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## MEMORANDUM OF UNDERSTANDING

DATED 30 OCTOBER 2024

### PARTIES

**THE SYDNEY PORTUGAL COMMUNITY CLUB LIMITED**

**(ACN 002 690 799)**

**AND**

**PORTUGAL MADEIRA SYDNEY SOCIAL & CULTURAL SPORTS CLUB LIMITED**

**(ACN 002 903 451)**

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DATE: This Memorandum of Understanding is made on 30<sup>th</sup> OCTOBER 2024.

PARTIES: **THE SYDNEY PORTUGAL COMMUNITY CLUB LIMITED ACN 002 690 799** of 100 Marrickville Road, Marrickville New South Wales 2204 (**Sydney Portugal Club**).

AND: **PORTUGAL MADEIRA SYDNEY SOCIAL & CULTURAL SPORTS CLUB LIMITED ACN 002 903 451** of 1-3 Denby Street, Marrickville New South Wales 2204 (**Portugal Madeira Club**).

## RECITALS

- (A) The Portugal Madeira Club and the Sydney Portugal Club both operate as registered clubs in Marrickville, New South Wales.
- (B) The Sydney Portugal Club and the Portugal Madeira Club propose to amalgamate (merge) both Clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- (C) The Amalgamation is intended to:
- (i) facilitate the establishment of one united registered club at the Sydney Portugal Club Premises for the benefit of the Portuguese (including Madeiran) community;
  - (ii) result in a financially secure Amalgamated Club which is able to preserve, maintain, uphold and advance the traditions, culture and activities of both Clubs;
  - (iii) subject to clause 10.1(a), result in the consolidation of the operations and activities of the Amalgamated Club at the Sydney Portugal Club Premises and the redevelopment of those premises;
  - (iv) establish one united board of directors comprising of directors from both Clubs to represent the interests of the Amalgamated Club.
- (D) The Regulations require clubs which are proposing to amalgamate (merge) to enter into a Memorandum of Understanding.
- (E) The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 11 inclusive below. However there are other matters of importance to the clubs that are included in this Memorandum.

## OPERATIVE SECTION

### 1. INTERPRETATION

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1.1 In this Memorandum unless the context otherwise requires:

- (a) **“Amalgamated Club”** means the amalgamated registered club arising from the Amalgamation of the Sydney Portugal Club and the Portugal Madeira Club, the corporate vehicle of which will be the Sydney Portugal Club;
- (b) **“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum;
- (c) **“Amalgamation Application”** means the provisional application for the transfer of

the Portugal Madeira Club's Liquor Licence to the Sydney Portugal Club (as the Amalgamated Club) pursuant to sections 60(6) and (7) of the Liquor Act by the Portugal Madeira Club's CEO and the Sydney Portugal Club's CEO;

- (d) **"Assets"** means all the goodwill, land, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the Portugal Madeira Club at the time of Completion of the Amalgamation;
- (e) **"Authority"** means the Independent Liquor and Gaming Authority;
- (f) **"Claim"** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;
- (g) **"Clubs"** means both the Portugal Madeira Club and the Sydney Portugal Club;
- (h) **"Completion of the Amalgamation"** means the day on which:
  - (i) the Final Order is granted and the Portugal Madeira Club's Liquor Licence is transferred to the Sydney Portugal Club (as the Amalgamated Club); and
  - (ii) the Assets, Debts and Liabilities of the Portugal Madeira Club are transferred to the Sydney Portugal Club (as the corporate structure of the Amalgamated Club), as referred to in clause 15.1;
  - (iii) all members of the Portugal Madeira Club and the Sydney Portugal Club become members of the Amalgamated Club;
  - (iv) the Sydney Portugal Club (as the Amalgamated Club) takes over responsibility for the management and control of the Portugal Madeira Club Premises.
- (i) **"Confidential Information"** means all information relating to a party, its business, employees or suppliers which is or might reasonably be considered by the other party to be confidential and which is not in the public domain, including all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party's suppliers;
- (j) **"Corporations Act"** means the Corporations Act 2001 (Commonwealth) and its associated regulations;
- (k) **"Debts"** means the accumulated debts of the Portugal Madeira Club at the time of Completion of the Amalgamation;
- (l) **"Final Order"** means the final order pursuant to section 60(8) of the Liquor Act by the Authority whereby the Portugal Madeira Club's Liquor Licence is transferred to the Sydney Portugal Club (as the Amalgamated Club);
- (m) **"Gaming Machines Act"** means the Gaming Machines 2001 (NSW) and its associated regulations;
- (n) **"GST"** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;

