

Western Australia

**Casino (Burswood Island) Agreement
Amendment Act 2003**

As at 02 Sep 2003

No. 51 of 2003

Extract from www.slp.wa.gov.au, see that website for further information

Casino (Burswood Island) Agreement Amendment Act 2003

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Schedule 9

Casino (Burswood Island) Agreement

EIGHTH SUPPLEMENTARY AGREEMENT

Western Australia

Casino (Burswood Island) Agreement Amendment Act 2003

No. 51 of 2003

An Act to amend the *Casino (Burswood Island) Agreement Act 1985*.

[Assented to 2 September 2003]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Casino (Burswood Island) Agreement Amendment Act 2003*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. The Act amended

The amendments in this Act are to the *Casino (Burswood Island) Agreement Act 1985**.

[* Reprinted as at 5 April 2002.]

4. Section 3 amended

(1) Section 3 is amended in the definition of “the Agreement” as follows:

- (a) by deleting “and” at the end of paragraph (b)(ii);
- (b) by inserting at the end of paragraph (b)(iii) —
“ and ”;
- (c) by inserting after paragraph (b)(iii) the following subparagraph —

“

- (iv) the Eighth Supplementary Agreement;

”.

(2) Section 3 is amended by inserting after the definition of “the Agreement” the following definition —

“

“the Eighth Supplementary Agreement” means the Eighth Supplementary Agreement, a copy of which is set out in Schedule 9;

”.

5. **Section 4D inserted**

After section 4C the following section is inserted —

“

4D. Eighth Supplementary Agreement ratified and implementation authorised

- (1) The Eighth Supplementary Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Eighth Supplementary Agreement is to operate and take effect despite any other Act or law and, to the extent that it amends the entrenched provisions (within the meaning of section 10), despite section 10.

”.

6. **Section 10 amended**

Section 10(2)(b) is amended by deleting “Seventh” and inserting instead —

“ Eighth ”.

7. **Sections 11 to 17 inserted**

After section 10 the following sections are inserted —

“

11. Interpretation in sections 12 to 17

- (1) In sections 12 to 17 —
 - “**approved company**” means a company approved under clause 17A of the Agreement;
 - “**Commission**” has the same meaning as in the *Casino Control Act 1984*;
 - “**probity approval notice**” means a notice issued by the Commission under section 14.

- (2) For the purposes of sections 12 to 17 a person has a relevant interest in a share if, under sections 608 and 609 of the *Corporations Act 2001* of the Commonwealth, the person has a relevant interest in the share.

12. Certain shareholdings to be notified to the Commission

- (1) If a person becomes the holder of a relevant interest in more than 10% of the voting shares of an approved company, the approved company must notify the Commission in writing.
- (2) The notice must be given to the Commission within 30 days after the day on which the company becomes aware that the person has become the holder of a relevant interest in more than 10% of the shares.
Penalty: \$10 000.

13. Certain shareholders to be approved by the Commission

- (1) A person must not have a relevant interest in more than 10% of the voting shares of an approved company unless the person holds a probity approval notice issued —
 - (a) within 90 days before; or
 - (b) within 90 days after,the day on which the person becomes the holder of a relevant interest in more than 10% of the shares.
- (2) The Commission may extend the period in subsection (1)(b) before it expires.
- (3) If the Commission extends the period in subsection (1)(b) it must promptly notify the approved company of the fact.

- (4) A contravention of subsection (1) is not an offence.

14. Probity approval notices, application for etc.

- (1) A person who is or intends to become the holder of a relevant interest in more than 10% of the voting shares of an approved company may apply for a probity approval notice.
- (2) The application must be made to the Commission in a form approved by the Commission.
- (3) The applicant must provide the Commission with any information that the Commission reasonably requires when dealing with the application.
- (4) The Commission may make any investigations it considers necessary or desirable for the purposes of dealing with the application.
- (5) Without limiting the matters that the Commission may investigate under subsection (4) the Commission may investigate any matter it considers necessary or desirable to inform itself of the reputation and financial status of the applicant.
- (6) The Commission may require an applicant to pay the reasonable costs of the Commission's investigations in connection with dealing with the application.
- (7) The Commission may issue the applicant with a probity approval notice if it is satisfied that the applicant is a suitable person to hold a relevant interest in more than 10% of the voting shares of an approved company.
- (8) The Commission may refuse to issue a probity approval notice if the applicant has not provided information required under subsection (3) or has not paid the costs required under subsection (6).

- (9) If the Commission issues a probity approval notice it must promptly give the approved company a copy of the notice.

