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Deed of Amalgamation

between

Lindfield Bowling Club Limited
ABN 37 000 089 878
(**Lindfield**)

and

Killara Bowling Club Limited
ABN 12 000 097 807
(**Killara Bowling**)

and its subsidiary

Killara Bowling Co Pty Ltd
ACN 000 038 346
(**Killara SubCo**)

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This deed is made on 19 January.2021

between	**Lindfield Bowling Club Limited** ABN 37 000 089 878 of 2B Carlyle Road, East Lindfield NSW 2070 (**Lindfield**)
and	**Killara Bowling Club Limited** ABN 12 000 097 807 of 6 Arnold Street, Killara NSW 2071 (**Killara Bowling**)
and its subsidiary	**Killara Bowling Co Pty Ltd** ACN 000 038 346 (**Killara SubCo**)

Recitals

A Lindfield and Killara Bowling are both registered clubs. Killara Subco is a subsidiary of Killara Bowling.

B On 13 August 2019, Killara Bowling called for expressions of interest in amalgamation from other registered clubs in accordance with clause 4 of the Regulation.

C On 30 August 2019 Lindfield submitted an expression of interest which has been accepted by the board of directors of Killara Bowling and Lindfield is nominated as the preferred amalgamation partner of Killara Bowling.

D The parties agree to amalgamate subject to the terms of this Deed and the MOU.

E This Deed is supplementary to the MOU entered into by the parties in accordance with the requirements of Part 2 Division 1A of the RCA and clause 8 of the Regulation, and is intended to provide for:

(i) commercial terms; and

(ii) other details agreed by the parties with respect to the Amalgamation,

(iii) which are not required to be included in the MOU under the Regulation.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in the Recitals and this Deed unless the context requires otherwise:

Accounting Standard means:

(a) the same thing as a reference to an accounting standard in the Act;

(b) if there is no standard under the Act, then the standard available from the Australian Accounting Standards Board; or

(c) if there is no standard under subclause (b), then the standard required by a qualified auditor;

Act means the *Corporations Act 2001* (Cth);

Amalgamated Club means Lindfield as the continuing club after Amalgamation Completion;

Amalgamation Completion means the day on which all of:

(a) the Assets and Club Licence of Killara Bowling are transferred to the Amalgamated Club; and

(b) the liabilities of Killara Bowling are discharged by, or transferred to, the Amalgamated Club,

in accordance with this Deed and the MOU;

Amalgamation means the amalgamation of Killara Bowling and Lindfield in accordance with applicable law, the MOU and this Deed;

Application for Transfer means an application for transfer of the Club Licence held by Killara Bowling to the Amalgamated Club (including an application for provisional transfer) in accordance with section 60 of the Liquor Act;

Asset includes chattels, motor vehicles, stock in trade, plant, fixtures and fittings, real property, gaming machines, gaming machine entitlements, debtors, intellectual property rights and goodwill at no consideration;

Authority means the Independent Liquor and Gaming Authority;

Board means the board of directors of the Amalgamated Club after Amalgamation Completion;

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney;

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

Conditions means the conditions set out in Schedule 3;

Confidential Information means all information which a party designates as being confidential, or, which would reasonably be considered to be confidential. This includes but is not limited to:

(a) financial information;

(b) business plans and marketing plans;

(c) terms of agreements with third parties, including the details of those third parties;

(d) membership records and information about persons which is subject to laws relating to privacy; and

(e) information recorded in board and committee papers and minutes;

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 Killara Bowling and an employee of Killara Bowling, accrued but not paid by Killara Bowling at Amalgamation Completion;

Force Majeure means:

(a) an event which is beyond the reasonable control of a party; and

(b) includes but is not limited to:

    (i) an act of God;

    (ii) a breakdown or destruction of plant and equipment;

    (iii) a shortage of or inability to secure fuel, power, material or labour;

(iv) a flood, earthquake, rockfall or landslide;

(v) a government act or regulation including but not limited to, exchange control by government having jurisdiction over the parties effected;

(vi) a blockade, riot, civil insurgence, act of terrorism or war;

(vii) lightning, fire or explosion; or

(viii) epidemic, pandemic or quarantine restriction;

Insolvency Event means:

(a) the happening of any of these events:

(i) an application is made to a court for an order or an order is made that a party be wound up;

(ii) an application is made to a court for an order appointing a liquidator or provisional liquidator for a party;

(iii) a person is appointed as a liquidator or provisional liquidator for a party;

(iv) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;

(v) a party proposes a reorganisation, moratorium or other administration involving a class of its creditors;

(vi) a party resolves to wind itself up, otherwise dissolve itself, gives notice of intention to do so or is otherwise wound up or dissolved;

(vii) a party is or states that it is unable to pay its debts when they fall due;

(viii) as a result of the operation of section 459F(1) of the Corporations Act, a party is taken to have failed to comply with a statutory demand;

(ix) a party is, or makes a statement from which it may be reasonably deduced that the party is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act;

(x) a party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a party;

(xi) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or

(xii) anything analogous or having a substantially similar effect to any event specified in this definition happens under the law of any applicable jurisdiction;

(b) it does not include something which happens under this clause, including the voluntary liquidation of Killara Bowling for the purposes of the amalgamation, if the party is solvent and on terms approved by the other party to effect Amalgamation Completion;

Killara Bowling Premises means the premises of Killara Bowling situated at 6 Arnold Street, Killara NSW 2071 and known as certificate of folio identifiers 2/817195, 3/817195 and B/380305 (including all property rights attached to such parcels of land, and all buildings situated on the Killara Bowling Premises) which at the date of the MOU is owned by Killara Sub Co;