- (o) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of the Portugal Madeira Club (whatever description) at the time of Final Order;
- (p) **“Liquor Act”** means the Liquor Act 2007 (NSW) and its associated regulations;
- (q) **“Liquor Licence”** means the club licence issued to a registered club under the Liquor Act;
- (r) **“Memorandum”** means this Memorandum of Understanding;
- (s) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to section 60(7) of the Liquor Act;
- (t) **“Party”** means the respective management and Board of Directors of the Portugal Madeira Club and the Sydney Portugal Club;
- (u) **“Portugal Madeira Club’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at the Portugal Madeira Club;
- (v) **“Portugal Madeira Club Premises”** means the Portugal Madeira Club’s premises located at 1-3 Denby Street, Marrickville NSW 2204;
- (w) **“Records”** means all original and copy records, sales brochures and catalogues, lists of clients, documents, books, files, accounts, plans and correspondence belonging to or used by the Clubs in the conduct of their businesses, including but not limited to corporate, accounting and statutory records;
- (x) **“Regulations”** means the Regulations under the RCA;
- (y) **“RCA”** means the Registered Clubs Act 1976 (NSW) and its associated regulations;
- (z) **“Sydney Portugal Club Premises”** means the Sydney Portugal Club’s premises located at 100 Marrickville Road, Marrickville NSW 2204.
- (aa) **“Sydney Portugal Club’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at the Sydney Portugal Club;

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (e) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (f) a reference to a Party to a document includes that Party’s successors, permitted assigns, administrators and substitutes;
- (g) an agreement on the part of 2 or more persons binds them jointly and severally;

- (h) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Deed means a written notice, consent, approval or agreement;
- (i) mentioning anything after 'include', 'includes' or 'including' does not limit what else might be included; and
- (j) a reference to "dollars" or "\$" is to Australian currency.

## **2. EACH CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION**

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- 2.1 The Sydney Portugal Club and the Portugal Madeira Club agree to merge by way of an amalgamation in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 For the purposes of the RCA, the corporate vehicle of the Amalgamated Club will be the corporate structure of the Sydney Portugal Club (and the corporate structure of the Portugal Madeira Club will be wound up after Completion of the Amalgamation).
- 2.3 The Amalgamation is intended to:
  - (a) facilitate the establishment of one united registered club at the Sydney Portugal Club Premises for the benefit of the Portuguese (including Madeiran) community;
  - (b) result in a financially secure Amalgamated Club which is able to preserve, maintain, uphold and advance the traditions, culture and activities of both Clubs;
  - (c) subject to clause 10.1(a), result in the consolidation of the operations and activities of the Amalgamated Club at the Sydney Portugal Club Premises and the redevelopment of those premises;
  - (d) establish one united board of directors comprising of directors from both Clubs to represent the interests of the Amalgamated Club.

### **Process for Amalgamation**

- 2.4 The process for the amalgamation will be as follows:
  - (a) The Clubs enter into this Memorandum;
  - (b) The members of the Portugal Madeira Club and the Sydney Portugal Club will be asked to pass resolution to approve the Amalgamation and other associated resolutions at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 13 below;
  - (c) The members of the Sydney Portugal Club will be asked to pass (by special resolution) amendments to the Sydney Portugal Club's Constitution (as the Constitution of the Amalgamated Club) in the manner and to the effect provided for in clauses 13.5 and 13.6 below;
  - (d) Once the resolutions in paragraphs (b) and (c) have been passed, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 14 below;
  - (e) After the Amalgamation Application is granted the Portugal Madeira Club and the Sydney Portugal Club will do all things necessary to prepare for Completion of the

Amalgamation which will take place on the date of the Final Order.

- (f) On the date of the Final Order:
  - (i) The Portugal Madeira Club's Assets, Debts and Liabilities will be transferred to the corporate structure of the Sydney Portugal Club in the manner referred to in clause 16 below.
  - (ii) All members of the Portugal Madeira Club will, with their consent, be admitted as members of the Sydney Portugal Club (as the Amalgamated Club). This will occur in accordance with the procedure set out in the amendments to the Constitution of the Sydney Portugal Club (as the Constitution of the Amalgamated Club) referred to in clause 13.5 below.
  - (iii) All employees of the Portugal Madeira Club who are requisite to the needs of the Amalgamated Club after Completion of the Amalgamation will be offered similar employment with the Sydney Portugal Club (as the Amalgamated Club), and if they accept, will be employed by the Sydney Portugal Club (as the Amalgamated Club). This will occur in accordance with the procedure set out in clause 6 below.
- (g) After Completion of the Amalgamation, the Sydney Portugal Club will continue as the corporate structure of the Amalgamated Club;
- (h) From Completion of the Amalgamation, the Portugal Madeira Club Premises and Sydney Portugal Club will be available to all members of the Amalgamated Club. The Portugal Madeira Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below; and
- (i) After Completion of the Amalgamation, the corporate structure of the Portugal Madeira Club will be wound up in the manner referred to in clause 15.1 below.