15. Probity approval notice, cancellation of

- (1) If —
 - (a) after a probity approval notice is issued to a person; and
 - (b) before the person becomes the holder of a relevant interest in more than 10% of the voting shares of an approved company,

the Commission is not satisfied the person is a suitable person to hold a relevant interest in more than 10% of the voting shares of an approved company, the Commission may cancel the probity approval notice.

- (2) If the Commission cancels a probity approval notice it must immediately serve the person with a written notice of the cancellation.
- (3) The cancellation of a probity approval notice has effect when a notice is served under subsection (2).
- (4) If the Commission cancels a probity approval notice it must promptly notify the approved company of the fact.

16. Intention to order disposal of shares, notice of

- (1) If the Minister is of the opinion that the power under section 17(1) should be exercised in respect of a person, the Minister must serve the person with a written notice —
 - (a) stating that the Minister proposes to exercise the power;

- (b) specifying the reasons for the Minister's opinion; and
 - (c) advising the person of the person's entitlement under subsection (2) and the requirement under subsection (3).
- (2) A person served with a notice under subsection (1) may serve the Minister with written reasons as to why the power conferred on the Minister under section 17(1) should not be exercised.
- (3) The reasons must be served on the Minister within 14 days after the day on which the person is served with the notice under subsection (1).
- (4) The Minister must consider any reasons served under subsections (2) and (3).

17. Certain shareholders may be ordered to dispose of shares

- (1) If the Minister, on the advice of the Commission, is satisfied —
- (a) that a person has contravened section 13(1); or
 - (b) that the holder of a probity approval notice is no longer a suitable person to hold a relevant interest in more than 10% of the voting shares of an approved company,

and the Minister has complied with section 16, the Minister may serve the person with a written notice requiring the person —

- (c) to dispose of as many of the shares as are necessary to reduce the number of shares in which the person has a relevant interest to not more than 10% of those voting shares; and

- (d) to do so within the period specified in the notice.
- (2) A notice issued to a person under subsection (1) must be served on the person within 28 days after the day on which the person was served with a notice under section 16.
- (3) A person served with a notice under subsection (1) must comply with the notice.
Penalty: \$30 000.
Penalty for each separate and further offence committed by the person under section 71 of the *Interpretation Act 1984*: \$30 000.
- (4) If the Minister issues a notice under subsection (1) the Minister must promptly give the approved company a copy of the notice.
- (5) If the Minister issues a notice under subsection (1) a report of the matter must be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

”.

8. Schedule 9 inserted

After Schedule 8 the following Schedule is inserted —

“

Schedule 9

[s. 3]

Casino (Burswood Island) Agreement

EIGHTH SUPPLEMENTARY AGREEMENT

THIS AGREEMENT made the 18 day of June 2003

B E T W E E N :

THE HONOURABLE NICHOLAS DAVID GRIFFITHS 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**”)

AND

BURSWOOD NOMINEES LTD (ACN 078 250 307) C/- Burswood
International Resort Casino, Great Eastern Highway, Burswood in the
State of Western Australia as trustee of the Burswood Property Trust
 (“**the Trustee**”)

AND

BURSWOOD RESORT (MANAGEMENT) LIMITED
(ACN 009 396 945) C/- Burswood International Resort Casino, Great
Eastern Highway, Burswood 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:
- (a) the Supplementary Agreement made on 14 September 1987;
 - (b) the Second Supplementary Agreement made on 3 May 1990;
 - (c) the Third Supplementary Agreement made on 13 November 1991;
 - (d) the Fourth Supplementary Agreement made on 30 March 1992;
 - (e) the Fifth Supplementary Agreement made on 3 April 1995;

- (f) the Sixth Supplementary Agreement made on 22 June 1996;
and
- (g) the Seventh Supplementary Agreement made on
9 June 1997,

which agreement as so amended is referred to in this agreement as “**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 and operation

- 2. (a) 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.
- (b) The provisions of this Agreement other than this clause and clause 1 shall not come into operation until the Bill referred to in sub-clause (a) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (c) On the said Bill commencing to operate as an Act, this Agreement shall operate and take effect according to its terms notwithstanding the provisions of any Act or law of Western Australia.