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

Loss means all loss, liability, damage, costs and expenses including direct and indirect Loss (on and indemnity basis);

Member means a member of either Killara Bowling, Lindfield or the Amalgamated Club as the case may be, as shown on that club's register of members at the relevant time;

MOU means the memorandum of understanding entered into by the parties on or about the date of this Deed for the purposes of the Amalgamation and in accordance with clause 7 of the Regulation;

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

Records means all documents, books, files, reports, accounts and plans of Killara Bowling and Lindfield relating exclusively or substantially to their businesses including:

(a) all marketing and member files and member lists;

(b) promotional and sales literature and other advertising material and catalogues;

(c) supplier lists;

(d) all records of debtors and creditor claims;

(e) wages and other employment benefit and payroll and personnel records of its employees;

(f) all computer software (including the media on which the same is stored) and computer records;

(g) financial records; and

(h) all records of contracts (including contracts of insurance);

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

Sunset Date means the sunset date for the respective Condition as set out in Schedule 3.

1.2 **Interpretation**

(a) The following rules of interpretation apply unless the context requires otherwise:

(i) headings are for convenience only and do not affect interpretation;

(ii) the singular includes the plural and conversely;

(iii) a gender includes any gender;

(iv) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;

(v) a reference to person includes:

(A) a body corporate, an unincorporated or other entity and conversely; and

(B) a reference to that person's executors, administrators, successors, permitted assigns and substitutes including but not limited to a person to whom this Deed is novated;

(vi) a reference to clause or schedule is to a clause or schedule to this Deed;

(b) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;

(c) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;

(d) a reference to legislation includes but is not limited to a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;

(e) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing; and

(f) a provision of this Deed must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

2 Amalgamation

2.1 Amalgamation

(a) The Amalgamation is intended to enhance the facilities and services available to all Members of the Amalgamated Club.

(b) The parties agree to amalgamate:

(i) in accordance with the RCA and Liquor Act; and

(ii) on the terms of this Deed and the MOU.

2.2 Purpose of this Deed

This Deed is supplementary to the MOU and provides for:

(a) commercial terms; and

(b) other details agreed by the parties with respect to the Amalgamation,

which are not required to be included in the MOU under the Regulation.

2.3 Effect of this Deed

This Deed is collateral to, and conditional upon execution of, the MOU.

2.4 Effect of the MOU

The Clubs agree that:

(a) the terms of the MOU will be taken to be terms of this Deed and are binding on both parties;

(b) a breach of the MOU will be taken to be a breach of this Deed; and

(c) if this Deed imposes an obligation on a party which would result in that party breaching a term of the MOU then:

(i) the MOU will prevail to the extent of the inconsistency; and

(ii) compliance by that party with the MOU will not be taken to be a breach of this Deed.

3 Conditions precedent

3.1 Conditions

Amalgamation Completion under the MOU and this Deed, is subject to and will not proceed unless on or prior to the Sunset Date all the Conditions have been satisfied or waived in writing.

3.2 Best endeavours

Each party must:

(a) use its best endeavours to ensure that the Conditions in respect of which it has a power or responsibility under this Deed as specified in Schedule 3 are satisfied as expeditiously as possible after execution of this Deed and in any event by no later than the Sunset Date (unless otherwise agreed in writing by Lindfield and Killara Bowling); and

(b) must provide all reasonable assistance to the other party (without being obliged to incur any expense in so doing) as is reasonably necessary to satisfy the Conditions.

3.3 Waiver

(a) Any Condition that is referred to as being for the benefit of:

(i) Lindfield only, is only waived if Lindfield notifies Killara Bowling in writing that Lindfield waives the Condition;

(ii) Lindfield and Killara Bowling, is only waived if both Lindfield and Killara Bowling agree in writing to waive the Condition; and

(iii) Killara Bowling only, is only waived if Killara Bowling notifies Lindfield in writing that Killara Bowling waives the condition.

(b) A Condition that is waived in accordance with clause 3.3(a) is effective only to the extent specifically set out in that waiver.

(c) Lindfield and Killara Bowling each acknowledge that the requirement for member approvals of the Amalgamation is a statutory requirement under s 17AEB of the RCA.

3.4 Obligation to notify

If Lindfield, Killara Bowling or Killara Sub Co becomes aware:

(a) that a Condition has been satisfied; or

(b) of any facts, circumstances or matters that may result in a Condition not being or becoming incapable of being satisfied,

that party must promptly notify the other parties accordingly.

3.5 Termination

If a party has complied with its obligations under clause 3.2, it may terminate this Deed by giving not less than five (5) Business Days' notice to the other party if:

(a) a Condition is not satisfied, or waived in accordance with clause 3.3, by the Sunset Date (unless otherwise agreed in writing by Lindfield and Killara Bowling); or

(b) a Condition is or becomes incapable of being satisfied; or

(c) a Condition, having been satisfied, does not remain satisfied in all respects at all times before Completion,

subject always to the rights of any party with respect to a breach by another party of the latter party's obligations prior to giving such notice.

3.6 **Rights on termination**

(a) If this Deed is terminated under clause 3.5 then, in addition to any other rights, powers or remedies provided by law or in equity:

(i) subject to clause 3.6(a)(ii), each party is released from its obligations and liabilities under or in connection with this Deed, and the MOU and this Deed will have no further force or effect, other than this clause 3 and clause 10; and

(ii) each party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

(b) Subject to any applicable law requiring the retention of any due diligence material or Records of the other party, each party must return to the other party any originals and copies of all due diligence material and Records relating to that other party in their possession or under their control.

