

Schedule 1

[Heading amended by No. 44 of 1987 s. 8.]

(Section (3))

AGREEMENT

INDEX ⁷.

Clause.	Page
1. Division into Parts	8
PART I — PRELIMINARY.	
2. Definitions and Interpretation	8
3. Initial obligations of the State	15
4. Limitation on the liability of the Trustee	16
5. Variation	16
PART II — DEVELOPMENT OF THE RESORT AND RELATED MATTERS.	
6. Obligation of the State and the Trustee	16
7. Initial obligations of the Manager	19
8. Zoning of the Site	21
9. Construction of Resort and operation of Resort Complex	21
10. Use of local professional services labour and materials	22
11. Committee's Nominated Representative	23
12. Burswood Park Technical Committee	24
13. Stage 2	24
PART III — CORPORATE ORGANISATION AND RELATED MATTERS.	
14. Burswood Property Trust	25
15. The Manager	26
16. Representations and Warranties of the Manager	27
17. Conditions of the Agreement	27
18. Excess Unit Holdings	32
19. Information to be made available for inspection	32
20. Right to attend and speak at meetings of the Trust and the Manager	32
PART IV — CASINO GAMING LICENCE AND RELATED MATTERS.	
Clause.	Page
21. Grant of Casino Gaming Licence	33
22. Authorised Games and Exclusivity	34
23. Taxes, Licence Fees and other Payments	36
24. Liquor Licences	39
PART V — SECURITY INTERESTS AND ASSIGNMENTS.	

25. Mortgaging Charging and Disposition of Site	40
---	----

PART VI — TERMINATION.

26. Termination of Agreement	40
27. Effect of Termination	42

PART VII — GENERAL.

28. Restrictions resumption etc. on the Site	43
29. Prohibition against discriminatory taxes etc.	43
30. Force Majeure	44
31. Power to extend periods etc.	44
32. Indemnity	44
33. Arbitration	44
34. Waivers	45
35. Consents and Approvals not to be unreasonably withheld	45
36. Notices	46
37. Governing law	47

THIS AGREEMENT made this 20th day of February 1985 BETWEEN:

THE HONOURABLE DESMOND KEITH DANS M.L.C. the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“the State”) of the first part;

AND

WEST AUSTRALIAN TRUSTEES LIMITED of 135 St George’s Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust (“the Trustee”) of the second part;

AND

BURSWOOD MANAGEMENT LIMITED of 8 St. George’s Terrace Perth in the State of Western Australia as manager of the Burswood Property Trust (“the Manager”) of the third part.

WHEREAS:

- A. The Control Act enables the Minister acting for and on behalf of the State and its instrumentalities to inter alia enter into an agreement with a public company, whether acting on its own behalf or as a trustee or in any other capacity, with respect to the construction and establishment of a new casino complex (as defined in that Act) in the State.
- B. Development Proposals with respect to the construction establishment and development of the Resort, including within the Resort Complex the Burswood Casino, have been submitted to and accepted in principle by the Minister.
- C. The Committee has, in accordance with section 19(2) of the Control Act, carried out the investigations referred to in that

Section and has, in accordance with section 19(2b) of the Control Act, reported to the Minister and has recommended to the Minister that he enter into this Agreement.

- D. The Minister pursuant to the power aforesaid has accordingly agreed to enter into this Agreement for the purpose of providing for and facilitating implementation of the Development Proposals and the operation of the Resort and the Resort Complex subject to and in accordance with the provisions hereinafter contained.
- E. For the purpose of providing for the development and construction of the Resort and the operation of the Resort Complex the respective parties thereto have entered into the Project Management Agreement and the Operation Management Agreement.
- F. By virtue of section 19(3) of the Control Act this Agreement is not enforceable by any Party unless and until it has been ratified by an Act.
- G. The State acknowledges that the establishment of the Resort is a large scale development project requiring a very large capital expenditure and that it is necessary to give to the Trustee the security and assurances contained herein to enable the provision of capital for the establishment of the Resort.

NOW IT IS HEREBY AGREED AS FOLLOWS:

Division into parts⁸

1. This Agreement shall be divided into parts as follows: —

PART I — PRELIMINARY

PART II — DEVELOPMENT OF THE RESORT AND RELATED MATTERS

PART III — CORPORATE ORGANISATION AND RELATED MATTERS

PART IV — CASINO GAMING LICENCE AND RELATED MATTERS

PART V — SECURITY INTERESTS AND ASSIGNMENTS

PART VI — TERMINATION

PART VII — GENERAL

PART I — PRELIMINARY

Definitions ⁸

2. In this Agreement unless otherwise expressly provided or the context otherwise indicates or requires;

“advise”, “agree”, “apply”, “approve”, “authorise”, “consent”, “certify”, “direct”, “nominate”, “notify”, “request”, “require”, or “specify” means advise, authorise, agree, apply, approve, consent, certify, direct, nominate, notify, request, require, or specify in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“this Agreement” means this agreement as amended from time to time in accordance with clause 5 and includes any schedule or annexure hereto;

“Agreement Act” means the Bill referred to in clause 3 when that Bill is passed and comes into operation as an Act as contemplated by that clause;

“Anniversary Date” means each anniversary of the date on which the Burswood Casino Licence is granted;

“Authorised Game” has the meaning ascribed to that term in the Control Act;

“Board” means the board to be created pursuant to clause 6(1)(c);

“Burswood Casino” means those premises in the Resort Complex identified in the Drawings as the areas to constitute the casino and includes areas in which money counting, surveillance, storage and other activities related to the conduct and playing of Games are carried on; and

“Burswood Casino Licence” means a Casino Gaming Licence in respect of the Burswood Casino provision for the grant of which is made in clause 21;

“Burswood Property Trust” or “Trust” means the trust constituted by the Trust Deed;

“Burswood Park Technical Committee” means the committee provision for the establishment of which is made in clause 12;

“Casino” has the meaning ascribed to that term in the Control Act;

“Casino Gross Revenue” means the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any month from the conduct of Gaming, less the total of all sums paid out as winnings during that month in respect of Gaming. For the purposes of this definition:

- (a) any sum received for the issue of a chip for Gaming is a sum received from the conduct of Gaming and any sum paid out to redeem a chip is a sum paid out as winnings;

(b) in a case in which the Committee consents to the extension of credit, the sum value of chips issued in any month on credit, whether by credit card transaction or otherwise howsoever, shall be deemed to be sums actually received in that month from the conduct of Gaming;

(c) “Gaming” means Gaming in the Burswood Casino;

“Casino Gaming Licence” has the meaning ascribed to that term in the Control Act;

“Committee” means the Casino Control Committee established by the Control Act;

“Committee’s Nominated Representative” means the person or persons nominated by the Committee to the Manager pursuant to clause 11 for the purposes of that clause and the other relevant provisions of this Agreement;

“Commissioning” means the checking, testing and acceptance of the operational readiness and procedures for each Phase of the Resort by the Committee and the Manager;

“Commonwealth” means the Commonwealth of Australia;

“Companies Code” means the *Companies (Western Australia) Code*;

“Control Act” means the *Casino Control Act 1984-1985*;

“CPI” means the Consumer Price Index — All Groups — Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics, or, if the same is not published, such other similar index as the Minister may reasonably determine;

“Crown” means the Crown in right of the State;

“Dempster” means Dempster Nominees Pty. Ltd. a company incorporated in the State as trustee of The Dallas Dempster Family Trust;

“Development Proposals” means the proposals in respect of the construction development and establishment of the Resort as detailed and set out in:

(a) a report titled “Burswood Island Resort — proposal for the Casino in Western Australia”

(b) a report titled “Burswood Island Resort — Development Concept”

copies of which have been signed by the Parties for the purpose of identification as from time to time amended, before or after the date of this Agreement, with the approval of the Minister;

“Design and Construction Programme” means the programme, as approved by the Minister pursuant to clause 7, for the design,

documentation, construction, Fit-Out, Commissioning and completion of the Resort;

“Dollars” or “\$” means the lawful currency for the time being of the Commonwealth;

“Drawings” means the design and working drawings and specifications of and relating to the Resort including the Resort Complex and other data delivered by the Manager to and approved, or deemed to have been approved, by the Minister pursuant to clause 7 and includes all approved variations thereto as hereinafter provided;

“Fit-Out” means the application of finishing material, furniture, fittings, furnishings and such other built-in and loose items required to bring the Resort to an operating condition;

“Foundation Agreement” means the agreement dated the 20th February 1985 made between the Trustee, the Manager, Dempster, Genting WA and Tileska providing for the subscription of Units and Options;

“Founders” means Dempster, Genting WA and Tileska;

“Game” has the meaning ascribed to that term in the Control Act;

“Gaming” has the meaning ascribed to that term in the Control Act;

“Gaming Report” means the report entitled “Report of the Committee appointed to enquire into and report upon Gaming in Western Australia” as published by the Government Printer of the State in December, 1984;

“Genting” means Genting Berhad, a publicly listed Malaysian Corporation;

“Genting WA” means Genting (Western Australia) Pty. Limited; a wholly owned subsidiary of Genting, incorporated in Western Australia and acting in its own right or as trustee of the Genting (Western Australia) Trust;

“Local Authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960-1984* within the boundaries of which the Site and the Resort Site are located;

“Manager” means Burswood Management Limited or any other Person for the time being appointed, subject to the provisions of this Agreement, Manager under and pursuant to the terms of the Trust Deed;

“Metropolitan Region Scheme” or “Scheme” has the meaning ascribed to that expression in the Scheme Act;

“Minister” means, except in the recitals to this Agreement and in clause 21 where the term means the Minister in his capacity as the Minister of the Crown for the time being charged with the

administration of the Control Act, the Minister in his capacity as the Minister of the Crown for the time being charged (under whatsoever title) with the administration of the Agreement Act and pending the passing of that Act means the Minister in his first mentioned capacity;

“Mortgagee” means a mortgagee, as defined in the Control Act, of the Burswood Casino Licence, the Site or the rights and benefits of the Trustee under this Agreement, as the case may be;

“Operative Date” means the date on which the Bill referred to in clause 3 comes into operation as an Act;

“Operation Management Agreement” means the agreement dated the 20th February 1985 made between the Trustee, the Manager and Genting WA providing for the operation of the Resort Complex by Genting WA and includes, if that agreement is terminated, any other agreement in like or similar terms made with the prior consent of the Minister;

“Option” has the meaning ascribed to the term in the Trust Deed;

“Party” means a party to this Agreement;

“Period of Exclusivity” means the period of 15 years from and including the date on which the Burswood Casino Licence is granted;

“Person” includes a public body, company or association or body or persons corporate or unincorporate;

“Project Management Agreement” means the agreement dated the 20th February 1985 made between the Trustee and the Manager providing for the Manager to manage and co-ordinate the development and construction of the Resort and includes, if that agreement is terminated, any other agreement in like and similar terms made with the prior consent of the Minister;

“Receiver” means receiver or receiver and manager according to the nature of the appointment;

“Relevant Phase” or “Phase” means a phase, element or component of the Resort separately identified in the Design and Construction Programme;

“Resort” means the complete and entire Burswood Island Resort (including the Resort Complex) referred to in the Development Proposals, to be constructed and developed on the Site and the Resort Site pursuant to and in accordance with the provisions of this Agreement;

“Resort Complex” means the hotel, convention centre/theatre restaurant, exhibition centre, recreation facilities and Burswood Casino to be constructed on the Site pursuant to and in accordance with the provisions of this Agreement and includes, if and when constructed, Stage 2;

“Resort Site” means that part of Burswood Island as is shown bordered red on Lands and Surveys Miscellaneous Plan 1512 but does not include the Site;

“Scheme Act” means the *Metropolitan Region Town Planning Scheme Act 1959-1984*;

“Site” means Swan Locations 10661 and 10662 as surveyed and shown on registered Lands and Surveys Original Plan 16284;

“Stage 2” means the construction of the second hotel and other developments facilities and amenities referred to in the Development Proposals;

“State” or “Western Australia” means the State of Western Australia;

“Tileska” means Tileska Pty. Limited, a company incorporated in New South Wales, acting in its own right or as the trustee of the Tileska Trust;

“Trust Deed” means the deed dated the 20th February 1985 made between the Trustee and the Manager constituting the Burswood Property Trust;

“Trust Fund” has the meaning ascribed to that term in the Trust Deed;

“Trustee” means West Australian Trustees Limited or any other Person for the time being appointed, subject to the provisions of this Agreement, Trustee under and pursuant to the provisions of the Trust Deed;

“Unit” has the meaning ascribed to that term in the Trust Deed;

“Unit Holder” has the meaning ascribed to that term in the Trust Deed;

“Works” means all design, construction, Fit-Out, Commissioning and works of any nature whatsoever necessarily required for the completion of the Resort or, as the case may be any Phase, and includes all excavations and ancillary works preparatory to and associated therewith whether on or off the Site.

Reference to:

Interpretation ⁸

- (i) an Act by name is a reference to an Act of the Parliament of the State;
- (ii) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the rules regulations and by-laws for the time being in force thereunder;
- (iii) a Schedule or Annexure is to any Schedule or Annexure as the case may be to this Agreement;
- (iv) a clause is to a clause of this Agreement;

- (v) a sub-clause is to a sub-clause of the clause in which the reference occurs;
- (vi) a paragraph is to a paragraph of the clause or sub-clause as the case may be in which the reference occurs.