Clause 2 amended

- 3. Clause 2 of the State Agreement is amended:
 - (a) by deleting the definition of “Casino Gross Revenue”;

- (b) by inserting after the definition of “Casino Gaming Licence” the following definitions-

“Casino Tax” means each of the Electronic Gaming Machine Tax, the Table Game Tax or the International Commission Business Tax, as the case may be, and “Casino Taxes” means two or all of them;

“Casino Tax Activity” means gaming by way of Electronic Gaming Machine, Table Game or International Commission Business;

“Casino Tax Rate” means the relevant per centum rate used for determining a Casino Tax as specified in Schedule C or as determined under clause 23(6) from time to time;

“Casino Taxable Revenue” where used in relation to a particular Casino Tax Activity means all sums, including cheques and other negotiable instruments whether collected or not, received in any month from the conduct of the Casino Tax Activity, less the total of all sums paid out as winnings during that month in respect of the Casino Tax Activity. For the purposes of this definition:

- (a) any sum received for the issue of a chip for the relevant Casino Tax Activity is a sum received from the conduct of the Casino Tax Activity and any sum paid out to redeem a chip is a sum paid out as winnings;*
- (b) in a case in which the Commission 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 the relevant Casino Tax Activity; and*
- (c) the Casino Taxable Revenue for the relevant Casino Tax Activity may be a negative amount;”;*

- (c) by inserting after the definition of “Drawings” the following definitions-

“**Electronic Gaming Machine**” means an Authorized Game played by means of any electrical, electronic or mechanical contrivance or machine that is not a Table Game;

“**Electronic Gaming Machine Tax**” means the amount, which may be a negative amount, determined as follows:

$$EGMT = (P \times EGMR)$$

Where:

EGMT = Electronic Gaming Machine Tax for the relevant month

P = the per centum specified for Electronic Gaming Machine Tax in Item 1 of Schedule C for the relevant period

EGMR = the Casino Taxable Revenue for Electronic Gaming Machines for the relevant month

relevant month = the month for which the Electronic Gaming Machine Tax is due and payable under clause 23(1)(a);”;

- (d) by inserting after the definition of “Genting WA” the following definitions-

“**International Commission Business**” includes any of the following activity:

- (a) Junket Activity;
- (b) Premium Player Activity; and
- (c) Privileged Player Activity;

“**International Commission Business Tax**” means the amount, which may be a negative amount, determined as follows:

$$ICBT = P \times ICBR$$

Where:

ICBT = *International Commission Business Tax for the relevant month*

P = *the per centum specified for International Commission Business Tax in Item 1 of Schedule C for the relevant period*

ICBR = *the Casino Taxable Revenue for International Commission Business for the relevant month*

relevant month = *the month for which the International Commission Business Tax is due and payable under clause 23(1)(a);*

“Junket Activity” means *gaming activity limited to Table Games arising from a Junket, and “Junket” has the same meaning as that term is defined under section 25A of the Control Act;”;*

- (e) by deleting the definition of “Mandatory Articles” and inserting the following definition-

“Mandatory Articles” means:

- (a) *the provisions to be included in the constitution of an Approved Company in accordance with the requirements of clauses 17A(2)(b) and 17A(2)(c); or*
- (b) *any other provisions of an Approved Company’s constitution as agreed by the Minister, the Manager and the Trustee from time to time under an agreement which has been ratified by an Act;”;*

- (f) by inserting after the definition of “Person” the following definitions-

“Premium Player Activity” means *gaming activity limited to Table Games arising from a patron who is a non resident of Australia with whom the casino licensee has an arrangement to pay the patron a commission based on the patron’s turnover of play in the casino or otherwise calculated by reference to such play. For the purpose of this definition “non resident of Australia” means the*

holder of a foreign passport whose principal place of residence is outside Australia;

“Privileged Player Activity” means gaming activity limited to Table Games arising from a patron who is a non resident of Australia with whom the casino licensee has an arrangement for the provision of transport, accommodation, food, drink or entertainment, based on the patron’s turnover of play in the casino or otherwise calculated by reference to such play. For the purpose of this definition “non resident of Australia” means the holder of a foreign passport whose principal place of residence is outside Australia;”;

- (g) by inserting after the definition of ““State” or “Western Australia”” the following definitions-

“Table Game” means:

- (a) *a game identified in Schedule D;*
- (b) *the Authorised Game Keno; and*
- (c) *any new game which is authorised under section 22 of the Control Act and which the Commission by notice to the Trustee specifies to be a Table Game;*

“Table Game Tax” means the amount, which may be a negative amount, determined as follows-

$$TGT = P \times (TGR - ICBR)$$

Where:

TGT = Table Game Tax for the relevant month

P = the per centum specified for Table Game Tax in Item 1 of Schedule C for the relevant period

TGR = the Casino Taxable Revenue for Table Games for the relevant month

ICBR = the Casino Taxable Revenue for International Commission Business for the relevant month

relevant month = the month for which the Table Game Tax is due and payable under clause 23(1)(a);” and

- (h) under the heading “Interpretation”-
 - (i) by deleting the full-stop from paragraph (vi) and substituting “; and”;
 - (ii) by inserting a new paragraph (vii)-
“a month is to a calendar month.”