### Due Diligence

- 2.5 The Portugal Madeira Club may, at its own expense, undertake a due diligence review of the Sydney Portugal Club.
- 2.6 The Sydney Portugal Club may, at its own expense, undertake a due diligence review of the Portugal Madeira Club.
- 2.7 Each Club will, if required by the other Club, provide a list of information (including, but not limited to, details of all their Debts and Liabilities) and assistance to the other Club for the other Club to properly carry out and complete the due diligence review.

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

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- 3.1 With effect from Completion of the Amalgamation, the Amalgamated Club will operate from the Sydney Portugal Club Premises and the Portugal Madeira Club Premises.
- 3.2 However, the Portugal Madeira Club Premises will be eventually closed and sold and the Amalgamated Club will operate only from the Sydney Portugal Club Premises.



- 3.3 For the purposes of the RCA, the Sydney Portugal Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.4 With effect from Completion of the Amalgamation, the Board of the Amalgamated Club will consist of seven (7) directors comprising four (4) current directors of the Sydney Portugal Club and three (3) current directors of the Portugal Madeira Club. The composition of the Board of the Amalgamated Club with effect from Completion will be as set out in clause 11.6.
- 3.5 With effect from Completion of the Amalgamation, the Amalgamated Club will be responsible for and have control of the Sydney Portugal Club Premises and the Portugal Madeira Club Premises.

**4. 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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- 4.1 The traditions, amenities and memorabilia of the Portugal Madeira Club will be maintained by the Amalgamated Club.
- 4.2 The Amalgamated Club will retain all the Portugal Madeira Club's memorabilia (including the statue of the former President of the Autonomous Region of Madeira) and honour boards at the Portugal Madeira Club Premises for as long as it trades from those premises. After the Amalgamated Club has ceased to trade from the Portugal Madeira Club Premises, the Amalgamation Club will retain all the Portugal Madeira Club's memorabilia (including the statue of the Mayor of Madeira) and honour boards and display them at the Sydney Portugal Club Premises.
- 4.3 The Amalgamated Club will continue to recognise and support the traditions and activities of the Portugal Madeira Club, including but not limited to hosting the Madeira Day Festival and the Festa Das Neves annually.
- 4.4 The Amalgamated Club will fly the Madeira flag alongside the Portuguese flag at the Sydney Portugal Club Premises.
- 4.5 The Amalgamated Club will continue to recognise and support the traditions of the Sydney Portugal Club.
- 4.6 The Amalgamated Club will continue to support the community to at least the same extent that it was supported by the Sydney Portugal Club and the Portugal Madeira Club as at the date of this Memorandum.

**5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [REGULATIONS – 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. However, it is the intention of the Amalgamated Club to operate the Amalgamated Club and the Portugal Madeira Club Premises in accordance with this clause 5.

**Amalgamated Club Premises**

- 5.2 With effect from Completion of the Amalgamation, the Amalgamated Club will operate from the Sydney Portugal Club Premises and the Portugal Madeira Club Premises. However, the Portugal Madeira Club Premises will eventually be closed and sold and the Amalgamated Club will only operate from the Sydney Portugal Club Premises.

### **Name of the Amalgamated Club**

- 5.3 Subject to obtaining the necessary approvals, the Amalgamated Club will be renamed as the "Sydney Portugal and Madeira Club Limited" (or such other name as agreed by the Clubs).

### **Portugal Madeira Club Premises**

- 5.4 The Portugal Madeira Club Premises, while it continues to trade, will be named and promoted as "Club Inner West" and the "Portugal Madeira Club."
- 5.5 Subject to clause 5.2 and clause 8, the Amalgamated Club intends to maintain the Portugal Madeira Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Portugal Madeira Club Premises with the usual facilities and amenities of a registered club.

### **Sydney Portugal Club Premises**

- 5.6 The Amalgamated Club will continue to be named and promoted as the "Sydney Portugal Community Club". However, with effect from the cessation of trade from the Portugal Madeira Club Premises, the Sydney Portugal Club will be renamed and be promoted as the "Sydney Portugal and Madeira Club" or some other form of this name (provided any trading name for the premises must contain references to both "Portugal" and "Madeira").
- 5.7 After the Completion of the Amalgamation, the Board of the Amalgamated Club will develop a masterplan for the redevelopment of the Sydney Portugal Club Premises (**the Redevelopment**) with the intention of ensuring that the premises contains facilities and amenities which best accommodate the members of the Amalgamated Club.
- 5.8 The Board of the Amalgamated Club will consult with the members of the Amalgamated Club regarding the Redevelopment and provide members with an opportunity to provide feedback and comments about the Redevelopment.

