

CASINO (BURSWOOD ISLAND) AGREEMENT.

No. 9 of 1985.

AN ACT to ratify and authorize the implementation of an agreement entered into under section 19 of the Casino Control Act 1984 between the Minister of the Crown to whom the administration of that Act was at the relevant time committed by the Governor and the public companies West Australian Trustees Limited and Burswood Management Limited with respect to the construction and establishment of a casino complex at Burswood Island in the State; to provide for the cancellation or amendment of certain reserves, for the modification of certain planning laws, for certain streets to be surveyed, dedicated and managed and for the Liquor Licensing (Moratorium) Act 1983 not to apply to certain applications under the Liquor Act 1970; and to provide for matters incidental to or connected with the foregoing.

[Assented to 25 March 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the *Casino (Burswood Island) Agreement Act 1985*.

Commence-
ment. 2. This Act shall come into operation on the day on which it is assented to by the Governor.

Interpreta-
tion. 3. In this Act, unless the contrary intention appears—

“municipality” has the meaning given by the Local Government Act 1960;

“the Agreement” means the Agreement a copy of which is set out in the Schedule, and includes that Agreement as altered from time to time in accordance with its provisions;

“the Resort Lands” means the combined areas of the Resort Site and the Site as respectively defined by the Agreement.

Agreement
ratified and
implementa-
tion
authorized.

4. (1) The Agreement is hereby ratified.

(2) The implementation of the Agreement is hereby authorized.

5. (1) Reserve No. 23251—

Reserves
Nos. 23251
and 19631 at
Burswood
Island
cancelled.

- (a) which is classified as of Class A, contains about 39.681 0 hectares and is set apart for "Recreation";

and

- (b) a portion of which is vested in the City of Perth,

is hereby cancelled.

(2) Reserve No. 19631, which is classified as of Class C, contains about 12.549 0 hectares and is set apart for "Railway Purposes", is hereby cancelled.

6. Reserve No. 27743, which is classified as of Class C, contains about 7.806 0 hectares, is set apart for "Recreation and Riverside Improvements" and is vested in the City of Perth, is hereby amended by excising an area of about 5.072 7 hectares, being that part of Reserve No. 27743 that is contained within the area shown bordered in red on Lands and Surveys Miscellaneous Plan No. 1512.

Reserve
No. 27743 near
Burswood
Island
amended.

7. (1) Notwithstanding anything in the Metropolitan Region Town Planning Scheme Act 1959 or in the Scheme, the Scheme does not apply to or in relation to the land within the Resort Lands.

Certain
planning
laws
modified.

(2) Notwithstanding anything in—

- (a) the Local Government Act 1960 or the Town Planning and Development Act 1928, by-laws made under section 248 of the Local Government Act 1960 as read with the Second Schedule to the Town Planning and Development Act 1928; or

- (b) the Town Planning and Development Act 1928, town planning schemes prepared under that Act,

by the council of the municipality within the district of which the Resort Lands are situated do not apply to or in relation to the land referred to in subsection (1).

(3) In subsection (1)—

"Scheme" has the meaning given by section 6 of the Metropolitan Region Town Planning Scheme Act 1959.

Survey,
dedication,
manage-
ment, etc.
of certain
streets.

8. (1) The Minister for Lands and Surveys may direct that the streets delineated and shown on the Drawings as defined by the Agreement be surveyed.

(2) When the Minister for Lands and Surveys has made a direction under subsection (1) and the plan of a survey made in compliance with the direction is certified correct by the Surveyor General or other officer authorized in that behalf—

(a) any land delineated and shown on that plan as a street shall, subject to subsection (3), be deemed to be dedicated as a street under the Local Government Act 1960; and

(b) the council of the municipality within the district of which a street deemed by virtue of this subsection to be dedicated under the Local Government Act 1960 is situated has the care, control and management of that street.

with effect from the date of that certification.

(3) A street 6 metres or less in width shall not be dedicated under subsection (2).

(4) For the purposes of sections 174 and 175 of the Land Act 1933, the Resort Lands shall be deemed to be land under the control of the Minister for Lands and Surveys.

(5) In this section—

“street” has the meaning given by section 6 of the Local Government Act 1960;

“the Minister for Lands and Surveys” means the Minister of the Crown to whom the administration of the Land Act 1933 is for the time being committed by the Governor;

“the Surveyor General” means the person for the time being holding or acting in the office of Surveyor General under section 173 of the Land Act 1933.

9. (1) The Liquor Licensing (Moratorium) Act 1983 does not apply to or in relation to a notice of application, or to an application, for the grant of a licence under the Liquor Act 1970 lodged or made by a casino licensee in respect of premises within the Site as defined by the Agreement.

Liquor
Licensing
(Moratorium)
Act 1983 not
to apply to
certain
applications
under
Liquor
Act 1970.

(2) In subsection (1)—

“casino licensee” has the meaning given by the Casino Control Act 1984.