Clause 17 amended

- 4. Clause 17(1) of the State Agreement is amended by deleting “*Memorandum and Articles of Association*” from clause 17(1)(e), clause 17(1)(ea) and their headings and in each case, substituting “*constitution*”.
- 5. Clause 17(1) of the State Agreement is amended:
 - (a) by inserting after clause 17(1)(eb) the following new clauses-
 - “(ec) *if a Person becomes the holder of a relevant interest in more than 10% of the voting shares of an Approved Company, the Approved Company must notify the Commission in writing within 30 days after the day on which the Approved Company becomes aware that the Person has become the holder of a relevant interest in more than 10% of the voting shares;*
 - “(ed) *if an Approved Company becomes aware that a contravention of the Mandatory Articles contained in its constitution has occurred, then unless agreed by the Commission the Approved Company must promptly take action, to the fullest extent permitted by its constitution, to rectify the contravention;*”;
 - (b) by inserting after clause 17(2) the following new clause-
 - “(3) *For the purposes of sub-clause (1)(ea) the Minister approves the proposed amendments to the*

constitution of Burswood Limited, an Approved Company, in the form set out in Schedule E, provided that such amendments take effect not earlier than 30 September 2003.”; and

- (c) by inserting after clause 17(3) the following new clause-

“(4) *For the purposes of sub-clause (1)(ga) in its application to Burswood Limited as an Approved Company, the Minister, the Manager and the Trustee agree that with effect from the date of amendment of the constitution of Burswood Limited in accordance with Schedule E, the provisions of Article 3 as set out in Schedule E shall be the Mandatory Articles in respect of Burswood Limited.*”

Clause 17A amended

6. Clause 17A of the State Agreement is amended by deleting “*articles of association*” from each of clauses 17A(2)(b) and 17A(2)(c) and in each case, substituting “*constitution*”.
7. Clause 17A(2)(b) of the State Agreement is amended by inserting the words “*at the time of approval*” after the word “*must*”.

Clause 23 amended

8. Clause 23 of the State Agreement is amended by:
- (a) deleting subclause (1)(a) and substituting the following clause-
- “(a) *to the Treasurer of the State in respect of each and every month the aggregate of all of the Casino Taxes, which shall:*
- (i) *accrue daily at the rates from time to time applicable pursuant to Item 1 of Schedule C, or a notice issued under clause 23(6); and*
- (ii) *be payable in the manner and at the time specified in Item 2 of Schedule C;”;*

- (b) deleting the words “*the aggregate of Casino Gross Revenue*” from subclause (1)(c) and substituting the words “*the aggregate Casino Taxable Revenues for all Casino Tax Activities*”; and
- (c) deleting subclauses (6), (7) and (8) and substituting the following clauses–

“(6) *The Minister may, with prospective effect from an Anniversary Date:*

(a) *at any time after 24 December 2009, review the Casino Tax Rates for International Commission Business Tax and Table Game Tax or either of them; and*

(b) *at any time after 24 December 2004, review the Casino Tax Rate for the Electronic Gaming Machine Tax,*

by not less than 4 weeks’ notice to the Trustee specifying an alternative Casino Tax Rate or alternative Casino Tax Rates, as the case may be, and the Anniversary Date on and from which such alternative rate of the Casino Tax Rate is, or Casino Tax Rates are, payable.

(6A) *If the Minister issues a notice under clause 23(6) (“**Review Notice**”), then subject to clause 23(7)(c) and clause 23(8), as the case may be, the Casino Tax Rate for the relevant Casino Tax specified in the Review Notice will be the rate specified in the Review Notice and will apply on and from the Anniversary Date specified in the Review Notice.*

(6B) *Nothing in clauses 23(6) or (6A) prevents the Minister from issuing a Review Notice in respect of more than one Casino Tax and those clauses apply mutatis mutandis if a Review Notice specifies more than one Casino Tax.*

(7) *If a Review Notice has the effect of increasing a Casino Tax Rate, it –*

- (a) *shall not be given more than once in respect of any one Anniversary Date;*
 - (b) *shall not on any one occasion increase the relevant Casino Tax Rate by more than one per centum (1%) per annum; and*
 - (c) *shall not be given without the consent of the Trustee if the effect of the Review Notice would be to cause the relevant Casino Tax Rate 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 Review Notice under clause 6A 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.”*

Clause 36 amended

9. Clause 36(b) of the State Agreement is amended by:

- (a) deleting the notice details for the Trustee and substituting the following-

*“Burswood Nominees Ltd
C/- Burswood International Resort Casino
Great Eastern Highway
Burswood WA 6100
Facsimile: 08 9470 1789
Attention: Managing Director”;*

- (b) deleting the notice details for the Manager and substituting the following-