### **Board of Amalgamated Club**

- 5.9 The Board of Directors of the Amalgamated Club who will take office on the date of Completion of the Amalgamation will consist of seven (7) directors, being three current (3) directors of the Portugal Madeira Club and four (4) current directors of the Sydney Portugal Club.
- 5.10 To achieve the composition of the Board of the Amalgamated Club described in clause 5.9 and for the purposes of determining future Boards of the Amalgamated Club, the Constitution of the Sydney Portugal Club (as the Constitution of the Amalgamated Club) will have to be amended as provided by clause 13.6.

### **Football Club**

- 5.11 The Clubs acknowledge and agree that:
- (a) currently, the Sydney Portugal Club and the Portugal Madeira Club each operate separate football clubs; and
  - (b) at some stage in the future, the Amalgamated Club may be required by FootballNSW to operate only one football club (**the Football Club**);
  - (c) the home colours of the Football Club will be red and green (being the current colours of the Sydney Portugal Club) and the away colours of the Football Club will



be yellow and blue (being the current colours of the Portugal Madeira Club).

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

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- 6.1 As part of the Amalgamation, the corporate structure of the Portugal Madeira Club will be wound up. As part of the winding up of the corporate structure of the Portugal Madeira Club, the employment of all the Portugal Madeira Club's employees would but for clause 6.2 below come to an end.
- 6.2 Prior to the Completion of the Amalgamation, the Sydney Portugal Club will undertake a review of the staffing requirements at the Portugal Madeira Club Premises and the Sydney Portugal Club Premises and it will only make offers of employment to those employees of the Portugal Madeira Club that are requisite to the needs of the Amalgamated Club after Completion of the Amalgamation.
- 6.3 The offers of employment:
- (a) will be effective from the Completion of the Amalgamation; and
  - (b) will, subject to clause (c) below, be on the same terms and conditions presently offered by the Sydney Portugal Club to employees of the Sydney Portugal Club in similar roles;
  - (c) may result in some employees of the Portugal Madeira Club being offered different roles with the Amalgamated Club and/or having different titles, duties, responsibilities, hours of work and times of work with the Amalgamated Club.
- 6.4 Any employee of the Portugal Madeira Club who receives and accepts an offer of employment with the Sydney Portugal Club will receive continuity of employment and their accrued entitlements will be honoured by the Sydney Portugal Club.
- 6.5 Any employee of the Portugal Madeira Club who does not receive an offer of employment from the Sydney Portugal Club or who receives but does not accept an offer of employment with the Sydney Portugal Club will be paid their full entitlements when their employment with the Portugal Madeira Club comes to an end by the Portugal Madeira Club.
- 6.6 Each employee of the Sydney Portugal Club will continue to be employed by the Amalgamated Club after the Completion of the Amalgamation, subject to the terms and conditions of employment between each of those employees and the Sydney Portugal Club.
- 7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE PORTUGAL MADEIRA CLUB :**
- 1. ANY CORE PROPERTY;**
  - 2. ANY CASH OR INVESTMENTS;**
  - 3. ANY GAMING MACHINE ENTITLEMENTS**
- [REGULATIONS – CLAUSE 7(2)(E)]**
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**Core Property**

- 7.1 For the purposes of the RCA, the Sydney Portugal Club Premises is core property of the Sydney Portugal Club and it will remain core property of the Sydney Portugal Club (as the Amalgamated Club) after Completion of the Amalgamation.

- 7.2 As at the date of this Memorandum, the Portugal Madeira Club Premises is the “core property” of the Portugal Madeira Club.
- 7.3 However, at the general meeting referred to in clause 13.1, the members of the Portugal Madeira Club will be asked to pass an ordinary resolution declaring the Portugal Madeira Club Premises as non-core property of the Portugal Madeira Club with immediate effect.
- 7.4 If ordinary resolution in clause 7.3 is passed:
- (a) the Portugal Madeira Club Premises will immediately cease to be core property of the Portugal Madeira Club; and
  - (b) the Portugal Madeira Club will not have any core property.
- 7.5 Additionally, at the general meeting referred to in clause 13.3, the members of the Sydney Portugal Club will be asked to pass an ordinary resolution declaring the Portugal Madeira Club Premises as non-core property of Amalgamated Club as and from Completion of the Amalgamation.
- 7.6 If the ordinary resolution in clause 7.5 is passed, the Portugal Madeira Club Premises will not be core property of the Amalgamated Club.

### **Cash and Investments**

- 7.7 The cash and investments (if any) of the Portugal Madeira Club will be transferred (in accordance with clause 15.1) to the general reserves of the Amalgamated Club.