4 Approvals

4.1 **Killara Bowling meeting**

(a) Unless otherwise agreed by the parties, Killara Bowling will convene a general meeting of its Members entitled to vote under its constituent documents and the RCA to be held as soon as reasonably practicable but within sixty (60) days of the date of this Deed.

(b) At that meeting, the Members of Killara Bowling will consider:

(i) a resolution in accordance with s 41E of the RCA to declare Killara Bowling's interest in the Killara Bowling Premises as "non-core property";

(ii) a resolution to:

(A) approve the Amalgamation in principle in accordance with section 17AEB(d) of the Act;

(B) approve the transfer of Assets from Killara Bowling and Killara SubCo to the Amalgamated Club in accordance with the MOU and this Deed;

(C) approve the making of the Application for Transfer; and

(D) approve any other matters required to give effect to this Deed and the MOU; and

(iii) a resolution in accordance with the constitution of Killara Bowling to approve the transfer of real property in which Killara Bowling has an interest to the Amalgamated Club in accordance with this Deed.

(c) The form of the resolutions referred to in clause 4.1(b) to be put to Members of Killara Bowling is contained in Schedule 1.

4.2 **Lindfield meeting**

(a) Unless otherwise agreed by the parties, subject to approval being given under subclause 4.1(b), Lindfield will convene a general meeting of its Members entitled to vote under its constituent documents and the RCA as soon as reasonably practicable after Killara Bowling passes the resolutions referred to in clause 4.1(b) but in any event within sixty (60) days thereafter.

(b) At that meeting the Members of Lindfield will:

(i) consider resolutions to:

(A) approve the Amalgamation in principle in accordance with section 17AEB(d) of the Act;

(B) approve the making of the Application for Transfer;

(ii) consider and if thought fit pass the Special Resolutions referred to in clause 5.1; and

(iii) approve any other matters required to give effect to this Deed and the MOU.

(c) The form of the resolutions referred to in clause 4.2(b) to be put to Members of Lindfield is contained in Schedule 2.

4.3 **Application for transfer**

(a) Within 10 Business Days of the meeting under clause 4.1 Killara Bowling will give to Lindfield:

(i) a certified copy of the notice of meeting and minutes of the meeting; and

(ii) certification that the notice of meeting and MOU have been displayed as required by the RCA and Regulation.

(b) Lindfield will lodge the Application for Transfer with the Authority as soon as reasonably practicable if approval is given by its members under clause 4.2 and the resolutions in clause 4.1(b) have been passed by the Members of Killara Bowling.

(c) Killara Bowling agrees to promptly sign all documents and provide all information reasonably necessary for Lindfield to complete and lodge the Application for Transfer.

(d) Within 10 Business Days of the meeting under clause 4.2 Lindfield will give to Killara Bowling:

(i) a certified copy of the notice of meeting and minutes of the meeting; and

(ii) certification that the notice of meeting and MOU have been displayed as required by the RCA and Regulations.

5 Transfer of Members

5.1 At the meeting under clause 4.2, the Members of Lindfield will consider special resolutions as contained in Schedule 2 to this Deed to amend the constituent documents of Lindfield (with effect from Amalgamation Completion) to:

(a) add classes of members for identification purposes under section 17AC of the RCA to be known as 'Ex Killara Bowling Members' and 'Ex Killara Life Members';

(b) permit all Members of Killara Bowling who make application under this clause to be admitted as Members of the Amalgamated Club (without the need for a proposer and seconder to sign their application);

(c) implement the proposed interim Board structure in accordance with clause 3.2(b) of the MOU; and

(d) amend the name of Lindfield to "Lindfield Killara Bowling Club Limited".

5.2 As soon as practicable after provisional approval of the Application for Transfer has been given by the Authority, Lindfield will send every Member of Killara Bowling (who is not already a Member of Lindfield) an invitation to become a member of the Amalgamated Club which includes the requirements for application for membership.

5.3 A Member of Killara Bowling may accept the invitation by completing and returning the application for membership of the Amalgamated Club (in a class of membership for which they are eligible as set out in clause 5.6) to Lindfield prior to Amalgamation Completion.

5.4 A Member of Killara Bowling who applies for membership of the Amalgamated Club under this clause:

(a) will have their name displayed on the noticeboard of Lindfield for at least 7 days and will not be admitted as a member of the Amalgamated Club until at least 14 days after receipt of their application for membership;

(b) during the period set out in clause 5.4(a) will be a Provisional Member of the Amalgamated Club; and

(c) subject to clause 5.4(a) and in accordance with section 30(2) of the RCA, will be admitted as a Member of the Amalgamated Club on or before Amalgamation Completion.

5.5 Members of Killara Bowling who become Members of the Amalgamated Club will not be required to pay any fee or subscription in addition to any fee or subscription pre-paid to Killara Bowling in respect of their membership for that financial year of Killara Bowling.

5.6 Lindfield will:

(a) permit all Bowling Members – Male and Bowling Members – Female of Killara Bowling who make application under this clause, to be admitted as Ex Killara Bowling Members of the Amalgamated Club;

(b) permit all Social (Non Bowling) Members – Male and Social (Non Bowling) Members – Female of Killara Bowling who make application under this clause, to be admitted as Social Members of the Amalgamated Club;

(c) permit all Junior Bowling Members – Male and Junior Bowling Members – Female of Killara Bowling who make application under this clause, to be admitted as Junior Members of the Amalgamated Club.