*“Burswood Resort (Management) Limited
C/- Burswood International Resort Casino*

*Great Eastern Highway
Burswood WA 6100
Facsimile: 08 9470 1789
Attention: Managing Director”;*

- (c) deleting the notice details for the Minister and substituting the following-

*“10th Floor
London House
216 St Georges Terrace
Perth WA 6000
Facsimile: 08 9222 8951”;* and

- (d) deleting the notice details for the Commission and substituting the following-

*“Gaming Commission of Western Australia
Level 1
Hyatt Centre
87 Adelaide Terrace
East Perth WA 6004
Facsimile: 08 9325 1636
Attention: Chairman”.*

Schedules C, D and E inserted

10. The State Agreement is amended by inserting after Schedule B new Schedules C, D and E in the form attached to this Agreement.

SCHEDULE C

ITEM 1 – CASINO TAX

Electronic Gaming Machine Tax

Period	Electronic Gaming Machine Tax
On and from 24 December 2002 to 23 December 2003	17% of Casino Taxable Revenue for Electronic Gaming Machines
On and from 24 December 2003 to 23 December 2004	18% of Casino Taxable Revenue for Electronic Gaming Machines

On and from 24 December 2004	20% of Casino Taxable Revenue for Electronic Gaming Machines
------------------------------	--

Table Game Tax

Period	Table Game Tax
On and from 24 December 2002 to 23 December 2004	16% of Casino Taxable Revenue for Table Games
On and from 24 December 2004 to 23 December 2006	17% of Casino Taxable Revenue for Table Games
On and from 24 December 2006	18% of Casino Taxable Revenue for Table Games

International Commission Business Tax

Period	International Commission Business Tax
On and from 24 December 2002 to 23 December 2004	13% of Casino Taxable Revenue for International Commission Business
On and from 24 December 2004 to 23 December 2006	12% of Casino Taxable Revenue for International Commission Business
On and from 24 December 2006	11% of Casino Taxable Revenue for International Commission Business

ITEM 2

- 1 All Casino Taxes are to be paid to the Treasurer of the State each month, within 8 days after the end of the month.
- 2 To give effect to the parties' agreement that the Casino Tax Rates specified in this Schedule C take effect from 24 December 2002:
 - (a) the Commission will determine the amount equal to all of the Casino Taxes which would have been payable for the period commencing 24 December 2002 and concluding on the last day of the month within which this Agreement takes effect, if this Agreement had taken effect on 24 December 2002;

- (b) if the amount calculated under paragraph 2(a) of this Item 2 is more than the actual amount paid by the Trustee under clause 23(1)(a) of the State Agreement for the period referred to in paragraph 2(a), then the Trustee must pay the difference between the two amounts to the Treasurer at the same time and in the same manner as the next monthly payment is due under clause 23(1)(a); and
- (c) if the amount calculated under paragraph 2(a) of this Item 2 is less than the actual amount paid by the Trustee under clause 23(1)(a) of the State Agreement for the period referred to in paragraph 2(a), then the difference between the two amounts shall be set off against monthly payments due under clause 23(1)(a) until it has been set off in full.

SCHEDULE D

TABLE GAMES

Baccarat
Big and Small
Blackjack
Caribbean Stud Poker
Craps
Fan Tan
French Boule
Mini Baccarat
Mini Dice
Money Wheel
Multiple Action Blackjack
Pai Gow Poker
Burswood Manila
Competition Burswood Manila
Five Card Stud
Competition Five Card Stud
Six Card Stud
Competition Six Card Stud
Seven Card Stud
Competition Seven Card Stud
Draw Poker
Competition Draw Poker

Draw Poker Ante
Competition Draw Poker Ante
Manila
Competition Manila
American Roulette
Tournament American Roulette
Super Pan 9
Tournament Baccarat
Tournament Baccarat (Burswood)
Tournament Blackjack
Tournament Two Up
Two Up Coins
Two Up Dice
Progressive Blackjack
Pai Gow Dominoes
Pontoon

SCHEDULE E

**PROPOSED AMENDMENTS TO THE CONSTITUTION OF
BURSWOOD LIMITED**

The constitution of Burswood Limited is amended by deleting Article 3 and substituting the following Article 3:

“3 REQUIREMENTS OF THE STATE AGREEMENT

Interpretation

3.1 In this Article 3:

- (a) **State Agreement** means the agreement referred to in the Casino (Burswood Island) Agreement Act 1985;
- (aa) **probity approval notice** in relation to a person means a notice served on the Company in respect of that person under section 14(9) of the Casino (Burswood Island) Agreement Act 1985;
- (ab) **approval cancellation notice** in relation to a person means a notice served on the Company in respect of that person under section 15(4) of the Casino (Burswood Island) Agreement Act 1985;