Headings indices and marginal notes are inserted for convenience only and shall not affect the construction or interpretation of this Agreement⁸.

Initial obligations of the State⁸

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st March 1985 or such later date as the Parties may agree;

(2) On such Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law;

Ratification and operation⁸

(3) The provisions of this Agreement other than this clause and clauses 1 and 2, which shall subject to the Control Act be operative from the date of this Agreement, shall come into operation on the day on which such Bill comes into operation as an Act;

(4) If before 31st March 1985 or such later date as may be agreed pursuant to sub-clause (1) such Bill has not come into operation as an Act then unless the Parties otherwise agree this Agreement shall then cease and determine and none of the Parties shall have any claim against any of the others of them with respect to any matter or thing antecedent to, or arising out of or done, performed, or omitted to be done or performed, under this Agreement.

Limitation on the liability of the Trustee⁸

4. Neither the State nor any Person to whom the Trustee is liable under or pursuant to this Agreement shall be entitled to have recourse, in satisfaction of such liability, to any assets held by the Trustee in its personal capacity or in its capacity as Trustee of any trust other than the Burswood Property Trust and the recourse of the State and/or any such Person shall be limited to the Trust Fund.

Variation⁸

5. (1) The Parties may from time to time by agreement add to substitute for cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement;

(2) The Minister shall cause any agreement made pursuant to sub-clause (1) to be laid on the table of each House of Parliament within 12 sitting days next following its execution;

(3) Either House may, within 12 sitting days of that House after such agreement has been laid before it, pass a resolution disallowing such agreement, but if after the last day on which such agreement might have been disallowed, neither House has passed such a resolution the agreement shall have effect from and after that last day.

PART II — DEVELOPMENT OF THE RESORT AND RELATED MATTERS

Obligations of the State and the Trustee⁸

6. (1) The State shall as soon as practicable after the Operative Date and, in the case of the matters referred to in paragraph (b) notwithstanding the provisions of the *Town Planning and Development Act 1928-1983* or any other Act, may: —

Entry upon Crown Lands⁸

- (a) to the extent reasonably necessary for the purposes of this Agreement allow the Trustee and the Manager and their respective servants agents and contractors to enter, with all necessary vehicles plant and equipment, upon such part of the Resort Site and the Site as comprise Crown Lands;

Crown Grant of the Site⁸

- (b) subject to there being no subsisting breach by the Trustee and the Manager of their respective obligations under this Agreement, and to payment by the Trustee of the payment to be made pursuant to sub-clause (4)(b), and to compliance with the condition contained in clause 17(1)(k) (unless waived in writing by the State), cause to be issued in the name of the Trustee a Crown Grant of the Site subject to the exceptions reservations and conditions usual in Crown Grants (save and except that such land shall be granted to depth of 30 metres) but otherwise free of encumbrances;

Creation of Resort Site as a reserve and of The Burswood Park Board⁸

- (c) cause the Resort Site (other than those parts thereof to be dedicated as public streets pursuant to paragraph (d)) to be created as a class C, reserve for parks and recreation and, for the purpose of managing and controlling the Resort Site as so reserved, cause to be established, and, during the continuance of this Agreement, maintained, a board as a body corporate under the provisions of the *Parks and Reserves Act 1895-1983* styled “The Burswood Park Board” the membership of such board to comprise:
- (i) 2 natural persons from time to time nominated to the Minister by the Local Authority;

- (ii) 2 natural persons from time to time nominated to the Minister by the Manager;
- (iii) 2 members of the Committee from time to time nominated to the Minister by the Committee;

provided that if at any time the Local Authority, the Manager or the Committee shall fail to nominate persons for membership of the Board as and when required by the Minister the State may cause to be appointed as members of the Board such persons as the State thinks fit;

Dedication of Public Streets⁸

- (d) cause, or, as the circumstances may require, from time to time cause, those parts of the Resort Site shown on the Drawings as public streets to be dedicated as public streets upon and subject to the completion of the construction by the Trustee of such streets, or any part or parts thereof, to the satisfaction of the Minister;

Power to resume⁸

(2) The State may as and for a public work under the *Public Works Act 1902-1984* resume any land required for the purposes of this Agreement and notwithstanding any other provision of that Act may sell grant or otherwise dispose of all or any part of land so resumed to the Trustee and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof;

Use of names⁸

(3) Subject to the application of the *Business Names Act 1962-1983* and the Companies Code in a case where a Person has rights in respect of the same or a similar name, the State will not during the continuance of this Agreement object to or permit the Board, or any agency or instrumentality of the State, or any local or other authority of the State to object to the use in connection with any promotion or advertising of the Resort or any part thereof of;

- (a) any depiction, photograph or reference to the Resort or any part thereof; or
- (b) any reference to or use of the words “Burswood”, “Burswood Park”, or “Burswood Island”;

Payment by Trustee⁸

(4) In and as consideration for the security and assurances conferred on the Trustee by this Agreement and for the grant to the Trustee of the Site the Trustee shall pay to the State \$30 000 000 as follows:

- (a) \$2 500 000 within 2 business days of the Operative Date;
- (b) \$22 500 000 contemporaneously with the issue of the Crown Grant pursuant to sub-clause (1)(b); and

- (c) \$5 000 000 on the third Anniversary Date, or the date on which the Trustee notifies the State as provided in clause 13(a), whichever date is the earlier

such sum to be apportioned: —

- (d) as to \$9 400 000 for the Site being the valuation thereof by the Valuer General of the State which sum shall be inclusive of any sum required to be paid pursuant to section 40 of the *Transfer of Land Act 1893-1982*;
- (e) as to \$20 600 000 in respect of such security and assurances

and to be inclusive of any State stamp duty payable in respect of this Agreement.

Submission of Design and Construction Programme⁸

7. (1) The Manager shall within one month of the Operative Date submit to the Minister for approval a detailed time programme for the design, documentation, construction, completion Fit-Out and Commissioning of the Resort;

Staged development Time for completion⁸

(2) The programme submitted by the Manager pursuant to sub-clause (1) may make provision for the staged development of the Resort but shall be such as to give effect to the Development Proposals and shall in any event make provision —

- (a) for the completion, Fit-Out and Commissioning of the Burswood Casino, including the construction of car parks and all necessary roads for public access, by not later than 30th June 1986;
- (b) for the completion, Fit-Out and Commissioning of the Resort, including the construction of all public streets, by not later than 31st December 1986;

Plans and specifications⁸

(3) The Manager shall from time to time and as soon as is reasonably practicable, but in any event in sufficient time to give to the Minister adequate and reasonable time for consideration prior to the commencement of construction of the Relevant Phase, submit to the Minister for approval detailed plans and specifications relating to that Phase, the obligations of the Manager under this sub-clause to include, but without limitation, an obligation to submit to the Minister for approval detailed plans and specifications of the buildings comprising the Resort Complex;

Consideration of programme and plans and specifications⁸

(4) If in the opinion of the Minister the programme submitted by the Manager pursuant to sub-clause (1) or any plan or specification submitted by

the Manager pursuant to sub-clause (2) is not such as to give proper effect to the Development Proposals or otherwise is not such as to comply with the obligations of the Trustee and the Manager under this Agreement, the Minister after consultation with the Manager may by notice to the Manager require such amendments alterations variations or additions to such programme plan or specification, as may be specified in the notice;

Deemed approval⁸

(5) Unless within fourteen days of receipt of the programme or, as the case may be, the plans and specifications, referred to in sub-clause (4), the Minister issues a notice to the Manager pursuant to that sub-clause, the Minister shall be deemed to have approved such programme, or as the case may be, such plans and specifications;

Effect to be given to Ministers requirements subject to arbitration⁸

(6) Unless the Manager disputes the reasonableness of any requirement of a notice given by the Minister pursuant to sub-clause (4), in which event if following consultation between the Manager and the Minister the dispute is not resolved, it shall be forthwith referred to arbitration in accordance with clause 33, the Manager shall comply with and give effect to such requirement;

Effect of arbitration award⁸

(7) If by an award made on reference to arbitration pursuant to sub-clause (6) —

- (a) the issue is decided against the Manager the Manager shall forthwith comply with the requirement of the Minister giving rise to the reference;
- (b) the issue is decided in favour of the Manager the Minister shall be deemed to have approved the relevant programme plan or specification as the case may be but so that neither the Trustee or the Manager shall have a claim of any kind against the Minister by reason of the requirement giving rise to the reference;

Security and alarm systems⁸

(8) Nothing in this clause shall be taken to require the Manager to provide drawings relating to the installation of the security surveillance and alarm systems to be incorporated into the Burswood Casino but the Manager shall:

- (a) deliver to the Committee upon the request of the Minister particulars of such systems to show how they operate and that they are adequate for the purposes for which they are intended;
- (b) make available at the office of the Manager the complete set of drawings of such systems for Perusal by the Committee's Nominated Representative and such other persons as may be

specified by the Committee's Nominated Representative and approved of by the Manager;

- (c) promptly advise the Committee's Nominated Representative of any variations proposed for such systems; and
- (d) maintain an up-to-date set of drawings of such systems and make such drawings available for examination at the office of the Manager by the Committee's Nominated Representative or to a person nominated by the Committee's Nominated Representative and approved by the Manager.

Zoning of the Site⁸

8. The State shall ensure after consultation with the Local Authority that the Site shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the use to which the Trustee and any person claiming through or under the Trustee may put the Site in accordance with the provisions of this Agreement, and the erection and use of the Resort Complex thereon, may be undertaken and carried out without any interference or interruption by the State or by any agency or instrumentality of the State or by any local or other authority of the State on the grounds that such use is contrary to any town planning scheme or zoning by-law of the Local Authority or any other statutory town planning engineering or environmental provision.

Construction of Resort Operation of Resort Complex⁸

9. (1) The Trustee shall in accordance with the Development Proposals, the Drawings, the Design and the Construction Programme and the provisions of this Agreement construct and develop the Resort, or cause the Resort to be constructed and developed, at a cost at completion (inclusive of the cost of the Site and of the costs referred to in sub-clause (4)) of at least \$200,000,000 of which at least \$15,000,000 shall be expended on the development and improvement of the Resort Site and shall, following Commissioning of the Resort Complex or, as the case may be, any stage or part thereof, thereafter during the continuance of this Agreement maintain and operate, or cause the Resort Complex, or as the case may be, such stage or part, to be maintained and operated for the purpose for which it was constructed subject, in the case of the Burswood Casino, to the Burswood Casino Licence being granted and remaining in force;

Compliance with laws⁸

(2) Subject to sub-clause (3) the design, construction, Fit-Out and Commissioning of the Resort and the operation of the Resort Complex shall comply with the lawful requirements of and all regulations and by-laws of all relevant local and other authorities of the State and the Commonwealth and all Acts of the State and Commonwealth applicable thereto;

Building Licence required⁸

(3) Notwithstanding the provisions of any Act, regulation, by-law, interim development order or town planning scheme, including but without limitation the provisions of the Metropolitan Region Scheme, the Trustee shall

not be required to obtain any approval or consent required by or under a law of the State to the development of the Site or the Resort Site in accordance with the provisions of this Agreement, save and except, in the case of the Site, for a building licence issued by the Local Authority pursuant to provisions of Part XV of the *Local Government Act 1960-1984*;

Provision and relocation of services⁸

(4) The Trustee shall pay to the State, or, as the case may be, to the instrumentality of the State concerned, the reasonable costs, including reasonable overhead costs, actually incurred:

- (a) in carrying out the works necessary to provide services, including without limitation water sewerage drainage electricity and gas, to the Site and the Resort Site;
- (b) in relocating any services such as are referred to in paragraph (a) (other than pylons of The State Energy Commission of Western Australia) the relocation of which is made necessary by the development of the Site and the Resort Site pursuant to the provisions of this Agreement;

Consultation with relevant authorities and the Burswood Park Technical Committee⁸

(5) The Trustee and the Manager shall in performing their respective obligations under this clause and clause 7 liaise and consult with all relevant departments agencies authorities and instrumentalities of the State and Commonwealth and, in addition in relation to the Resort Site, with the Burswood Park Technical Committee, and shall in performance of such obligations have due regard to all reasonable requests or requirements of such departments agencies authorities instrumentalities and such Committee;

Quality of materials etc⁸

(6) All materials, fittings and equipment utilised in carrying out the Works shall be of a high standard of manufacture and quality commensurate with a Resort Complex of international standard.

Use of local professional services labour and materials⁸

10. The Trustee and the Manager shall, according to their respective functions, in relation to the carrying out of the Works and the operation of the Resort Complex, to the extent it is reasonable and economically practicable so to do and as the circumstances require:

- (a) use or ensure the services of engineers, surveyors, architects and other professional consultants resident and available within Western Australia;
- (b) use or ensure the use of labour available within Western Australia;
- (c) in respect of the preparation of specifications, calling for tenders and letting contracts for or in relation to the Works

and materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and

- (d) ensure proper consideration is given to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for or in relation to the Works where price quality delivery and service are equal to or better than that obtainable elsewhere.

