club Premises subject to the terms and conditions of this Memorandum of Understanding.
- 11.2 The objects of Parkes Services Club will become the objects of Parkes Railway Bowling Club with effect from Completion.



11.3 Parkes Services Club intends to operate the Amalgamated Club in the manner referred to in clause 6 of this Memorandum of Understanding.

11.4 For the purposes of clause 7(2)(f) of the Regulations, Parkes Services Club and Parkes Railway Bowling Club have agreed that the Amalgamated Club may cease trading from the Parkes Railway Bowling Club Premises and/or cease bowling activities from the Parkes Railway Bowling Club, in the following circumstances:

- (i) If it does so in a manner that complies with section 17A1 of the Registered Clubs Act;
- (ii) upon the order of any Court, Government Agency or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs which orders the closure of the Parkes Railway Bowling Club Premises;
- (iii) upon the lawful order of any Government Agency to requiring that the Amalgamated Club cease trading in the ordinary course of its business from the Parkes Railway Bowling Club Premises, or revoking any licence, approval or consent necessary for the Amalgamated Club to continue trading in the ordinary course of its business from the Parkes Railway Bowling Club Premises;
- (iv) if the Parkes Railway Bowling Club Premises are destroyed or partially destroyed, and it is not commercially viable or appropriate to reconstruct or repair the Parkes Railway Bowling Club Premises in the opinion of the Board of the Amalgamated Club;
- (v) if required to avoid an Insolvency Event occurring in respect of the Amalgamated Club in the opinion of the Board of the Amalgamated Club; or
- (vi) after expiry of the period referred to in clause 12.3 (being five (5) years after Completion) if the Board of the Amalgamated Club determines that continued trading of the Parkes Railway Bowling Club and/or the conducting of bowling activities from the Parkes Railway Bowling Club Premises is not in the best interests of the Amalgamated Club.

11.5 The time period specified in clause 12.3, and the circumstances in which the Amalgamated Club may cease trading from the Parkes Railway Bowling Club Premises and/or the conducting of bowling activities from the Parkes Railway Bowling Club Premises are not an indication that Parkes Services Club believes that the use of such premises will remain financially unviable.

**12. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM PARKES RAILWAY BOWLING CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF PARKES RAILWAY BOWLING CLUB PREMISES [REGULATIONS – CLAUSE 7(2)(G)]**

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12.1 Parkes Services Club intends to operate the Amalgamated Club in the manner referred to in clause 4 and would only cease to do so in the circumstances referred to in clause

11.

12.2 As mentioned above the objects of Parkes Services Club will become the objects of Parkes Railway Bowling Club Premises, as set out in its Rules, with effect from Completion.

12.3 For the purposes of clause 7(2)(g) of the Regulations, Parkes Services Club and Parkes Railway Bowling Club have agreed that the Amalgamated Club will continue to trade from the Parkes Railway Bowling Club Premises for a minimum of five (5) years from Completion (except in any of the circumstances referred to in clause 11.4(i) to (v) inclusive).

### **13. BINDING EFFECT OF MEMORANDUM OF UNDERSTANDING**

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13.1 Parkes Services Club and Parkes Railway Bowling Club agree that this Memorandum of Understanding is legally binding on them.

### **14. CALLING OF MEETINGS AND ADMISSION OF PARKES RAILWAY BOWLING CLUB MEMBERS TO MEMBERSHIP OF PARKES SERVICES CLUB**

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14.1 Parkes Railway Bowling Club must call a general meeting of the ordinary members of Parkes Railway Bowling Club within thirty (30) days of the date of this Memorandum of Understanding, or such other period of time as agreed to by Parkes Services Club, for the purposes of considering and if thought fit passing:

(i) a resolution approving in principle the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act with such amalgamation to be effected by:

(A) The continuation of Parkes Services Club as the corporate entity of the Amalgamated Club; and

(B) The transfer of the Parkes Railway Bowling Club's Club Licence, Assets, Land and Liabilities to Parkes Services Club.

14.2 The meeting referred to in clause 14.1 must be held as soon as practicable after the date of this Memorandum of Understanding but not later than six (6) months from the date of this Memorandum of Understanding. For the avoidance of doubt, there is no obligation on Parkes Railway Bowling Club to call and hold more than one general meeting to seek and obtain the approvals referred to in clause 14.1.