- (ac) **probity review period** in relation to a person means a period of 90 days, or such longer period as the Commission may allow under section 13(2) of the Casino (Burswood Island) Agreement Act, after the person becomes the holder of a relevant interest in Shares that represent more than 10% of the voting Shares in the Company;
- (ad) **section 17 notice** in relation to a person means a notice served on the Company in respect of that person under section 17(4) of the Casino (Burswood Island) Agreement Act;
- (b) **Commission, Commission's Nominated Representative and Minister** have the same meaning as in the State Agreement;
- (c) **Australian citizen, foreign person and relevant interest** have the same meaning as in Schedule B to the State Agreement; and
- (d) a reference to the requirements of the State Agreement includes the provisions and restrictions that must be included in this Constitution under clause 17 of the State Agreement.

Background

- 3.2 The State Agreement requires this Constitution to comply with certain requirements. These requirements include restrictions on the acquisition and ownership and voting of Shares. Accordingly, it is necessary to regulate these matters in the manner set out in this Article 3. Except as set out in Articles 3.6 to 3.9A inclusive, Shares in the Company may be acquired, owned, and the voting rights in respect of those Shares may be exercised, in any manner permitted by the other provisions of this Constitution, the Corporations Act and the Listing Rules.
- 3.3 The Company's compliance with the Listing Rules and the granting of CHESS approval for its securities may limit the Company's ability to restrict registration of transfer of

Company Securities prior to the Company being satisfied that there would be no breach of the requirements of the State Agreement. Accordingly, this Article 3 contains provisions consistent with the requirements of the State Agreement which entitle the Directors in certain circumstances to deprive a person of rights and powers in relation to Company Securities registered in a person's name and to order the divestiture of Company Securities.

- 3.4 The Company, its members and holders of Company Securities acknowledge and recognise that the exercise of the powers given to the Company and its Directors under this Article 3 may cause individual members and holders of Company Securities considerable financial disadvantage, but the members, holders of Company Securities and Company acknowledge that such a result is necessary to enable the Company to comply with the requirements of the State Agreement.
- 3.5 The powers conferred under this Article 3 are to be interpreted widely. In exercising the powers under this Article 3, the Directors are entitled to have sole regard to the interests of the Company and may disregard any loss or disadvantage that may be suffered by individual members or holders of Company Securities affected by the exercise of those powers. Members and holders of Company Securities acknowledge that they have no right of action against the Directors or the Company for any loss or disadvantage incurred by them as a result, whether directly or indirectly, of the Directors exercising the powers pursuant to this Article 3.

Restrictions on ownership of Shares

- 3.6 A person is not eligible to be issued, acquire or own (including own jointly) Shares if, as a result of that issue, acquisition or ownership, foreign persons would have a relevant interest in Shares that represent in total more than 40% of the voting Shares in the Company. This does not apply to the extent that the Minister by notice to the Company has exempted any existing or future holding of Shares by a specified person from this restriction for a period specified in the notice.
- 3.7 A person is not eligible to be issued Shares if as a result of that issue an individual person would have a relevant interest in

Shares that represent more than 10% of the voting Shares in the Company, unless in relation to that person the Company:

- (a) has received a probity approval notice;
- (b) has not received an approval cancellation notice; and
- (c) has not received a section 17 notice.

3.7A A person is not eligible to own (including own jointly) Shares if as a result of that ownership an individual person (a “substantial holder”) would have a relevant interest in Shares that represent more than 10% of the voting Shares in the Company:

- (a) after the expiry of the probity review period in relation to that person, unless the Company has received a probity approval notice in relation to that person; or
- (b) at any time after the Company has received an approval cancellation notice or a section 17 notice in relation to that person.

Voting

3.8 On any vote in respect of the appointment, replacement or removal of a Director, the votes attaching to any substantial foreign shareholdings will not be counted in respect of the appointment, replacement or removal of more than one-third of the Directors who hold office at any particular time, so that at any particular time not less than two-thirds of the Directors have been appointed by a resolution of Shareholders in respect of which no votes attaching to any substantial foreign shareholding was counted.

3.9 For the purposes of Article 3.8, a “substantial foreign shareholding” is a shareholding of 10% or more of the voting Shares in the Company in which a particular foreign person has a relevant interest.

3.9A On any vote at a meeting of members or a class of members, where any individual person holds a relevant interest in Shares that represent more than 10% of the voting Shares in the Company and in relation to that person the Company:

- (a) has not received a probity approval notice; or
- (b) has received a section 17 notice,

the votes cast in respect of those Shares will be disregarded to the extent that they exceed the total number of votes that could have been cast on that resolution in respect of 10% of the voting Shares in the Company.