The Committee's Nominated Representative⁸

11. (1) The Committee may from time to time nominate to the Manager a person or persons as the Committee's Nominated Representative for the purposes of this Agreement and may from time to time by notice to the Manager revoke any such nomination;

Power to enter inspect measure and test⁸

(2) The Committee, the Committee's Nominated Representative and any person authorised by the Committee's Nominated Representative shall at all times have free and unrestricted access to the Site and the Resort Site for the purpose of inspecting and measuring the progress of the Works and undertaking tests PROVIDED THAT such persons shall:

- (a) not interfere with the progress of the Works except for the purpose of exercising any powers conferred by this Agreement;
- (b) inform the senior representative of the Manager, or any contractor employed by the Trustee or the Manager, on the Site or the Resort Site of their presence;

Power to require rectification of the Works⁸

(3) If following any inspection, measuring or examination pursuant to sub-clause (2) the Committee or, as the case may be, the Committee's Nominated Representative, is of the opinion that the Works are not in conformity with the provisions of this Agreement the Committee, or as the case may be, the Committee's Nominated Representative may by notice to the Manager specify:

- (a) in what respect the Works do not so conform;
- (b) the action to be taken to rectify the situation and the time within which such action is to be taken

and the Manager shall forthwith comply with any such notice;

Minister may suspend the Works⁸

(4) If the Manager fails to comply with a notice given pursuant to sub-clause (3) the Minister may, but without prejudice to any other right or remedy of the State arising by reason of such failure, by notice to the Trustee and the Manager, direct the suspension of the Works until such time as the first

mentioned notice is complied with and the Trustee and the Manager shall forthwith comply with any such direction.

Burswood Park Technical Committee⁸

12. (1) For the purposes of this Agreement in relation to the development of the Resort Site the State shall arrange the formation of a committee comprising:

Composition of the Committee⁸

- (a) a member or officer of the Authority as defined in the Scheme Act;
- (b) the Town Planning Commissioner appointed under the *Town Planning and Development Act 1928-1983* or his nominee;
- (c) the Commissioner of Main Roads appointed under the *Main Roads Act 1930-1984* or his nominee;
- (d) a representative of the Local Authority;
- (e) the Director of the Department of Conservation and Environment of the State or his nominee;
- (f) a member or officer of the Swan River Management Authority constituted under the *Waterways Conservation Act 1976*;
- (g) a representative of the Manager's environmental consultants;
- (h) the Committee's Nominated Representative;

Meetings of the Committee⁸

(2) Meetings of the Burswood Park Technical Committee may be convened at any time by the Committee's Nominated Representative, of his own volition or at the direction of the Minister, or by the Board;

Functions of the Committee⁸

(3) The functions of the Burswood Park Technical Committee shall be to consult with and advise the Board and the Manager in relation to the development of the Resort Site and to make recommendations to the Minister or the Board in relation thereto.

Stage 2⁸

13. If the Trustee shall resolve to proceed with Stage 2:

- (a) the Trustee shall forthwith notify the State of such resolution;
- (b) the provisions of clauses 7, 9, 10 and 11 shall, with necessary modifications, apply in relation to the construction, Fit-Out and Commissioning of Stage 2.

PART III — CORPORATE ORGANISATION AND
RELATED MATTERS

The Burswood Property Trust Issue of Units and Options to the Founders⁸

14. The Manager shall —

(a) issue the respective number of Units and Options set forth below:

(i) 60,000,000 Units to Genting WA;

(ii) 60,000,000 Units to Dempster;

at a selling price of 50 cents (\$0.50) per Unit payable in such instalments as are provided for in the Foundation Agreement and on the conditions set out in the Trust Deed;

(iii) 30,000,000 Options to Tileska; and

(iv) 30,000,000 Options to Dempster;

at no cost and otherwise as are provided for in the Foundation Agreement and on the terms and conditions set out in the Trust Deed PROVIDED THAT the above issue shall be taken to include the issue to the Founders of Units in order to establish the Trust;

Issue of Units and Options to the Public⁸

(b) offer, and upon acceptance, issue Units to the public each at a selling price of Fifty Cents (\$0.50) to a total value of at least \$40,000,000 and payable in such instalments as are provided for in the Foundation Agreement and on the terms and conditions set out in the Trust Deed and otherwise in compliance with the requirements of the Australian Associated Stock Exchanges and the Companies Code. One Option shall be issued at no cost in respect of each two Units subscribed for. The offer pursuant to this paragraph shall in the first instance be directed to members of the public resident in Western Australia;

Issue of additional Units and Options to the public⁸

(c) issue at its discretion further Units to the public each at a selling price of Fifty Cents (\$0.50) to a total value of \$10,000,000 and payable in such instalments as are provided for in the Foundation Agreement and on the terms and conditions set out in the Trust Deed and shall also issue one Option at no cost in respect of each two Units subscribed for;

Committee may require details of relevant interest in Units and Options⁸

(d) when directed by the Committee require production of a statutory declaration by any Person registered as the holder of

any Units or Options setting forth the name and address of any Person of whom the Person so registered is aware has a relevant interest in the Units or Options and full particulars of each relevant interest. For the purposes of this paragraph a relevant interest in a Unit or an Option has the meaning as is ascribed to the term relevant interest in Section 8 of the Companies Code as if a reference therein to shares included a reference to Units or Options.

The Manager⁸

15. The Manager in respect of its own corporate structure and organisation shall: —

Minimum share issue⁸

- (a) issue at par two million (2,000,000) fully paid ordinary shares in the capital of the Manager with a nominal value of Fifty Cents (\$0.50) each as set forth below:
 - (i) 1,000,000 to Dempster; and
 - (ii) 1,000,000 to Tileska

on the terms and conditions set out in the Articles of Association of the Manager PROVIDED THAT:

- (A) the shares referred to above shall include the subscriber shares referred to in such Articles of Association;
- (B) any such shares may be held by a nominee, approved of by the Committee, on behalf of any such party;

Issue of further shares — Approval of Committee required in certain circumstances⁸

- (b) refrain from issuing allotting reallothing or otherwise disposing of any shares in the capital of the Manager other than those provided for in paragraph (a) except —
 - (i) with the approval of the Committee;
 - or
 - (ii) the issuing of shares to each of the shareholders for the time being in proportion to their respective share-holdings;

Committee to approve appointment of Directors⁸

- (c) obtain the prior approval of the Committee to any appointment of a director or alternate director of the Manager;

Committee to approve transfers of shares⁸

- (d) obtain the prior approval of the Committee to the registration of any transfer of shares in the capital of the Manager;

Committee may require Directors to vacate office⁸

- (e) procure the vacation from office of any director of the Manager in accordance with any direction to that effect by the Committee.

Representations and warranties of the Trustee and the Manager⁸

16. The Manager represents and warrants to the State: —

- (a) that the Units to be issued pursuant to clause 14(a) will be paid for in full in accordance with the terms upon which such Units are to be issued;
- (b) that the Units to be issued pursuant to clause 14(b) will, to the extent that the issue is not taken up by the public, be taken up and paid for in full in accordance with the terms upon which such units are to be underwritten by such underwriters as may be approved by the Minister in accordance with an underwriting agreement approved by the Minister;
- (c) that in addition to the funds to be provided by the issue of Units referred to in paragraphs (a) and (b) the Trustee has, or has the assurance of, additional funds adequate to meet the obligations of the Trustee under clause 9(1).

Conditions⁸

17. (1) The following shall be conditions of this Agreement: —

Foundation Agreement⁸

- (a) there shall be no amendment or variation of the terms or conditions of the Foundation Agreement after its execution without the prior approval of the Minister;
- (b) no party to the Foundation Agreement shall be released or discharged from its obligations under the Foundation Agreement without the prior approval of the Minister;
- (c) the form of the trust and corporate structure and the method of financing set forth in the Foundation Agreement shall, subject to any amendment or variation approved by the Minister, be followed;

Trust Deed⁸

- (d) the Trust Deed shall not be altered or amended without the prior approval of the Minister;

Memorandum and Articles of Association of the Manager⁸

- (e) the Memorandum and Articles of Association of the Manager shall not be altered or amended without the prior approval of the Minister;

Appointment of Auditors⁸

- (f) the appointment of the respective auditors under the Trust Deed and of the Manager shall be in accordance with the provisions of the Trust Deed and the Companies Code but no person shall be appointed as such auditor unless that person's appointment has first been approved by the Minister;

Maximum holdings of Units and Options⁸

- (g) subject to any necessary approval of the Australian Associated Stock Exchanges the total number of Units and Options to which any Person shall be entitled (other than a holding by a Founder in accordance with clause 14(a)) shall not exceed five per centum (5%) of the aggregate total number of the Units and Options in issue at any time without the approval of the Minister provided that the Minister may by notice to the Manager exempt any existing or future holding of Units or Options by a specified Person from the provisions of this paragraph for a period specified in such notice and during that period such Units or Options shall be disregarded for the purposes of this paragraph;

Restrictions on appointment of a new Trustee or Manager⁸

- (h) there shall be no appointment of any new additional or substitute Trustee or Manager under the Trust Deed without the prior consent of the Minister;

Ancillary agreements⁸

- (i) neither the Project Management Agreement or the Operation Management Agreement shall be terminated or altered or amended without the prior approval of the Minister, nor without the like approval, shall there be any change in the parties thereto;
- (j) if the Project Management Agreement or the Operation Management Agreement is terminated any new or substitute Project Management Agreement or Operation Management Agreement, and the Parties thereto, shall be subject to the prior approval of the Minister;
- (k) prior to the issue of a Crown Grant of the Site pursuant to clause 6(1)(b) there shall be an underwriting agreement such as

is referred to in clause 16(b) and that agreement, and the parties thereto, shall be subject to the prior approval of the Minister;

Foreign Persons⁸

- (1) the total number of Units to which a Foreign Person or Foreign Persons shall be entitled shall not exceed forty per centum (40%) of the total number of Units in issue at any time provided that the Minister may by notice to the Manager exempt any existing or future holding of Units by a specified Person from the provisions of this paragraph for a period specified in such notice and during that period such Units shall be disregarded for the purposes of this paragraph;
- (2) For the purposes of sub-clause (1) and this sub-clause: —

Definition of Foreign Person⁸

- (a) “Foreign Person” means —
 - (i) a natural person not ordinarily resident in Australia;
 - (ii) a corporation (other than a Foreign Corporation) in which a natural person not ordinarily resident in Australia or a Foreign Corporation holds a controlling interest;
 - (iii) a corporation (other than a Foreign Corporation) in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a Foreign Corporation, hold an aggregate controlling interest; or
 - (iv) a Foreign Corporation;

PROVIDED HOWEVER that —

- (A) a corporation incorporated in Australia and having its shares listed for quotation in the official list of a stock exchange in Australia and which is the registered holder or the beneficial owner of not more than one per centum (1%) of all Units for the time being created and not cancelled;
- (B) a corporation incorporated in Australia which is the registered holder or beneficial owner of not more than one quarter of one per centum ($\frac{1}{4}\%$) of all Units for the time being created and not cancelled shall not be, for the purposes of this Agreement, a Foreign Person unless the Minister deems it to be a Foreign Person.

Definition of Foreign Corporation⁸

- (b) “Foreign Corporation” means a corporation incorporated elsewhere than in Australia or any Australian External Territory;

Definition of controlling interest⁸

- (c) A person shall be taken to hold a controlling interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than fifteen per centum (15%) of the voting power in the corporation or holds interests in not less than fifteen per centum (15%) of the issued shares in the corporation;

Aggregate controlling interest⁸

- (d) Two or more persons shall be taken to hold an aggregate controlling interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than forty per centum (40%) of the voting power in the corporation or hold interests in not less than forty per centum (40%) of the issued shares in the corporation;

Associates of persons⁸

- (e) The following persons are associates of a person: —
 - (i) The person’s spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
 - (ii) any partner of the person;
 - (iii) any corporation of which the person is an officer;
 - (iv) where the person is a corporation — any officer of the corporation;
 - (v) any employee or employer of the person;
 - (vi) any officer of any corporation of which the person is an officer;
 - (vii) any employee of a natural person of whom the person is an employee;
 - (viii) any Corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of the person, or where the person is a corporation, of the directors of that corporation;
 - (ix) any corporation in accordance with the directions, instructions or wishes of which, or of the directors

of which, the person is accustomed or under an obligation, whether formal or informal, to act;

- (x) any corporation in which the person holds a controlling interest;
- (xi) where the person is a corporation — a person who holds a controlling interest in the corporation;
- (xii) any person who is, by virtue of this paragraph, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph);

Application of Division 4 of Part IV of the Companies Code⁸

- (f) A reference to a person being entitled to Units or a stipulated percentage of the same shall have the same meaning as a reference in Division 4 of PART IV of the Companies Code to a person being entitled to a stipulated percentage of the voting shares in a company and that person's entitlement shall be calculated in the manner prescribed for calculation of substantial shareholdings in Division 4 of PART IV of the Companies Code as if that Division applied and as if Units were voting shares.

Excess holdings of Units and Options⁸

18. Notwithstanding clause 17, an entitlement to Units or Options in excess of the limitation contained in paragraphs (g) or (l) of clause 17(1) shall not constitute a breach of this Agreement if the Manager shall have acted forthwith to bring about the disposal of the relevant Units or Options in accordance with the powers in that behalf contained in the Trust Deed upon its becoming aware of that entitlement and its being in excess of the relevant limitation.

