

# Consolidated Management Agreement

**Incorporating**

**First**

**Second**

**Third**

**Fourth (which does not amend this document)**

**Fifth**

**Sixth**

**Seventh**

**Eighth**

**Ninth**

**Tenth**

**Deeds of Variation**

## MANAGEMENT AGREEMENT

**AGREEMENT** dated 20 September 1993

### **BETWEEN:**

- (1) **THE HONOURABLE HADDON STOREY QC MLC** the Minister of the Crown for the time being administering the Casino Control Act, acting for and on behalf of the State of Victoria ("**State**"); and
- (2) ~~**CROWN CASINO LTD**~~ **CROWN MELBOURNE LTD (10thDV)** (ACN 006 973 262) with its registered office at Hudson Conway House, 311 Glenferrie Road, Malvern, Victoria ("**Company**").

### **RECITALS**

- A. The Authority has power to grant a casino licence under the provisions of the Casino Control Act.
- B. Under section 15 of the Casino Control Act it is a condition precedent to the grant of a casino licence that an agreement in writing be entered into between the Minister for and on behalf of the State and the proposed casino operator identifying the casino to be the subject of the casino licence and containing any terms and conditions that the Minister thinks fit.
- C. The Company has made application for a casino licence for the Melbourne Casino and pursuant to such application has provided information and submissions, including the Melbourne Casino Complex Development Proposals and the Temporary Casino Complex Development Proposals, to the State and the Authority.
- D. The Authority has, in accordance with sections 9 and 10 of the Casino Control Act, carried out investigations and enquiries in relation to the Company and other persons required to be investigated.
- E. Upon execution of this document the Authority and the Company will enter into the Casino Agreement.
- F. Subject to the terms and conditions of this document and the Casino Agreement, the Authority has agreed to grant the Casino Licence to the Company.
- G. The Casino Licence will enable the Company to operate a casino from temporary premises.
- H. The Minister has authority to enter into this document on behalf of the State and this document is made pursuant to section 15 of the Casino Control Act.
- I. The State acknowledges that the establishment of the Melbourne Casino Complex is a large scale development project requiring significant capital expenditure and that it is necessary to provide to the Company certain assurances contained in this document and other Transaction Documents to facilitate the financing of the Melbourne Casino Complex.

2.

- J. The Company acknowledges that the establishment of the Melbourne Casino Complex and the Temporary Casino Complex is a major project for the State and that the State is reliant upon timely completion and operation of the Temporary Casino and the Melbourne Casino and accordingly certain assurances are given by the Company in this document and other Transaction Documents.
- K. Certain provisions of this document are not effective unless and until this document has been ratified by Act of Parliament (as contemplated by clause 3).

## AGREEMENT

### 1. Division into Parts

This document is divided into Parts as follows:

PART 1 - PRELIMINARY  
 PART 2 - APPROVAL OF DEVELOPMENT PROPOSALS AND CASINO LOCATION  
 PART 3 - DEVELOPMENT  
 PART 4 - PAYMENTS TO THE STATE  
 PART 5 - EXCLUSIVITY  
 PART 6 - TERMINATION  
 PART 7 - GENERAL

### 2. Definitions

In this document, unless the context otherwise requires or the contrary intention appears, terms defined in the Casino Control Act have the same meanings and the following terms have the meanings indicated if they start with a capital letter:

**"Agent"** means National Australia Bank Limited ACN 004 044 937 and any successor to it as agent under the Facility Agreement;

**"Agreement Act"** means the bill referred to in clause 3.2 (a) when that bill is passed and comes into operation as an Act of Parliament as contemplated by that clause;

**"Assets and Rights"** means all the present and future undertaking, property, assets and rights of or held by the Company;

**"Associate"** has the same meaning as in sections 10 to 17 of the Corporations Law;

**"Authorisation"** includes a consent, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration and exemption;

**"Authority"** means the ~~Victorian Casino Control Authority~~ Victorian Commission for Gambling and Liquor Regulation (10thDV);

**"Ancillary Facilities"** means all facilities ancillary to the Temporary Casino or the Melbourne Casino identified in the Melbourne Casino Complex Development

## 3.

Proposals or the Temporary Casino Complex Development Proposals (as the case may be) to be constructed on or located within the Temporary Casino Site or the Site, including an hotel, restaurant, retail, recreation, entertainment and carparking facilities, residential and office accommodation, staff facilities, staff carparking, coach storage facilities and open space areas;

**"Bank Bill"** means a Bill which has been accepted by a bank authorised under the Banking Act 1959 to carrying on banking business in Australia;

**"Bank Guarantees"** means the guarantees or letters of credit to be provided by the Company pursuant to clauses 18.1 and 22.9;

**"Bill"** has the meaning given to the expression 'Bill of Exchange' in the Bills of Exchange Act 1909 (but does not include a cheque) and any reference to the drawing, acceptance or other dealing of or with a Bill has the relevant meaning set out in that Act;

**"Bill Rate"** means on any day the rate (expressed as a yield per annum) which is-

- (a) the rate quoted as the average bill rate on the Reuters Monitor System Page 'BBSY' (or any page which replaces that page) by about 10.30 a.m. (Melbourne time) on that day for Bank Bills having a tenor of one month; or
- (b) if no average bill rate is published for bills of that tenor in accordance with paragraph (a), the bid rate quoted to the State by Westpac Banking Corporation on that date for the purchase of Bank Bills having a tenor of one month;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks (as defined in the Banking Act 1959 (Commonwealth)) are generally open for business in Melbourne;

**"Casino Agreement"** means the agreement between the Authority and the Company providing, among other things, for the grant of the Casino Licence;

**"Casino Asset"** means an asset or undertaking of the Company which forms part of the Secured Property and which consists of-

- (a) the Casino Licence;
- (b) the Melbourne Casino;
- (c) the Temporary Casino;
- (d) all gaming equipment used in the Melbourne Casino or the Temporary Casino;
- (e) all revenue derived from the Melbourne Casino or the Temporary Casino (other than revenues which have been deposited or are standing to the credit of the Debt Protection Account or the Debt Service Reserve Account (each as defined in the Facility Agreement) in accordance with the Facility

4.

Agreement and any Authorised investments (as defined in the Facility Agreement) from either of those Accounts (or the proceeds of any such Authorised Investment)); and

- (f) all other assets of the Company necessary for the operation of the Melbourne Casino or the Temporary Casino;

and a reference to the 'Casino Assets' includes any part of them;

**"Casino Control Act"** means the Casino Control Act 1991 (Victoria);

**"Casino Licence"** means a casino licence as defined in the Casino Control Act in relation to the Temporary Casino and the Melbourne Casino in the form of the licence set out in Schedule One to the Casino Agreement as varied from time to time (10thDV);

**"Casino Supervision and Control Charge"** means-

- (a) for the period from the Licensing Date until 30 June 1994, \$5,000,000; and  
 (b) for each Financial Year from 1 July 1994 until 30 June 1997, \$5,000,000;

**"Commission Based Player"** means a person who participates in a premium player arrangement or a junket where the person and the Company satisfy the requirements of any relevant controls and procedures approved by the Authority under section 121 of the Casino Control Act in respect of a premium player or a junket player (as the case may be);(SDV)

**"Commission Based Players' Gaming Revenue"** means the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period after 31 December 1995 by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) by Commission Based Players less the total of all sums paid out as winnings during that period to Commission Based Players in respect of such conduct or playing of games;(SDV)

**"Commissioning"** means the checking, testing and acceptance of the operational readiness of and the procedures for the various components of the Melbourne Casino Complex or the Temporary Casino Complex as the case may be (including all staff, facilities and equipment);

**"Completion"** means ~~the completion of the construction, the Fit-Out and the Commissioning of the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino or the Melbourne Casino Complex, as the case may be, to a state of operational readiness which complies with the Completion Standards, as determined pursuant to clause 15, and 'Complete' and 'Completed' have corresponding meanings;(SDV)~~

**"Completion"** means the completion of the construction, the Fit-Out and the Commissioning of the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino, the Melbourne Casino Complex (excluding (SDV) (SVDV) the

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Southern Tower of the Hotel), the Melbourne Casino Complex, the Training and Human Resource Centre, (SDV) (SVDV) the Southern Tower of the Hotel or any other relevant part of the Melbourne Casino Complex, as the case may be, to a state of operational readiness which complies with the Completion Standards, as determined pursuant to clause 15, and "Complete" and "Completed" have corresponding meanings; (SDV)

**"Completion Date"** means (subject in each case to clause 16)-

- (a) ~~in relation to the Temporary Casino, the day immediately following the expiration of 34 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative;~~
- (b) ~~in relation to the Temporary Casino Complex, the day immediately following the expiration of 34 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative;~~
- (c) ~~in relation to the Melbourne Casino, the day immediately following the expiration of 143 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative; and~~
- (d) ~~in relation to the Melbourne Casino Complex, the day immediately following the expiration of 143 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative; (SDV)~~

**"Completion Date"** means (subject in each case to clause 16):

- (a) in relation to the Temporary Casino, the day immediately following the expiration of 34 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative;
- (b) in relation to the Temporary Casino Complex, the day immediately following the expiration of 34 weeks from the Licensing Date or such later date as is agreed by the State's Nominated Representative;
- (c) in relation to the Melbourne Casino, 30 November 1996 or such later date as is agreed by the State's Nominated Representative;
- (d) in relation to the Melbourne Casino Complex (excluding (SDV) (SVDV) the Southern Tower of the Hotel), 30 November 1996 or such later date as is agreed by the State's Nominated Representative; and
- (e) in relation to the Southern Tower of the Hotel, 24 December 1997 or such later date as is agreed by the State's Nominated Representative; (SDV)
- (e) in relation to (SVDV) the Southern Tower of the Hotel, 30 November 1999 2003 (FIDV) or such later date as is agreed by the State's Nominated Representative;

**"Completion Standards"** means-

6.

- ~~(a) for construction of the Melbourne Casino, the Melbourne Casino Complex, the Temporary Casino or the Temporary Casino Complex when-~~
- ~~(i) a certificate of occupancy is issued by the responsible authority;~~
  - ~~(ii) the Melbourne Casino, the Melbourne Casino Complex, the Temporary Casino or the Temporary Casino Complex is fit for use by the Company;~~
  - ~~(iii) the Fit-Out and Commissioning has been completed in accordance with the requirements of this document; and~~
  - ~~(iv) all other requirements under this document have been complied with; and~~
- ~~(b) in respect of the Melbourne Casino or the Temporary Casino, when a certificate is issued by the Authority pursuant to clause 20 of the Casino Agreement;(SDV)~~

**"Completion Standards" means:**

- (a) for the construction of the Melbourne Casino, the Melbourne Casino Complex (excluding(SDV) (SVDV) the Southern Tower of the Hotel), the Melbourne Casino Complex, the Training and Human Resource Centre,(SDV) (SVDV) the Southern Tower of the Hotel or any other relevant part of the Melbourne Casino Complex, the Temporary Casino or the Temporary Casino Complex, when in relation to the relevant works:
- (i) an occupancy permit is issued by the responsible authority;
  - (ii) those works are fit for use by the Company;
  - (iii) the Fit-Out and Commissioning has been completed in accordance with the requirements of this documents; and
  - (iv) all other requirements under this document have been complied with; and
- (b) in respect of the Melbourne Casino or the Temporary Casino, when a certificate is issued by the Authority pursuant to clause 20 of the Casino Agreement;(SDV)

**"Construction Agreement"** means the proposed building agreement between the Company and a proposed builder substantially in the form of the draft agreement a copy of which has been signed on behalf of the Authority and the Company for the purposes of identification;

**"Contractor's Deed"** has the meaning ascribed to that term in the Supplemental Development Agreement;

**"Control Acts"** means the Building Control Act 1981 and the Planning and Environment Act;

7.