### **Gaming Machine Entitlements**

- 7.8 The Portugal Madeira Club has twelve (12) poker machine entitlements at the Portugal Madeira Club Premises and ownership of those gaming machine entitlements will be transferred to the Sydney Portugal Club (as the Amalgamated Club).

## **8. RISKS OF NOT PRESERVING THE PORTUGAL MADEIRA CLUB’S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED [REGULATIONS – CLAUSE 7(2)(E1)]**

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- 8.1 As at the date of this Memorandum, the Portugal Madeira Club Premises is the “core property” of the Portugal Madeira Club.
- 8.2 However, at the general meeting referred to in clause 13.1, the members of the Portugal Madeira Club will be asked to pass the ordinary resolution referred to in clause 7.3.
- 8.3 If ordinary resolution in clause 7.3 is passed, the Portugal Madeira Club will not have any core property as at the Completion of the Amalgamation.

## **9. DISPOSAL OF THE PORTUGAL MADEIRA CLUB’S MAJOR ASSETS [REGULATIONS – CLAUSE 7(2)(E2)]**

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- 9.1 For the purposes of the RCA, the Portugal Madeira Club Premises is the “core property” of the Portugal Madeira Club.
- 9.2 However, at the general meeting referred to in clause 13.1, the members of the Portugal Madeira Club will be asked to pass an ordinary resolution set out in clause 7.3.
- 9.3 If ordinary resolution in clause 7.3 is passed, the Portugal Madeira Club Premises will immediately cease to be a major asset of the Portugal Madeira Club and section 17A1 of the RCA will not apply in respect of the disposal (sale) of the Portugal Madeira Club Premises.

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

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10.1 For the purposes of clause 7(2)(f) of the Regulations, the Sydney Portugal Club and the Portugal Madeira Club have agreed that the Amalgamated Club will cease trading from or change the objects of the Portugal Madeira Club Premises in the following circumstances:

- (a) on the later of:
  - (i) two (2) years from Completion of the Amalgamation; and
  - (ii) the issuance of development approval for the Redevelopment in a form acceptable to the Amalgamated Club.
- (b) during the period from Completion of the Amalgamation until the occurrence of the event referred to in clause 10.1(a):
  - (i) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
  - (ii) upon the lawful order of any government authority;
  - (iii) if the Portugal Madeira Club Premises are destroyed or partially destroyed by fire, floods, storms or similar events and/or it is not lawful for a licensed club to be operated at the Portugal Madeira Club Premises.

10.2 In the period from Completion of the Amalgamation until the occurrence of the event referred to in clause 10.1(a), the Sydney Portugal Club intends to operate the Amalgamated Club in the manner referred to in clause 5.

**11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE PORTUGAL MADEIRA CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE PORTUGAL MADEIRA CLUB PREMISES [REGULATIONS – CLAUSE 7(2)(G)]**

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11.1 With effect from Completion of the Amalgamation, the objects of the Sydney Portugal Club will become the objects of the Amalgamated Club (subject to the amendment to the objects of the Sydney Portugal Club referred to in clause 13.6(a)).

11.2 For the purposes of clause 7(2)(g) of the Regulations, the Sydney Portugal Club and the Portugal Madeira Club have agreed that the Amalgamated Club will continue:

- (a) to trade from the Portugal Madeira Club Premises; and
- (b) the activities at the Portugal Madeira Club Premises,

until the occurrence of the circumstances referred to in clause 10.1.

**12. BINDING EFFECT OF MEMORANDUM**

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12.1 The Clubs agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