14.3 Parkes Services Club must call a general meeting of the ordinary members of Parkes Services Club for the purposes of considering and if thought fit passing a resolution:

(i) approving in principle the Amalgamation in accordance with section 17AEB (d) of the Registered Clubs Act to be effected by:

(A) the continuation of Parkes Services Club as the corporate entity of the Amalgamated Club; and

(B) the transfer of the Club Licence, Assets, Land and Liabilities of Parkes

Railway Bowling Club to Parkes Services Club.

- 14.4 The meeting referred to in clause 14.3 must be held as soon as reasonably practicable after Parkes Railway Bowling Club passes the resolution referred to in clause 14.1 (or at such prior time as may be determined by Parkes Services Club in its absolute discretion).
- 14.5 In addition to the resolution referred to in clause 14.3, Parkes Services Club will, at the meeting referred to in clause 14.3 submit to those members eligible to attend and vote, a special resolution to amend the Rules of Parkes Services Club (with effect only from Completion) to the following effect:
- (i) All financial members of Parkes Railway Bowling Club will be invited to apply for ordinary membership of Parkes Services Club in the manner referred to in paragraphs (vi) and (vii) inclusive of this clause 14.5;
  - (ii) All transferring members will be ordinary club members of Parkes Services Club;
  - (iii) All transferring members will be subject to the usual restrictions applicable to new Parkes Services Club members except that all transferring members will be subject to a three (3) year qualification period prior to being able to be nominated or appointed to the Board of Parkes Services Club unless they are already a current financial member of the Parkes Services Club at the time of Completion;
  - (iv) For the purposes of section 17AC(2) of the Registered Clubs Act, all transferring members will be identified in Parkes Services Club membership register as "Parkes Railway Bowling Club Members";
  - (v) All transferring members will be given credit for any subscription fees paid in advance Parkes Railway Bowling Club on a pro-rata basis;
  - (vi) Prior to Completion, Parkes Services Club will forward to each member of Parkes Railway Bowling Club an invitation to become ordinary club members or junior members of Parkes Services Club;
  - (vii) Any member of Parkes Railway Bowling Club who accepts the invitation to become an ordinary club member agrees to pay the appropriate fees and subscriptions for that class of membership and agrees in writing to be bound by the Rules of Parkes Services Club will (subject to the name of that person being displayed on the noticeboard of Parkes Services 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 Parkes Services Club) be elected by a resolution of the Board of Parkes Services Club to membership of Parkes Services Club.
- 14.6 Notwithstanding anything contained in this Memorandum of Understanding, any member of Parkes Railway Bowling Club who, at Completion, is then:

- (i) duly in the ordinary course refused admission to or has been turned out of the Parkes Services Club Premises;
- (ii) suspended from Parkes Services Club; or
- (iii) expelled from Parkes Services Club,

shall only be entitled to attend at and use the facilities at Parkes Railway Bowling Club Premises, and for the avoidance of doubt, shall not be entitled to attend at or use the facilities at Parkes Services Club Premises, until such time as:

- (i) the person is again permitted to enter the Parkes Services Club Premises; or
- (ii) the period of suspension has been served; or
- (iii) the Board of the Amalgamated Club has overturned the person's expulsion from Parkes Services Club or has readmitted the person to membership of Parkes Services Club.

14.7 This Memorandum of Understanding is to be:

- (i) made available to the ordinary members of Parkes Railway Bowling Club and ordinary club members of Parkes Services Club at least 21 days before any meeting of the members of the respective club for the purpose of voting on whether to approve the proposed amalgamation; and
- (ii) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any such meeting is held.

14.8 Before this Memorandum of Understanding was executed, the parties acknowledge that each Club displayed the intentions and proposals notices to members which are required under section 17AE of the Registered Clubs Act and clause 4(5) of the Registered Clubs Regulation.

## **15. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

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15.1 As soon as reasonably practicable after the meetings referred to in clauses 14.1 and 14.3, each Club must prepare and provide to the lawyers for Parkes Services Club for the purposes of the Amalgamation Application the following documents:

- (i) A true copy of the notice of the meeting at which the resolution was passed; and
- (ii) A true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.