5.7 Any person who, at Amalgamation Completion, is a Life Member of Killara Bowling:

(a) will be admitted, and continue to be recognised, as a Life Member of the Amalgamated Club; and

(b) will only be required to pay the Amalgamated Club the minimum annual subscription required by the RCA.

6 Due diligence

6.1 Due diligence enquiries

(a) The parties acknowledge that prior to Amalgamation Completion, each party may undertake at its cost a due diligence review of the other party and may appoint a third party consultant or consultants to assist in its review.

(b) Each party (the **first party**) must make its Records available to the other party (the **other party**) for inspection and copying by that other party or its authorised representatives for the purposes of due diligence, within a reasonable time of receiving a request from that other party.

(c) Each party must permit the other party and its authorised representatives to enter and access any part of the first party's premises on request, in order to carry out inspections, surveys or any other assessment of those premises (provided that the other party must use reasonable endeavours not to unduly interfere with the trading activities of the first party on the first party's premises.

(d) Each party agrees to sign all consents or applications that are required to be signed by the first party and reasonably requested by the other party to enable that other party to complete its due diligence (unless it is unreasonable for the first party to do so).

6.2 **Termination**

Lindfield and Killara each may terminate this Deed and the MOU if, in either case, it is not satisfied with the outcome of its due diligence review on the other party, provided that it gives written notice to the other party within thirty (30) days of the date of this Deed.

7 Clubs' obligations

7.1 On and from the date of this Deed up to Amalgamation Completion, each of Lindfield and Killara Bowling must:

(a) trade in the ordinary course of business and with due care and skill;

(b) maintain the following insurance policies with a reputable insurer in Australia:

(i) public liability insurance in the amount of $20,000,000 for each single claim, 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;

(c) give the other party a copy of its certificates of currency for any insurance policy held under subclause 7.1(b) on request;

(d) immediately notify the other party of anything which may result in a claim on an insurance policy held under subclause 7.1(b);

(e) comply with any agreement to which it is a party;

(f) comply with all applicable laws;

(g) not do anything which may damage its reputation or the reputation of Lindfield; and

(h) not enter into any agreement, memorandum of understanding, arrangement, negotiations, discussions or communications with any other registered club with respect to a possible amalgamation with such a registered club,

except as specified otherwise in the MOU or this Deed.

7.2 On and from the date of this Deed to Amalgamation Completion, each of Lindfield and Killara Bowling must not without the prior written consent of the other party:

(a) incur any single debt or liability in excess of $1,000 plus goods and services tax;

(b) vary, enter into, or exercise any option to renew an agreement;

(c) enter into, terminate or alter any term of any material contract, arrangement or understanding in relation to its operations or otherwise;

(d) employ any person; or

(e) dispose of, lease, licence, mortgage, charge or otherwise encumber, or permit any encumbrance to arise, over any of its Assets,

except as specified otherwise in the MOU or this Deed.

7.3 Notwithstanding clauses 7.1 and 7.2, Killara Bowling must cease trading from the Killara Bowling Premises in accordance with a request given by Lindfield to Killara Bowling in accordance with the MOU.

8 Co-operation between the Clubs

8.1 From the date of this Deed to Amalgamation Completion the parties will each nominate suitably authorised officers to hold regular discussions about:

(a) the management of Killara Bowling and Lindfield up to Amalgamation Completion;

(b) the efficient transfer of the Assets and Club Licence of Killara Bowling and/or Killara SubCo to Lindfield and efficient payment of liabilities of Killara Bowling by Lindfield;

(c) management of the transfer of the Members of Killara Bowling to Lindfield in accordance with this Deed and the MOU; and

(d) any other matters relevant to the Amalgamation reasonably considered necessary by the parties.

8.2 Each party acknowledges that prior to Amalgamation Completion, the other party remains under control of its own board and other duly authorised officers, and participation in discussions about the management of the other party is only in an advisory capacity only under this clause.

8.3 Both parties agree to carry out all acts necessary to give effect to this Deed and the MOU promptly and in good faith.

8.4 From the date of this deed:

(a) Killara Bowling will permit Lindfield to inspect and copy any Records of Killara Bowling; and

(b) Lindfield will permit Killara Bowling to inspect and copy any Records of Lindfield,

as considered reasonably necessary for the purposes of assisting the requesting party to comply with its obligation under the MOU or this Deed.

9 Publicity

A party must not make any public announcement or statement relating to the Amalgamation without the prior written consent of the other party (which must not be unreasonably withheld).

10 Confidentiality

10.1 A party must not, and must ensure that its employees, agents and contractors do not, disclose any Confidential Information of the other party to any person except:

(a) as required to carry out its obligations under this Deed and the MOU;

(b) if required by law;

(c) if the other party ceases to treat that information as being confidential; or

(d) with the prior written consent of the other party.

10.2 If this Deed or the MOU is terminated, then a party must return or destroy any Confidential Information of the other party in its possession in any form, at the request of the other party except to the extent it is required to retain such a record for financial reporting purposes or under any law.