Trustee and Manager to make available information for inspection⁸

19. The Trustee and the Manager shall make available for inspection by the Minister, the Committee or the Committee's Nominated Representative all information held in respect to the ownership, unitholdings, shareholdings, directors or corporate structure of the Burswood Property Trust or the Manager, and all minutes of meetings of unitholders, shareholders and directors and other records relating thereto.

Right to attend and speak at meetings of the Trust and the Manager⁸

20. (1) The Committee or the Committee's Nominated Representative shall be entitled to attend and to speak at any meeting of Burswood Property Trust or the Manager as though it or he were a unitholder the Trust or a director of the Manager but nothing contained in this section shall confer on the Committee or the Committee's Nominated Representative a right to vote;

Copies of notices to be given to the Committee⁸

(2) The Trustee and the Manager shall deliver to the Committee a copy of all notices that are forwarded to unitholders or directors of such meetings in the same manner and time frame as if the Committee were a unitholder or a director.

PART IV — CASINO GAMING LICENCE AND RELATED MATTERS

Grant of Casino Gaming Licence⁸

21. Subject to:

- (a) the Trustee having made the necessary application pursuant to section 21 of the Control Act, paid the application fee therein specified and having otherwise complied with the requirements of that Section;
- (b) the Burswood Casino having been completed, Fitted Out and Commissioned in accordance with the provisions of this Agreement to the satisfaction of the Minister;
- (c) at the time at which the application is submitted to the Minister for his approval there is not subsisting a notice issued by the State pursuant to clause 26(1)

the Minister shall subject to section 21 of the Control Act approve the application for a Casino Gaming Licence in respect of the Burswood Casino in accordance with that section subject to:

Conditions of Casino Gaming Licence⁸

- (d) the condition that none of the Trustee, the Manager, the Operator or any other Person concerned with the operation of the Burswood Casino shall, directly in connection with Gaming in the Burswood Casino, without the prior consent of the Committee:
 - (i) accept a credit wager from any Person;
 - (ii) make a loan to any Person;
 - (iii) provide cash or chips to any Person in respect of a credit card transaction;
 - (iv) extend credit in any form to any Personbut so that such condition shall not preclude the acceptance or cashing of cheques or travellers cheques;
- (e) the condition that the Trustee shall at all times comply with directions given by the Committee pursuant to section 24 of the Control Act; and

- (f) such other conditions (if any) as may be agreed between the Minister and the Trustee

and such licence shall thereupon be granted to the Trustee as provided in Section 21 of the Control Act.

Authorised Games⁸

22. (1) The following Games are specified for the purposes of subsection (2a) of section 22 of the Control Act:

Blackjack
Roulette
Baccarat
Craps
Keno
Two-up
Mini dice
Money Wheel
Big and small

Additional Authorised Games⁸

(2) The Trustee or the Manager may apply to the Committee at any time for approval of the rules of any Game played in a Casino (whether in Australia or elsewhere) or any variation or derivative thereof no matter how played and subject to approval by the Committee of the rules in respect of any such game the Committee shall declare any such game to be an Authorised Game;

Prohibitions on the State during the Period of Exclusivity⁸

(3) Subject to sub-clause (5) before and during the Period of Exclusivity the State shall not:

- (a) enter into a casino complex agreement (as defined in the Control Act) other than this Agreement or permit a Casino Gaming Licence other than the Burswood Casino Licence to be granted;
- (b) authorise license or approve in any manner whatsoever and whether pursuant to the Control Act or any other Act or otherwise the conduct or playing except in the Burswood Casino of any Game commonly played in Casinos (whether in Australia or elsewhere) or any variation or derivative thereof no matter how played and in particular any Game or variation or derivative thereof declared to be an Authorised Game or the use of any premises of whatsoever nature for the conduct and playing of any such Game or variation or derivative thereof;

Prohibitions on the State after the Period of Exclusivity⁸

- (4) After the Period of Exclusivity the State shall not, except —
- (a) in the Burswood Casino; or
 - (b) in any other Casino constructed pursuant to a casino complex agreement (as defined in the Control Act), being, in the case of a casino complex (as defined in the Control Act) constructed within a radius of 100 kilometres in any direction of the Burswood Casino, a complex containing a hotel and Casino of Comparable size and standard to the Burswood Casino and the first hotel comprised within the Resort Complex

authorise license or approve in any manner whatsoever and whether pursuant to the Control Act or any other Act or otherwise the conduct or playing of any Authorised Game or any other Game commonly played in Casinos (whether in Australia or elsewhere) or any variation or derivative of any such Game;

Rights of State to permit playing of two up and other Games⁸

- (5) Nothing in sub-clauses (3) and (4) shall:
- (a) prevent the State permitting the playing of the game known as “two-up” in any part of the State which is outside a radius in any direction of 200 kilometres of the Burswood Casino;
 - (b) limit or affect the power of the State to authorise permit or approve in any manner whatsoever the playing of the following Games:
 - (i) Games the playing of which under any of the Acts referred to in paragraphs (a), (aa), (ab) and (b) of Section 85(4) of the *Police Act 1892-1983* as in force at the date of this Agreement are by that Section rendered lawful;
 - (ii) Games specified in Schedule A subject to such limitations or restrictions as may be specified in that Schedule

or, with the consent of the Trustee, like or similar Games to any such Games.

Taxes, Licence Fees and other Payments⁸

23. (1) Subject to the succeeding provisions of this clause the Trustee or as the case may be, any administrator (as defined in the Control Act) appointed in respect of the Burswood Casino, shall upon and subject to the grant of the Burswood Casino Licence and so long as a Casino Gaming Licence remains in force in respect of the Burswood Casino pay —

Casino Tax⁸

- (a) to the Treasurer of the State in respect of each and every month casino tax in an amount equal to fifteen per centum (15%) of

the Casino Gross Revenue for the month in question within eight (8) days following the end of that month the first payment to be made with respect to the month in which the Burswood Casino Licence is granted;

Annual licence fee⁸

- (b) to the Committee annually a licence fee of the Annual Specified Amount such fee to be payable and paid by equal quarterly instalments in advance the first such instalment being due and payable contemporaneously with the grant to the Trustee of the Burswood Casino Licence;

Payments to the Board⁸

- (c) subject to sub-clause (2), to the Board \$1,000,000 or one per centum (1%) of the aggregate of Casino Gross Revenue for each annual period ending on an Anniversary Date, whichever amount is the greater, payment to be made to the Board by monthly payments on, and commencing on, the same date(s) as payments are to be made to the Treasurer of the State pursuant to paragraph (a), each such monthly payment to be, in the case of the first eleven payments in respect of each annual period \$83,334, and in the case of the final payment in respect of each annual period such amount as may be necessary to meet in full the Trustee's obligations as to annual payment pursuant to this paragraph, all such payments made to the Board pursuant to this paragraph to be applied by the Board solely for the purpose of performing the functions for which it was or is to be constituted and to be expended on or directly in relation to the Resort Site and the reasonable administration expenses of the Board;

Conditions attaching to payments to the Board⁸

(2) The obligation of the Trustee under sub-clause (1)(c) shall continue for so long only as:

- (a) the Resort Site remains reserved as provided in clause 6(1)(c) and under the control and management of the Board;
- (b) subject to sub-clause (3) the area of the Resort Site as determined by survey, exclusive of the part or parts thereof to be dedicated as public streets pursuant to clause 6(1)(d), remains unchanged;

Right of State to excise land from the Resort Site⁸

(3) Without affecting the obligation of the Trustee under sub-clause (1)(c) the State shall be at liberty to:

- (a) excise from the Resort Site any part or parts thereof which may from time to time be reasonably required for public streets or for the purpose of providing services or facilities of like or similar kind to those referred to in clause 9(4) or, with the

agreement of the Trustee, for any other purpose, provided that the area or aggregate of the areas so excised shall not without the consent of the Trustee exceed 10% of the area of the Resort Site as determined by the survey referred to in subclause (2)(b); and

- (b) designate or permit the designation of:
 - (i) that part of the Resort Site which immediately prior to the coming into operation of the Agreement Act comprised reserve 27743 by the name “Charles Paterson Park”;
 - (ii) that part of the Resort Site bounded by a prolongation of the southern boundary of Swan Location 10662 and Great Eastern Highway by the name “Kagoshima Park”.

Review of Casino Tax during Period of Exclusivity⁸

(4) During the Period of Exclusivity the Minister shall on each second Anniversary Date, or if the Trustee establishes to the reasonable satisfaction of the Minister that circumstances have arisen which have or are likely to have an adverse financial impact on the Burswood Casino, at any time at the request of the Trustee, review the rate of casino tax specified in sub-clause (1)(a), and the Trustee shall if so required by the Minister consult and negotiate with the Minister with a view to agreeing to an alternative rate of tax and the date from which such alternative rate is to apply;

Alternative rate of Casino Tax⁸

(5) If following consultation and negotiation as provided for in sub-clause (4) the Minister and the Trustee agree to an alternative rate of casino tax the Minister may by notice to the Trustee specify such alternative rate and the agreed date from which it is to apply and there-upon casino tax shall be payable pursuant to sub-clause (1)(a) accordingly;

Casino Tax after Period of Exclusivity⁸

(6) After the Period of Exclusivity the Minister may at any time, or if the Trustee establishes to the reasonable satisfaction of the Minister that circumstances have arisen which have or are likely to have an adverse impact on the viability of the Burswood Casino, at any time at the request of the Trustee, review with prospective effect from an Anniversary Date the rate of casino tax specified in sub-clause (1)(a) and may subject to sub-clause (7) by not less than 4 week’s notice to the Trustee specify an alternative rate of casino tax for the purposes of sub-clause (1)(a) and the Anniversary Date on and from which such alternative rate of casino tax is payable and thereupon casino tax shall be payable pursuant to that sub-clause accordingly;

(7) A notice given by the Minister pursuant to sub-clause (6), if it has the effect of increasing the rate of casino tax payable pursuant to sub-clause (1)(a): —

- (a) shall not be given more than once in respect of any one Anniversary Date;
- (b) shall not on any one occasion increase the rate of casino tax by more than one per centum (1%) per annum;
- (c) shall not be given without the consent of the Trustee if the effect of the notice would be to cause the rate of casino tax payable pursuant to sub-clause (1)(a) to exceed twenty per centum (20%) per annum;

(8) If a dispute shall arise between the Minister and the Trustee as to whether the effect of a notice given by the Minister pursuant to sub-clause (6) would or is likely to have an adverse impact on the viability of the Burswood Casino such dispute shall be referred to arbitration in accordance with clause 33 provided that pending the determination upon such reference casino tax at such higher rate shall be payable by the Trustee provided further that if the dispute is decided in favour of the Trustee the State shall as soon as practicable cause to be repaid to the Trustee any such additional tax;

Annual Specified Amount⁸

(9) In sub-clause (1)(b) “Annual Specified Amount” means \$400,000 escalated on each Anniversary Date by the percentage by which the CPI last published prior to such Anniversary Date has increased over the CPI last published prior to the grant of the Burswood Casino Licence.

Liquor Act Licences⁸

24. (1) Subject to sub-clause (2) the number of licences in which may be granted in respect of the Resort Complex pursuant to section 50A of the *Liquor Act 1970-1984* shall not exceed:

- (a) 1 hotel licence;
- (b) 1 cabaret licence;
- (c) 6 restaurant licences;

(2) Upon and subject to the completion of construction of Stage 2 there may be granted pursuant to section 50A of the *Liquor Act 1970-1984* in respect of the Resort Complex, in addition to the licences specified in sub-clause (1), further licences which shall not exceed in number:

- (a) 1 hotel licence;
- (b) 1 cabaret licence;
- (c) 6 restaurant licences;

(3) In relation to section 25(1)(b) of the *Liquor Act 1970-1984* that part of the Resort Complex as comprises or will comprise the Burswood Casino and convention centre/theatre restaurant are specified premises for the purpose of that Section.

PART V — SECURITY INTERESTS AND ASSIGNMENTS.

Restriction on assigning mortgaging charging encumbering Casino Licence etc or disposing of the Site⁸

25. (1) The Trustee shall not:
- (a) except in accordance with the provisions of the Control Act assign or mortgage, charge or otherwise encumber:
 - (i) the Burswood Casino Licence;
 - (ii) the Site;
 - (iii) its rights and benefits under this Agreement;
 - (b) during the continuance of this Agreement dispose of the Site or any part thereof without the prior consent of the Minister;

Definition of “Disposition”⁸

(2) In sub-clause (1)(b) “disposition” includes (i) a disposition of any estate or interest in any manner including by way of sale transfer assignment lease letting or license; and (ii) entering into an agreement to effect a disposition whether in either case for valuable consideration or not and “dispose” has a corresponding meaning but does not extend to the letting or leasing of shops and offices, or the granting of concessions, within the Resort Complex;

Sub-division of the Site⁸

(3) In the event that the Trustee with the prior consent of the Minister desires to sub-divide the Site or any part of it, the State shall use its best endeavours to ensure that the approval to sub-divide shall not be subject to any condition, precedent or subsequent, requiring the setting aside or reservation of land for the purpose of public open space or in any other way set aside or reserved for use by the public other than any land necessarily required for the purpose of public streets.

PART VI — TERMINATION.