Enforcement powers of Directors

3.10 The Directors have the following powers to enable them to enforce the restrictions referred to in Articles 3.6, 3.7, 3.7A, 3.8 and 3.9A:

- (a) the power to do anything necessary to effect the transfer or disposal of Company Securities held by a person in accordance with Articles 3.21 - 3.25;
- (b) the power to remove or limit the right of a person to exercise voting rights attached to voting Shares in accordance with Articles 3.27 - 3.29;
- (c) the power to end the appointment of a person to the office of Director in accordance with Article 3.26;
- (d) the power to suspend the rights to dividends attaching to a Share; and
- (e) the power to require or cause divestiture of Company Securities held by a person in accordance with Articles 3.21 - 3.25.

Change of name

3.11 The Company must not take any action to bring about a change of the company name under which the Company is registered for the purposes of the Corporations Act to a name that does not include the word "Burswood", unless the prior approval of the Minister has been obtained.

Head office

3.12 The head office of the Company must always be located in Western Australia. For this purpose, "head office" means the

place of business of the Company where central management and control are exercised.

Board of Directors

- 3.13 Any one Shareholder must not nominate more than one of the Directors unless:
- (a) that Shareholder holds more than 10% of the voting shares in the Company; and
 - (b) the Company has received a probity approval notice, and has not received a section 17 notice, in relation to that Shareholder.
- 3.14 At all times at least two-thirds of the Directors must be Australian citizens.
- 3.15 At all meetings of the Board of Directors, the Director presiding at or chairing the meeting (however described) must be an Australian citizen.

Place of incorporation

- 3.16 The Company must not at any time take any action to become incorporated outside Australia.

Auditor

- 3.17 The Company must appoint the Auditor or Auditors of the Company in accordance with the provisions of the Corporations Act, but no person may be so appointed as Auditor unless that person's appointment has first been approved by the Minister.

Making information available

- 3.18 The Company and the Directors must make available for inspection by the Minister, the Commission or the Commission's Nominated Representative all information held in respect of the ownership, holdings of Shares and other Company Securities, Directors or corporate structure of the Company, and all minutes of meetings of Shareholders and Directors and other records relating thereto.

Right to attend and speak

- 3.19 The Commission or the Commission's Nominated Representative is entitled to attend and speak at any meeting of the Company or its Directors as though it or he or she were a Shareholder or a Director. Nothing contained in this Article confers on the Commission or the Commission's Nominated Representative a right to vote.
- 3.20 The Company must deliver to the Commission a copy of all notices that are forwarded to Shareholders or Directors of such meetings in the same manner and at the same time as such notices are forwarded to Shareholders or Directors as the case may be.

Right to transfer

- 3.21 The Directors have the right to effect the transfer or disposal of Company Securities held by a person to the extent considered necessary by the Directors to prevent a possible contravention or a possible continuation of a contravention of the restrictions referred to in Articles 3.6, 3.7 and 3.7A.
- 3.22 If the Directors reasonably believe that circumstances exist which permit them to effect the transfer or disposal of Company Securities under Article 3.21, the Directors may by notice in writing ("**Sale Notice**") to the holder of the Company Securities specified in the Sale Notice require that, within 30 days of the date of the Sale Notice (or such other period as specified in the Sale Notice provided that where the period is reduced the ASX gives its approval to the reduction):
- (a) those Company Securities be transferred or disposed of; or
 - (b) the holder satisfy the Directors that the requirements of Articles 3.6, 3.7 and 3.7A have not been and will not be contravened.

Right to require information

- 3.23 A person holding Company Securities must, if required by notice from the Company, furnish to the Company within 15 days of the date of the notice (or within such other period as the Directors notify, provided that where the period is reduced the ASX gives its approval to the reduction) a written statement

by that person, or in the case of a corporation by a director or secretary of that corporation, in a form approved by the Directors (and if required by the Directors verified by statutory declaration or by other means acceptable to the Directors) setting out whatever information is in the opinion of the Directors necessary for the Directors to determine the eligibility of that person or corporation to continue to hold Company Securities having regard to the requirements of Articles 3.6, 3.7 and 3.7A.