11 Exclusivity

11.1 Each of Lindfield, Killara Bowling and Killara Subco agrees that on and from the date of this Deed:

(a) it must not, and must ensure that its officers, employees, agents and contractors do not, accept any expression of interest, make any expression of interest, accept or make any unsolicited merger offer, or negotiate with any third party (including any other registered club) in respect of any amalgamation or transfer of any of its Assets except:

(i) in the case of Lindfield, with the prior written consent of Killara Bowling (which may be given or withheld at Killara's absolute discretion);

(ii) in the case of Killara Bowling or Killara SubCo, with the prior written consent of Lindfield (which may be given or withheld at Lindfield's absolute discretion); or

(iii) for the purposes of making any disclosures required under the RCA; and

(b) Killara Bowling and Killara Subco must notify Lindfield as soon as practicable after receiving any expression of interest, unsolicited merger offer or any other form of approach or offer from any third party in respect of any amalgamation or transfer of any of the Assets of Killara Bowling or Killara Subco, or any non-compliance with clause 11.1(a); and

(c) Lindfield must notify Killara Bowling as soon as practicable after receiving any expression of interest, unsolicited merger offer or any other form of approach or offer from any third party in respect of any amalgamation or transfer of any of the Assets of Lindfield, or any non-compliance with clause 11.1(a).

11.2 Each of Killara Bowling and Killara Subco agrees that the obligations imposed on them under clause 11.1 are reasonably necessary to protect the legitimate interests of Lindfield, and made in good faith in consideration for the negotiation and endeavours undertaken by all parties to advance the proposed Amalgamation.

11.3 Lindfield agrees that the obligations imposed on it under clause 11.1 are reasonably necessary to protect the legitimate interests of Killara Bowling, and made in good faith in consideration for the negotiation and endeavours undertaken by all parties to advance the proposed Amalgamation.

11.4 The obligations in this clause 11 shall apply until Amalgamation Completion, unless this Deed is terminated prior to Amalgamation Completion.

12 Liabilities

The Amalgamated Club will be responsible for and pay when due all debts and liabilities of Killara Bowling:

(a) as at Amalgamation Completion; and

(b) reasonably incurred after Amalgamation Completion for the purposes of the winding up of Killara Bowling.

13 Transfer of assets, assignment or novation of agreements and payment of remaining liabilities

13.1 On the date of transfer of the Club Licence of Killara Bowling to the Amalgamated Club, or as soon as practicable after that, Killara Bowling must do all things necessary:

(a) to assign to the Amalgamated Club or assist the Amalgamated Club to novate those contracts of Killara Bowling with third parties which the Amalgamated Club has agreed will be assigned to it or will be novated;

(b) to assist the Amalgamated Club in the payment of all liabilities of Killara Bowling not already paid by either Killara Bowling or Lindfield; and

(c) to transfer to the Amalgamated Club all Assets of Killara Bowling provided that the shares in Killara SubCo will not be transferred to Lindfield unless and until requested by Lindfield and any such transfer shall only take effect on or after the date of the transfer of the Club Licence of Killara Bowling to the Amalgamated Club.

13.2 Killara Bowling must ensure that the Board of Killara SubCo must pass all resolutions in accordance with the constitution of Killara SubCo, and do all things necessary to give effect to all of its obligations under this Deed and the MOU.

13.3 Killara SubCo must pass all resolutions in accordance with its constitution and do all things necessary to give effect to all of its obligations under this Deed and the MOU.

13.4 Each of Lindfield and Killara Bowling must ensure that their respective Boards pass all resolutions and do all things necessary to give effect to all of the respective obligations under this Deed and the MOU.

13.5 On Amalgamation Completion:

(a) Killara Bowling must give to the Amalgamated Club all statutory, membership and other Records of Killara Bowling that it is not required to retain until winding up is completed;

(b) Killara SubCo must give to the Amalgamated Club:

(A) all statutory, membership and other Records of Killara SubCo that relate to the Killara Bowling Premises; and

(B) copies of all other Records of which Killara SubCo is required to retain the originals.

13.6 On winding up of Killara Bowling, it must give to the Amalgamated Club the balance of all Records not already given under clause 13.5.

13.7 Lindfield will retain the Records specified in clauses 13.5 and 13.6, for as long as Lindfield exists as a corporation, it shall produce them upon receiving a reasonable request from any Ex Killara Member but may withhold them to the extent permitted by law.

13.8 Notwithstanding anything to the contrary in this Deed or the MOU, Lindfield may require Killara Subco to transfer to Lindfield the Killara Bowling Premises for such consideration as agreed to by Lindfield prior to Killara Bowling transferring the shares in Killara Subco to Lindfield but not before Amalgamation Completion.

14 Dissolution of Killara Bowling

14.1 After Amalgamation Completion, or as otherwise agreed by the parties, Killara Bowling will:

(a) call a general meeting of its Members entitled to vote under its constituent documents to consider and, if thought fit, pass the resolutions required for a members voluntary winding up of Killara Bowling; and

(b) carry out all acts necessary to effect such winding up after the approval of those Members has been given.

14.2 The Amalgamated Club shall nominate a liquidator (with consent from Killara Bowling, which must not be unreasonably withheld) to be appointed to liquidate Killara Bowling.

14.3 Each of the parties warrant to the other that 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 matters referred to in this clause 14.

15 Force Majeure

15.1 A party is deemed not to be in breach of an obligation under this Deed or the MOU if it cannot comply with its obligations because of a Force Majeure event.

15.2 A party which is subject to a Force Majeure event must take all reasonable steps to mitigate the effects of that event, keep the other party notified of progress of mitigation actions, and comply with its obligations under this Deed and the MOU.

16 Representations and warranties

Each party represents and warrants that:

(a) it has full power and authority to enter into and perform its obligations under this Deed and the MOU;

(b) the Records and accounts which it has given to the other party before the execution of this Deed 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;

(c) it has complied with all laws relating to payment of taxes and Employee Entitlements;

(d) each of the representations and warranties it has made in this Deed and the MOU are correct; and

(e) 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.