**"Deed of Undertaking and Guarantee"** means the Deed of Undertaking and guarantee as defined in the Casino Agreement; (EDV)

**"Default Rate"** means the rate set under the Penalty Interest Rates Act 1983 (Victoria) as at the date of any default;

**"Deal with"** means deal with property in any way (other than enter into an arm's length agreement to sell dependent for effect on the State's consent) including, but not limited to, offer for sale, grant an option in respect of, create or Dispose of a right in respect of, render or permit to be subject to an Encumbrance, convert, deposit, compromise or allow a counterclaim or right of set-off to arise in respect of;

**"Design and Construction Programme"** means the programme for the design, documentation, construction, Fit-Out, Commissioning and Completion of the Temporary Casino Complex or the Melbourne Casino Complex (as the case may be) set out in Schedule One, as amended from time to time with the prior written approval of the State;

**"Development Agreement"** means the agreement dated 30 August 1993 between the Company and Hudson Conway Management Limited ACN 006 742 294 providing for the construction of the Temporary Casino Complex and the procuring of the construction of the Melbourne Casino Complex;

**"Dispose of"** means sell, transfer, assign, alienate, surrender, dispose of, deposit, Lease, part with possession of and enter into any agreement or arrangement to do or allow any of these things;

~~**"Drawings"** means the plans, designs and working drawings relating to the Temporary Casino Complex or the Melbourne Casino Complex (as the case may be) provided by the Company and described in Schedule Two;(FDV)~~

**"Drawings"** means:

- (a) the plans, designs and working drawings relating to the Temporary Casino Complex provided by the Company and initialled by the State's Nominated Representative on behalf of the State and the Company for the purposes of identification and described in Schedule Two; or
- (b) the plans, designs and working drawings relating to the Melbourne Casino Complex provided by the Company and initialled by the State's Nominated Representative on behalf of the State and the Company for the purposes of identification and described in Schedule Two;

or such other plans, designs and working drawings authorised in writing by the Minister in accordance with section 16 of the **Casino (Management) Agreement Act 1993**; (FDV)

**"Encumbrance"** means a mortgage, charge, pledge, lien, assignment, hypothecation, retention of title (other than a retention of title in respect of trading stock), or any other right (including, without limitation, under a trust, agency, hire

## 8.

purchase, sale and repurchase, sale and leaseback or flawed asset arrangement) of a creditor to have its claims satisfied prior to other creditors with, or from the proceeds of or by recourse to any asset, and includes any agreement, arrangement or document conferring such a right or having substantially the same economic effect;

**"Extension Event"** has the meaning given in clause 16.8;

**"Facility Agreement"** means the \$300,000,000 multi-option facility agreement dated 30 August 1993 between the Company, the Financiers and the Agent;

**"Finance Documents"** means the Facility Agreement and the Financiers' Securities;

**"Financial Year"** means from 1 July to 30 June (inclusive);

**"Financiers"** means the National Australia Bank Limited, Australia and New Zealand Banking Group Limited, Hongkong Bank of Australia Limited, R & I Bank of Western Australia Limited and State Bank of New South Wales Limited and their successors, assigns and substitutes;

**"Financiers' Securities"** means the following securities given to the Agent as agent for the Financiers-

- (a) a first registered fixed and floating charge over the undertaking and all the assets of the Company including a mortgage over the Casino Licence;
- (b) a mortgage of the Site Lease and a mortgage of the Temporary Casino Leases; and
- (c) each other security given to the Agent or the Financiers as security for the liabilities of the Company under the Facility Agreement;

**"Fit-Out"** means the application of finishing material, gaming equipment, furniture, fittings, furnishings and such other built-in and loose items required to bring any part of the Temporary Casino Complex or the Melbourne Casino Complex (as the case may be) to a stage to enable Commissioning to take place;

**"Fixed and Floating Charge"** means the second registered fixed and floating charge of 30 August 1993 by the Company in favour of the Minister on behalf of the State;

**"Force Majeure Event"** means any explosion, earthquake, natural disaster, Government Action, sabotage, act of a public enemy, war (declared or undeclared) or revolution which causes or results in delay in the performance by a party of any of its obligations under this document where the event, circumstance, default or delay could not have been prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent, experienced and competent person including but not limited to the expenditure of all reasonable sums of money, but does not include-

9.

- (a) fire or flood;
- (b) lightning, storm, hurricane or other action of the elements;
- (c) strikes, lockouts, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockages, picketing action, secondary boycotts or any other labour action or lack of action except those caused by Government Action;
- (d) action or inaction by a court, government or authority, including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment other than Government Action;
- (e) mechanical, electrical or equipment breakdown or failure; or
- (f) riot, civil commotion or blockade;

**"Founding Shareholders Agreement"** means the agreement dated 30 August 1993 between each Sponsor, Carlton and United Breweries Limited ACN 004 056 106 and the Company providing for the subscription for Shares by the Sponsors and Carlton and United Breweries Limited;

**"Further Amendment Act"** means the bill referred to in clause 3.2(b) when that bill is passed and comes into operation as an Act of Parliament as contemplated by that clause;

**"Global GST Amount"** has the same meaning as in the GST Act (DV6);

**"Government Action"** means-

- (a) any breach by the State or the Authority of any obligation or duty arising under the Casino Control Act or any Transaction Document;
- (b) any negligent act or omission or any default or delay by a Government Authority in the exercise of its rights, powers, privileges or discretions conferred on it by law directly in connection with any matter arising under the Casino Control Act or any Transaction Document; or
- (c) any combination of any of the activities in each of (a) or (b) above;

other than any of the activities described in (a) to (c) above in this definition which occur in circumstances where the State or Government Authority, as the case may be, acts in good faith-

- (i) in satisfying a conflicting obligation or duty arising under the Casino Control Act or any Transaction Document;
- (ii) in exercising a conflicting right, power, privilege or discretion conferred on it by law; or
- (iii) in pursuing a matter which is in the public interest;

10.

and for the purposes of this definition of 'Government Action' 'delay by a Government Authority' means a delay by a Government Authority which, having regard to the workloads and usual practices and procedures of that Government Authority, would be considered extraordinary;

**"Government Authority"** means-

- (a) the Parliament of the State;
- (b) the Governor of the State whether or not acting in Council;
- (c) any minister of the State (including the Minister), department or official administering power or authority (other than judicial or quasi judicial power) under any State law which regulates any of the matters contemplated in any Transaction Document;
- (d) the relevant authority under the Local Government Act 1989 having jurisdiction over the Site or the Temporary Casino Site;

**"Gross Gaming Revenue"** means the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) less the total of all sums paid out as winnings during that period in respect of such conduct or playing of games but excluding any Commission Based Players' Gaming Revenue (SDV);

**"GST"** has the same meaning as in the GST Act (DV6);

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth); (DV6)

**"Intergovernmental Agreement"** means the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations executed in June 1999; (DV6)

**"Lease"** means an agreement or arrangement under which property is or may be used, occupied, retained, operated or managed by a person for consideration (of whatever form) including, but not limited to, a lease, licence, charter, hire purchase or hiring arrangement;

**"Licensing Date"** means the date which is 2 Business Days after the conditions precedent in clause 5.1 are satisfied;

**"Licensing Payment Amounts"** means the amounts payable by the Company under clause 21.1;

(SVDV)

**"Master Security Agreement"** means the agreement between the State, the Authority, the Company, the Agent and the Sponsors relating, among other things, to the priority of the Financiers' Securities and the Fixed and Floating Charge;

11.

**"Melbourne Casino"** means those areas identified in the Drawings of the Melbourne Casino Complex as the areas which constitute a casino and includes the areas in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried on;

**"Melbourne Casino Complex"** means the Melbourne Casino and Ancillary Facilities and such other facilities as are nominated by the Company, with the approval of the Minister, as forming part of the Melbourne Casino Complex (SVDV) to be constructed on or located within the Site in accordance with the provisions of this document and the Casino Agreement;

(SVDV)

~~**"Melbourne Casino Complex (excluding the Southern Tower of the Hotel)"** means all of the Melbourne Casino Complex except the Southern Tower of the Hotel; (SDV)(TDV)~~

~~**"Melbourne Casino Complex Development Proposals"** means the proposals of the Company in relation to the construction, development and establishment of the Melbourne Casino Complex, a copy of which has been signed on behalf of the Authority and the Company for the purposes of identification; (FDV)~~

~~**"Melbourne Casino Complex Development Proposals"** means the proposals of the Company in relation to the construction, development and establishment of the Melbourne Casino Complex (including without limitation:~~

~~(a) proposals in relation to traffic management, taxi holding areas and availability;~~

~~(b) the design of, public access to and amenity of the roof garden;~~

~~(c) wind diffusion from the tower building to public open spaces; and~~

~~(d) the quality of finishes);~~

~~a copy of which has been signed by or on behalf of the State's Nominated Representative and the Company for the purposes of identification; (FDV)(SDV)~~

~~**"Melbourne Casino Complex Development Proposals"** means the proposals of the Company in relation to the construction, development and establishment of the Melbourne Casino Complex, a copy of which has been signed on behalf of the State's Nominated Representative and the Company for the purposes of identification, or such proposals as amended by agreement of the State's Nominated Representative and the Company from time to time; (SDV)~~

**"Minister"** means the Minister for the time being administering the Casino Control Act;

**"Mortgagee"** means any person other than the State with any Encumbrance (whether as mortgagee, chargee or otherwise) affecting or in relation to the Assets and Rights of the Company;

12.

**"Ninth Variation Commencement Date"** has the same meaning as in the Ninth Deed of Variation to the Management Agreement; (NDV)

**"Operations Agreement"** means the agreement dated 30 August 1993 between the Company and Crown Management Pty Ltd ACN 059 301 610 providing for the conduct of the operations of the Temporary Casino and the Melbourne Casino;

**"Permitted Encumbrance"** means an encumbrance permitted under clause 29.1 of the Casino Agreement;

**"Planning Amendments"** means the planning scheme amendments referred to in clause 9;

**"Planning and Environment Act"** means the Planning and Environment Act 1987 (Victoria);

**"Premium Payment"** means \$10,000,000 being the amount determined by the Treasurer of the State under section 112A of the Casino Control Act as the amount payable by the Company under this document;

**"Public Authority"** means any government or minister or any governmental, semi-governmental or judicial entity, department, instrumentality or authority;

**"Receiver"** means receiver, receiver and manager or agent for a mortgagee in possession, according to the nature of the appointment;

**"Secured Property"** means at any time, any present or future right, property or undertaking of the Company, (other than an amount which has been deposited to, or which is standing to the credit of, the Debt Service Reserve Account or the Debt Protection Account (each as defined in the Facility Agreement) and any Authorised Investment (as defined in the Facility Agreement) from either of those Accounts (or the proceeds of any such Authorised Investment)) of whatever kind or wherever situated which is subject at that time to both-

- (a) the Fixed and Floating Charge; and
- (b) any one or more of the Financiers' Securities;

and a reference to 'Secured Property' includes any part of it;

**"Share"** means a fully paid ordinary share of \$0.50 in the capital of the Company;

~~**"Site"** means that part of the land bounded by the Yarra River, Clarendon Street, Whiteman Street and Queensbridge Street in the City of South Melbourne and more particularly described as part of Crown Allotments 58D and 58E, County of Bourke, Parish of Melbourne South, City of South Melbourne, as identified in the draft Plan of Survey annexed as Schedule Three;~~(SDV)

**"Site"** means that part of the land bounded by the Yarra River, Clarendon Street, Whiteman Street and Queensbridge Street in the City of Melbourne and more particularly described as part of Crown Allotments 58D and 58E, County of

13.

Bourke, Parish of Melbourne South, City of Melbourne, as identified in the draft Plan of Survey annexed as Schedule Three (being the land the subject of the Site Lease) and the land in Certificates of Title Volume ("V") 9872 Folio ("F") 067, V9876 F112, V9874 F285, V6519 F602, V9117 F032, V6253 F477, V5061 F124, V8404 F673, V9580 F903, V8444 F586, V8597 F415, V9468 F166, V10182 F514, V10182 F515, V5867(SDV), F3263, V5867 F3264 and V6087 F365 together with F263, V5867 F264 and V6087 F365, together with such other land within the area bounded by Queensbridge Street, City Road, Clarendon Street and Whiteman Street which the Company shall designate, with the Minister's approval, as part of the Site (SVDV) and(TDV) any road adjoining any such land which is closed for the purpose of being part of the land for the Melbourne Casino Complex;(SDV)

~~"Site Lease" means the lease of the Site from the Minister for Finance on behalf of the State to the Company;(SDV)~~

"Site Lease" means the lease of part of the Site from the Minister for Finance on behalf of the State to the Company;(SDV)

**"Site Lease Supplemental Agreement"** means the agreement between the Minister for Finance on behalf of the State, the Company and the Agent;

~~**"Southern Tower of the Hotel"** means the second tower of the hotel to be constructed by the Company, such tower comprising not more than 24 floors above the podium and not less than 465 rooms and to be located at the south west corner of Queensbridge Street and Whiteman Street, but it excludes the Training and Human Resource Centre;(SDV)(TDV)~~

**"Southern Tower of the Hotel"** means the building to be constructed by the Company comprising not less than 465 hotel rooms and to be located on the Site;

**"Sponsors"** mean Hudson Conway Limited ACN 009 556 629 and The Federal Hotels Limited ACN 004 108 249;

**"Sponsor's Guarantees"** means the guarantees by Hudson Conway Limited in favour of the Authority and in favour of the State;

**"State"** means the State of Victoria;

**"State's Nominated Representative"** means the person appointed from time to time under clause 6.4;

**"State Tax Credit"** means an amount equivalent to the amount determined under Division 126 of the GST Act, declared by the Company to the Commissioner as the Global GST Amount with respect to gambling supplies to which clauses 22 and clause 22A apply; (DV6)

**"Supplemental Casino Agreement"** means the Supplemental Casino Agreement as defined in the Casino Agreement; (EDV)

14.