15.2 Parkes Services Club and its lawyers will prepare and file the Amalgamation Application.

15.3 Parkes Railway Bowling Club will co-operate with Parkes Services Club, and the lawyers

for Parkes Services Club, and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the Parkes Railway Bowling Club CEO to sign the Amalgamation Application if required to do so.

- 15.4 Parkes Services Club will seek an approval in principle from the Authority of the Amalgamation Application with final transfer of the Parkes Railway Bowling Club's Club Licence to Parkes Services Club to occur on Completion.
- 15.5 After the Amalgamation Application is granted and the Conditions Precedent have either been achieved or waived as permitted by clause 17.3 then Completion will occur and:
- (i) Parkes Services Club will continue as the body corporate of the Amalgamated Club; and
  - (ii) Parkes Railway Bowling Club will be dissolved and wound up in accordance with law.
- 15.6 This Memorandum of Understanding is to be lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Parkes Railway Bowling Club to Parkes Services Club.

## **16. WARRANTIES AND OPERATIONAL ARRANGEMENTS**

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- 16.1 Parkes Railway Bowling Club warrants to Parkes Services Club that:
- (a) from the date of this Memorandum of Understanding to the date of Completion, Parkes Railway Bowling Club shall not do any of the following without the prior written consent of Parkes Services Club:
    - (i) manage and conduct the business other than in its ordinary and usual course including without limitation the payment of all debts as and when they fall due;
    - (ii) incur liabilities in the aggregate of more than \$5,000 per month other than as incurred in the usual and ordinary course of business;
    - (iii) incur in aggregate any capital expenses or repairs of more than \$2,000;
    - (iv) enter any commitment which will involve capital expenditure relating to its Business;
    - (v) other than disposals of Stock in the ordinary course of business, dispose of, create any Encumbrance over, or declare itself trustee of any asset of its Business;
    - (vi) hire any new permanent or part time employee, hire any new casual employee, terminate the employment of any employee or vary the terms

of employment or engagement of any employee, agent, distributor or independent contractor, or agree to do any of those things except in the ordinary course of business or as required by law;

- (vii) enter into any new contract or vary the term of any existing contract;
  - (viii) enter into any transaction other than on arm's length terms;
  - (ix) fail to maintain the level of Stock levels appropriate in quality and volume for the ongoing needs of the Business;
  - (x) fail to maintain, repair and replace the Plant and Equipment in the ordinary course of the business (subject to (ii) and (iii) above);
  - (xi) engage in discussions or negotiations with anyone other than Parkes Services Club concerning a possible amalgamation and/or the sale of all or any part of Parkes Railway Bowling Club's Assets and Parkes Railway Bowling Club must advise Parkes Services Club of any solicitation by any third party in respect of any such discussion or negotiation;
  - (xii) borrow any money or obtain any draw down or advance from any existing facility; or
  - (xiii) reduce any membership fees payable by members or other patrons and
- (b) that Schedule 2 includes all liabilities (actual or contingent), losses, damages, debts, outgoings, costs and expenses of Parkes Railway Bowling Club (whatever description) as at the date of the MOU.

16.2 Until completion Parkes Railway Bowling Club must maintain the following insurance policies in respect of the Assets and the Parkes Railway Bowling Club Business:

- (i) public liability insurance in the amount of at least \$20 million for each single occurrence, and unlimited in aggregate;
- (ii) property damage insurance to the full replacement value of all Assets insurable under such a policy; and
- (iii) workers compensation insurance as required by law.

16.3 Each of Parkes Railway Bowling Club's warranties contained in clause 16.1 remain in full force and effect notwithstanding Completion.

16.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum of Understanding, Parkes Services Club may terminate this Memorandum of Understanding and the amalgamation at any time prior to Completion if there is any breach of any of Parkes Railway Bowling Club's warranties set out in clause

16.1.