Termination of Agreement⁸

26. (1) In any of the following events namely if —
- (a) (i) the Trustee or the Manager makes any default, which the State considers material, in the due and punctual performance or observance of any of the obligations or undertakings contained in this Agreement or imposed by the Control Act and on the part of the Trustee and or the Manager as the case may be to be performed or observed; or
 - (ii) there shall be any failure, which the State considers material, to comply with any provision of this Agreement which is expressed to be a condition of this Agreement;
 - (iii) any representation or warranty made by the Manager in this Agreement is or proves to be incorrect untrue or

misleading in any respect which the State considers material;

- (iv) the Trustee and or the Manager abandons or repudiates this Agreement or their operations under this Agreement

and such default is not remedied, such condition is not complied with, such representation and warranty is not rendered correct true and not misleading or as the case may be such operations are not resumed within a period of sixty (60) days after notice is given by the State as provided in sub-clause (2) or, if the default, failure, breach or abandonment, or the materiality of the default, failure or breach, is referred to arbitration, then within the period mentioned in sub-clause (3); or

- (b) the Trust is terminated; or
- (c) the Burswood Casino Licence is revoked or surrendered

the State may by notice terminate this Agreement;

(2) A notice given by the State pursuant to sub-clause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Trustee the Manager and any Mortgagee;

- (3)(a) If the Trustee or the Manager contests the alleged default failure breach abandonment or repudiation referred to in paragraph (a) of sub-clause (1) or the materiality of any such default failure or breach it shall within thirty (30) days after notice is given by the State pursuant to sub-clause (2) refer the matter in dispute to arbitration.
- (b) If the question is decided against the Trustee or the Manager, the Trustee or the Manager shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Trustee or the Manager, as the case may be, was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than sixty (60) days from the date of such award;

(4) If the default or failure referred to in sub-paragraphs (a)(i) or (a)(ii) of sub-clause (1) is not remedied after receipt of the notice referred to in sub-clause (1) within the time specified in that sub-clause or within the time fixed by the arbitration award referred to in sub-clause (3) the State instead of terminating this Agreement may itself remedy such default or failure or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon the Site and to make use of all plant machinery equipment and installations thereon and on the Resort Site) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Trustee to the State on demand.

Effect of Termination⁸

27. (1) On the termination of this Agreement —
- (a) except as otherwise provided by this Agreement or agreed by the Minister the rights of the Trustee and the Manager to in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
 - (b) all moneys owing to the State shall become immediately due and payable and shall be forthwith paid to the State by the Trustee or the Manager as the case may be;
 - (c) save as aforesaid and as otherwise provided in this Agreement none of the Parties shall have any claim against any of the others of them with respect to any matter or thing in or arising out of this Agreement and in particular, but without limiting the generality of the preceding provisions of this paragraph, the Trustee shall have no claim to the repayment of all or any part of any payment made by the Trustee to the State pursuant to clause 6(4);
 - (d) the Trustee or any person claiming through or under it as the case may be may continue to erect, complete or use the Resort Complex, as the case may be without, if the Burswood Casino Licence has been granted and has not been surrendered or revoked, any interference or interruption by the Local Authority or by any other authority or instrumentality of the State or by any person on the grounds that such operations are contrary to any town planning scheme or zoning by-law of any Local Authority or any other statutory town planning provision as if this Agreement was not so terminated PROVIDED HOWEVER that no person, other than an Administrator appointed pursuant to the Control Act, shall continue to use or operate the Burswood Casino as a Casino.

PART VII — GENERAL

Restrictions on resumption etc of the Site⁸

28. Subject to the performance by the Trustee and the Manager of their obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Trustee and the Manager resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State the Site or any installations plant equipment or other property for the time being belonging to the Trustee thereon AND without such consent the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of the Site which may unduly prejudice or interfere with the Trustees' operations hereunder.

Prohibition against discriminatory taxes etc ⁸

29. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose, discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products material or services used or produced by or through the operations of the Trustee or the Manager in the conduct of their operations hereunder nor shall the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Trustee or the Manager of full enjoyment of the rights granted or intended to be granted under this Agreement.

Force majeure ⁸

30. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the Party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State), or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the Party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other Parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods etc ⁸

31. Notwithstanding any provision of this Agreement the Minister may at the request of the Trustee or the Manager from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in the Design and Construction Programme, other than the Period of Exclusivity, for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Indemnity ⁸

32. The Trustee and the Manager shall each indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Trustee and or the Manager pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use of the Works.

Arbitration⁸

33. (1) Any dispute or difference between the Parties arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of any Party under this Agreement or as to any matter to be agreed upon between the Parties under this Agreement shall in default of agreement between the Trustee and or the Manager on the one hand and the State of the other and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by the Trustee and or the Manager and the other by the State the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

(2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the State or the Committee is by this Agreement, the Control Act or the Agreement Act given a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of any Party to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein or in the Design and Construction Programme which having regard to the circumstances may reasonably be required in order to preserve the rights of that Party or of the Parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

Waivers⁸

34. No omission by any Party to require the performance by another or the others of any of the terms or conditions of this Agreement nor any forbearance or indulgence granted or shown by any Party to another or others shall release discharge or in any manner affect or prejudice the right of a Party at any time to require strict and full performance by another or others of any or all of the terms or conditions to be observed or performed hereunder.

Consents and approvals not to be unreasonably withheld⁸

35. (1) Subject to sub-clause (2) in this Agreement any reference to a requirement to obtain the consent or approval of the Minister, the Committee, the Trustee or the Manager shall be interpreted as including a proviso that such consent or approval (as the case may be) shall not be unreasonably withheld or delayed by the Minister, the Committee, the Trustee or the Manager as the case may be;

(2) Sub-clause (1) shall not apply in relation to the consents or approvals of the Minister or the Committee as the case may be referred to in clauses 21(d), 22(2), 25(1)(b) and 25(3) in which cases the giving or otherwise of the relevant consent or approval shall be in the absolute discretion of the Minister or the Committee as the case may be.

Notices ⁸

36. Any notice consent or other writing authorised required or contemplated by this Agreement to be given or sent shall be deemed to have been duly given or sent:

- (a) by the State or the Minister if given or sent by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister;
- (b) by the Committee if given or sent

by telex or prepaid post or delivered by hand as follows:

- if to the Trustee —
West Australian Trustees Limited
135 St. George's Terrace
Perth 6000
Telex: AA92516
Attention: Manager — Trust Services
- if to the Manager —
Burswood Management Limited
8 St. George's Terrace
Perth 6000
Telex: AA96577
Attention: Managing Director

and

- (c) by the Trustee or the Manager if given or sent on its behalf by any person authorised by it or by the solicitors of the Trustee or the Manager as notified to the State from time to time and sent by telex or prepaid post or delivered by hand as follows:
 - if to the Minister at
15th Floor
City Mutual Tower
197 St. George's Terrace
Perth 6000
Telex: AA96555
 - if to the Committee —
Casino Control Committee
15th Floor
City Mutual Tower
197 St. George's Terrace
Perth 6000
Telex: [To be advised]
Attention: Chief Casino Officer

Except in the case of personal service which shall be effective upon delivery any such notice consent or writing shall be effective if given or sent by telex upon receipt of the recipients answerback or if given by post on the day on

which it would be delivered in the ordinary course of post. A Party may, by notice given in accordance with this clause to the other Parties, change its address and or telex number or advise a telex number.

Governing Law⁸

37. This Agreement shall be governed by and construed in accordance with the law of the State.

SCHEDULE A

- (a) (i) Manila;
 - (ii) Crown & Anchor;
 - (iii) without prejudice to the provisions of clause 22(5)(b)(i) bingo played pursuant to conditions which, without the prior consent of the Trustee, are not less restrictive than those contained in Part 6.7 of the Gaming Report;
- (b) rummy, euchre, bridge, solo, whist, five hundred, crib, poker played with cards, briscola, draughts, dominoes, mahjong, chess, monopoly, Chinese chequers, backgammon, scrabble, darts, pool, billiards, snooker, Kelly's pool, paper currency serial number games, drawing lots or tossing a coin to buy the next round, alphabetic weekly racing games and "100-clubs" provided always that the Games referred to in this paragraph shall not be played against "the House".

IN WITNESS WHEREOF the parties have executed this Agreement the day and year hereinbefore written.

SIGNED by THE HONOURABLE
DESMOND KEITH DANS M.L.C. for
and on behalf of the State of Western
Australia in the presence of: } D. K. DANS.

R. CHAPMAN.

THE COMMON SEAL of WEST
AUSTRALIAN TRUSTEES LIMITED
was hereunto affixed by authority of the
Board of Directors in the presence of: } (L.S.)

A. M. READ Manager — Trust Services.

F. S. KAMP Secretary.

THE COMMON SEAL of
BURSWOOD MANAGEMENT
LIMITED was hereunto affixed by
authority of the Board of Directors in
the presence of: } (L.S.)

D. R. DEMPSTER Director.

J. J. HUGHES Director.

[Schedule 1 amended by No. 44 of 1987 s. 8.]

Schedule 2

(Section 3)

SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made this 14th day of September 1987 BETWEEN:

THE HONOURABLE PAMELA ANNE BEGGS J.P. M.L.A. the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time ("the State") of the first part;

AND

WEST AUSTRALIAN TRUSTEES LIMITED of 135 St. Georges Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust ("the Trustee") of the second part;

AND

BURSWOOD MANAGEMENT LIMITED of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust ("the Manager") of the third part.

WHEREAS:

- A. The State, the Trustee and the Manager are parties to an agreement dated 20 February 1985 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* ("the Principal Agreement").
- B. The parties have agreed that subject as hereinafter provided the Principal Agreement should be amended.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Words and expressions defined in the Principal Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as are ascribed to them in the Principal Agreement and the provisions of clause 2 of the Principal Agreement as to the interpretation thereof shall apply to this Agreement.
2.
 - (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
 - (2) The following provisions of this Agreement shall be of no force or effect if the Bill referred to in sub-clause (1) is not passed as an Act on or before 31 October 1987.
3. The Principal Agreement is hereby amended: —
 - (A) by deleting from clause 2 the definitions "this Agreement", "Burswood Casino", "Control Act", "Resort Complex", "Resort

Site”, “Site” and “Trust Deed” and inserting the following definitions: —

“this Agreement” means this Agreement as amended from time to time, whether in accordance with clause 5 or otherwise, and includes any schedule or annexure hereto;

“Burswood Casino” means that area in the Resort Complex identified in the Drawings as the area to constitute the casino and includes the area in which money counting, surveillance, storage and other activities relating to the conduct and playing of Games are carried on or, if and when the area to which the Burswood Casino Licence relates is fixed pursuant to section 21(4a) of the Control Act, the area so fixed as thereafter altered from time to time in accordance with that section;

“Control Act” means the *Casino Control Act 1984*;

“Resort Complex” means the hotel, convention centre/theatre restaurant, exhibition centre, recreation and other facilities and the Burswood Casino established or to be established on the Site pursuant to and in accordance with the provisions of this Agreement and includes, if and when constructed, Stage 2 but does not include, on and from the date specified in an order made under section 21F(1b) of the Control Act, any of the foregoing which are by the order excluded from the operation of this Agreement;

“Resort Site” means that part of Burswood Island as is shown bordered red on Lands and Surveys Miscellaneous Plan 1512 but does not include the Site or any land which ceases to be part of the Site by virtue of an order made under section 21F(1b) of the Control Act;

“Site” means Swan Locations 10661 and 10662 as surveyed and shown on registered Lands and Surveys Original Plan 16284 but does not include, on and from the date specified in an order made under section 21F(1b) of the Control Act, any part of that land which is by the order excluded from the operation of this Agreement;

“Trust Deed” means the deed dated 20 February 1985 made between the Trustee and the Manager constituting the Burswood Property Trust as amended consolidated and replaced by a deed dated 18 April 1985 made between the Trustee and the Manager and includes such last mentioned deed as thereafter from time to time altered or amended with the prior approval of the Minister;

(B) by deleting clause 13 and substituting the following clause: —

13. (1) If the Trustee shall resolve to proceed with Stage 2 or to carry out any other development of the Site the Trustee shall: —
 - (a) forthwith notify the State of such resolution;
 - and

- (b) in the case of any such other development, submit to the Minister a proposal in reasonable detail, and before proceeding, obtain the consent of the Minister, in relation thereto.
 - (2) The provisions of clauses 7, 9, 10 and 11 shall, with necessary modifications, apply in relation to the construction, Fit-Out and Commissioning of Stage 2 or any other development referred to in sub-clause (1).
- (C) by deleting clause 20 and substituting the following clause: —
20. (1) The Committee or the Committee's Nominated Representative shall be entitled to attend and to speak at any meeting of the Burswood Property Trust or the Manager as though it or he were a unitholder of the Trust or a director of the Manager but nothing contained in this clause shall confer on the Committee or the Committee's Nominated Representative a right to vote.
- (2) The Trustee and the Manager shall deliver to the Committee a copy of all notices that are forwarded to unitholders or directors of such meetings in the same manner and at the same time as such notices are forwarded to unitholders or directors as the case may be.
- (D) by adding after paragraph (a) of sub-clause 24(1) the following paragraph: —
- (aa) if pursuant to an order made under section 21F(1b) of the Control Act the hotel the subject of the licence referred to in paragraph (a) is excluded from the operation of this Agreement, 1 casino liquor licence;
- (E) by deleting sub-clauses (1) and (2) of clause 25 and substituting the following sub-clauses: —
- (1) The Trustee shall not except in accordance with the provisions of the Control Act: —
- (a) assign, mortgage, charge or otherwise encumber: —
 - (i) the Burswood Casino Licence;
 - (ii) the Site or the Resort Complex or any part of either;
 - (iii) its rights and benefits under this Agreement;
 - (b) dispose of any part of the Resort Complex or the Site.
- (2) In sub-clause (1) "dispose of" has the meaning ascribed to that expression by section 21F(8) of the Control Act.