**"Supplemental Development Agreement"** means the agreement between the State, the Company, the Sponsors and Hudson Conway Management Limited ACN 006 742 294 which is supplemental to the Development Agreement;

**"Supplemental Operations Agreement"** means the agreement between the Authority, the Company, the Sponsors and Crown Management Pty Ltd ACN 059 301 610 which is supplemental to the Operations Agreement;

**"Supplemental Sponsors' Agreement"** means the agreement between the Authority, the Company and the Sponsors which is supplemental to the Founding Shareholders Agreement;

**"Table Game"** means a game (including a game that is substantially similar to an already approved game and including, for the removal of doubt, any semi-automated, fully automated, electronic or animated versions of such games) that has, at the date of this Deed, been approved under section 60 of the Casino Control Act as a "table game" or at any time in the future is so approved; (NDV)

**"Temporary Casino"** means those areas identified in the Drawings of the Temporary Casino Complex as the areas which constitute a casino and includes the areas in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried on;

**"Temporary Casino Complex"** means the Temporary Casino and Ancillary Facilities to be constructed on or located within the Temporary Casino Site in accordance with the provisions of the Casino Agreement;

**"Temporary Casino Complex Development Proposals"** means the proposals of the Company in relation to the construction, development and establishment of the Temporary Casino Complex a copy of which has been signed on behalf of the Authority and the Company for the purposes of identification;

**"Temporary Casino Leases"** means-

- (a) the lease from the Port of Melbourne Authority to the Company; and
- (b) the sub-lease between the Urban Land Authority, Allco Nominees (Vic) Pty Ltd ACN 006 837 289 and the Company;

**"Temporary Casino Leases Supplemental Agreements"** means-

- (a) the agreement between the Port of Melbourne Authority, the Company and the Agent; and
- (b) the Temporary Casino Sub-Lease Supplemental Agreement;

**"Temporary Casino Site"** means that part of the World Trade Centre on the land bounded by Spencer Street, Flinders Street Extension and the River Yarra identified in the Plan of Survey annexed to the lease referred to in paragraph (a) of the definition of Temporary Casino Leases;

15.

**"Temporary Casino Sub-Lease Supplemental Agreement"** means the agreement between the Urban Land Authority, Allco Nominees (Vic) Pty Ltd ACN 006 837 289, the Company and the Agent;

**"Tenth Deed of Variation"** means the Tenth Deed of Variation to the Management Agreement between the State and the Company dated on or about 1 September 2014; (10thDV)

**"Tenth Variation Commencement Date"** has the same meaning as the term "Operative Date" in the Tenth Deed of Variation to the Management Agreement; (10thDV)

**"Training and Human Resource Centre"** means the facility comprising 5 levels of office space and a car park with a capacity for up to 180 cars to be constructed by the Company on the land bounded by Queensbridge Street, Kingsway and Whiteman Street for the purposes of staff facilities (including training and administration);(SDV)

**"Training and Human Resource Centre"** means the staff facilities (including training and administration) to be incorporated within the building which incorporates the car park referred to in clause 10.3;(TDV)

**"Transaction Document"** means each of this document, the Casino Agreement, the Casino Licence, the Site Lease, the Temporary Casino Leases, the Fixed and Floating Charge, the Sponsor's Guarantees, the Master Security Agreement, the Site Lease Supplemental Agreement, the Temporary Casino Leases Supplemental Agreements, the Supplemental Sponsors' Agreement, the Supplemental Development Agreement, the Contractor's Deed, the Bank Guarantees, the Supplemental Operations Agreement, the Deed of Undertaking and Guarantee and the Supplemental Casino Agreement; (EDV)

**"Underwriting Agreement"** means both the underwriting agreements of 13 August 1993 and 23 August 1993 between the Company, E. L. & C. Baillieu Limited ACN 006 519 393, Rothschild Australia Securities Limited ACN 008 591 768, Macquarie Underwriting Limited ACN 001 374 572, Ord Minnett Securities Limited ACN 003 245 234, James Capel Australia Limited ACN 002 786 272 and the Sponsors; and

**"Warranties"** means the representations and warranties of the Company set out in Schedule Four.

### 3. **Operation of provisions**

- 3.1 This clause and clauses 2, 4, 5, 9 and 25-40 (inclusive) commence on the date of this document.
- 3.2 Following satisfaction or waiver of the conditions in clauses 5.1(a) (except for the execution of the Construction Agreement, the Contractor's Deed, the Site Lease and the Site Lease Supplemental Agreement) a minister of the State must-

## 16.

- (a) introduce and sponsor in the Parliament of Victoria a bill to ratify this document and endeavour to secure its passage as an Act prior to 31 December 1993; and
  - (b) introduce and sponsor in the Parliament of Victoria a bill contiguous to the bill referred to in paragraph (a) to amend the Casino Control Act and endeavour to secure its passage as an Act prior to 31 December 1993.
- 3.3 The provisions of this document other than those referred to in clause 3.1 will come into operation on the day on which all of the conditions precedent in clause 5.1 are satisfied.
- 3.4 If by 31 December 1993 or such later date as may be agreed by the parties in writing those parts of the Agreement Act and the Further Amendment Act which relate to the construction, Fit-Out, Commissioning, Completion and operation of the Melbourne Casino Complex and the Temporary Casino Complex each in the form and substance reasonably satisfactory to the Company to enable the Company to comply with its obligations under the Transaction Document have not come into operation, this document will terminate.
- 3.5 Unless termination under clause 3.4 arose because of a failure to satisfy the conditions in clause 5.1 (a) or (b), following that termination neither party shall have any claim against the other 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 document.
- 4. Variation**
- 4.1 Subject to clauses 4.2 and 4.3, the parties may from time to time by agreement in writing vary any provision of this document.
- 4.2 A minister of the State must introduce and sponsor a bill in the Parliament of Victoria to ratify any agreement made pursuant to clause 4.1 as soon as reasonably practicable following its execution.
- 4.3 The provisions of any agreement made pursuant to clause 4.1 shall come into operation once the bill referred to in clause 4.2 has come into operation as an Act.
- 4.4 Clauses 4.2 and 4.3 shall not apply to the giving of a waiver, a failure of a party to require full or part performance of an obligation or the granting of or agreement to an extension of time under this document.
- 5. Conditions precedent**
- 5.1 This document (other than clauses 2, 4, 5, 9 and 25-40 (inclusive)) is subject to the satisfaction or waiver by the parties, as conditions precedent, of all of the following conditions-
  - (a) the execution of-

17.

- (i) the Transaction Documents except for the Casino Licence, the Bank Guarantees, the Deed of Undertaking and Guarantee and the Supplemental Casino Agreement; (*EDV*)
  - (ii) the Finance Documents;
  - (iii) the Development Agreement;
  - (iv) the Operations Agreement;
  - (v) the Construction Agreement;
  - (vi) the Founding Shareholders Agreement;
  - (vi) the Underwriting Agreement;
  - (vii) the Equity Funding Agreement (Federal)-as defined in the Casino Agreement;
  - (viii) the Shareholders Agreement-Crown Management Pty Ltd as defined in the Casino Agreement; and
  - (ix) the Guarantee and Indemnity for Development Agreement as defined in the Casino Agreement;
- (b) each of the conditions precedent in each document referred to in paragraph (a) being satisfied other than-
- (i) conditions precedent contained in paragraphs (14), (15), and (28) of Part 1 of Appendix A to and clause 4.2 of the Facility Agreement and those conditions precedent in Appendix A to the Facility Agreement that are factual or procedural matters that cannot be satisfied until the time of drawdown; and
  - (ii) the issue of the Casino Licence;
- (c) approval of the Planning Amendments; and
- (d) the coming into operation of those parts of the Agreement Act and the Further Amendment Act which relate to the construction, Fit-Out, Commissioning, Completion and operation of the Melbourne Casino Complex and the Temporary Casino Complex each in the form and substance reasonably satisfactory to the Company to enable the Company to comply with its obligations under the Transaction Documents.
- 5.2 Subject to clause 5.3, if all of the conditions in clause 5.1 are not satisfied or waived on or before 31 December 1993 or such later date agreed by the parties in writing, then either party may terminate this document by notice in writing to the other party.

18.

- 5.3 A party cannot exercise the right of termination referred to in clause 5.2 where any of the conditions in clause 5.1 remain unsatisfied due to an act or omission of that party.

## **PART 2 - APPROVAL OF DEVELOPMENT PROPOSALS AND CASINO LOCATION**

### **6. Design and planning objectives**

- 6.1 The parties acknowledge that the Melbourne Casino Complex Development Proposals and the Temporary Casino Complex Development Proposals and the Drawings describe the Company's proposals for the design, development, construction, Fit-Out and Commissioning of the Melbourne Casino Complex and the Temporary Casino Complex.
- 6.2 The Company must develop the Melbourne Casino Complex and the Temporary Casino Complex in accordance with the requirements of this document and the Casino Agreement.
- 6.3 The Company acknowledges that it is required to obtain approvals under the Control Acts and otherwise comply with the Control Acts.
- 6.4 The State shall procure that the minister for the time being administering the Planning and Environment Act appoints a person who will represent the persons responsible for the granting of approvals under or otherwise administering the Control Acts.
- 6.5 The Company may deliver all documents and other information required to obtain approvals or to otherwise comply with the Control Acts to the State's Nominated Representative.
- 6.6 The State's Nominated Representative shall use its best endeavours to procure the making of all decisions required to be made under the Control Acts in respect of the obligations of the Company under clause 6.2.
- 6.7 The State shall procure that the State's Nominated Representative complies with the obligations of the State's Nominated Representative under the Casino Agreement.

### **7. Approval of the casino site**

The State approves-

- (a) the Site as the site upon which the Melbourne Casino Complex will be developed in accordance with the Melbourne Casino Complex Development Proposals, the relevant Planning Amendments and the requirements of this document and the Casino Agreement; and
- (b) the Temporary Casino Site as the site upon which the Temporary Casino Complex will be developed in accordance with the Temporary Casino Complex Development Proposals, the relevant Planning Amendments and the requirements of this document and the Casino Agreement.

## 8. Identification of casino

On and subject to the provisions of this document and the Casino Agreement, the State approves of the grant by the Authority to the Company of the Casino Licence which provides for a casino to be located at the Temporary Casino and then at the Melbourne Casino.

## 9. Zoning

- 9.1 The Minister will recommend to the minister administering the Planning and Environment Act that a planning scheme amendment be prepared, adopted and approved by the minister administering the Planning and Environment Act to allow the use and development of the Site for the purposes of the Melbourne Casino Complex generally in accordance with the Melbourne Casino Complex Development Proposals.
- 9.2 The Minister will recommend to the minister administering the Planning and Environment Act that a planning scheme amendment be prepared, adopted and approved by the minister administering the Planning and Environment Act to allow the use and development of the Temporary Casino Site for the purposes of the Temporary Casino Complex generally in accordance with the Temporary Casino Complex Development Proposals.
- 9.3 Section 38 of the Planning and Environment Act will not apply to the Planning Amendments.
- 9.4 Clause 9.3 will not apply if the Planning Amendments are approved prior to the beginning of the 1993 Spring Parliamentary session.

## PART 3 - DEVELOPMENT

## 10. Development conditions

- 10.1 The Company must-
- (a) Construct, Fit-Out, Commission and Complete the Melbourne Casino Complex in accordance with-
    - (i) the Melbourne Casino Complex Development Proposals, the Drawings and the further working drawings and specifications provided to the State and the Authority together with any approved variations;
    - (ii) the Design and Construction Programme;
    - (iii) the Planning Amendments; and
    - (iv) the terms of this document and the Casino Agreement;
  - (b) Complete the Melbourne Casino by the Completion Date; and (SDV)

20.