Power to disenfranchise and dispose

- 3.24 If a person fails to comply with a requirement of Articles 3.22 or 3.23 and the Directors know of such failure:
- (a) the Directors may, at any time, declare by notice in writing (“**Suspension Notice**”) to the person who is the holder of the Company Securities that the voting interests, dividend interests and winding up interests that the holder is entitled to (under this Constitution or by any law) in relation to those Company Securities that the Directors believe are or may be held in breach of Article 3.6, 3.7 or 3.7A are, to the extent declared in the notice, suspended from the date of the Suspension Notice until the Company Securities are disposed of in accordance with clause 3.22 or until a written statement or statutory declaration or both is provided as required by Article 3.23; and
 - (b) in the case of a person failing to comply with Article 3.23 - if within 15 days of the date of a Suspension Notice the relevant written statement or statutory declaration or both has not been provided, the Directors may give notice in writing (“**Disposal Notice**”) to the holder of the Company Securities requiring that the Company Securities (or some of them) must be transferred or disposed of within 30 days of the date of the Disposal Notice (or such other period as is specified in the Disposal Notice provided that where the period is reduced the ASX gives its approval to the reduction).
- 3.25 If a notice under Article 3.22 or 3.24(b) is not complied with by the holder of the Company Securities within the time limit

specified, the Directors may appoint a person to execute any documents and implement any procedures that may be required to procure the transfer or disposal of the Company Securities on behalf of the holder and to receive and give a good discharge for the purchase price. The Company Securities are to be sold as part of the ordinary trading on the ASX and the Directors are to use reasonable endeavours to obtain a fair and reasonable purchase price. The net proceeds of any transfer or disposal under this Article must be paid to the person who held the Company Securities, provided that the person has delivered to the Company such documents or information as may be reasonably required by the Directors. Upon the name of the transferee being entered in the Register in purported exercise of the powers under this Article, the validity of the transfer or disposal may not be challenged by any person.

Composition of Board

3.26 If at any time the composition of the Board of Directors is or may become inconsistent with Articles 3.13 or 3.14, or has been affected by a resolution passed in circumstances where the voting exclusion in Articles 3.8 or 3.9A has not been applied or has not been applied properly, the Directors may:

- (a) appoint one or more new Directors under Article 14.11; or
- (b) convene a general meeting to consider one or more resolutions to remove or appoint a Director; or
- (c) subject to the Corporations Act take such steps as are available to them to remove a Director,

as they consider necessary to prevent a possible contravention or a possible continuation of a contravention of the requirements of this Article 3.

Right to vote

3.27 The Directors have the right to prevent the votes attaching to Shares being exercised or counted in circumstances where that is considered necessary by the Directors to give effect to the provisions of Articles 3.8 or 3.9A.

- 3.28 A person holding Company Securities must, if required by notice from the Company, furnish to the Company within 15 days of the date of the notice (or within such other period as the Directors notify, provided that where the period is reduced the ASX gives its approval to the reduction), a written statement by that person, or in the case of a corporation by a director or secretary of that corporation, in a form approved by the Directors (and if required by the Directors verified by statutory declaration or by other means acceptable to the Directors) setting out whatever information is in the opinion of the Directors necessary for the Directors to determine the eligibility of that person or corporation to have its votes counted.
- 3.29 If a person fails to comply with a requirement of Article 3.28 and the Directors know of such failure, the Directors may, within a reasonable time, declare by notice in writing to the person who is the holder of the Company Securities that some or all of the voting rights that the holder is entitled to in relation to Company Securities are, to the extent declared in the notice, suspended from the date of the Suspension Notice until a written statement or statutory declaration or both is provided as required by Article 3.28.

Application of Article 3

- 3.30 To the extent of any inconsistency, the provisions of this Article 3 override the remainder of the Articles in this Constitution.
- 3.31 The provisions of this Article 3 only apply for so long as and to the extent necessary to comply with the requirements of the Casino (Burswood Island) Agreement Act 1985 and the State Agreement.”

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**)
NICHOLAS DAVID GRIFFITHS)
MLC) *N Griffiths*

s. 8

for and on behalf of the State of)
Western Australia in the presence of:)

B A Sargeant
B A Sargeant

THE COMMON SEAL of)
BURSWOOD NOMINEES LTD) C.S.
(ACN 078 250 307) is duly affixed)
by authority of its directors in the)
presence of:)

John W Schaap
Signature of authorised person

M J Egan
Signature of authorised person

MANAGING DIRECTOR
Office held

COMPANY SECRETARY
Office held

Name of authorised person
(block letters)

M. J. EGAN
Name of authorised person
(block letters)

THE COMMON SEAL of)
BURSWOOD RESORT) C.S.
(MANAGEMENT) LTD)
(ACN 009 396 945) is duly affixed by)
authority of its directors in the presence)
of:)

John W Schaap
Signature of authorised person

M J Egan
Signature of authorised person

MANAGING DIRECTOR
Office held

COMPANY SECRETARY
Office held

JOHN W. SCHAAP
Name of authorised person
(block letters)

M. J. EGAN
Name of authorised person
(block letters)

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