17 Dispute resolution

17.1 A party must not commence proceedings in relation to a dispute under this Deed or the MOU without first following the procedures in this clause, except to seek urgent injunctive or other interlocutory relief.

17.2 If there is a dispute between the parties, then either party may give a notice to the other which must:

(a) succinctly set out the details of the dispute; and

(b) state that it is a dispute notice given under this clause.

17.3 The parties must meet within 5 Business Days after the date of delivery of the dispute notice and attempt to resolve the dispute.

17.4 Each party must use its best endeavours to resolve the dispute and act in good faith.

17.5 If the parties cannot solve the dispute within a further 10 Business Days, either party may refer the dispute for mediation by giving the other party notice.

17.6 A mediation conducted under this clause will be in accordance with the mediation rules of the Law Society of New South Wales and the President of the Law Society of NSW (or his or her nominee) will determine the mediator's remuneration.

17.7 If a dispute is not resolved by mediation under this clause within 30 Business Days of referral to a mediator, or a longer period agreed by the parties, any party may take any action available to it at law.

18 Termination

18.1 A party may terminate this Deed immediately by giving notice to the other party if:

(a) the Authority does not approve the transfer of the Club Licence of Killara Bowling to Lindfield within twenty-four (24) months after the date of this Deed;

(b) Amalgamation Completion does not occur by the date which is 6 months after the date on which the Authority approves the transfer of the Club Licence of Killara Bowling to Lindfield (or such other date which is agreed by the parties);

(c) the other party is in breach of an obligation under this Deed or the MOU and:

(i) that breach is not capable of rectification; or

(ii) the other party fails to rectify that breach within 10 Business Days of being given notice to do so; or

(d) the other party suffers an Insolvency Event.

18.2 Termination of this Deed by a party under clause 18.1(a) or clause 18.1(b) is without penalty to either party.

18.3 The provisions of this clause 18 are separate to the rights of termination under clause 3.5.

19 Indemnity

19.1 Lindfield indemnifies Killara Bowling against any Loss that Killara Bowling incurs as a result of:

(a) any breach of this Deed, the MOU or any law by Lindfield:

(b) the wilful misconduct, negligence, or fraud of Lindfield or its officers, employees, contractors or agents,

except to the extent such Loss is caused or contributed to by Killara Bowling or its officers, employees, contractors or agents.

19.2 Killara Bowling indemnifies Lindfield against any Loss that Lindfield incurs as a result of:

(a) any breach of this Deed, the MOU or any law by Killara Bowling; and

(b) the wilful misconduct, negligence, or fraud of Killara Bowling or its officers, employees, contractors or agents,

except to the extent such Loss is caused or contributed to by Lindfield or its officers, employees, contractors or agents.

19.3 Killara SubCo indemnifies Lindfield against any Loss that Lindfield incurs as a result of:

(a) any breach of this Deed, the MOU or any law by Killara SubCo; and

(b) the wilful misconduct, negligence, or fraud of Killara SubCo or its officers, employees, contractors or agents,

except to the extent such Loss is caused or contributed to by Lindfield or its officers, employees, contractors or agents.

19.4 The indemnities given under this clause are in addition to any other remedy available to a party at law.

20 Costs and expenses

20.1 Cost and expenses

Each party must pay its own legal and other costs and expenses relating to:

(a) preparation and execution of this Deed and the MOU; and

(b) effecting Amalgamation Completion.

20.2 Stamp duty

Lindfield must pay any stamp duty assessable in relation to this Deed.

21 Notices

21.1 A notice, approval, consent or other communication to a person relating to this Deed:

(a) must be in legible writing;

(b) executed by duly authorised person(s); and

(c) in English.

21.2 If the notice is to Lindfield then it must be addressed as follows:

Attention: Roger Parks, Chairman

Lindfield Bowling Club Limited
Roger Parks, Chairman
2B Carlyle Road, East Lindfield NSW 2070
rogparks@gmail.com
0414 385 690

21.3 If the notice is to Killara Bowling then it must be addressed as follows:

Attention: James McBean, Chairman

Killara Bowling Club Limited
6 Arnold St Killara NSW 2071

mcbean@bigpond.com
0400 398 452

21.4 Notice is sent by the sender and received by the receiver:

(a) if the notice is hand delivered, upon delivery to the receiving party;

(b) if the notice is sent by email, upon the successful completion of the relevant transmission;

(c) if the notice is sent by pre-paid registered mail within Australia, 2 Business Days after the registration of the notice of posting.

22 Assignment

A party cannot assign its rights and obligations under this Deed.

23 General

23.1 Governing law and jurisdiction

(a) This Deed is governed by the laws of New South Wales.

(b) The parties submit to the New South Wales. The parties' submission to the jurisdiction includes submission to a court of appeal.

23.2 Service

A document may be served on a party by delivering it to that party in accordance with the notice provisions of clause 21.

23.3 Severability

(a) If a provision of this Deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this Deed.

(b) All the other provisions of this Deed remain in full force and effect.

23.4 No waiver

(a) A party's agreement to waive a right or entitlement under this Deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.

(b) Waiver by a party of anything required to be done under this Deed is not a waiver of any other thing required to be done under this Deed.

(c) A failure or delay in exercising a right arising from a breach of this Deed is not a waiver of that right.

23.5 Variation

The parties can only vary a term of this Deed if the variation is in writing and both parties sign.

23.6 Further assurances

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

23.7 **Entire agreement**

This Deed and the MOU:

(a) are the entire agreement between the parties with respect to the Amalgamation; and

(b) supersede all previous agreements.