- (c) Complete the Melbourne Casino Complex (excluding(SDV) (SVDV) the Southern Tower of the Hotel) (SDV) by the Completion Date.;and(SDV)
- ~~(d) Complete(SDV) (SVDV) the Southern Tower of the Hotel by the Completion Date. (SDV)~~

10.2 The Company must-

- (a) Construct, Fit-Out, Commission and Complete the Temporary Casino Complex in accordance with-
- (i) the Temporary Casino Complex Development Proposals, the Drawings and the further working drawings and specifications provided to the State and the Authority together with any approved variations;
  - (ii) the Design and Construction Programme;
  - (iii) the Planning Amendments; and
  - (iv) the terms of this document and the Casino Agreement;
- (b) Complete the Temporary Casino by the Completion Date; and
- (c) Complete the Temporary Casino Complex by the Completion Date.

~~10.3 The Company must construct on the land located at 1-21 Clarke Street, South Melbourne being more particularly described in Certificates of Title Volume 5867 and Folios 3263 and 3264 a car park comprising not less than 600 car parking spaces which shall be available for use by patrons of the Melbourne Casino Complex. The Company must provide weather protection and security access from such car park to the Melbourne Casino Complex. In addition to all approvals required under the Control Acts, the design of the car park must be approved in advance by the Minister. The Company must use its best endeavours:~~

- ~~(a) to obtain as soon as practicable all necessary approvals under the Control Acts and from the Minister for the construction of the car park; and~~
- ~~(b) to complete the car park prior to the opening of the Melbourne Casino. (FDV)(SDV)~~

10.3 The Company must construct(SDV) in accordance with the Drawings and this document(TDV) on the land located on the western side of Kingsway fronting Whiteman Street a car park(SDV) of 7 levels above ground (TDV) comprising approximately 2,600 car parking spaces with on site queuing for in excess of 40 cars which shall be available for use by patrons of the Melbourne Casino Complex. The Company must provide weather protection and security access from such car park to the Melbourne Casino Complex. In addition to all approvals required under the Control Acts, the design of the car park must be approved by the Minister. The Company must:

21.

- (a) use its best endeavours to obtain as soon as practicable all necessary approvals under the Control Acts and from the Minister for the construction of the car park; and
- (b) as a condition to the approval required under the Planning and Environment Act:
  - (i) ensure that a car park guidance system reasonably acceptable to the State is provided; and
  - (ii) pay to City of Melbourne immediately after all necessary approvals have been obtained \$500,000 to be used for a parking guidance system which is to be developed for the Southbank area.(SDV)

10.4 As part of the development of the Melbourne Casino Complex, the Company must construct the Training and Human Resource Centre(SDV) (SVDV) and the Southern Tower of the Hotel. The Company must use its best endeavours to obtain (SDV) as soon as practicable (FIDV) all necessary approvals under the Control Acts and from the Minister(SDV) (including approval of drawings under section 16 of the Casino (Management Agreement) Act 1993)(TDV) for construction of the Training and Human Resource Centre(SDV) (SVDV) and the Southern Tower of the Hotel;(SDV) within sufficient time to enable their Completion by the relevant Completion Date. (FIDV)

## **11. Documents to be submitted to the State's Nominated Representative**

- 11.1 The Company must provide to the State's Nominated Representative for the approval or otherwise of the State's Nominated Representative-
- (a) within 12 weeks following the Licensing Date, such drawings, specifications and other documents as are required by the State's Nominated Representative so that the State's Nominated Representative may be satisfied that the Melbourne Casino Complex and the Temporary Casino Complex will be Completed in accordance with this document; and
  - (b) within 12 weeks following the Licensing Date, an itemised Design and Construction Programme for all phases of the development of the Melbourne Casino Complex and the Temporary Casino Complex up to and including Completion.
- 11.2 On the first Business Day of each month the Company must provide to the State's Nominated Representative a report in a form satisfactory to the State's Nominated Representative as to the progress of construction of the Melbourne Casino Complex and the Temporary Casino Complex.
- 11.3 If the Company wishes to vary any drawings, specifications or other documents approved by the State's Nominated Representative under clause 11.1, the Company must submit the proposed variation to the State's Nominated Representative for approval. (FDV)

## 22.

**12. Approvals**

- 12.1 Where the Company submits documents to the State's Nominated Representative under ~~clause 11.4~~ clauses 11.1 and 11.3 (FDV), the State's Nominated Representative may-
- (a) approve the documents;
  - (b) approve the documents subject to any reasonable condition or conditions the State's Nominated Representative decides to impose;
  - (c) require amendment to the documents as specified by the State's Nominated Representative; or
  - (d) reject the documents.
- 12.2 Where the Company submits documents to the State's Nominated Representative under clauses 11.1 or 11.3 (FDV), the State's Nominated Representative must respond in writing to the Company in the manner contemplated within 14 days of receiving the documents or proposal from the Company or such further period agreed between the State's Nominated Representative and the Company.
- 12.3 If the State's Nominated Representative has not responded in writing to the Company as required within 14 days or such further period as agreed the State's Nominated Representative will be taken to have given its approval.
- 12.4 In exercising any powers under clauses 12, 15 and 18 the State's Nominated Representative must not act unreasonably and have regard to the contents of the Melbourne Casino Complex Development Proposals, the Temporary Casino Complex Development Proposals and the Planning Amendments.
- 12.5 Subject to the rights, obligations or powers of the State or the State's Nominated Representative under the Control Acts and this document including without limitation the obligations of the Company under clause 13, the State's Nominated Representative will not impose conditions or amendments which have the effect of substantially increasing the cost to Complete the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino or the Melbourne Casino Complex from the cost to develop, design and construct set out in the Melbourne Casino Complex Development Proposals and the Temporary Casino Development Proposals.

**13. Quality**

- 13.1 The Company must ensure that all materials, fittings, equipment and workmanship utilised in carrying out the construction of the Melbourne Casino Complex-
- (a) are of a quality commensurate with an international class casino complex;
  - (b) comply with standards specified in the Melbourne Casino Complex Development Proposals; and

23.

- (c) comply with the provisions of the Building Control Act 1981 (Victoria) and the Building Code of Australia relevant to the materials, fittings, equipment or workmanship.
- 13.2 The Company must ensure that all materials, fittings, equipment and workmanship utilised in carrying out the construction of the Temporary Casino Complex-
- (a) are of a quality commensurate with the proposed use of the Temporary Casino Site, the nature of the premises on the Temporary Casino Site and the proposed term of occupation of the Temporary Casino Site by the Company;
  - (b) comply with standards specified in the Temporary Casino Complex Development Proposals; and
  - (c) comply with the provisions of the Building Control Act 1981 (Victoria) and the Building Code of Australia relevant to the materials, fittings, equipment or workmanship.
- 13.3 The builder to be appointed by the Company in relation to the construction of the Melbourne Casino Complex or the Temporary Casino Complex, as the case may be, must be approved in writing by the State's Nominated Representative prior to the builder's appointment.

#### 14. **Provision of services**

The Company must-

- (a) pay to the State or, as the case may be, the instrumentality of the State concerned, the costs incurred in carrying out any works necessary to provide services or change existing services, including without limitation, water, sewerage, drainage, electricity and gas, to the Site and the Melbourne Casino Complex; or
- (b) if required by the State or the relevant instrumentality, carry out such works at the Company's cost and in accordance with all directions of the State or instrumentality.

#### 15. **Completion**

~~15.1 The Company must give not less than 7 Business Days notice in writing to the State's Nominated Representative that the Company anticipates that the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino or the Melbourne Casino Complex, as the case may be, ('Relevant Works') will be Completed on the date specified in the notice. (SDV)~~

15.1 The Company must give not less than 7 Business Days notice in writing to the State's Nominated Representative that the Company anticipates that the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino, the Training and Human Resource Centre, the Melbourne Casino Complex (excluding (SDV) (SVDV) the Southern Tower of the Hotel), (SDV) (SVDV) the

24.

Southern Tower of the Hotel or the Melbourne Casino Complex, as the case may be, ("Relevant Works") will be Completed on the date specified in the notice.(SDV)

- 15.2 On the date agreed between the Company and the State's Nominated Representative (and if no date is agreed, then on the date specified in the Company's notice under clause 15.1) the State's Nominated Representative must inspect the Relevant Works and consider all matters relevant to the Completion of the Relevant Works.
- 15.3 If the State's Nominated Representative is of the opinion that the Relevant Works are not Completed, the State's Nominated Representative must within 10 Business Days of the inspection under clause 15.2 give notice to the Company of this opinion and state in that notice the reason or reasons why the State's Nominated Representative is of this opinion.
- 15.4 ~~If Subject to clause 15.9, if (FDV) (SDV)~~ Subject to clauses 15.9 and 15.10 if (SDV) the State's Nominated Representative is of the opinion that the Relevant Works are Completed, the State's Nominated Representative must within 10 Business Days of the inspection under clause 15.2 issue a certificate to the Company stating the date on which it believes those Relevant Works reached Completion and those Relevant Works shall, for the purpose of this document, be taken to have been Completed on that date.
- 15.5 Upon receipt of a notice from the State's Nominated Representative under clause 15.3, the Company must immediately attend to any matters stated in the notice as requiring attention and upon the Company attending to these matters the Company must give a further notice in writing to the State's Nominated Representative pursuant to clause 15.1.
- 15.6 Any determination by the State's Nominated Representative that any Relevant Works have been Completed is not acceptance that the Company has complied with the Transaction Documents and any right which the State or the State's Nominated Representative may have had prior to that determination is preserved absolutely.
- 15.7 If the State's Nominated Representative does not deliver a notice to the Company under clause 15.3 or a certificate under clause 15.4 within the period of 10 Business Days referred to in those clauses, the Relevant Works will be taken to have been Completed on the date on which those Relevant Works were inspected under clause 15.2 and a certificate of Completion will be taken to have been issued by the State's Nominated Representative with a date of Completion on that date.
- 15.8 A certificate of Completion under clause 15 does not excuse the Company from compliance with all relevant legislation in relation to the Relevant Works.
- 15.9 Subject to clause 15.10, (SDV) The State's Nominated Representative, acting reasonably, must issue the certificate for the Melbourne Casino pursuant to clause 15.4, if

25.

- (a) all the requirements of clause 15.4 are satisfied; and
- (b) the Company is, at the time, diligently pursuing the Completion of the Melbourne Casino Complex.

If, having issued a certificate under clause 15.4 for the Melbourne Casino, the State's Nominated Representative acting reasonably determines that the Company is not diligently pursuing the Completion of the Melbourne Casino Complex the Company will be considered to have committed a breach of this document enabling action to be taken, under clause 25. (FDV)

15.10 It is a condition precedent to the issue by the State's Nominated Representative of a certificate of Completion for the Melbourne Casino under clause 15.4 that the Authority has advised the State's Nominated Representative that the wardrobe and staff change facilities in the Training and Human Resource Centre necessary for the proper conduct of operations in the Melbourne Casino are complete and available for use by staff of the Company, as determined by the Authority in its absolute discretion. The Melbourne Casino will be taken to be not Completed if the Authority has not advised the State's Nominated Representative accordingly.(SDV)

(SVDV)

## 16. Force Majeure

16.1 Provided the Company complies with clause 16.2, the performance by the Company of the terms and conditions of this document relating to the design, development, construction, Fit-Out, Commissioning and Completion of the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino, the Melbourne Casino Complex (excluding(SDV) (SVDV) the Southern Tower of the Hotel) (SDV) or the Melbourne Casino Complex, as the case may be, is subject to any Force Majeure Event which interferes with the performance of those terms and conditions.