**13. CALLING OF MEETINGS AND ADMISSION OF THE PORTUGAL MADEIRA CLUB MEMBERS TO MEMBERSHIP OF THE SYDNEY PORTUGAL CLUB**

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- 13.1 The Portugal Madeira Club will call a general meeting of the ordinary members of the Portugal Madeira Club for the purposes of considering and if thought fit passing a resolution to:
- (a) approve in principle the amalgamation in accordance with section 17AEB(d) of the RCA; and
  - (b) declare the Portugal Madeira Club Premises as non-core property of the Portugal Madeira Club with immediate effect.
- 13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 13.3 The Sydney Portugal Club will call a general meeting of the ordinary members of the Sydney Portugal Club for the purposes of considering and if thought fit passing a resolution to:
- (a) approve in principle the amalgamation in accordance with section 17AEB(d) of the RCA; and
  - (b) declare the Portugal Madeira Club Premises as non-core property of the Amalgamated Club as and from Completion of the Amalgamation.
- 13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the meeting referred to in clause 13.1.
- 13.5 In addition to the resolution referred to in clause 13.3, the Sydney Portugal Club will, at the meeting referred to in clause 13.4, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the Sydney Portugal Club (as the Constitution of the Amalgamated Club) to the following effect:
- (a) All members of the Portugal Madeira Club who apply to become members of the Sydney Portugal Club (as the Amalgamated Club) for the purposes of the Amalgamation will be admitted to membership of the Sydney Portugal Club (as the Amalgamated Club).
  - (b) All members of the Portugal Madeira Club will be able to apply for membership of the Sydney Portugal Club (as the Amalgamated Club) in the manner referred to in paragraphs (a) to (d) inclusive of this clause 13.5.
  - (c) As soon as practicable after the Order, the Sydney Portugal Club (as the Amalgamated Club) will forward to each member of the Portugal Madeira Club, who is not already a member of the Sydney Portugal Club (as the Amalgamated Club), a written invitation to become a member of the Sydney Portugal Club (as the Amalgamated Club).
  - (d) Any member of the Portugal Madeira Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Sydney Portugal Club (as the Constitution of the Amalgamated Club) will (subject to the name of that person being displayed on the noticeboard of the Sydney Portugal 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 Sydney Portugal Club) be elected by a resolution of the Board of the Sydney Portugal Club to membership of the Sydney Portugal Club (as

the Amalgamated Club) with effect from the date of Completion of the Amalgamation.

- (e) For the purposes of section 17AC(2) of the RCA, the transferring members will be identified in the Sydney Portugal Club's membership register as "Portugal Madeira Club Members" for administrative purposes only.
- (f) Any person who, at Completion of the Amalgamation, is a:
  - (i) Life member of the Portugal Madeira Club will be admitted as a Life member of Sydney Portugal Club (as the Amalgamated Club); and
  - (ii) Club member of the Portugal Madeira Club will be admitted as a Full member of the Sydney Portugal Club (as the Amalgamated Club);
  - (iii) Social member of the Portugal Madeira Club will be admitted as a Social member of the Sydney Portugal Club (as the Amalgamated Club);
  - (iv) Junior member of the Portugal Madeira Club will be admitted as a Junior member of the Sydney Portugal Club (as the Amalgamated Club);

13.6 The Sydney Portugal Club will, at the meeting referred to in clause 13.4, submit to those members eligible to attend and vote, a further special resolution to amend the Constitution of the Sydney Portugal Club (as the Constitution of the Amalgamated Club), with effect from Completion of the Amalgamation, the effect of which is to:

- (a) include a provision which provides that an object of the Amalgamated Club will be preserve, maintain, uphold and advance the traditions and culture of Portugal and Madeira; and
- (b) amending existing provisions relating to the composition of the Board so that with effect from Completion of the Amalgamation:
  - (i) the Board of the Amalgamated Club will consist of seven (7) directors, comprising of a President, Vice President and five (5) Ordinary directors; and
  - (ii) the Board of the Amalgamated Club will comprise four (4) Sydney Portugal Club members and three (3) Portugal Madeira Club members;
  - (iii) the composition of the Board (including the requirements referred to in sub paragraphs (i) and (ii) above) can not be changed before the Annual General Meeting of the Club to be held in 2031.

13.7 Notwithstanding anything contained in this Memorandum, any member of the Portugal Madeira Club or the Sydney Portugal Club who, at Completion of the Amalgamation, has been:

- (a) refused admission to or turned out of either the Portugal Madeira Club Premises or the Sydney Portugal Club Premises;
- (b) suspended from the Portugal Madeira Club or the Sydney Portugal Club pursuant to the respective Constitution; or
- (c) expelled from the Portugal Madeira Club or the Sydney Portugal Club pursuant to the respective Constitution;

shall, after Completion of the Amalgamation, not be entitled to attend at and use the facilities of the Amalgamated Club and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the Portugal Madeira Club Premises and the Sydney Portugal Club Premises until such time as:

- (d) the person is again permitted to enter the Portugal Madeira Club Premises or the Sydney Portugal Club Premises;
- (e) the period of suspension has been served; or
- (f) the person has applied for and been admitted to membership of the Amalgamated Club.

**14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

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14.1 The Sydney Portugal Club will have carriage of the Amalgamation Application.