16.5 If, before Completion, in relation to Parkes Railway Bowling Club:

- (i) a Material Adverse Event occurs;
- (ii) a Material Adverse Regulatory Event occurs;
- (iii) an event occurs which makes any warranty, or any of a Parkes Railway Bowling Club representations or other warranties made or given to the other party untrue or misleading;
- (iv) any Claim of any nature is threatened or asserted by or against Parkes Railway Bowling Club; or
- (v) there is any material adverse change in the condition (financial or otherwise) or prospects of Parkes Railway Bowling Club or of its operations,

then Parkes Railway Bowling Club must within a reasonable time on becoming aware of the circumstances, give notice to Parkes Services Club fully describing the circumstances.

16.6 Title to, property in and risk of Parkes Railway Bowling Club's Assets remain solely with Parkes Railway Bowling Club until such time as they are passed to the Amalgamated Club in accordance with clause 18.

16.7 Each party represents and warrants that:

- (i) It has full power and authority to enter into and perform its obligations under this Memorandum of Understanding;
- (ii) The accounts given to the other party contain all information necessary to give a true and fair view of its financial situation and state of affairs and are prepared in accordance with any applicable Accounting Standard;
- (iii) It has complied with all laws relating to payment of Taxes and Employee Entitlements;
- (iv) Each of the representations and warranties it has made in this Memorandum of Understanding are correct; and
- (v) All information that it has provided to the other party is true and correct in all respects and is not misleading by omission of information.

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**17. CONDITION PRECEDENTS TO COMPLETION OF THE AMALGAMATION**

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17.1 Completion of this Memorandum of Understanding is subject to and conditional upon the following:

- (i) Parkes Railway Bowling Club making available the Records for review and copying by Parkes Services Club for due diligence purposes;
  - (ii) Parkes Services Club's due diligence being satisfactory to Parkes Services Club in relation to Parkes Railway Bowling Club's Premises, Club Licence, Business, and liabilities;
  - (iii) All Assets (including the Land) on Completion being transferred to Parkes Services Club free of any and all Encumbrances with, subject to clause 18.1, any necessary releases being provided on Completion to Parkes Services Club;
  - (iv) Parkes Railway Bowling Club passing the resolutions set out in clause 14.1 of this Memorandum of Understanding;
  - (v) Parkes Services Club passing the resolutions set out in clause 14.3 and 14.5 of this Memorandum of Understanding;
  - (vi) The Final Approval being issued by the Authority to transfer Parkes Railway Bowling Club's Club Licence to Parkes Services Club;
  - (vii) Parkes Railway Bowling Club's Club Licence when transferred to Parkes Services Club having ten (10) GMEs;
  - (viii) The completion of all Land Purchase Contracts between Parkes Railway Bowling Club and Parkes Services Club with respect to all Land and the transfer of such Land to Parkes Services Club free from any and all Encumbrances; and
  - (ix) All loan facilities have been paid out in full by Parkes Railway Bowling Club.
- 17.2 Parkes Railway Bowling Club and Parkes Services Club will use all reasonable endeavours to ensure the satisfaction of the conditions set out in clause 17.1 above as far as they lie within their respective powers to do so.
- 17.3 If any of the above conditions in clauses 17.1 are not satisfied or waived by Parkes Services Club, either partially or fully, on or before the date which is 24 months from the date of this Memorandum of Understanding then Parkes Services Club may from that date terminate this Memorandum of Understanding by providing Parkes Railway Bowling Club written notice of the same and neither party shall be entitled to make a claim against the other party in connection with this Memorandum of Understanding.

**18. DISSOLUTION OF PARKES RAILWAY BOWLING CLUB, TRANSFER OF ASSETS AND LIABILITIES POSITION UNDER THIS AMALGAMATION**

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- 18.1 On Completion Parkes Railway Bowling Club must transfer to Parkes Services Club the Assets and Land free from all Encumbrances (less an amount sufficient for the purposes of liquidating Parkes Railway Bowling Club in the manner referred to in clause 15.5). For the purposes of this clause, Parkes Services Club will be deemed to have unencumbered title



and ownership of an Asset (that is not Land) if Parkes Railway Bowling Club has obtained a written undertaking from the relevant secured party on or before Completion which states that the relevant secured party will release their interest in the Asset after Completion and the undertaking is in all respects acceptable to Parkes Services Club.