23.8 **Counterparts**

(a) A party may execute this Deed by signing any counterpart.

(b) All counterparts constitute one document when taken together.

Schedule 1

Resolution to be put to Members of Killara Bowling

Ordinary Resolution 1 (to take effect only if Ordinary Resolutions 2 and 3 are also passed)

'That the members hereby:

1 *approve in principle the amalgamation of Killara Bowling Club Limited ABN 120 000 097 807 (**Killara Bowling**) with Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**) such an amalgamation to be effected by:*

   *(a) the continuation of Lindfield (as the **Amalgamated Club**) and the dissolution of Killara Bowling;*

   (b) the transfer of Killara Bowling's assets to the Amalgamated Club; and

   (c) the transfer of the club licence of Killara Bowling to the Amalgamated Club,

   in accordance with the memorandum of understanding and the Deed of Amalgamation between Killara Bowling and Lindfield; and

2 *approve in principle the making of an application to the Independent Liquor and Gaming Authority.'*

Ordinary Resolution 2 (to be considered only if Ordinary Resolution 1 is passed, and to take effect only if Ordinary Resolutions 1 and 3 are also passed)

'That the members hereby declare the land known as certificate of folio identifiers 2/817195, 3/817195 and B/380305 (including all property rights attached to such parcels of land) situated at 6 Arnold St, Killara NSW 2071 (such land being occupied by Killara Bowling Club Limited ABN 120 000 097 087) and any right or interest held by Killara Bowling Club Limited ABN 120 000 097 087 (including through the ownership of shares in Killara Bowling Co Pty Ltd ACN 000 038 346) in such land, as non-core property for the purposes of section 41E of the Registered Clubs Act 1976 (NSW) but this declaration is made only for the purposes of an amalgamation between Killara Bowling Club Limited and Lindfield Bowling Club Limited.'

Ordinary Resolution 3 (to be considered and take effect only if Ordinary Resolutions 1 and 2 are passed)

*'That for the purposes of Rule 39(j) of the Constitution of Killara Bowling Club Limited ABN 120 000 097 807 (**Killara Bowling**), the members hereby approve the Board to transfer all real property assets owned by Killara Bowling, or in which Killara Bowling has rights (including through the ownership of shares in Killara Bowling Co Pty Ltd ACN 000 038 346), to Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**) for the purposes of an amalgamation between Killara and Lindfield in accordance with the Registered Clubs Act 1976 (NSW), such transfer to take place in accordance with the memorandum of understanding and the Deed of Amalgamation between Killara Bowling and Lindfield.*

Schedule 2

Resolutions to be put to members of Lindfield

Ordinary Resolution

'That the members hereby:

1 *approve in principle the amalgamation of Killara Bowling Club Limited ABN 120 000 097 807 (**Killara Bowling**) with Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**) such an amalgamation to be effected by:*

(a) *the continuation of Lindfield (as the **Amalgamated Club**) and the dissolution of Killara Bowling;*

(b) *the transfer of Killara Bowling's assets to the Amalgamated Club; and*

(c) *the transfer of the club licence of Killara Bowling to the Amalgamated Club,*

in accordance with the memorandum of understanding and the Deed of Amalgamation between Killara Bowling and Lindfield; and

2 *approve in principle the making of an application to the Independent Liquor and Gaming Authority.'*

Special Resolution 1 (to be considered only if the Ordinary Resolution is passed)

*'That, on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara Bowling Club Limited ABN 12 000 097 807 (**Killara Bowling**) to Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**), the Constitution of Lindfield be amended by:*

- *Deleting existing Article 5 of the Articles of Association and replacing it with the following new Article 5:*

  '5. Ordinary Membership of the Club shall consist of the following classes:

  (a) *Lindfield Bowling Member;*

  (b) *Ex East Roseville Bowling Member;*

  (c) *Ex Killara Bowling Member;*

  (d) *Social Member; and*

  (e) *Junior Member.'*

- *Inserting new Article 6(a2) of the Articles of Association and renumbering existing Article 6(a2) as 6(a3):*

  '6.

  (a2) *'Ex Killara Bowling Member' shall mean a person who was a financial full member of Killara, and whose name was entered in the Register of Members of Killara as a 'Bowling Member – Male' or 'Bowling Member – Female' on the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club.*

- *Replacing the definition of 'Bowling Member' in Article 1 of the Articles of Association with the following new definition:*

*'**Bowling Member** means:*

(a) a Lindfield Bowling Member; or

(b) Ex East Roseville Bowling Member; or

(c) Ex Killara Bowling Member; or'

- *Replacing the definition of 'Life Member' in Article 1 of the Articles of Association with the following new definition:*

  *(a) **'Life Member** means:*

  (i) a Lindfield Life Member; or

  (ii) Ex East Roseville Life Member; or

  (iii) Ex Killara Life Member.'

- *Inserting the following new Article 7(a2):*

  '(a2) "Ex Killara Life Member" shall mean a person who was a Life member of Killara, and whose name was entered in the Register of Members of Killara as a 'Life member' on the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club.'

- *Inserting the following new definition of 'Killara' in Article 1 of the Articles of Association:*

  *'**Killara** means Killara Bowling Club Limited ABN 12 000 097 807.'*

- *Inserting new Articles 7B after existing Article 7A of the Articles of Association, as follows:*

  '7B. Those persons who were financial full members of Killara, and whose names were entered in the Register of Members of Killara on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara to the Club shall, for the purposes of section 17AC(2) of the Registered Clubs Act, be identified in the Club's Register of Members as 'former Killara Members'.