**15. WARRANTIES AND OPERATIONAL ARRANGEMENTS**

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15.1 The Portugal Madeira Club warrants to the Sydney Portugal Club Club that from the date of this Memorandum to the date of the Completion of the Amalgamation, the Portugal Madeira Club will:

- (a) carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of \$2,000.00 plus GST without the prior approval of the Sydney Portugal Club's CEO or his delegate; and
- (b) maintain the Assets of the Portugal Madeira Club in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets of the Portugal Madeira Club insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (c) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets;
- (d) provide the Sydney Portugal Club's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Portugal Madeira Club;
- (e) not do anything which may damage the goodwill of its business or that of the Sydney Portugal Club;
- (f) not without the prior written consent of the Sydney Portugal Club:
  - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
  - (ii) incur any actual or contingent liabilities whether in relation to the Portugal Madeira Club's operations or otherwise;
  - (iii) dispose of, encumber or grant an option over, or grant any interest in any of the Portugal Madeira Club's Assets;



- (iv) employ any person;
- (v) terminate the employment of any employee;
- (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
- (vii) seek to borrow any equipment or borrow money from any third party;
- (viii) increase the level of debt of the Portugal Madeira Club beyond that existing as at the date of this Memorandum other than any reasonable debt incurred in the normal day to day trading of the Portugal Madeira Club; or
- (ix) engage in discussions or negotiations with anyone other than the Sydney Portugal Club concerning an amalgamation or the sale or disposal of all or any part of the Portugal Madeira Club's Assets, and the Portugal Madeira Club must immediately advise the Sydney Portugal Club of any such offer, inducement or solicitation by any third party to participate in any such discussion or negotiation.

15.2 Notwithstanding clause 15.1, each of the Portugal Madeira Club's warranties contained in clause 15.1 will remain in full force and effect notwithstanding Completion of the Amalgamation and until the Portugal Madeira Club is liquidated or otherwise wound up.

15.3 The Sydney Portugal Club's CEO and the Portugal Madeira Club's CEO will have regular discussions about the management and operations of the Portugal Madeira Club with the object of:

- (a) providing for an orderly transfer of the management and operations of the Portugal Madeira Club to the Sydney Portugal Club on the date of Completion of the Amalgamation;
- (b) achieving efficiencies and cost savings in the Portugal Madeira Club;
- (c) implementing operational changes in preparation for the Completion of the Amalgamation.

15.4 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):

- (a) an event occurs which has or may have a material adverse effect on the profitability of the premises or value of any of the Assets of the subject Club;
- (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
- (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
- (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.

15.5 Title to, property in and risk of the Portugal Madeira Club's Assets remain solely with the

Portugal Madeira Club until such time as they are passed to the Amalgamated Club in accordance with clause 15.1.

15.6 For the avoidance of doubt, it is acknowledged that no liability is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the Portugal Madeira Club.

**16. WINDING UP OF THE PORTUGAL MADEIRA CLUB CORPORATE STRUCTURE AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE SYDNEY PORTUGAL CLUB (AS THE CORPORATE STRUCTURE OF THE AMALGAMATED CLUB)**

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16.1 As soon as practicable after the Order, but subject to the Final Order, the Portugal Madeira Club must ensure the Assets, Debts and Liabilities of the Portugal Madeira Club are transferred to the Sydney Portugal Club in the manner referred to in clause 16.

16.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order.

16.3 For the purposes of clause 16.1, the Portugal Madeira Club must do all things necessary and execute all documents to cause all of the Assets of the Portugal Madeira Club to be transferred to or assigned to the Sydney Portugal Club with effect from the date of Final Order.

16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Portugal Madeira Club and held in escrow by the Sydney Portugal Club pending Completion of the Amalgamation.

16.5 The Portugal Madeira Club must ensure that the Assets are transferred to the Sydney Portugal Club free of charges, security interests and encumbrances of any other nature to enable the Sydney Portugal Club to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation.

16.6 After the Sydney Portugal Club has advised the Portugal Madeira Club that it is satisfied that all matters related to the Amalgamation have been completed, the Portugal Madeira Club must, as soon as reasonably practicable, ensure the company structure of the Portugal Madeira Club is either voluntarily wound up, deregistered or liquidated.

16.7 The Sydney Portugal Club will be responsible for the costs of the liquidation of the corporate structure of the Portugal Madeira Club.

16.8 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 15.1.

**17. ACCESS TO RECORDS**

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17.1 From the date of this Memorandum, the Portugal Madeira Club will provide to the Sydney Portugal Club at all reasonable times access to the Portugal Madeira Club Premises, Records and other information and material reasonably required by the Sydney Portugal Club (including for the purpose of any due diligence referred to in clause 2.6).

17.2 From the date of this Memorandum, the Sydney Portugal Club will provide to the Portugal Madeira Club at all reasonable times access to the Sydney Portugal Club Premises, Records and other information and material reasonably required by the Portugal Madeira Club for the purposes of the due diligence referred to in clause 2.5.

## **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.
- 18.4 This clause 18 survives completion of this Memorandum.

## **19. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

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- 19.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 19.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- 19.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.
- 19.4 If the parties do not within seven (7) days of the receipt of the notice referred to in clause 19.2 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.