- 18.2 Subject to clause 18.3(iii), Parkes Services Club will honour and accept the novation or assignment of all contracts between Parkes Railway Bowling Club and third parties for the remainder of their existing term, and being liable only for amounts payable from Completion, provided that such contracts have been available for inspection by Parkes Services Club during its due diligence process, and are specified in Schedule 3, or they have been entered into with the prior written consent of Parkes Services Club after the date of this Memorandum of Understanding.
- 18.3 Parkes Services Club will be responsible for and pay when due all debt and liabilities of Parkes Railway Bowling Club which:
- (i) have not been paid or otherwise discharged in full by Parkes Railway Bowling Club as at Completion, with such debts being limited to the amounts specified in Schedule 2 or incurred in accordance with clauses 16.1(a);
  - (ii) are reasonably incurred by Parkes Railway Bowling Club after Completion with Parkes Services Club's prior written consent, including without limitation the costs of winding up Parkes Railway Bowling Club and the costs of directors' and officers' liability insurance pending deregistration of Parkes Railway Bowling Club as a corporate entity; and
  - (iii) arise from Parkes Services Club not accepting the assignment or novation of any contracts as required by clause 18.2.
- 18.4 As soon as practicable after Completion, Parkes Railway Bowling Club must ensure Parkes Railway Bowling Club is wound up.
- 18.5 Parkes Services Club will put in place contracts with the Caterer and Greenkeeper prior to Completion, which will be subject to Completion, that reflects current commercial terms and are on Parkes Services Club specified contract form.

## **19. COMPLETION**

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- 19.1 Subject to the satisfaction, or valid waiver, of the Conditions Precedent set out in clause 17.1, Completion will take place on the date which Final Approval is issued by the Authority at a time, location and in the manner as specified by Parkes Services Club (acting reasonably and after consultation with Parkes Railway Bowling Club).
- 19.2 Parkes Railway Bowling Club must on Completion:
- (i) (Assets) deliver to Parkes Services Club duly signed transfer and similar forms in respect of all Assets that require such forms for their transfer;

- (ii) (business name) deliver to Parkes Services Club the online transfer key to transfer each Business name to Parkes Services Club;
- (iii) (Intellectual Property rights) assign and transfer absolutely all its rights, title and interest in all intellectual property rights by delivering to Parkes Services Club deeds of assignment or transfers of such Assets all in form and substance reasonably required by Parkes Services Club;
- (iv) (delivery) deliver to Parkes Services Club those Assets, including plant and equipment, capable of transfer by leaving those Assets in situ on the Land;
- (v) (possession) permit Parkes Services Club to take possession of all those Assets which are not on the Land, at the location where they are usually retained;
- (vi) (Records) deliver to Parkes Services Club the Records;
- (vii) (IT Asset licences) deliver to Parkes Services Club executed transfers or assignments in favour of Parkes Services Club of all information technology Asset licences;
- (viii) (deeds of assignment or novation) deliver to Parkes Services Club duly executed deeds of assignment or novation, all in form and substance as reasonably required by Parkes Services Club in respect of all contracts agreed to be honoured by Parkes Services Club;
- (ix) (release of Encumbrances) deliver evidence satisfactory to Parkes Services Club of the release of all Encumbrances (if any) over its Business and the Assets;
- (x) (consents and approvals) deliver to Parkes Services Club signed copies of all required governmental and regulatory approvals or other third-party approvals and consents to the actions required by this Deed;
- (xi) (utilities) surrender or cause to be surrendered all telephone and related lines, electricity, gas and other utility services as relate to the Land and use its best endeavours to assist the transfer or grant of those services or the grant of similar new services to Parkes Services Club;
- (xii) (Rental Assets) deliver to Parkes Services Club such other documents and material as Parkes Services Club requires to effect the transfer of any rental assets to Parkes Services Club;
- (xiii) (third party items) deliver to Parkes Services Club a comprehensive list of all items on the Premises owned by a party other than Parkes Railway Bowling Club (not including member personal effects but including any items of memorabilia on display); and
- (xiv) (general) deliver to Parkes Services Club such other documents and material and do all other things reasonably required to effect the transfer of the business of

Parkes Railway Bowling Club and the Assets to Parkes Services Club on Completion and perform all other obligations to be performed by Parkes Railway Bowling Club on Completion under this Deed.