AS WITNESS the execution of this Agreement by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOURABLE
PAMELA ANNE BEGGS J.P. M.L.A.
for and on behalf of the State of
Western Australia in the presence of:

}

P. A. BEGGS.

R. CHAPMAN.

THE COMMON SEAL of WEST
AUSTRALIAN TRUSTEES LIMITED
was hereunto affixed by authority of the
Board of Directors in the presence of:

}

(C.S.)

A. M. READ.

Manager — Corporate Services

F. S. KAMP.

Secretary

THE COMMON SEAL of
BURSWOOD MANAGEMENT
LIMITED was hereunto affixed by
authority of the Board of Directors in
the presence of:

}

(C.S.)

D. R. DEMPSTER.

Director

C. R. COULSON.

Secretary

[Schedule 2 inserted by No. 44 of 1987 s. 9.]

Schedule 3

(Section 3)

SECOND SUPPLEMENTARY AGREEMENT BURSWOOD CASINO (1990)

THIS AGREEMENT made the third day of May 1990

BETWEEN:

THE HONOURABLE PAMELA ANNE BEGGS, J.P., M.L.A., the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time ("the State") of the first part;

AND

PERPETUAL TRUSTEES W.A. LTD. of 89 St. Georges Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust ("the Trustee") of the second part;

AND

BURSWOOD MANAGEMENT LIMITED of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust ("the Manager") of the third part.

WHEREAS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager are parties to agreements dated 20 February 1985 and 14 September 1987 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* (the 20 February 1985 Agreement as supplemented and amended by the 14 September 1987 Agreement "the Principal Agreement").
- B. The parties have agreed that subject as hereinafter provided the Principal Agreement should be amended.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Words and expressions defined in the Principal Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as are ascribed to them in the Principal Agreement and the provisions of clause 2 of the Principal Agreement as to the interpretation thereof shall apply to this Agreement.
2. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

- (2) The following provisions of this Agreement shall become effective on the day on which the Act referred to in sub-clause (1) comes into operation.
3. The Principal Agreement is amended by adding the following sub-clauses to clause 23: —
- (10) Notwithstanding sub-clause (9) for the purposes of sub-clause (1)(b) “Annual Specified Amount” means: —
- (a) in relation to the annual period in which the Effective Date occurs the aggregate of:
- (i) the same proportion of what but for this sub-clause would have been the Annual Specified Amount for that period as the proportion which the number of days from and including the Anniversary Date preceding the Completion Date to but excluding the Completion Date bears to 365; and
- (ii) the same proportion of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1 400 000.00) as the proportion which the number of days from and including the Completion Date to but excluding the Anniversary Date following the Completion Date bears to 365;
- (b) on and from the Anniversary Date following the Completion Date ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1 400 000.00) escalated on each Anniversary Date after the Completion Date by the percentage by which the CPI last published prior to such Anniversary Date has increased over the CPI last published prior to the Anniversary Date preceding the Completion Date.
- (11) The payment, or if more than one, each payment, to be made pursuant to sub-clause (1)(b) after the Effective Date in respect of the period referred to in sub-clause (10)(a) shall be adjusted so as to give effect to sub-clause (10)(a) or, if the Effective Date occurs after

the date on which the last payment in respect of that period has been made, the additional amount payable by reason of the operation of sub-clause (10)(a) shall be paid by the Trustee within seven (7) days of the Effective Date.

(12) In sub-clauses (10) and (11): —

“Completion Date” means the date of Commissioning of an extension to the Burswood Casino proposed in plans dated September 1989 and submitted to the Minister by the Manager with a letter dated 13 September 1989 and subsequently approved by the Minister, as to which date a certificate issued by the Minister shall for the purposes of this Agreement be conclusive;

“Effective Date” means the date on which the Act ratifying the agreement by which those sub-clauses were inserted into this Agreement came into operation.

AS WITNESS the execution of this Agreement by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOURABLE
PAMELA ANNE BEGGS, J.P., M.L.A.
for and on behalf of the State of
Western Australia in the presence of: } P. A. Beggs

R. Chapman

PERPETUAL TRUSTEES W.A. LTD by its Attorney who state they have no notice of revocation of the Power of Attorney dated 5 February 1990 under which this document is signed.

P. G. Webse — Manager Corporate Trusts.

B. Romeo — Accountant Corporate Trusts.

THE COMMON SEAL of
BURSWOOD MANAGEMENT
LIMITED was hereunto affixed by
authority of the Board of Directors in
the presence of: } [C. S.]

Dallas R. Dempster, Director.

Yew Seng Kwa, Secretary.

[Schedule 3 inserted by No. 15 of 1990 s. 6.]

Schedule 4

(Section 3)

CASINO (BURSWOOD ISLAND) AGREEMENT SEVENTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the ninth day of June 1997

B E T W E E N :

THE HONOURABLE GEORGE MAXWELL EVANS MBE, FCA, MLC, the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“the State”);

PERPETUAL TRUSTEES W.A. LTD. (ACN 008 666 886) of 89 St. George’s Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust (“the Trustee”);

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust (“the Manager”) of the third part.

RECITALS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to an agreement dated 20 February 1985 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* as amended by two agreements dated 14 September 1987 and 3 May 1990 also ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* and by four other agreements made pursuant to clause 5 of the 20 February 1985 Agreement dated 13 November 1991, 30 March 1992, 3 April 1995 and 22 June 1996 (the 20 February 1985 Agreement as so amended “the State Agreement”).
- B. The parties have agreed to further amend the State Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating certain of its objectives.

THE PARTIES AGREE AS FOLLOWS:

Definitions and Interpretation

1. Words and expressions defined in the State Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the State Agreement and the provisions of clause 2 of the State Agreement as to interpretation apply to this Agreement.

Variation

2. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
- (2) The following provisions of this Agreement shall be of no force or effect if the Bill referred to in sub-clause (1) is not passed as an Act on or before 20 September 1997.

Clause 2 amended

3. Clause 2 of the State Agreement is amended-
 - (a) by inserting after the definition of “Anniversary Date” the following definition-

“ “Approved Company” means a company approved by the Minister under clause 17A(1)”;
 - (b) by deleting the definition of “Burswood Park Technical Committee”;
 - (c) by inserting after the definition of “Committee’s Nominated Representative” the following definition-

“ “Commission” means the Gaming Commission of Western Australia established by the *Gaming Commission Act 1987*”;
 - (d) by deleting the definition of “Manager”, and substituting the following-

“ “Manager” means any Person for the time being appointed, subject to the provisions of this Agreement, Manager under and pursuant to the terms of the Trust Deed, provided that if there is no person appointed Manager or the Trustee is appointed Manager, then references in this agreement to Manager will be read as references to the Trustee, except where the context so requires.”;
 - (e) by inserting after the definition of “Manager”, the following definition -

“ “Mandatory Articles” means the provisions to be included in the articles of association of the Approved Company in accordance with the requirements of clauses 17A(2)(b) and 17A(2)(c)”;
 - (f) in the definition of “Resort Complex”, by inserting after “Stage 2 but” the following:-

“subject to paragraph (c) of the definition of “Site””;
 - (g) by deleting the definition of “Resort Site”, and substituting the following -

“ “Resort Site” means those parts of Burswood Island as are-

- (a) shown bordered red on Department of Land Administration Miscellaneous Plan 1512;
- (b) designated as Swan Location 12057 on Department of Land Administration Plan 18634; and
- (c) designated as Swan Location 11877 on Department of Land Administration Diagram 91378

or, if some other area is for the time being notified in the *Government Gazette* pursuant to clause 6(2B), that other area, but subject to clause 6(2A) does not include the Site or any land which ceases to be part of the Site by virtue of an order made under section 21F(1b) of the Control Act;” and

- (h) by deleting the definition of “Site”, and substituting the following-
 “ “Site” means-

- (a) Swan Location 10661 and 10662 as surveyed and shown on Department of Land Administration Original Plan 16284;
- (b) except in clauses 6, 9(1) and 9(3), any additional land granted or leased to the Trustee for the purposes of this Agreement whether pursuant to clause 6(5) or otherwise; and
- (c) any land in respect of which an order made under section 21F(1b) of the Control Act is revoked

but, subject to paragraph (c), does not include, on and from the date specified in an order made under section 21F(1b) of the Control Act, any part of that land which is by the order excluded from the operation of this Agreement;”.

Clause 6 amended

4. Clause 6 of the State Agreement is amended-

- (a) in clause 6(1)(c)(iii) by deleting the following-
 “of the Committee”;

- (b) after clause 6(2), by inserting the following clauses:-

“(2A) The State may from time to time

- (a) determine the boundaries of the Resort Site; or
- (b) amend the boundaries of the Resort Site-
 - (i) to increase the area of the Resort Site with the consent of the Trustee and the Manager;
 - (ii) to decrease the area of the Resort Site pursuant to clause 23(3)(a);

- (iii) to decrease the area of the Resort Site otherwise than pursuant to clause 23(3)(a), with the consent of the Trustee and the Manager.”
- (2B) Subject to subclause (2C), a determination of the boundaries of the Resort Site or an amendment of the boundaries of the Resort Site pursuant to subclause (2A) is effective from the date on which notice of the amendment is published in the *Government Gazette*.
- (2C) A determination of the boundaries of the Resort Site pursuant to subclause (2A) may, in the notice published pursuant to subclause (2B), be expressed to be effective as of a date, prospective or retrospective, specified in the notice.
- (2D) If the Resort Site is amended pursuant to subclause (2A), the State must amend the reserve created pursuant to clause 6(1)(c) accordingly.”; and
- (c) by inserting after clause 6(4), the following clause-
 - “(5) Notwithstanding the provisions of the *Public Works Act 1902*, the *Financial Administration and Audit Act 1985* or of any other Act the State may-
 - (a) on the recommendation of the Minister cause part or parts of any land excised from the Resort Site not exceeding in the aggregate 10 hectares to be granted or leased to the Trustee on terms and conditions approved by the Minister by notice published in the *Government Gazette*; and
 - (b) pay or direct the payment of all or any part of any money payable by the Trustee to the State for land granted or leased to the Trustee under paragraph (a) to the person who was registered as the proprietor of that land immediately prior to its acquisition by or on behalf of the State.”.

Clause 9 amended

- 5. Clause 9(5) of the State Agreement is amended-
 - (a) by deleting after “of the State and Commonwealth” the following-

“and, in addition in relation to the Resort Site, with the Burswood Park Technical Committee,”; and
 - (b) by deleting “instrumentalities and such Committee” and substituting the following-

“and instrumentalities”.

The heading of “The Committee’s Nominated Representative” in Part II, amended

6. Part II of the State Agreement is amended in the heading “The Committee’s Nominated Representative” by deleting “Committee’s” and substituting the following-

“Commission’s”.

Clause 12 deleted

7. Clause 12 of the State Agreement is deleted.

The heading of “The Burswood Property Trust Issue of Units and Options to the Founders” in Part III, amended

8. Part III of the State Agreement is amended in the heading “The Burswood Property Trust Issue of Units and Options to the Founders” by deleting the following-

“to the Founders”.

Clause 14 amended

9. Clause 14 is amended by inserting after clause 14(c), the following clause-

“(ca) with the prior approval of the Minister, issue further Units to the public or otherwise at a price, and on terms and conditions as to payment of the price, approved by the Minister”.

Clause 17 amended

10. Clause 17 is amended -

- (a) by inserting after clause 17(e), the following clauses:-

“(ea) the Memorandum and Articles of Association of an Approved Company shall not be altered or amended without the prior approval of the Minister;

(eb) an Approved Company may not sell or otherwise dispose of any Units without the prior approval of the Minister;”;

- (b) in clause 17(g)-

- (i) by inserting after “subject to”, the following-

“any approval given under clause 17A and to”;

- (ii) by deleting “Associated Stock Exchanges” and substituting the following-

“Stock Exchange Limited”;

- (iii) by deleting “five” and substituting the following-

“ten”; and

- (iv) by deleting “5” and substituting the following -
“10”;
- (c) by inserting after clause 17(g) the following clause-
“(ga) there shall be no breach of the Mandatory Articles;”;
- (d) by inserting after clause 17(i) the following clause-
“(ia) there shall be no change in the ownership or control of the Manager as defined in the Operation Management Agreement without the prior approval of the Minister;”;
- (e) by inserting after clause 17(l) the following clause-
“(m) except for holding Units as authorised under clause 17A, any Approved Company will not without the Minister’s consent be engaged, concerned or interested in, any investment or business activity which the Trustee would not have power under the Trust Deed to be engaged, concerned or interested in.”; and
- (f) by inserting after clause 17, the following clause-
“17A(1) Notwithstanding anything in clause 17(1), the Minister may approve:
 - (a) the acquisition by a Company of up to all the Units in the Trust; and/or
 - (b) the redemption or cancellation of some or all of the Units in the Trusts
 so that all of the Units in the Trust are held by a company, if, but only if the requirements of subclause (2) are satisfied in relation to that company.
- (2) For the purposes of subclause (1)-
 - (a) the company must be a public company incorporated in Australia the voting shares of which are capable of being quoted on the Australian Stock Exchange Limited and the Minister must be reasonably satisfied that the company’s voting shares will be quoted on the Australian Stock Exchange Limited;
 - (b) the articles of association of the company must comply with the requirements set out in Schedule B; and
 - (c) the memorandum and articles of association of the company must have been approved by the Minister.