16.2 The Company must-

- (a) immediately give notice to the State's Nominated Representative of-
  - (i) a Force Majeure Event and its nature;
  - (ii) the actual or likely extent and effect of the Force Majeure Event on the Company's performance of its obligations in relation to the matters referred to in clause 16.1;
  - (iii) the likely duration of the Force Majeure Event;
- (b) meet with the State's Nominated Representative within 2 Business Days of receipt of a request from the State's Nominated Representative to discuss the Force Majeure Event and attempt to determine what action if any may be taken to ameliorate, remedy or overcome the Force Majeure Event; and

## 26.

- (c) use its best endeavours-
    - (i) to minimise the effect of that Force Majeure Event as soon as possible after the occurrence; and
    - (ii) to prevent, overcome or remedy any delay which would or might otherwise be caused by a Force Majeure Event, including if necessary by the commitment of additional resources.
- 16.3 If the Company complies with clause 16.2, the State's Nominated Representative will by notice in writing to the Company extend the relevant Completion Date to a date to be specified by the State's Nominated Representative to allow for any delay caused by the Force Majeure Event and the Company will not be liable to the State for any delay in the Completion of the Temporary Casino, the Temporary Casino Complex, the Melbourne Casino, the Melbourne Casino Complex (excluding (SDV) (SVDV) the Southern Tower of the Hotel) (SDV) or the Melbourne Casino Complex (as the case may be) for the period from the Completion Date until the new Completion Date specified by the State's Nominated Representative.
- 16.4 If an Extension Event occurs which is not a Force Majeure Event but which delays the performance by the Company of any of the terms and conditions of this document relating to the design, development, construction, Fit-Out, Commissioning or Completion, the relevant Completion Date shall be extended by the period it would take a reasonable person acting diligently to overcome or remedy the delay, provided that the Company-
- (a) as soon as reasonably practicable after becoming aware of the occurrence of the event gives notice to the State of-
    - (i) the event and its nature;
    - (ii) the actual or likely extent and effect of the event on Completion; and
    - (iii) the likely delay to Completion; and
  - (b) pays Liquidated Damages to the State in accordance with clause 17.2.
- 16.5 The cessation of casino operations by the Company at the Temporary Casino after the Completion of the Temporary Casino caused directly or indirectly by an Extension Event which results in the physical destruction of all or a material part of the Temporary Casino shall not be a contravention of a condition of the Casino Licence or any Transaction Document provided that the Company-
- (a) as soon as reasonably practicable after becoming aware of the occurrence of the Extension Event gives notice to the State of-
    - (i) the Extension Event and its nature;
    - (ii) the actual or likely extent and effect of the Extension Event on the operations of the Temporary Casino; and

27.

- (iii) the likely duration of the cessation of operations of the Temporary Casino;
- (b) commences reinstatement of the Temporary Casino within 3 months of the date of the cessation of the Extension Event; and
- (c) if paragraph (b) applies, the Company is diligently proceeding with the construction of the reinstatement of the Temporary Casino;

provided that paragraphs (b) and (c) shall apply subject to any requirements or actions of the lessors or sub-lessors under the Temporary Casino Leases, the relevant insurers, or any authorities and if it is practicable and permitted by each relevant lessor or sub-lessor and each other applicable authority for the Company to reinstate or attempt to reinstate the Temporary Casino.

- 16.6 The cessation of casino operations by the Company at the Melbourne Casino after the Completion of the Melbourne Casino caused by an Extension Event which results in the physical destruction of all or a material part of the Melbourne Casino shall not be a contravention of a condition of the Casino Licence or any Transaction Document provided that-
- (a) as soon as reasonably practicable after becoming aware of the occurrence of the Extension Event the Company gives notice to the State of-
    - (i) the Extension Event and its nature;
    - (ii) the actual or likely extent and effect of the Extension Event on the operations of the Melbourne Casino; and
    - (iii) the likely duration of the cessation of operations of the Melbourne Casino;
  - (b) if requested by the State within 1 month of the occurrence of the Extension Event, the Company must submit a proposal to the State within 3 months of the State's request for the construction of a replacement temporary casino ('Replacement Temporary Casino');
  - (c) if the Company, the State and the Financiers have agreed, as contemplated in clause 16.7, on the basis for the construction of the Replacement Temporary Casino, the Company completes the construction of the Replacement Temporary Casino within the time periods agreed in relation thereto; and
  - (d) the Company commences reinstatement of the Melbourne Casino within 12 months of the date of the cessation of the Extension Event, subject to any requirements of the relevant insurers or any authorities, and diligently pursues a course of action which will reasonably be expected to reinstate the Melbourne Casino in a period of time reasonably acceptable to the State and is making satisfactory progress in the reinstatement.

## 28.

- 16.7 The Company, the State and the Financiers shall consult in good faith in relation to the Company's proposal submitted under clause 16.6(b) to agree on the terms for the establishment and operation of the Replacement Temporary Casino including-
- (a) the site of the Replacement Temporary Casino;
  - (b) the size, features and specifications of the Replacement Temporary Casino;
  - (c) the amendments to the Transaction Documents and the additional documents necessary (including the issue of a new casino licence under the Casino Control Act);
  - (d) all planning and zoning approvals, permits and requirements;
  - (e) any extensions of the exclusivity periods for the Casino Licence; and
  - (f) the cost of the Replacement Temporary Casino and the funding of those costs.
- 16.8 For the purposes of this document-
- (a) "Extension Event" means-
    - (i) a Force Majeure Event;
    - (ii) a Labour Dispute where the Labour Dispute could not have been prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent, experienced and competent person; or
    - (iii) any other event or circumstance which causes disruption, illegality or physical damage and which is outside the control of the Company and has not been directly or indirectly caused by an act or omission of the Company;
  - (b) "Labour Dispute" means a strike, lockout, industrial dispute, labour dispute, industrial difficulty, labour difficulty, work ban, blockage, picketing action, secondary boycott or any other labour action or lack of action.
- 16.9 (a) The Company agrees that the proceeds of any insurance policy for business interruption insurance taken out by or on behalf of the Company will, on receipt by the Company, be paid to the State in compensation to the State for the loss of fees and taxes calculated for a period in accordance with paragraph (b) and otherwise to the Agent in respect of moneys owing to the Financiers under the Finance Documents.
- ~~(b) The amount of the insurance proceeds received by the Company in respect of a period which shall be paid as compensation to the State under paragraph (a) for that period shall be an amount equal to 20% (and after 1 July 1997, 21 1/4%) of the amount of the assumed Gross Gaming Revenue~~

29.

~~for that period, based on the assumption that Gross Gaming Revenue had been earned at the average daily rate calculated for the six months period immediately prior to the commencement of that period. (SDV)~~

(b) The amount of the insurance proceeds received by the Company in respect of a period which shall be paid as compensation to the State under paragraph (a) for that period shall be an amount equal to the taxes that would have been paid by the Company to the State under clauses 22 and 22A (SDV) and section 81J of the Casino Control Act (FIDV) during the relevant period based on the assumption that Gross Gaming Revenue (SDV) and (FIDV) Commission Based Players' Gaming Revenue (SDV) and gross betting revenue (FIDV) had been earned at the average daily rate calculated for the six months period immediately prior to the commencement of that period. (SDV)

## 17. Liquidated damages

~~17.1 Subject only to clause 16.3, if the Company fails to Complete and open for business-~~

~~(a) the Temporary Casino by the Completion Date; or~~

~~(b) the Melbourne Casino by the Completion Date,~~

~~the State's Nominated Representative may give notice in writing to the Company that this clause 17 is to apply.~~

17.1 Subject only to clause 16.3, if the Company fails to Complete and open for business:

(a) the Temporary Casino by the Completion Date;

(b) the Melbourne Casino by the Completion Date; or

(c) the Melbourne Casino Complex (FDV) (excluding (SDV) (SVDV) the Southern Tower of the Hotel) (SDV) by the Completion Date (SDV); and (TDV)

(d) (SVDV) the Southern Tower of the Hotel by the Completion Date. (TDV)

the State's Nominated Representative may give notice in writing to the Company that this clause 17 is to apply. (FDV)

~~17.2 If a notice is given under clause 17.1 the Company must pay to the State liquidated damages-~~

~~(a) in the event that the Temporary Casino is not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3), at the rate of \$50 000 for each day from that date to the date the Temporary Casino is Completed and open for business; and~~

30.

- (b) ~~in the event that the Melbourne Casino is not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3), at the rate of \$50,000 for each day from that date to the date the Melbourne Casino is Completed and open for business.~~

17.2 If a notice is given under clause 17.1, the Company must pay to the State liquidated damages:

- (a) in the event that the Temporary Casino is not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3), at the rate of \$50,000 for each day from that date to the date the Temporary Casino is Completed and open for business;
- (b) subject to paragraph (c), in the event that the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) is not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3), at the rate of \$50,000 for each day from that date to the date that the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) is Completed and open for business; ~~or~~
- (c) in the event that the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) is not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3) but the Melbourne Casino is completed and open for business, at the rate of \$5,500 for each day from the date that is the later of the date that the Melbourne Casino is Completed and open for business and the Completion Date for the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) (as varied by any Force Majeure Event pursuant to clause 16.3) until the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) is Completed and open for business(SDV) ~~;~~ or(TDV)
- (d) in the event that (SVDV) the Southern Tower of the Hotel is (SVDV) not Completed and open for business by the Completion Date (as varied by any Force Majeure Event pursuant to clause 16.3), at the rate of \$50,000 for each day from that date to the date that (SVDV) the Southern Tower of the Hotel is (SVDV) Complete and open for business.(TDV)

17.3 The parties agree that the liquidated damages calculated and provided for in clause 17.2-

- (a) constitute a genuine pre-estimate of the loss or damage anticipated to be actually suffered by the State if the Company breaches its obligations to Complete and open for business the Temporary Casino or the Melbourne Casino or the Melbourne Casino Complex(FDV) (excluding(SDV) (SVDV) the Southern Tower of the Hotel)(SDV) or (SVDV) the Southern Tower of the Hotel(TDV) by the respective Completion Dates;

31.

- (b) are intended to avoid the cost and difficulty of proof of damages in the event of that breach;
- (c) are reasonable and not intended to be a penalty; and
- (d) subject to clause 25.5, are the only damages payable by the Company for late Completion.

17.4 If all payments due under clause 17.2 are made, then notwithstanding clause 25.2(a), the Authority shall not be entitled to serve a notice pursuant to section 20(2) of the Casino Control Act by reason of the Company failing to comply with clause 10.1 if-

- (a) completion of the Melbourne Casino Complex (SDV) has occurred within a period of 12 months commencing on the Completion Date;
- (b) the Authority is not entitled to do so under the Master Security Agreement; or
- (c) the failure to comply with clause 10.1 was caused by an Extension Event subject to compliance with such other obligations as arise under clause 16.

## 18. **Bank Guarantee**

18.1 In order to secure the obligations of the Company under clause 17.2 of this document to pay liquidated damages, the Company must on or before the Licensing Date provide to the State an unconditional guarantee or letter of credit issued by a bank or banks acceptable to the State's Nominated Representative and in such form approved by the State's Nominated Representative to pay to the State on demand up to \$25 000 000.

18.2 Unless demand under the Bank Guarantee has been previously made and has not been satisfied, the Bank Guarantee will be returned to the Company 18 months after the Melbourne Casino Complex has been Completed.

## 19. **Off-Site Works**

19.1 The Company must, at the cost of the Company, construct and complete or procure the construction and completion of the off-site works specified in the Melbourne Casino Complex Development Proposals, the Temporary Casino Complex Development Proposals and Schedule Five ('Off-Site Works') in accordance with the terms of this clause 19 and the reasonable requirements of the State.

19.2 The Company must prepare all plans, specifications and computations necessary for the obtaining of all relevant approvals.

19.3 Subject to clause 19.8, the State will issue or procure the issue of all approvals within its power in order that the Off-Site Works may be completed.

19.4 Subject to clauses 19.5 to 19.7 (inclusive), the Company must construct, complete and maintain the Off-Site Works such that-

32.

- (a) subject to paragraph (c), in the case of those Off-Site Works which relate to the Temporary Casino Complex or the Temporary Casino, the Off-Site Works are constructed promptly and their construction completed so as to coincide with the Completion and opening for business of the Temporary Casino;
  - (b) subject to paragraph (c), in the case of those Off-Site Works which relate to the Melbourne Casino Complex or the Melbourne Casino, the Off-Site Works are constructed promptly and their construction completed so as to coincide with the Completion and opening for business of the Melbourne Casino;
  - (c) each item of Off-Site Works is to be constructed and completed by a date that the State may reasonably direct having regard to-
    - (i) the nature of that item of Off-Site Works;
    - (ii) the impact the completion of that item of Off-Site Works will have on the amenity of the area where that item of Off-Site Works will be located; and
    - (iii) the desirability of having that item of Off-Site Works completed having regard to the community's need for it; and
  - (d) the Off-Site Works are to be constructed, completed and maintained by the Company in compliance with the Control Acts and the Planning Amendments using all materials, fittings, equipment and workmanship that-
    - (i) are of a similar standard to those used in constructing the Melbourne Casino Complex;
    - (ii) are of a standard specified in Schedule Five, the Melbourne Casino Complex Development Proposals and the Temporary Casino Complex Development Proposals; and
    - (iii) comply with the provisions of the Control Acts and the Building Code of Australia relevant to the materials, fittings, equipment or workmanship.
- 19.5 The State may give a notice to the Company by 31 March 1994 excluding the Queensbridge Square Access Tunnel identified as part of the Off-Site Works described in Schedule Five ('Tunnel') from the obligations referred to in clauses 19.1 to 19.4 and the Company shall not and will not be obliged to construct or complete the Tunnel.
- 19.6 In consideration of the State excluding the Tunnel from the obligations referred to in clauses 19.1 to 19.4, the Company shall pay to the State the amount identified in item 6 of the Off-Site Works applicable to the Tunnel within 30 days from the date of the notice given by the State pursuant to clause 19.5.