- 19.3 Where Parkes Railway Bowling Club is required to give any form of transfer, assignment or other documents to effect the transfer or assignment of any property or chose in action to Parkes Services Club on Completion in a form required by Parkes Services Club (the "Transfer Documents"), Parkes Services Club must, not less than 7 days before the proposed date of Completion, deliver the Transfer Documents to Parkes Railway Bowling Club or its solicitors for execution by Parkes Railway Bowling Club.
- 19.4 Parkes Railway Bowling Club must give Parkes Services Club or its solicitors all such Transfer Documents within a reasonable period (having regard to when any such Transfer Documents were provided to Parkes Railway Bowling Club or its solicitors) prior to Completion for stamping where necessary. All such documents must be held by Parkes Services Club or its solicitors in escrow pending Completion.
- 19.5 On winding up of Parkes Railway Bowling Club it must give to Parkes Services Club the balance of all Records.
- 19.6 Any document or other item specified in clause 19.2 may be delivered to Parkes Services Club by leaving that document or other item in a safe and appropriate place at which it is located on the date of Completion or otherwise delivered in accordance with Parkes Services Club's instructions.
- 19.7 For the purposes of clause 18.1, Parkes Railway Bowling Club must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to the Parkes Services Club with effect from the date of Final Approval.
- 19.8 The obligations of the parties under this clause 19 are interdependent and must be performed, as nearly as possible, simultaneously. If any obligation specified in clauses 19.2 to 19.4 is not performed on or before Completion then, without limiting any other rights of the parties, Completion is taken not to have occurred and any document delivered, or payment made, under clauses 19.2 to 19.4 must be returned to the party that delivered it or paid it.
- 19.9 Each of the parties warrant 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 in this clause 19.

**20. GST**

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- 20.1 The parties agree that:
- (a) All Payments, save to the extent provided for otherwise elsewhere in this Memorandum of Understanding, have been calculated without regard to GST;

- (b) If the whole or any part of any Payment, is Consideration for a Taxable Supply, the Recipient of the Taxable Supply must pay to the Supplier an amount additional to the relevant Consideration provided for elsewhere in this Memorandum of Understanding equal to the GST Amount. Unless otherwise agreed in writing, such amount equal to the GST Amount is to be paid within five Business Days of the Supplier issuing to the Recipient a valid Tax Invoice for the Taxable Supply.

The amount equal to the GST Amount must be paid in full and without deduction, notwithstanding any entitlement that the Purchaser may have to a credit or offset however arising;

- (c) If either party is required to reimburse to the other any cost or expense or other amount incurred by the other party under or in connection with this Memorandum of Understanding, the amount to be reimbursed must be reduced by any part of that amount for which that other party can claim an Input Tax Credit, partial Input Tax Credit or other like set-off;
- (d) If a party is a member of a GST Group, references to GST for which the party is liable and to Input Tax Credits to which the party is entitled include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled; and
- (e) If, in relation to a Taxable Supply, an Adjustment Event occurs that gives rise to an Adjustment then the GST Amount will be adjusted accordingly and where necessary a payment will be made to reflect that adjustment. If a payment is required it will be made within five Business Days of the date on which the Adjustment Note is issued by the Supplier.

## **21. CONFIDENTIALITY**

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- 21.1 Subject to clauses 21.2 and 21.3, each party must not disclose any Confidential Information without the prior written consent of the other party.
- 21.2 A party may disclose matters referred to in clause 21.1:
  - (i) To those of its employees, officers, professional or financial advisers and bankers as the party reasonably thinks necessary but only on a strictly confidential basis; and
  - (ii) If required by law, after the form and terms of that disclosure have been notified to the other party and the other party has had a reasonable opportunity to comment on the form and terms.
- 21.3 A party may make announcements or statements at any time in the form and on the terms previously agreed by the parties in writing.
- 21.4 If this Memorandum of Understanding is terminated prior to Completion, each party

must:

- (i) return any Confidential Information of the other party in its possession to that other party; and
- (ii) do everything reasonably required by the other party to reverse any action taken under this Memorandum of Understanding.

21.5 This clause 21 will survive the termination of this Memorandum of Understanding.

## **22. COSTS**

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22.1 Each party will bear its own costs in relation to the negotiation, preparation and execution of this Memorandum of Understanding and the Amalgamation.