The heading of “Excess holdings of Units and Options” in Part III, amended

11. Part III of the State Agreement is amended after clause 17 in the heading “Excess holdings of Units and Options” by inserting after “Units and Options”, the following-

“and breach of Mandatory Articles”.

Clause 18 amended

12. Clause 18 of the State Agreement is amended-
- (a) by inserting after “18.” the following-
“(1”;
 - (b) by inserting after “clause 17(1)” the following-
“and which is not authorised under clause 17A”; and
 - (c) by inserting after clause 18 the following clause-
“(2) Notwithstanding paragraph (ga) of clause 17(1), a breach of the Mandatory Articles of an Approved Company shall not constitute a breach of this Agreement if the directors of the Approved Company as soon as possible upon becoming aware of a breach of the Mandatory Articles enforce compliance with the Mandatory Articles under the enforcement provisions of the Mandatory Articles.”.

Clause 23 amended

13. Clause 23 of the State Agreement is amended-
- (a) in clause 23(2)(b)-
 - (i) by inserting after “subject to” the following-
“clause 6(2A) and to”;
 - (ii) by deleting after “Resort Site” the following-
“as determined by survey,”; and
 - (iii) by deleting “remains unchanged” and substituting the following-
“is not decreased”; and
 - (b) by inserting after clause 23(2A) the following clause-
“(2B) For the purposes of subclause (2) the Resort Site shall be taken to remain under the control and management of the Board even if the Board, with the prior approval of the Minister and the Trustee, leases the whole or part of that part of the Resort Site as now comprises Swan Location 11877 on Department of Land Administration Diagram 91378”.

- (c) in clause 23(3) -
 - (i) by inserting before clause 23(3)(a), the following clause -
 - “(aa) excise from the Resort Site any part or parts of the Resort Site agreed to be granted or leased to the Trustee under clause 6(5)”;
 - (ii) in subclause 23(3)(a), by deleting after “ consent of the Trustee” the following-
 - “exceed 10% of the area of the Resort Site as determined by the survey referred to in subclause (2)(b); and”
 - (iii) in clause 23(3)(a) by inserting after “ consent of the Trustee” the following-
 - “exceed -
 - (i) 10% of the area of the Resort Site as at 3 January 1986; or
 - (ii) 10% of the aggregate of the area of (A) the Resort Site at the time of excision; and (B) any land which has been excised from the Resort Site pursuant to paragraph (aa)
- whichever area is the greater; and”.

Clause 24 amended

- 14. Clause 24(2)(aa) of the State Agreement is amended after “paragraph (a)” by deleting “is” and substituting the following
“has at any time been”.

Clause 35 amended

- 15. Clause 35(2) of the State Agreement is amended by inserting after “referred to in clauses” the following-
“6(5),14(ca), 17(1)(ea), 17(1)(eb), 17(1)(ia), 17A”.

Clause 36 amended

- 16. Clause 36 of the State Agreement is amended-
 - (a) in clause 36(b)-
 - (i) by deleting “telex” in the first place where it occurs and substituting the following-
 - “facsimile (to be immediately confirmed by postal or hand delivery)”;
 - (ii) by deleting “West Australian” and substituting the following-

- “Perpetual”;
- (iii) by inserting after “Trustees” the following-
“WA”;
 - (iv) by deleting “135 St George’s Terrace” and substituting the following -
“C/- Level 7, 1 Castlereagh Street”;
 - (v) by deleting “Perth 6000” in the first place where it occurs, and substituting the following-
“Sydney NSW 2000”;
 - (vi) by deleting “Telex AA92516” and substituting the following-
“Facsimile: (02) 9223 7688”;
 - (vii) by deleting “Manager- Trust Services”, and substituting the following-
“National Manager- Property Trusts”
 - (viii) by inserting after “Burswood” the following-
“Resort”;
 - (ix) by deleting “8 St George’s Terrace” and substituting the following-
“40 The Esplanade”; and
 - (x) by deleting “Telex AA96577” and substituting the following-
“Facsimile: 08 9481 0892”
- (b) in clause 36(c) -
- (i) by deleting “telex” in the first place where it occurs, and substituting the following-
“facsimile (to be immediately confirmed by postal or hand delivery)”;
 - (ii) by deleting “15th” in the first place where it occurs and substituting the following-
“11th”;
 - (iii) by deleting after “15th Floor” in the first place where it occurs, the following-
“City Mutual Tower”;

- (iv) by deleting “197” in the first place where it occurs, and substituting the following-
“216”;
- (v) by deleting “Telex AA96555” and substituting the following-
“Facsimile:(08) 9481 4613”;
- (vi) by deleting “Casino Control Committee” and substituting the following-
“Gaming Commission of Western Australia”
- (vii) by deleting “City Mutual Tower” in the second place where it occurs, and substituting the following-
“Hyatt Centre”;
- (viii) by deleting “197 St. George’s Terrace” in the second place where it occurs, and substituting the following -
“87 Adelaide Terrace”;
- (ix) by deleting “Perth 6000” in the second place where it occurs, and substituting the following-
“East Perth 6004”
- (x) by deleting “Telex: [To be advised]” and substituting the following-
“Facsimile:(08) 9325 1636”;
- (xi) by deleting “telex upon receipt of the recipients answerback” and substituting the following-
“facsimile upon report of successful transmission to the correct facsimile number”; and
- (xii) by deleting “telex” in the third and fourth places where it occurs, and substituting the following-
“facsimile”.

17. The State Agreement is amended by deleting “Committee” in each place where it occurs in the clauses referred to in the Table to this clause and substituting in each case the following-
“Commission”.

Table

2 (definition of “Casino Gross Revenue”)	15(e)
2(definition of “Commissioning”)	19

2 (definition of “Committee’s Nominated Representative)	20(1)
6(1)(c)	20(2)
7(8)(a)	21(d)
11(1)	21(e)
11(2)	22(2)
11(3)	23(b)
14(d)	33(2)
15(a)(B)	35(1)
15(b)(i)	35(2)
15(c)	36(b)
15(d)	36(c)

18. The State Agreement is amended by deleting “Committee’s” in each place where it occurs in the clauses referred to in the Table to this subclause and substituting in each case the following-

“Commission’s”.

Table

2 (definition of “Committee’s Nominated Representative)	
7(8)(b)	11(2)
7(8)(c)	11(3)
7(8)(d)	19
11(1)	20(1)

19. The State Agreement is amended by inserting after Schedule A, the following-

“SCHEDULE B

(Clause 17A - Mandatory Articles)

1. (1) The articles of association of any Approved Company must:
 - (a) impose restrictions on the issue, acquisition and ownership (including joint ownership) of shares in the Approved Company so as to prevent foreign persons having relevant interests in shares in the Approved Company that represent, in total, more than 40% of the voting shares of the issued share capital of the Approved Company provided that the Minister may by notice to the Approved Company exempt

any existing or future holding of shares in the Approved Company by a specified Person from the provisions of this paragraph for a period specified in the notice and during that period those shares shall be disregarded for the purposes of this paragraph; and

- (b) impose restrictions on the issue, acquisition and ownership (including joint ownership) of shares in the Approved Company so as to prevent an individual Person having relevant interests in shares in the Approved Company that represent more than 10% of the voting shares of the issued share capital of the Approved Company provided that the Minister may by notice to the Approved Company exempt any existing or future holding of shares in the Approved Company by a specified Person from the provisions of this paragraph for a period specified in the notice and during that period those shares shall be disregarded for the purposes of this paragraph; and
- (c) impose restrictions on the counting of votes in respect of the appointment, replacement and removal of a director of the Approved Company so as to prevent the votes attaching to all substantial foreign shareholdings being counted in respect of the appointment, replacement or removal of more than one-third of the directors of the Approved Company who hold office at any particular time, so that at any particular time not less than two thirds of the directors of the Approved Company have been appointed by a resolution of shareholders in respect of which no votes attaching to any substantial foreign shareholding was counted; and
- (d) confer the following powers on the directors of the Approved Company to enable the directors to enforce the restrictions referred to in paragraphs (a), (b) and (c);
 - (i) the power to do anything necessary to effect the transfer of shares or divestment held by a Person;
 - (ii) the power to remove or limit the right of a Person to exercise voting rights attached to voting shares;
 - (iii) subject to the Corporations Law, the power to end the appointment of a person to the office of director of the Approved Company;
 - (iv) the power to suspend dividend rights attaching to a share; and
 - (v) the power to require or cause the divestiture of shares held by a Person"; and
- (e) without the prior approval of the Minister, prohibit the Approved Company from taking any action to bring about a

change of its company name to a name that does not include the word “Burswood”; and

- (f) require that the head office of the Approved Company always be located in Western Australia; and
 - (g) prohibiting any one shareholder of the Approved Company nominating or appointing more than one member of the Board of Directors of the Approved Company; and
 - (h) require that, at all times, at least two-thirds of the directors of the Approved Company are Australian citizens; and
 - (i) require that, at a meeting of the board of directors of the Approved Company, the director presiding at the meeting (however described) must be an Australian citizen; and
 - (j) prohibit the Approved Company, at all times, from taking any action to become incorporated outside Australia; and
 - (k) the appointment of the auditors of the Approved Company to be in accordance with the provisions of the Corporations Law but no person shall be appointed as such auditor unless that person’s appointment has first been approved by the Minister;
 - (l) include provisions in the same terms as clauses 19 and 20 as if references in those clauses to the Burswood Property Trust were references to the Approved Company.
- (2) For the purposes of this Schedule, a person has a relevant interest in a share if, and only if, the person would be taken because of Division 5 of Part 1.2 of the Corporations Law to have a relevant interest in the share if section 33 of that Law were disregarded.
- (3) For the purposes of this Schedule, the question whether a person who is not an Australian citizen is ordinarily resident in Australia at a particular time is to be determined in the same manner as that question is determined under the *Foreign Acquisitions and Takeovers Act 1975 (Commonwealth)*.
- (4) For the purposes of this Schedule, a reference to a substantial foreign shareholding is a reference to a shareholding of 10% or more of the voting shares in the Approved Company in which a particular foreign person has a relevant interest.
- (5) In this Schedule -
- “Australian citizen”** has the same meaning as in the *Australian Citizenship Act 1948 (Commonwealth)*;
- “Australian person”** means:
- (a) an individual who is an Australian citizen or is ordinarily resident in Australia; or

- (b) the Commonwealth, a State or a Territory; or
- (c) a person who is a nominee of the Commonwealth or of a State or a Territory; or
- (d) a Commonwealth, State or Territory authority; or
- (e) a person who is a nominee of a Commonwealth, State or Territory authority; or
- (f) a local government body (whether incorporated or not) formed by or under a law of a State or a Territory; or
- (g) a person who is a nominee of a local government body referred to in paragraph (f); or
- (h) a body corporate that:
 - (i) is incorporated by or under a law of the Commonwealth or of a State or a Territory; and
 - (ii) is substantially owned and effectively controlled by persons referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (i); or
- (i) a person in the capacity of a trustee, or manager, of a fund in which the total interests (if any) of persons referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) represent 80% or more of the total interests in the fund;

“company name”, in relation to an Approved Company, has the same meaning as in the Corporations Law;

“Corporations Law” means the Corporations Law of the Commonwealth of Australia as applying in each State and Territory of Australia;

“foreign person” means a person who is not an Australian person;

“head office”, in relation to an Approved Company, means the place of business of the Approved Company where central management and control are exercised.

AS WITNESS the execution of this Agreement by or on behalf of the parties the day and year first hereinbefore written.

SIGNED by **THE HONOURABLE**)
GEORGE MAXWELL EVANS)
 MBE, FCA, MLC for and on behalf of) **G M EVANS**
 the State of Western Australia in the)
 presence of:)

WILLIAM JOHN SHEPHERD

SIGNED by **ROBERT PETER**)
JENKINS for and on behalf of)
Perpetual Trustees W.A. Ltd. under)
Power of Attorney dated 5 June 1997)

R JENKINS

THE COMMON SEAL of)
BURSWOOD RESORT)
(MANAGEMENT) LIMITED)
(ACN 009 396 9450) was hereunto)
affixed by authority of the Board of)
Directors in the presence of)

C.S.

Director DONALD MICHAEL WATT

Secretary YE W SENG KWA

[Schedule 4 inserted by No. 20 of 1997 s. 8.]

Schedule 5

[Section 3A]

CASINO (BURSWOOD ISLAND) AGREEMENT

THIRD SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the 13th day of November 1991

B E T W E E N :

THE HONOURABLE PAMELA ANNE BEGGS, J.P., M.L.A., the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“the State”) of the first part;

AND

PERPETUAL TRUSTEES W.A. LTD. (ACN 008 666 886) of 89 St. Georges Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust (“the Trustee”) of the second part;

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust (“the Manager”) of the third part.