19.7 The State may give a notice to the Company by 31 March 1994 excluding the Modification to North River Bank identified as part of the Off-Site Works described in Schedule Five ('North River Bank Modifications') from the obligations referred to in clauses 19.1 to 19.4 and the Company shall not and will not be obliged to construct, complete or maintain the North River Bank Modifications and the State shall not be entitled to any payment in lieu of the exclusion of the North River Bank Modifications.

## 20. Use of Melbourne Casino Complex following completion

20.1 Following Completion of the Melbourne Casino Complex, the Company must use all reasonable endeavours and have the firm objective at all times to-

- (a) do all things necessary or desirable to ensure that all parts of the Melbourne Casino Complex are fully let and are kept let in accordance with the Melbourne Casino Complex Development Proposals and the relevant Planning Amendments;
- (b) ensure that there is at all times a variety of retail businesses operating from or in the Melbourne Casino Complex of a type and nature necessary to attract customers and tourists to the Melbourne Casino Complex consistent with the use of the Melbourne Casino Complex as a high quality, international class casino complex; and
- (c) ensure that each business in the Melbourne Casino Complex is kept open for business and carried on in a manner compatible with and complementary to the use of the Melbourne Casino Complex as a high quality, international class casino complex.

20.2 Following Completion of the Melbourne Casino Complex, the Company must at all times-

- (a) advertise and promote the Melbourne Casino Complex so as to endeavour to ensure that the Melbourne Casino Complex is fully and regularly patronised; and
- (b) properly and diligently manage the Melbourne Casino Complex in accordance with good, modern and proven management methods and practices and with due skill, expertise, diligence and vigour, using good and sufficient materials and services and in strict accordance and compliance with all applicable laws, regulations and requirements.

~~20.3 For a period of five years from 30 June 1995 the Company:~~

- ~~(a) agrees that it will commit to a major marketing programme at national and international level, to be co-ordinated with Tourism Victoria and the Melbourne Tourism Authority. The programme will incorporate strategies to address the marketing of exhibitions, conventions and incentive travel, recognising the role of Melbourne Tourism Authority in managing the promotion to these market segments. The programme is to be reviewed annually in advance with the first review to be completed by 30 June 1995;~~

34.

~~(b) will participate in, and contribute to, the operation of the Melbourne Tourism Authority; and~~

~~(c) will support the efforts of the State and its representatives to attract hallmark events to Victoria. (FDV)~~

20.3 To facilitate the marketing of Victoria in the general tourism and convention markets, the Company agrees to pay to Tourism Victoria, \$5,000,000 by 5 annual payments of \$1,000,000, the first payment being due on the later of 1 November 1995 and the date on which this clause comes into operation, and each subsequent payment being due on 1 July in each year. The State will use its best endeavours to procure that a body will be formed for convention marketing on an outsource basis from Tourism Victoria, and that the Company may appoint a director to this body. The State will also procure that Tourism Victoria consults with the Company to periodically review the marketing activities of both bodies, but Tourism Victoria will not be obliged to act on any proposals or recommendations of the Company. (SDV)

#### **PART 4 - PAYMENTS TO THE STATE**

##### **21. Payments on the Licensing Date**

21.1 In consideration of the agreement of the Authority to grant to the Company the Casino Licence and of the other assurances from the State and the Authority contained in this document and the Casino Agreement, the Company shall pay on the Licensing Date-

- (a) the Premium Payment; and
- (b) a further amount of \$190,000,000.

21.2 The Licensing Payment Amounts must be paid in same day settlement funds before 2.00 p.m. on the Licensing Date.

21.3 If the Company fails to pay the Licensing Payment Amounts on the Licensing Date, without prejudice to any other right or remedy arising because of that failure, the Company must pay to the State interest (calculated daily) on the amount in default (including accrued interest) at the Default Rate for the period from the Licensing Date until the Licensing Payment Amounts and all interest payable have been paid.

##### **21A. Further payments (10thDV)**

The Company will make the following payments to the State:

- (a) \$250,000,000, payable within seven (7) days after the Tenth Variation Commencement Date; and
- (b) \$250,000,000, payable on 1 July 2033.

##### **21B. Contingent Payments (10thDV)**

35.

- (a) In addition to the payments referred to in clause 21A, the Company will pay to the State the following additional amounts on 1 September 2022:
- (i) if the Compound Annual Growth Rate of Normalised Gaming Revenue from the Financial Year ending 30 June 2014 to the Financial Year ending 30 June 2022 exceeds 4.0%, then the Company will pay to the State an amount of \$100,000,000; and
  - (ii) if the Compound Annual Growth Rate of Normalised Gaming Revenue from the Financial Year ending 30 June 2014 to the Financial Year ending 30 June 2022 exceeds 4.7%, then the Company will pay to the State, in addition to the payment referred to in sub-paragraph (a)(i), a further amount of \$100,000,000.
- (b) In this clause 21B:
- (i) “**Compound Annual Growth Rate**” is calculated as follows (and expressed as a percentage):  
  

$$\frac{\text{Ending Value} - \text{Beginning Value}}{\text{Beginning Value}} \times 100\%$$
Where:  
  
Ending Value is the Normalised Gaming Revenue for the Financial Year ending 30 June 2022; and  
  
Beginning Value is the Normalised Gaming Revenue for the Financial Year ending 30 June 2014;
  - (ii) “**Normalised Gaming Revenue**” means Gross Gaming Revenue, plus Normalised Revenue from the Commission Based Play; and
  - (iii) “**Normalised Revenue from the Commission Based Play**” means the total turnover from the Commission Based Players, multiplied by 1.35%.
- (c) The State may request details from the Company of the total turnover from the Commission Based Players at any time (but no more frequently than twice in any one year). The Company must provide such details promptly following the request.

## 21C. Interest (10thDV)

21C.1 The amounts referred to in clauses 21A and 21B must be paid in same day settlement funds before 2.00pm on the due date.

21C.2 If the Company fails to pay any amount due under clause 21A or clause 21B by the due date, without prejudice to any other right or remedy arising because of that failure, the Company must pay to the State interest (calculated daily) on the amount in default (including accrued interest) at the Default Rate for the period from the due date until the amount due and all interest payable has been paid.

## 22. Amount of fees and taxes

22.1 While the Casino Licence remains in force, the Company must pay-

- (a) to the State, for each Financial Year or part thereof until 30 June 1997, the Casino Supervision and Control Charge, the first payment being due and payable on the Licensing Date in respect of the period until 30 June 1994 and thereafter the Casino Supervision and Control Charge will be paid annually in advance, commencing on 1 July 1994;
- (b) to the State, in respect of each month in which gaming is conducted in the Temporary Casino or the Melbourne Casino, casino tax in an amount equal to-
  - (i) for the period until 30 June 1997, 20% of the Gross Gaming Revenue for the month in question; and
  - (ii) on and from 1 July 1997 until the day before the Ninth Variation Commencement Date, 21.25% (NDV) of the Gross Gaming Revenue for the month in question; and
  - (iii) on and from the Ninth Variation Commencement Date –
    - (A) 21.25% of the Gross Gaming Revenue attributable to the operation of Table Games; plus
    - (B) 22.97% of the Gross Gaming Revenue attributable to the operation of gaming machines (NDV)

payable in each case within 7 days following the end of each month, the first payment to be made in relation to the month in which the Temporary Casino is Completed;
- (c) to the State, in respect of each month beginning on 1 July 1994 and ending on 30 June 1996 additional casino tax in an amount of \$2 400 000 payable within 7 days of the end of each month;
- (d) to the State, in respect of each month in which gaming is conducted in the Temporary Casino or the Melbourne Casino, a community benefit levy in an amount equal to 1% of the Gross Gaming Revenue for the month in question, on the same dates as payments are made to the State pursuant to paragraph (b); and (NDV)
- (e) any other fees and payments payable under the Casino Control Act; and
- (f) the casino tax payable under sub-paragraph 22.1 (iii) (B) will be increased by 1.72% on 1 July 2010 and each anniversary of 1 July 2010, the final such increase to occur on and from 1 July 2014. (NDV)

22.2 In addition to the casino tax payable under clause 22.1(b), while the Casino Licence remains in force the Company must pay to the State in respect of each

37.

Financial Year in which Gross Gaming Revenue exceeds the Base Amount, additional casino tax calculated in accordance with clause 22.3.

22.3 In this clause 22 "Base Amount" means, subject to clause 22.6-

- (a) to 30 June 1994, \$500,000,000; and
- (b) Subject to sub-clause 22.3(c) (NDV) on 1 July 1994 and each anniversary of that date ('Review Date') the amount determined at any time after that review date in accordance with the following formula-

$$R = \{ EQ \lfloor (A, B \times C) \quad \}$$

where-

R is the Base Amount in respect of the year commencing on the relevant Review Date;

A is the Consumer Price Index (All Groups for Melbourne) published from time to time in the Australian Statistician's Summary of Australian Statistics ('CPI Index') published for the day immediately preceding the relevant Review Date;

B is the CPI Index for the day one year and one day prior to the relevant Review Date; and

C is the Base Amount (as amended from time to time in accordance with this clause) for the year immediately preceding the relevant Review Date; and

- (c) on and from 1 July 2009, the Base Amount "R" will be calculated pursuant to the formula in clause 22.3(b) and will also be increased and adjusted as follows:

<u>Review Date</u>	<u>Increase/Addition to Base Amount "R"</u>
<u>1 July 2009</u>	<u>\$5,000,000</u>
<u>1 July 2010</u>	<u>\$5,000,000</u>
<u>1 July 2011</u>	<u>\$30,000,000</u>
<u>1 July 2012</u>	<u>\$30,000,000</u>
<u>1 July 2013</u>	<u>\$5,000,000</u>

for the avoidance of doubt, on 1 July 2014 and on each anniversary thereafter the Base Amount will continue to be calculated in accordance with the formula in clause 22.3(b). (NDV)

22.4 The amount of the additional casino tax payable under clause 22.2 shall be calculated in accordance with the following table:-

**Amount of EGGR (\$)**

**Amount of additional casino tax (\$)**

## 38.

Nil - 19 999 999	Nil+ 1% of the Excess
20 000 000 - 39 999 999	200 000+ 2% of the Excess
40 000 000 - 59 999 999	600 000+ 3% of the Excess
60 000 000 - 79 999 999	1 200 000+ 4% of the Excess
80 000 000 - 99 999 999	2 000 000+ 5% of the Excess
100 000 000 - 119 999 999	3 000 000+ 6% of the Excess
120 000 000 - 139 999 999	4 200 000+ 7% of the Excess
140 000 000 - 159 999 999	5 600 000+ 8% of the Excess
160 000 000 - 179 999 999	7 200 000+ 9% of the Excess
180 000 000 - 199 999 999	9 000 000+ 10% of the Excess
200 000 000 - 219 999 999	11 000 000+ 11% of the Excess
220 000 000 - 239 999 999	13 200 000+ 12% of the Excess
240 000 000 - 259 999 999	15 600 000+ 13% of the Excess
260 000 000 - 279 999 999	18 200 000+ 14% of the Excess
280 000 000 - 299 999 999	21 000 000+ 15% of the Excess
300 000 000 - 319 999 999	24 000 000+ 16% of the Excess
320 000 000 - 339 999 999	27 200 000+ 17% of the Excess
340 000 000 - 359 999 999	30 600 000+ 18% of the Excess
360 000 000 - 379 999 999	34 200 000+ 19% of the Excess
380 000 000 or more	38 000 000+ 20% of the Excess

where-

"EGGR" is the amount by which Gross Gaming Revenue in a Financial Year exceeds the Base Amount for that Financial Year; and

"Excess" means in respect of any row in the above table, the amount by which EGGR exceeds the number first appearing in the first column of that row.

- 22.5 The casino tax calculated under clause 22.4 and payable under clause 22.2 must be paid to the State within 7 days following the end of each Financial Year.
- 22.6 If the Australian Statistician updates the reference base for the CPI Index an appropriate adjustment shall be made to the definition of 'Base Amount' in clause 22.3 to preserve the intended continuity of calculation by using an alternative appropriate factor determined by the Statistician in lieu of 'A/B' in the definition of 'Base Amount'.
- 22.7 If the CPI Index referred to in the definition is discontinued, suspended or otherwise altered to such an extent that an adjustment under clause 22.6 cannot in the reasonable opinion of the State be made, the Base Amount shall be determined by substituting for 'A/B' in the definition of 'Base Amount' such other comparable index as the State may reasonably require.
- 22.8 The Casino Supervision and Control Charge will not be levied on the Company after 1 July 1997.
- 22.9 To secure to the State the payment of the additional casino tax pursuant to clause 22.1(c), the Company must on or before the Licensing Date provide to the State an unconditional letter of credit issued by a bank or banks acceptable to the State's Nominated Representative and in such form approved by the State's

Nominated Representative to pay to the State an amount not less than \$57 600 000 provided that the amount required to be secured to the State by the letter of credit from time to time shall be reduced by an amount equal to each amount of exclusivity casino tax paid under this document.