22.2 Parkes Services Club must bear and is responsible for all filing fees, transaction fees (including PEXA fees), duties, stamp duties or other similar imposts on or in respect of this Memorandum of Understanding and any document or transaction contemplated by this Memorandum of Understanding.

22.3 This clause 22 survives the termination of this Memorandum.

## **23. GENERAL PROVISIONS**

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23.1 This Memorandum of Understanding constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this Memorandum of Understanding and have no further effect.

23.2 If this Memorandum of Understanding conflicts with any other document, agreement or arrangement, this Memorandum of Understanding prevails to the extent of the inconsistency.

23.3 The provisions of this Memorandum of Understanding will not merge on Completion of any transaction contemplated in this Memorandum of Understanding and, to the extent any provision has not been fulfilled, will remain in force.

23.4 Each person who executes this Memorandum of Understanding on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Memorandum of Understanding under that power.

23.5 This Memorandum of Understanding may not be amended or varied unless the amendment or variation is in writing signed by all parties.

23.6 No party may assign, transfer or otherwise deal with this Memorandum of Understanding or any right or obligation under this Memorandum of Understanding without the prior written consent of each other party.

- 23.7 Part or all of any provision of this Memorandum of Understanding that is illegal or unenforceable will be severed from this Memorandum of Understanding and will not affect the continued operation of the remaining provision or provisions of this Memorandum of Understanding.
- 23.8 Waiver of any power or right under this Memorandum of Understanding:
- (i) must be in writing signed by the party entitled to the benefit of that power or right; and
  - (ii) is effective only to the extent set out in that written waiver.
- 23.9 Any rights and remedies that a person may have under this Memorandum of Understanding are in addition to and do not replace or limit any other rights or remedies that the person may have.
- 23.10 Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Memorandum of Understanding and the transactions contemplated by it (including the execution of documents).
- 23.11 This Memorandum of Understanding may be executed in any number of counterparts and all counterparts taken together will constitute one document.
- 23.12 If a party delivers an executed counterpart of this Memorandum of Understanding or any other document executed in connection with it ("**Relevant Document**") by email or other electronic means:
- (i) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
  - (ii) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.
- 23.13 This Memorandum of Understanding will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of that State.

## **24. TERMINATION**

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- 24.1 Parkes Services Club may terminate this Memorandum of Understanding at any time, without penalty, by giving written notice to Parkes Railway Bowling Club if:
- (i) The ongoing due diligence review undertaken by it on Parkes Railway Bowling Club is not at any time satisfactory to the Board of Parkes Services Club at any time prior to Completion;

- (ii) Parkes Railway Bowling Club breaches any warranty contained in clause 16;
- (iii) The circumstances in clause 16.5 exist in relation to Parkes Railway Bowling Club;
- (iv) Parkes Railway Bowling Club's members do not pass the resolution referred to in clause 14.1 at a general meeting within six (6) months of the date of this Memorandum;
- (v) Parkes Services Club's members do not pass the resolutions referred to in clauses 14.3 and 14.5 at a general meeting within twelve (12) months of Parkes Services Club;
- (vi) Parkes Railway Bowling Club is in material breach of this Memorandum of Understanding and that breach is not capable of rectification or if able to be rectified it fails to rectify that breach within ten (10) Business Days of being given notice to do so;
- (vii) The Authority does not grant Final Approval of the Amalgamation Application before the first anniversary of the date of this document; or
- (viii) Parkes Railway Bowling Club suffers a Material Adverse Event or a Material Adverse Regulatory Event.

24.2 Parkes Railway Bowling Club may terminate this Memorandum of Understanding at any time, without penalty, by giving written notice to Parkes Services Club if:

- (i) Parkes Railway Bowling Club's members do not pass the resolution referred to in clause 14.1 at its general meeting;
- (ii) Parkes Services Club's members do not pass the resolutions referred to in clauses 14.3 and 14.5 at the general meeting of Parkes Services Club; or
- (iii) Parkes Services Club is in breach of this Memorandum of Understanding and that breach is not capable of rectification or it fails to rectify that breach within a reasonable time period of being given notice to do so.