THE SCHEDULE. (Section (3).)

AGREEMENT.

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1985.]

*Casino (Burswood Island)
Agreement.*

[No. 9.

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.

"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:

- (i) an Act by name is a reference to an Act of the Parliament of the State; Interpretation.
- (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 Agreement.

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; Initial obligations of the State

(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;

(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; Ratification and operation

(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
Trustee

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.

Variation

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 Trustee

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 Lands

(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;

- (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 a depth of 30 metres) but otherwise free of encumbrances; Crown Grant
of the Site
- (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: Creation of
Resort Site
as a reserve
and of The
Burswood
Park Board
- (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;
- (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; Dedication
of Public
Streets

Power to
resume

(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 names

(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 Trustee

(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.

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;

Submission
of Design and
Construction
Programme

(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—

Staged
development
Time for
completion

(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;

(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;

Plans and
specifications

(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;

Considera-
tion of
programme
and plans
and
specifications

(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;

Deemed
approval

Effect to
be given to
Ministers
requirements
subject to
arbitration

(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
award

(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
systems

(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.

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.

Zoning of
the Site

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;

Construc-
tion of
Resort
Operation
of Resort
Complex

(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;

Compliance
with laws

(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;

Building
Licence
required

Provision
and
relocation
of services

(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
Committee

(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 etc

(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
materials

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 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.

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;

The
Committee's
Nominated
Representative

(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:

Power to
enter inspect
measure and
test

- (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;

(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:

Power to
require
rectification
of the Works

- (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;

(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

Minister may
suspend the
Works

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
Committee

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 Committee

- (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
Committee

(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 Committee

(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 2

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

14. The Manager shall—

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

- (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;

- (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
Units and
Options to
the Public

- (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;

Issue of
additional
Units and
Options to
the public

Committee
may
require
details
of relevant
interest in
Units and
Options

- (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 Manager

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

Minimum
share issue

- (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 or
further
shares—
Approval of
Committee
required in
certain
circum-
stances

- (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 shareholdings;

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*Casino (Burswood Island)
Agreement.*

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- (c) obtain the prior approval of the Committee to any appointment of a director or alternate director of the Manager; Committee to approve appointment of Directors
- (d) obtain the prior approval of the Committee to the registration of any transfer of shares in the capital of the Manager; Committee to approve transfers of shares
- (e) procure the vacation from office of any director of the Manager in accordance with any direction to that effect by the Committee. Committee may require Directors to vacate office

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; Representations and warranties of the Trustee and the Manager
- (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).

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

- (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; Foundation Agreement
- (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 Deed

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

Memorandum and Articles of Association of the Manager

- (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 Auditors

- (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 Options

- (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 Manager

- (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 agreements

- (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 Manage-

ment 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;

- (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;

Foreign
Persons

(2) For the purposes of sub-clause (1) and this sub-clause:—

- (a) "Foreign Person" means—

Definition
of Foreign
Person

- (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
Corporation

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

Definition
of controlling
interest

- (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
interest

- (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 persons

- (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);
- (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
Options**

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
inspection

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 Manager

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
Committee

(2) The Trustee and the Manager shall deliver to the Committee a copy of all notices that are forwarded to unit-holders 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

21. Subject to:

Grant of
Casino
Gaming
Licence

- (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:

- (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:

Conditions
of Casino
Gaming
Licence

- (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 Person

but 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 Games

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 Games

(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 Exclusivity

(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;

(4) After the Period of Exclusivity the State shall not, except—

Prohibitions
on the State
after the
Period of
Exclusivity

- (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;

(5) Nothing in sub-clauses (3) and (4) shall:

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

- (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
Payments

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
Tax

- (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 fee

- (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 Board

- (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

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Agreement.*

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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;

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

(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;

- (3) Without affecting the obligation of the Trustee under sub-clause (1) (c) the State shall be at liberty to:
- Right of State to excise land from the Resort Site

(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 sub-clause (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
Exclusivity**

(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 Tax

(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 thereupon casino tax shall be payable pursuant to sub-clause (1) (a) accordingly;

Casino Tax after Period of Exclusivity

(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;

(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. Annual
Specified
Amount

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

(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.

Restrictions
on assigning
mortgaging
charging
encumbering
Casino
Licence etc
or disposing
of the Site

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"

(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 Site

(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
Agreement

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 subparagraphs (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
Termination

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

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.

Restrictions
on resump-
tion etc
of the Site

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.

Prohibition
against
discrimin-
atory
taxes etc

Force
Majeure

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

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

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.

Arbitration

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.

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.

Waivers

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;

**Consents and
approvals not
to be
unreasonably
withheld**

(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

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: AA 96577
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

1985.]

*Casino (Burswood Island)
Agreement.*

[No. 9.]

- 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.

§7. This Agreement shall be governed by and construed in accordance with the law of the State. ^{Governing Law}

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.