## 22.10

- (a) Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product must be separately accounted for by the Company and verified by the Authority.
- (b) If casino tax paid to the State in accordance with clauses 22.1(b)(iii), 22.1(f) and 22A.1 in respect of Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product in any Financial Year during the Guarantee Period is less than \$35,000,000, the Company must pay to the State within 60 days following the end of that Financial Year, as additional casino tax, an amount equal to \$35,000,000 less the casino tax paid in respect of Gross Gaming Revenue and Commission Based Players' Gaming Revenue from New Gaming Product for that Financial Year.
- (c) New Gaming Product will be deployed through the Guarantee Period at the Melbourne Casino on the following basis:
  - (i) no less than 80 per cent of the new gaming machines will be placed in Non-VIP areas and no less than 75 per cent of those new gaming machines placed in Non-VIP areas will be operated in Restricted Mode only;
  - (ii) no less than 75 per cent of the new Gaming Tables will be placed in Non-VIP areas and all of the remaining new Gaming Tables will be placed in Non-smoking areas with the VIP areas; and
  - (iii) 100 per cent of the additional stations connected to Fully Automated Table Games will be placed in Non-VIP areas. (TDV)

In this clause 22.10:

"Fully Automated Table Game" has the same meaning as in the Casino Licence;

'Gaming Table' has the same meaning as in the Casino Licence;

"Guarantee Period" means the period from 1 July 2015 to 30 June 2021;

"New Gaming Product" means the new gaming products permitted to be installed as a consequence of the amendments to the Casino Licence referred to in clause 2.2(b) of the Tenth Deed of Variation and does not include any gaming product installed at the Melbourne Casino as at the Tenth Variation Commencement Date;

"Non-smoking areas" means all areas of the Melbourne Casino except those areas declared pursuant to section 3E of the *Tobacco Act 1987* as smoking areas;

"Non-VIP areas" means all areas of the Melbourne Casino except VIP areas;

"Restricted Mode" means the usual mode of operation of a gaming machine that is not operating in Unrestricted Mode;

"Semi Automated Table Game" has the same meaning as in the Casino Licence;

"Unrestricted Mode" means the mode of operation of a gaming machine operated at the Melbourne Casino within "Specified Areas" pursuant to the notice issued by the Authority dated 17 August 2012 and permitted pursuant to Ministerial Directions dated 17 August 2012 issued under section 3.2.3 (1) of the Gambling Regulation Act 2003;

"VIP areas" means those areas in the Melbourne Casino reserved for the use of Commission Based Players and certain designated members of the Company's complex wide loyalty program and guests and comprising as at the Tenth Variation Commencement Date those areas known as "Teak Room", "Mahogany Room", "Riverside Slots" and the private salons on levels 29 and 39 of "Crown Towers". (10thDV)

## 22A. Tax on Commission Based Players' Gaming Revenue

22A.1 In addition to any fees or taxes payable by the Company under clause 22 or otherwise, while the Casino Licence remains in force, the Company must pay to the State, in respect of each month in which gaming is conducted in the Temporary Casino or the Melbourne Casino, as the case may be:

- (a) casino tax in an amount equal to 9% of the Commission Based Players' Gaming Revenue for the month in question, such tax being payable within 7 days following the end of each month, the first payment to be made in relation to the month commencing 1 January 1996 ; and
- (b) a community benefit levy in an amount equal to 1% of the Commission Based Players' Gaming Revenue for the month in question, on the same dates as payments are made to the State under paragraph (a); but
- (c) if in any month the Commission Based Players' Gaming Revenue is less than zero, the amount of the negative Commission Based Players' Gaming Revenue may be carried forward to the following month and applied to reduce the Commission Based Players' Gaming Revenue in that month.

22A.2 If the casino tax paid by the Company to the State under clause 22A.1(a) and the community benefit levy paid under clause 22A.1(b) in respect of the year commencing on 1 January 1996 or the 6 month period commencing on 1 January 1997 is less than \$5,000,000, the Company must pay to the State within 7 days following the end of that year or 6 month period (as the case may be), as additional casino tax, an amount equal to \$5,000,000 less the casino tax paid under clause 22A.1(a) and the community benefit levy paid under clause 22A.1(b) in respect of that year or 6 month period (as the case may be).

41.

22A.3 If the casino tax paid by the Company to the State under clause 22A.1(a) and the community benefit levy paid under clause 22A.1(b) in respect of any Financial Year commencing on or after 1 July 1997 is less than \$10,000,000, the Company must pay to the State within 7 days following the end of that Financial Year, as additional casino tax, an amount equal to \$10,000,000 less the casino tax paid under clause 22A.1(a) and the community benefit levy paid under clause 22A.1(b) in respect of that Financial Year.

22A.4 In addition to the casino tax and community benefit levy payable under clause 22A.1, while the Casino Licence remains in force the Company must pay to the State in respect of each Financial Year in which Commission Based Players' Gaming Revenue exceeds the CBP Base Amount, additional casino tax calculated in accordance with clause 22A.6. (10th DV)

22A.5 In this clause 22A "CBP Base Amount" means, subject to clause 22A.8:

(a) to 30 June 1994, \$160,000,000; and

(b) on 1 July 1994 and each anniversary of that date ("Review Date"), the amount determined at any time after that Review Date in accordance with the following formula:

$$R = A/B \times C$$

where:

R is the CBP Base Amount in respect of the year commencing on the relevant Review Date;

A is the Consumer Price Index (All Groups for Melbourne) published from time to time in the Australian Statistician's Summary of Australian Statistics ("CPI Index") published for the day immediately preceding the relevant Review Date;

B is the CPI Index for the day one year and one day prior to the relevant Review Date; and

C is the CBP Base Amount (as amended from time to time in accordance with this clause) for the year immediately preceding the relevant Review Date. (10th DV)

22A.6 The amount of the additional casino tax payable under clause 22A.4 shall be calculated in accordance with the following table:

<u>Amount of ECBPR</u>	<u>Amount of additional casino tax</u>
<u>\$</u>	<u>\$</u>
<u>Nil - 19,999,999</u>	<u>Nil + 1% of the Excess</u>
<u>20,000,000 - 39,999,999</u>	<u>200,000 + 2% of the Excess</u>
<u>40,000,000 - 59,999,999</u>	<u>600,000 + 3% of the Excess</u>

42.

<u>60,000,000 - 79,999,999</u>	<u>1,200,000 + 4% of the Excess</u>
<u>80,000,000 - 99,999,999</u>	<u>2,000,000 + 5% of the Excess</u>
<u>100,000,000 - 119,999,999</u>	<u>3,000,000 + 6% of the Excess</u>
<u>120,000,000 - 139,999,999</u>	<u>4,200,000 + 7% of the Excess</u>
<u>140,000,000 - 159,999,999</u>	<u>5,600,000 + 8% of the Excess</u>
<u>160,000,000 - 179,999,999</u>	<u>7,200,000 + 9% of the Excess</u>
<u>180,000,000 - 199,999,999</u>	<u>9,000,000 + 10% of the Excess</u>
<u>200,000,000 - 219,999,999</u>	<u>11,000,000 + 11% of the Excess</u>
<u>220,000,000 or more</u>	<u>13,200,000 + 12.25% of the Excess</u>

where:

"ECBPR" is the amount by which Commission Based Players' Gaming Revenue in a Financial Year exceeds the CBP Base Amount for that Financial Year; and

"Excess" means in respect of any row in the above table, the amount by which ECBPR exceeds the number first appearing in the first column of that row. (10thDV)

22A.7 The casino tax calculated under clause 22A.6 and payable under clause 22A.4 must be paid to the State within 7 days following the end of each Financial Year. (10thDV)

22A.8 If the Australian Statistician updates the reference base for the CPI Index an appropriate adjustment shall be made to the definition of "CBP Base Amount" in clause 22A.5 to preserve the intended continuity of calculation by using an alternative appropriate factor determined by the Statistician in lieu of "A/B" in the definition of "CBP Base Amount". (10thDV)

22A.9 If the CPI Index referred to in the definition is discontinued, suspended or otherwise altered to such an extent that an adjustment under clause 22A.8 cannot in the reasonable opinion of the State be made, the Base Amount shall be determined by substituting for "A/B" in the definition of "CBP Base Amount" such other comparable index as the State may reasonably require. (10thDV)

22A.10 The casino tax payable by the Company under this clause 22A shall be reviewed by the State in consultation with the Company prior to the date which is 5 years after the opening of the Melbourne Casino. The review shall have regard to factors such as the Company's profits from commission based players, its investment in the market place and its capacity to effectively compete in the international and interstate commission based gaming markets. The casino tax payable by the Company under this clause 22A may then be varied by Act of Parliament, with effect from a date after the 5 year period referred to above, taking into account (among other things), the findings of this review, but any such variation shall be at the discretion of the State. (SDV)

22A.11 The casino tax payable by the Company under this clause 22A will be reviewed by the State, if requested by the Company at any time prior to the expiry of 5

years after the opening of the Melbourne Casino on the grounds that the rates of tax substantially impede the Company from competing effectively in the international or interstate commission based gaming markets, and may following such review be varied by Act of Parliament at the discretion of the State.(SDV)

22B. In addition to any fees or taxes payable by the Company under clauses 22 or 22A or otherwise, the Company agrees to pay to the State as additional tax in respect of each month during the period commencing 1 January 1996 and ending 31 December 1998 a guaranteed minimum base tax of \$2,800,000 per month, each payment being due on the first day of each month, with the first payment being due on 1 January 1996.(SDV)

**22C "GST Offset and Intergovernmental Agreement with the Commonwealth"**

22C.1 The Intergovernmental Agreement requires the State to adjust its gambling tax arrangements to take account of the GST on gambling operations.

22C.2 The total amount of casino tax as described in and calculated under clauses 22 and 22A shall be reduced by the State Tax Credit calculated with respect to gambling supplies to which those clauses apply. The State Tax Credit will be allowed as a reduction in the total amount of casino tax payable under clauses 22 and 22A when calculated on the seventh day after the end of the relevant month.

22C.3 Where no casino tax is payable with respect to the relevant month due to Gaming Revenue being less than zero, the State Tax Credit will be calculated with respect to the following month to which the negative Gaming Revenue is carried forward and applied. When the Casino tax is less than the State Tax credit in any month, the State Tax Credit remaining after applying it to the casino tax in that month, shall be carried forward to the following month.

22C.4 When submitting documentation to the Authority for calculation of the casino tax payable under clauses 22 and 22A, the Company must provide to the Authority preliminary documentation and calculations supporting its claim for a State Tax Credit in a form similar to the document set out in Schedule Six (the "Schedule Six Return").

22C.5 The Company must provide to the State, within 48 hours of lodgement, a copy of its GST return as lodged under Division 31 of the GST Act, together with a statutory declaration as to the accuracy and authenticity of that document. The State Tax Credit will be varied in the following month by the amount of any difference between the amount allowed by the State as a State Tax Credit in a particular month when compared with the actual Global GST Amount declared by the Company to the Commissioner for that month for gambling supplies to which clauses 22 and 22A apply. Any adjustment made by the Commissioner to the Global GST Amount subsequent to the declaration by the Company shall be reflected as a corresponding adjustment in the following monthly State Tax Credit and the Company must include details of such adjustments in the monthly Schedule Six Return.

22C.6 The Company consents to the Authority inspecting such records of the Company that relate to the Global GST Amount used to calculate the State Tax Credits

44.

allowed or to be allowed and will provide to the authorised representatives of the Authority (or the Auditor-General) all reasonable access to records and documents of the Company that relate to the calculation of the relevant Global GST Amount.