WHEREAS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to agreements dated 20 February 1985, 14 September 1987 and 3 May 1990 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* (the 20 February 1985 agreement as supplemented and amended by the 14 September 1987 and 3 May 1990 agreements “the Principal Agreement”).
- B. The parties have agreed subject as hereinafter provided to amend the Principal Agreement pursuant to clause 5 for the purpose of more efficiently or satisfactorily implementing or facilitating certain of its objectives.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Words and expressions defined in the Principal Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the Principal Agreement and the provisions of clause 2 of the Principal Agreement as to the interpretation thereof shall apply to this Agreement.

2. (1) This Agreement, if not disallowed pursuant to clause 5 of the Principal Agreement, has effect from and after the date on which in accordance with that clause it has effect.
- (2) As between the parties to this Agreement a certificate signed by the Minister as to the date on and from which this Agreement has effect shall be conclusive.
3. (1) Subject to sub-clause (2) the Principal Agreement is amended:-
 - (a) by adding at the end of clause 17(2) the following:-

“Provided that for the purposes of paragraph (1) of clause 17(1) of this Agreement a person shall be taken not to be entitled to Units by reason only that the entitlement arises as a result of the person acting as trustee, manager or custodian of a superannuation fund, a trust constituted for the purpose of investment in securities or funds or moneys held or managed for the purpose of investment in securities where more than 80% of the beneficiaries of each such superannuation fund, trust, fund or moneys are not Foreign Persons.”
 - (b) by adding the following paragraph to clause 22(5):-

“(c) prevent the State from permitting the playing of the game known as “two-up” on Anzac Day as defined in section 3 of the *Anzac Day Act 1960* in premises in any part of the State of The Returned and Services League of Australia, W.A. Branch, Incorporated or of any of its affiliated sub branches and normally used for social functions or activities of members of any such organisation.”
- (2) The amendment to the Principal Agreement made by paragraph (a) of sub-clause (1) takes effect on and from the date on which, with the approval required by clause 17(1)(d) of the Principal Agreement, an amendment to the Trust Deed in the same terms takes effect.

AS WITNESS the execution of this Agreement by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE)	
HONOURABLE PAMELA)	
ANNE BEGGS, J.P., M.L.A., for)	
and on behalf of the State of)	Pam Beggs
Western Australia in the presence)	
of.)	

A J Secker CT 6217

SIGNED by **PERPETUAL**)
TRUSTEES WA. LTD. by it's)
Attorney who state they have no)
notice of revocation of the Power)
of Attorney dated 5 February 1990)
under which this Agreement is)
signed.)

R P Jenkins
Company Solicitor

George Butcher
Manager Corporate Trusts

THE COMMON SEAL of))
BURSWOOD RESORT)
(MANAGEMENT) LIMITED)
was hereunto affixed by authority)
of the Board of Directors in the)
presence of:)

C.S.

Bill Martin Director

Yew Seng Kwa Secretary

[Schedule 5 inserted in Gazette 8 May 1998 p. 2390-2.]

Schedule 6

[Section 3A]

CASINO (BURSWOOD ISLAND) AGREEMENT

FOURTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the 30th day of March 1992

B E T W E E N :

THE HONOURABLE PAMELA ANNE BEGGS, J.P., M.L.A., the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time ("the State") of the first part;

AND

PERPETUAL TRUSTEES W.A. LTD. (ACN 008 666 886) of 89 St. Georges Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust ("the Trustee") of the second part;

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust ("the Manager") of the third part.

WHEREAS:

- A. The State, the Trustee (by virtue inter alia of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to agreements dated 20 February 1985, 14 September 1987 and 3 May 1990 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* (the 20 February 1985 agreement as supplemented and amended by the 14 September 1987 and 3 May 1990 agreements "the Principal Agreement").
- B. By an agreement made on 13 November 1991 between the State, the Trustee and the Manager ("the Third Supplementary Agreement") the Principal Agreement was, pursuant to clause 5 thereof, further supplemented and amended.
- C. Pursuant to clause 5(3) of the Principal Agreement, the Third Supplementary Agreement, subject to its terms, has effect from and after 19 March 1992.
- D. By reason of clause 3(2) of the Third Supplementary Agreement the amendment to The Principal Agreement made by paragraph (a) of clause 3(1) of the Third Supplementary Agreement has not, as at the date hereof, taken effect.

- E. The parties have agreed that certain of the objectives of the Principal Agreement would be more efficiently or satisfactorily implemented or facilitated otherwise than as contemplated by paragraph (a) of clause 3(1) of the Third Supplementary Agreement and accordingly have further agreed that the Principal Agreement, as amended by the effective provisions of the Third Supplementary Agreement (the Principal Agreement as so amended “the Amended Principal Agreement”), should, subject as hereinafter provided, be amended pursuant to clause 5 of the Amended Principal Agreement as provided in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Words and expressions defined in the Amended Principal Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the Amended Principal Agreement and the provisions of clause 2 of the Amended Principal Agreement as to the interpretation thereof shall apply to this Agreement.
2.
 - (1) This Agreement, if not disallowed pursuant to clause 5 of the Amended Principal Agreement, has effect from and after the date on which in accordance with that clause it has effect.
 - (2) As between the parties to this Agreement a certificate signed by the Minister as to the date on and from which this Agreement has effect shall be conclusive.
3.
 - (1) Subject to sub-clause (2) the Amended Principal Agreement is further amended by adding at the end of clause 17(2) the following proviso in lieu of the proviso contemplated by paragraph (a) of clause 3(1) of the Third Supplementary Agreement —

“Provided that for the purposes of paragraph (1) of clause 17(1) of this Agreement a Person shall be taken not to be entitled to Units by reason only that the entitlement arises as a result of the Person acting as trustee, manager or custodian of a superannuation fund, a trust constituted for the purpose of investment in securities or funds or moneys held or managed for the purpose of investment in securities where —

 - (i) more than 80% of the beneficiaries of each such superannuation fund, trust, fund or moneys are not Foreign Persons; and
 - (ii) more than 80% of the beneficial entitlement to each such superannuation fund, trust, fund or moneys is held by persons who are not Foreign Persons.”
 - (2) The amendment to the Amended Principal Agreement made by sub-clause (1) takes effect on and from the date on which, with the approval required by clause 17(1)(d) of the Amended Principal Agreement, an amendment to the Trust Deed in the same terms takes effect.

AS WITNESS the execution of this Agreement by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by **THE**)
HONOURABLE PAMELA)
ANNE BEGGS, J.P., M.L.A., for) Pam Beggs
and on behalf of the State of)
Western Australia in the presence)
of:)

M J Egan CT 7847

SIGNED by **PERPETUAL**)
TRUSTEES W.A. LTD. by its) George Butcher
duly appointed Attorneys who state) Manager, Corporate Trusts
they have no notice of revocation)
of the Power of Attorney dated) R P Jenkins
5 February 1990 under which this) Company Solicitor
Agreement is signed.)

THE COMMON SEAL of))
BURSWOOD RESORT))
(MANAGEMENT) **LIMITED**))
was hereunto affixed by authority) C.S.
of the Board of Directors in the)
presence of:)

Bill Martin Director

Yew Seng Kwa Secretary

[Schedule 6 inserted in Gazette 8 May 1998 p. 2392-3.]

Schedule 7

[Section 3A]

CASINO (BURSWOOD ISLAND) AGREEMENT

FIFTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the 3rd day of April 1995

B E T W E E N :

THE HONOURABLE GEORGE MAXWELL EVANS MBE, FCA, MLC, the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“the State”);

PERPETUAL TRUSTEES WA. LTD. (ACN 008 666 886) of 89 St. George’s Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust (“the Trustee”);

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust (“the Manager”) of the third part.

RECITALS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to an agreement dated 20 February 1985 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* as amended by two agreements dated 14 September 1987 and 3 May 1990 also ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* and by two other agreements made pursuant to clause 5 of the 20 February 1985 Agreement dated 13 November 1991 and 30 March 1992 (the 20 February 1985 Agreement as so amended “the State Agreement”).
- B. The parties have agreed to further amend the State Agreement pursuant to clause 5 for the purpose of more efficiently or satisfactorily implementing or facilitating certain of its objectives.

THE PARTIES AGREE AS FOLLOWS:

1. Words and expressions defined in the State Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the State Agreement and the provisions of clause 2 of the State Agreement as to interpretation apply to this Agreement.

2. (1) This Agreement, if not disallowed pursuant to clause 5 of the State Agreement, has effect from the date on which in accordance with that clause it has effect.
- (2) As between the parties a certificate signed by the Minister as to the date from which this Agreement has effect shall be conclusive.

3. Clause 2 of the State Agreement is amended by deleting the definition “Resort Site” and substituting the following -

“ “Resort Site” means those parts of Burswood Island as are -

- (a) shown bordered red on Department of Land Administration Miscellaneous Plan 1512; and
- (b) designated as Swan Location I2057 on Department of Land Administration Plan 18634

but does not include the Site or any land which ceases to be part of the Site by virtue of an order made under section 21F(lb) of the Control Act;”

AS WITNESS the execution of this Agreement by or on behalf of the parties the day and year first hereinbefore written.

SIGNED by **THE**)
HONOURABLE GEORGE)
MAXWELL EVANS MBE, FCA,) G M Evans
MLC for and on behalf of the State)
of Western Australia in the)
presence of:)

B A Sargeant

THE COMMON SEAL of the said)
PERPETUAL TRUSTEES WA)
LTD A.C.N. 008 666 886 was) C.S.
hereunto affixed in accordance)
with its articles of association.)

Director I B Anderson

Secretary L M McKinley

THE COMMON SEAL of)
BURSWOOD RESORT)
(MANAGEMENT) LIMITED) C.S.
(ACN 009 396 9450 was hereunto)
affixed by authority of the Board of)
Directors in the presence of-)

Director P G Evans

Secretary Yew Seng Kaw

[Schedule 7 inserted in Gazette 8 May 1998 p. 2393-4.]

Schedule 8

[Section 3A]

CASINO (BURSWOOD ISLAND) AGREEMENT

SIXTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the 22 day of June 1996

B E T W E E N :

THE HONOURABLE GEORGE MAXWELL EVANS MBE, FCA, MLC, the Minister of the Crown for the time being charged with the administration of the Control Act acting for and on behalf of the State of Western Australia and its instrumentalities from time to time (“the State”);

PERPETUAL TRUSTEES W.A. LTD. (ACN 008 666 886) of 89 St. George’s Terrace Perth in the State of Western Australia as trustee of the Burswood Property Trust (“the Trustee”);

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED (ACN 009 396 945) of 40 The Esplanade Perth in the State of Western Australia as manager of the Burswood Property Trust (“the Manager”) of the third part.

RECITALS:

- A. The State, the Trustee (by virtue of the *West Australian Trustees Limited (Merger) Act 1989*) and the Manager (by virtue of a deed of retirement and appointment of manager made on 13 August 1990 and a deed of assumption and covenant made on 13 November 1991) are parties to an agreement dated 20 February 1985 ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* as amended by two agreements dated 14 September 1987 and 3 May 1990 also ratified by and scheduled to the *Casino (Burswood Island) Agreement Act 1985* and by three other agreements made pursuant to clause 5 of the 20 February 1985 Agreement dated 13 November 1991, 30 March 1992 and 3 April 1995 (the 20 February 1985 Agreement as so amended “the State Agreement”).
- B. The parties have agreed to further amend the State Agreement pursuant to clause 5 for the purpose of more efficiently or satisfactorily implementing or facilitating certain of its objectives.

THE PARTIES AGREE AS FOLLOWS:

1. Words and expressions defined in the State Agreement when used in this Agreement have, unless the context otherwise requires, the same meanings as in the State Agreement and the provisions of clause 2 of the State Agreement as to interpretation apply to this Agreement.
2. (1) This Agreement, if not disallowed pursuant to clause 5 of the State Agreement, has effect from the date on which in accordance with that clause it has effect.

- (2) As between the parties a certificate signed by the Minister as to the date from which this Agreement has effect shall be conclusive.
3. Clause 23 of the State Agreement is amended by adding after subclause 2 the following subclause -
- “(2A) For the purposes of subclause (2) the Resort Site shall be taken to remain under the control and management of the Board even if the Board, with the prior approval of the Minister and the Trustee, leases the whole or part of that part of the Resort Site as now comprises Swan Location 12057 on Department of Land Administration Plan 18634.”

AS WITNESS the execution of this Agreement by or on behalf of the parties the day and year first hereinbefore written.

SIGNED by **THE**)
HONOURABLE GEORGE)
MAXWELL EVANS MBE, FCA,) G M Evans
 MLC for and on behalf of the State)
 of Western Australia in the)
 presence of:)
 B A Sargeant

THE COMMON SEAL of the said)
PERPETUAL TRUSTEES WA)
LTD (A.C.N. 008 666 886) was) C.S.
 hereunto affixed in accordance)
 with its articles of association.)
 Director D R Clark
 Secretary L M McKinley

THE COMMON SEAL of)
BURSWOOD RESORT)
(MANAGEMENT) LIMITED) C.S.
 (ACN 009 396 945) was hereunto)
 affixed by authority of the Board of)
 Directors in the presence of:)
 Director M A Mullins
 Secretary Yew Seng Kwa

[Schedule 8 inserted in Gazette 8 May 1998 p. 2395-6.]