24.3 Notwithstanding any other provision of this Memorandum of Understanding, if Completion has not occurred within twenty-four (24) months of the date of this Memorandum of Understanding then either party by giving written notice to the other may, without penalty or liability to the other party, terminate this Memorandum of Understanding on one (1) month's written notice.

24.4 Termination of this Memorandum of Understanding does not affect the rights and remedies of any party accrued prior to termination.

## **25. NOTICES**

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25.1 All notices, requests, demands, consents, approvals, offers, agreements or other

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communications (“**notices**”) given by a party under or in connection with this agreement must be:

- (i) in writing;
- (ii) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (iii) directed to the recipient’s address (as specified in clause 25.3 or as varied by any notice); and
- (iv) hand delivered or sent by prepaid post to that address; or
- (v) transmitted by email to the recipient’s nominated email address (as specified in clause 25.3 or as varied by notice).

25.2 A notice given in accordance with this clause is taken as having been given and received:

- (i) if hand delivered at or before 4.30pm on a Business Day, on delivery, otherwise at 9.30am on the next Business Day;
- (ii) if sent by prepaid post:
  - (A) within Australia, on the seventh Business Day after the date of posting;
  - (B) to or from a place outside Australia, on the fourteenth Business Day after the date of posting;
- (iii) if transmitted by e-mail at or before 4.30pm on a Business Day, on transmission, otherwise at 9.30am on the next Business Day.

25.3 Unless varied by notice in accordance with this clause 25, the parties’ addresses and other details are:

Party: **Parkes Railway Bowling Club**  
Attention: Mr Paul Lewin  
Parkes Railway Bowling Club  
Address: 4 Hooley Street, Parkes, NSW 2870  
E-mail: paul@bugman.com.au

Party: **Parkes Services Club**  
Attention: Mr Mike Phillips, General Manager  
Address: 9-17 Short Street, Parkes NSW 2870 E-mail: gm@parkesservicesclub.com.au



## **SCHEDULE 1**

### **ASSETS**

All assets which are owned by Parkes Railway Bowling Club at Completion including without limitation:

1. all of the goodwill;
2. all real property including without limitation the Land which includes without limitation Lot 1092 in Deposited Plan 750152;
3. all Plant & Equipment;
4. all Gaming Machine Entitlements;
5. all gaming machines;
6. all intellectual property rights;
7. all memorabilia owned by the Club;
8. all assets of trade;
9. all business names;
10. all cash on hand, general reserves and investments;
11. the Club Licence (LIQC300241572) for the Parkes Railway Bowling Club Premises with not less four (4) gaming machine entitlements on it;
12. stock in trade;
13. domain names;
14. all other tangible and intangible assets;
15. insurance policies;
16. insurance claims; and
17. debtors.

**SCHEDULE 2**

**DEBTS AND LIABILITIES OF PARKES RAILWAY BOWLING CLUB  
AS AT DATE OF MOU**

Existing Overdraft - approximately \$7,000.00

Day-to-day creditors incurred in conduct of business in the ordinary course

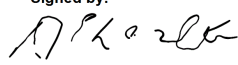
**SCHEDULE 3**

**CONTRACTS**

Nil

**EXECUTED as a DEED:**

Executed by **Parkes Services & Citizens Club** )  
**Co-Operative Ltd ABN 19 681 339 813** )  
pursuant to Section 127 of the Corporations )  
Act 2001 )

Signed by:  
  
8F8821397BB54FE...

Director / Secretary

Dorothy Charlton

Name of Director/Secretary

(print name)

Signed by:  
  
461CA293631140E...

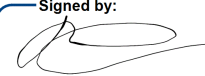
Director / Secretary

Mike Phillips

Name of Director/Secretary

(print name)

Executed by **Parkes Railway Institute** )  
**Bowling Club Ltd ACN 001 059 310** )  
pursuant to Section 127 of the Corporations )  
Act 2001: )

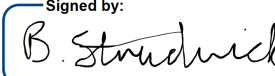
Signed by:  
  
E70FC1B0E36E47F...

Director / Secretary

Paul Lewin

Name of Director/Secretary

(print name)

Signed by:  
  
047392113DF6469...

Director / Secretary

Blake Strudwick

Name of Director/Secretary

(print name)