Special Resolution 2 (to be considered only if the Ordinary Resolution is passed).

*'That, on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara Bowling Club Limited ABN 12 000 097 807 (**Killara Bowling**) to Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**), the Constitution of Lindfield be amended by:*

- *Deleting existing Articles 25A and 25B, and inserting the following new Articles 25A to 25D:*

  25A. The requirements under Article 25 shall only apply until the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara to the Club.

  25B. Notwithstanding any other article in these Articles, on and from the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara to the Club, until the 2021 Annual General Meeting, the Board shall consist of:

  (a) a Chairperson, who will be the person who held office as the chairperson of the Club immediately before the date on which the Independent Liquor and Gaming authority transferred the club licence

of Killara to the Club, and who shall hold a deliberative and casting vote;

(b) four (4) Directors, each of whom were members of the board of directors of the Club immediately before the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club (such four (4) persons to be nominated for election by determination of that board of the Club), and are Bowling or Life members of the Club; and

(c) four (4) Directors, each of whom were members of the board of Killara immediately before the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club (such four (4) persons to be nominated for election by the board of Killara), and are Bowling or Life members of the Club,

who shall be the only persons eligible for election to such positions on the Board.

25C. On and from the 2021 Annual General Meeting until the 2022 Annual General Meeting only:

(a) the Board shall consist of nine (9) Directors who shall be elected at the 2021 Annual General Meeting;

(b) notwithstanding the eligibility requirements set out in these Articles:

(ii) to be eligible for election to the Board, a person must have served on the Board of the Club after the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club;

(ii) to be eligible for election to the position of Chairperson, a person must have served on the Board of the Club as Chairperson after the date on which the Independent Liquor and Gaming Authority transferred the club licence of Killara to the Club;

(iii) if a person is unwilling to serve in, or resigns from, any of the positions specified in paragraphs (i) or (ii) above, then any Bowling or Life member of the Club shall be eligible to be nominated for and elected to such position subject to any other article in these Articles.

25D. On and from the 2022 Annual General Meeting:

(a) subject to Article 35A, the Board shall consist of seven (7) Directors who shall comprise a Chairperson, two (2) Deputy Chairpersons, a Treasurer and three (3) other Directors;

(b) the Board shall be elected annually;

(c) at least one position on the Board shall be reserved for the person who is elected as chairperson of the Men's Bowling sub-club of the Club as at the date of calling for nominations for election of the Board, who shall be the only person eligible to hold that reserved position on the Board; and

(d) at least one position on the Board shall be reserved for the person who is chairperson of the Women's Bowling sub-club of the Club as at the date of calling for nominations for election of the Board, who shall be the only person eligible to hold that reserved position on the Board.

Special Resolution 3 (to be considered only if the Ordinary Resolution is passed).

*'That, on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara Bowling Club Limited ABN 12 000 097 807 (**Killara Bowling**) to Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**), the company name of Lindfield shall be changed to Lindfield Killara Bowling Club Limited.'*

Special Resolution 4 (to be considered only if the Ordinary Resolution is passed and Special Resolution 3 is passed)

'That, on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Killara Bowling Club Limited ABN 12 000 097 807 (**Killara Bowling**) to Lindfield Bowling Club Limited ABN 37 000 089 878 (**Lindfield**), the Constitution of Lindfield be amended by:

- *replacing the reference to "Lindfield Bowling Club" in the headings of the Constitution, Articles of Association and Memorandum of Association" with a reference to "Lindfield Killara Bowling Club Limited"; and*

- *deleting the definition of "Club" in Article 1 of the Articles of Association and replacing it with the following new definition:*

  *'**Club'** means the Lindfield Killara Bowling Club Limited ACN 000 089 878.'*

Schedule 3

Conditions

No	Condition	Party who has benefit	Sunset Date
1.	**(Approval by Killara Bowling)** – the members of Killara Bowling passing the resolutions in accordance with clause 4.1	Killara Bowling and Lindfield	12 months from the date of this Deed
2.	**(Approval by Lindfield)** – the members of Lindfield passing the resolutions in accordance with clause 4.2	Killara Bowling and Lindfield	12 months from the date of this Deed
3.	**(Revenue NSW ruling)** – Killara SubCo applying for and receiving a private ruling from Revenue NSW confirming that no land tax, or any consequent penalties or interest, is payable in respect of the Killara Bowling Premises in respect of the period before Amalgamation Completion	Lindfield	6 months from the date of this Deed
4.	**(Encumbrances on Killara Bowling Premises)** – Killara Bowling and Killara Subco ensuring that the certificate of titles to the Killara Bowling Premises are free of all mortgage and lease encumbrances, to the satisfaction of Lindfield	Lindfield	6 months from the date of this Deed

Executed as a deed

Executed as a deed by **Lindfield Bowling Club Limited** ABN 37 000 089 878 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

Director/~~Company Secretary~~

ROGER PARKS

Name of Director
BLOCK LETTERS

IAN KIMMORLEY

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

Executed as a deed by **Killara Bowling Club Limited** ABN 12 000 097 807 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

*~~Director~~/*Company Secretary

JAMES DAYSDALE McBEAN

Name of Director
BLOCK LETTERS

DONALD J MURPHY

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

Executed as a deed by **Killara Bowling Co Pty Ltd** ACN 000 038 346 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

Director/~~Company Secretary~~

JAMES DAYSDALE McBEAN

Name of Director
BLOCK LETTERS

DONALD J. MURPHY

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