- 19.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 19.2 a party which has complied with the provisions of this clause 19 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.
- 19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 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.

## **20. COSTS**

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

## 21. **STAMP DUTY**

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21.1 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.

21.2 Despite the exemption from duty referred to in clause 21.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by the Sydney Portugal Club.

## 22. **GENERAL**

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22.1 This Memorandum 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 is of no force or effect.

22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.

22.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.

22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.

22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.

22.6 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.

22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

## 23. **TERMINATION**

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23.1 The Sydney Portugal Club may terminate this Memorandum at any time, without penalty or liability to the Portugal Madeira Club for any Claim by giving written notice to the Portugal Madeira Club if:

- (a) the due diligence review undertaken by it on the Portugal Madeira Club (as referred to in clause 2.5) is not satisfactory to the Board of the Sydney Portugal Club in its absolute discretion; and/or
- (b) the Portugal Madeira Club breaches any warranty contained in clause 15.

23.2 If:

- (a) the members of the Portugal Madeira Club have not passed the resolution referred

to in clause 13.1 within six (6) months of the date of this Memorandum; or

- (b) the members of the Sydney Portugal Club do not pass the resolutions referred to in clauses 13.3, 13.5 and 13.6 within six (6) months of the members of the Portugal Madeira Club passing the resolution referred to in clause 13.1,

then either party by giving written notice to the other may, without penalty or liability to the other for any Claim, terminate this Memorandum.

23.3 Notwithstanding anything contained in this Memorandum and subject to clause 23.4, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum or such other longer period agreed by the parties, then either party by giving written notice to the other may, without penalty or liability to the other Party for any Claim terminate this Memorandum.

23.4 A Party may not rely on clause 23.3 to terminate this Memorandum if it is responsible for any delay in Completion of the Amalgamation occurring.

23.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 23 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 23.

23.6 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation terminates.

## 24. NOTICES

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24.1 A notice, approval, consent or other communication to a person relating to this Memorandum must be in writing and executed by duly authorised persons.

24.2 If the notice is to the Sydney Portugal Club then it must be addressed as follows:

- (a) **Name:** Sydney Portugal Community Club Limited
- (b) **Attention:** Jorge Martins
- (c) **Email:** [secretary@sydneyportugalclub.com.au](mailto:secretary@sydneyportugalclub.com.au)

24.3 If the notice is to the Portugal Madeira Club then it must be addressed as follows:

- (a) **Name:** Portugal Madeira Sydney Social & Cultural Sports Club Limited
- (b) **Attention:** Bruno Nobrega
- (c) **Email:** [hello@clubinnerwest.com.au](mailto:hello@clubinnerwest.com.au)

24.4 Notice is sent by the sender and received by the receiver upon the successful completion of the email.

## 25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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25.1 No variation or waiver of any provision of this Memorandum is of any force or effect unless it is confirmed in writing and signed by both Parties. The variation or waiver is effective only to the extent for which it is made or given.



**26. WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT**

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26.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on that Party by this Memorandum operates as a waiver of that power or right. No single or partial exercise of any such power or right will preclude any other or future exercise of it, or the exercise of any other power or right under this Memorandum.

**27. NOTES**

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27.1 Before this Memorandum was executed, the Clubs each displayed the notices to members which are required under section 17AE of the RCA and clause 4(5) of the Regulations to the RCA.

27.2 This Memorandum is to be:

- (a) made available to the ordinary members of the Portugal Madeira Club and the Sydney Portugal Club at least 21 days before any meeting 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) of these Notes is held.
- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by the Portugal Madeira Club to the Sydney Portugal Club.

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**EXECUTED as a Deed**

Executed by **THE SYDNEY )  
PORTUGAL COMMUNITY CLUB )  
LIMITED ACN 002 690 799** pursuant )  
to Section 127 of the Corporations Act  
2001

DocuSigned by:  
*Jorge Martins*  
4DE13B975CED496...  
Secretary

Signed by:  
*Nuno Da Silva*  
79173ABF4F504F2...  
Director

Jorge Martins

Nuno Silva

\_\_\_\_\_  
Name of Secretary

\_\_\_\_\_  
Name of Director

Executed by **PORTUGAL MADEIRA )  
SYDNEY SOCIAL & CULTURAL )  
SPORTS CLUB LIMITED ACN 002 )  
903 451** pursuant to Section 127 of the  
Corporations Act 2001

Signed by:  
*Bruno Nobrega*  
74D0929D0E6242E...  
Director

DocuSigned by:  
*Jason Perestrelo*  
14735AA338C64BF...  
Director

Bruno Nobrega

Jason Perestrelo

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director