22C.7 For the purposes of clauses 22C.1 to 22C.6

"Casino tax" includes any additional casino tax payable under clauses 22 and 22A;

"Commissioner" means the Commissioner of Taxation for the Commonwealth of Australia; and

"Gaming Revenue" means total amount of Gross Gaming Revenue and Commission Based Player Revenue. (DV6)

22D (DV6). If the Company fails to make any payment required under clauses 22, 22A or 22B on the due date, without prejudice to any other right or remedy arising because of that failure, the Company must pay to the State interest (calculated daily) on the amount in default (including accrued interest) at the Default Rate for the period from the due date until payment is made (including all interest due under this clause).(SDV)

## PART 5 - EXCLUSIVITY

### 23. Exclusivity period and area

23.1 The Minister approves of the undertaking given by the Authority to the Company under clause 26.2 of the Casino Agreement.

23.2 Subject to clauses 23.3 and 24 and to the rights conferred on the Company under the Casino Agreement and the Casino Licence, while the Casino Licence remains in force the conduct or playing of any game approved by the Authority under section 60 of the Casino Control Act or the use of any premises for the conduct and playing of any such game shall not be permitted by the State-

- (a) within the State prior to 6 years from the Licensing Date; and
- (b) for those parts of the State within a radius of 150 kilometres from the Site, prior to 12 years from the Licensing Date.

23.3 If clause 26.3 of the Casino Agreement applies, the exclusivity periods referred to in clause 23.2 shall be extended to the same dates that the exclusivity periods in clause 26.2 of the Casino Agreement are extended under clauses 26.3 and 26.4 of the Casino Agreement (if any).

### 24. Existing games

24.1 Nothing in this document shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatever-

45.

- (a) the playing on any gaming machines (in accordance with the provisions of the ~~Gaming Machine Control Act 1994~~ *Gambling Regulation Act 2003* (10thDV) (Victoria)) of-
- (i) any game not referred to in clause 27.1 of the Casino Agreement;
  - (ii) any machine derivative of any game not referred to in clause 27.1 of the Casino Agreement; or
  - (iii) any machine derivative of any game referred to in clause 27.1 of the Casino Agreement which is played on a gaming machine at the date of this document;
- (b) any lottery, bingo or other game approved or permitted under the Lotteries Gaming and Betting Act 1966 (Victoria);
- (c) any sweepstake, lottery or other game approved or permitted under the Tattersall Consultations Act 1958 (Victoria);
- (d) the conduct of the game of club keno in accordance with the Club Keno Act 1993 (Victoria); or
- (e) any other game which may legally be played or conducted in the State of Victoria as at the date of this document.

24.2 Notwithstanding clause 24.1, the State shall restrict the playing of gaming machines within the following limits-

- (a) during the period prior to the date 12 years from the Licensing Date, the maximum number of gaming machines permitted to be used at any approved venue located within a radius of 100 kilometres from the Site shall be 105; and
- (b) the total number of gaming machines permitted to be used in the State during the period prior to the date 12 years from the Licensing Date shall not exceed 45 000.

#### **PART 5A – REGULATORY CERTAINTY (10thDV)**

24A.1 In this clause 24A and Annexure 1 the following terms have the meanings indicated:

**“Expert”** means a partner or director of an independent, internationally recognised chartered accounting firm or investment bank (or other professional organisation agreed by the parties) which is not the then current auditor of the Company or the Authority or (unless otherwise agreed) has not been during the past twelve month period an adviser to Crown, the Authority, the Department of Treasury and Finance or the Department of Justice (in relation to gambling matters) and who has experience of the gaming industry;

**“Senior Management Representative”** means:

46.

- (a) in the case of the State, the representative from time to time nominated by the Minister of the Crown for the time being administering the Casino Control Act; and
- (b) in the case of the Company, the Chief Executive Officer of the Company, or if that position does not exist, a position of equivalent seniority or higher; "Trigger Event" has the meaning given in section 1 of Annexure 1. (10thDV)

24A.2

- (a) The State or the Authority must not without the Company's prior written consent, take any action or series of actions that has or will have the effect of:
  - (i) cancelling or varying the Casino Licence, other than the revocation, termination, suspension or variation by the Authority of the Casino Licence in accordance with section 20 of the Casino Control Act (except where the Authority is relying on section 20(1)(e) of the Casino Control Act as a ground for disciplinary action);
  - (ii) increasing the then current rates of casino tax (or any part of it) such that the increased rate exceeds the rate of that casino tax (or part of it) set out in this Agreement as at the date of the Tenth Deed of Variation or such higher rate as may be agreed by the parties from time to time;
  - (iii) imposing any new tax or increasing any tax (including levies or similarly described payments) on the Company, except where such new or increased tax:
    - (A) applies generally to Victorian businesses or property owners or occupiers;
    - (B) applies generally to businesses or property owners or occupiers in the Melbourne CBD or a similar geographic location (but is not specifically directed at the Company or the Melbourne Casino Complex); or
    - (C) applies generally to businesses in the hospitality industry (including non-gaming businesses).
- (b) The State acknowledges that the Company will suffer loss and damage in the event of breach of paragraph (a) and the State and the Company acknowledge that the ordinary principles for breach of contract apply. (10thDV)

24A.3 The State and the Company agree that certain other actions or series of actions by the State or the Authority may give rise to compensation being payable by the State to the Company. (10thDV)

24A.4 The actions or series of actions by the State and/or the Authority referred to in clause 24A.3 and the principles and process for determining the amount of compensation payable (if any) are set out in Annexure 1. (10thDV)

47.

24A.5 If any variation of the Casino Licence constitutes a Trigger Event, the Company will not be entitled to bring or maintain a claim for breach of clause 24A.2 in respect of that variation. (10thDV)

#### 24A.6

- (a) For the avoidance of doubt, for the purposes of this clause 24A and Annexure 1, the State does not include the Commonwealth, local government or any Commonwealth or local government authority or body.
- (b) For the avoidance of doubt, no damages for breach of clause 24A.2 or compensation under clause 24A.3 and Annexure 1 will be due or payable by the State or the Authority with respect to:
  - (i) the granting of one or more casino licences or similar authorities to any person or persons other than the Company or the granting of licences or authorities permitting the operation or playing of gaming product to any person or persons other than the Company; or
  - (ii) action or actions necessary to put in place the Victorian government's current state-wide voluntary pre-commitment system, including the prohibition of any alternative limit setting system (which, for the avoidance of doubt, includes the Company's existing loss and time limit setting system known as "Play Safe") from 1 December 2015. (10thDV)

## **PART 6 - TERMINATION**

### **25. Termination of this document**

25.1 This document will automatically terminate-

- (a) without notice to the Company, if the Casino Licence is-
  - (i) surrendered; or
  - (ii) cancelled; or
- (b) when the Casino Licence expires due to the effluxion of time.

Such termination, however, does not affect the ability of either party to enforce a right which may have accrued to it under this document prior to such termination.

25.2 Subject to the Master Security Agreement, it shall be a contravention of a condition of the Casino Licence enabling the Authority to serve a notice on the Company pursuant to section 20(2) of the Casino Control Act if any of the following events occurs-

- (a) the Company commits a breach of any provision of this document and the State has given a notice ('Notice') to the Company detailing the particulars of the breach unless-

48.

- (i) if the breach is capable of remedy-
  - (A) it is remedied within the cure period allowed in the Notice (which shall not be less than 60 days) to the reasonable satisfaction of the State; or
  - (B) the Company-
    - (i) is diligently pursuing a course of action which could reasonably be expected to remedy the breach in a period of time reasonably acceptable to the State; and
    - (ii) is making satisfactory progress with such course of action; or
- (ii) if the breach to which the Notice refers is not capable of remedy-
  - (A) the Company is complying to the reasonable satisfaction of the State with any reasonable requirements of the State in relation to the breach or is attending to the reasonable redress of the prejudice arising from the breach, default or event in the manner specified in the Notice; or
  - (B) the payment of damages constitutes in the reasonable opinion of the State proper redress and the required amount of damages is paid within 15 Business Days of the date for payment as specified in the Notice;
- (b) any of the following occurs and the Company does not within 10 Business Days of the occurrence of the event establish to the reasonable satisfaction of the State that despite the occurrence of the event the Company will be able to perform its obligations under the Transaction Documents-
  - (i) a provisional liquidator or administrator is appointed to the Company;
  - (ii) a Receiver is appointed to any of the Casino Assets;
  - (iii) any Encumbrance becomes enforceable and the holder of the Encumbrance takes possession of any of the Casino Assets;
  - (iv) a judgment is obtained against the Company and execution or other process of any Court or other authority is issued against or is levied or enforced upon any of the Casino Assets;
- (c) a liquidator is appointed to the Company;
- (d) prior to Completion, the Financiers terminate their obligations under the Facility Agreement, or otherwise permanently refuse to permit any further drawings under the Facility Agreement or the facilities provided or available under the Facility Agreement, and the Company does not within 20 Business Days of the occurrence of the event establish to the reasonable satisfaction of the Authority that despite the occurrence of the event the

49.

Company will be able to perform its obligations under the Transaction Documents;

- (e) a Notice of Intention pursuant to the Supplemental Development Agreement is given by the Developer under that agreement and is not withdrawn within 10 Business Days;
- (f) a Notice of Intention pursuant to the Contractor's Deed is given by the Contractor under that agreement and is not withdrawn within 10 Business Days;
- (g) except with the prior consent in writing of the Authority the members resolve to wind up the Company;
- (h) the Site Lease is terminated or surrendered;
- (i) prior to Completion of the Melbourne Casino any one of the Temporary Casino Leases is terminated (other than by effluxion of time) or surrendered;
- (j) prior to the subscription by the Founding Shareholders for all the Shares for which they have agreed to subscribe under the Founding Shareholders Agreement, any of the following occurs and the Company does not within 10 Business Days after the State has given notice to the Company remedy the event or redress the prejudice arising from the event or establish to the reasonable satisfaction of the Authority that despite the occurrence of the event the Company will be able to perform its obligations under the Transaction Documents-
  - (i) a Founding Shareholder fails to comply with any obligation to subscribe for Shares in accordance with the provisions of the Founding Shareholders Agreement;
  - (ii) a Receiver, provisional liquidator, liquidator or administrator is appointed to a Sponsor;
  - (iii) except with the prior consent in writing of the Authority the members resolve to wind up a Sponsor;
- (k) Shares having an aggregate subscription amount of \$210,000,000 have not been subscribed for by the Licensing Date by persons other than the Founding Shareholders and within 10 Business Days of the Licensing Date the Company has not established to the reasonable satisfaction of the State that the Company will despite this be able to perform its obligations under the Transaction Documents.

25.3 The State may in its absolute discretion extend any time period referred to in clause 25.2.

25.4 Subject to clause 26, on termination of this document-

50.

- (a) except as otherwise provided by this document all rights of the Company to, in or under this document will cease but without prejudice to the liability of any party in respect of any antecedent breach or default under this document or in respect of any indemnity or other payment obligation under this document;
  - (b) all moneys owing or remaining unpaid (and whether actually or contingently) to the State will (to the extent not then due) become immediately due and payable and the Company must immediately pay all those moneys to the State; and
  - (c) except as otherwise provided in this document or the Master Security Agreement, neither the Company nor any Sponsor or any other person will have any claim against the State or both with respect to any matter or thing in or arising out of this document and in particular, but without limiting the generality of the preceding paragraphs, the Company will have no claim to the repayment of all or any part of the Licensing Payment Amounts.
- 25.5 Without limiting the powers of the State under the Fixed and Floating Charge, if this document is terminated prior to Completion of the Temporary Casino Complex or the Melbourne Casino Complex and a Mortgagee does not agree to or does not Complete the Temporary Casino Complex or the Melbourne Casino Complex or both (as the case may be) in accordance with the Master Security Agreement or otherwise on terms approved by the State-
- (a) the State may Complete or arrange for the Completion of the Temporary Casino Complex or the Melbourne Casino Complex or both at the cost of the Company; and
  - (b) any moneys expended by the State in or in connection with Completing or attempting to Complete the Temporary Casino Complex or the Melbourne Casino Complex or both, and the amount of any loss, damages or costs suffered or incurred by the Authority or the State as a result of the termination of this document or any event giving rise to the termination of this document, will be a debt due and payable by the Company to the State and the Company indemnifies the State against all those losses, damages or costs.
- 25.6 In the event that the State exercises its rights under clause 25.5 or otherwise to Complete the Melbourne Casino Complex or the Temporary Casino Complex or both, the State-
- (a) will do so in all material respects in accordance with the Design and Construction Programme, the Temporary Casino Complex Development Proposal and the Melbourne Casino Complex Development Proposal but subject to such variations as the State and the Financiers may agree; and
  - (b) will be responsible as if the State were doing so as chargee under the Fixed and Floating Charge.

## 51.

- 25.7 Interest will be payable by the Company to the State on all moneys expended by the State under clause 25.5 at the rate equal to the aggregate of the Bill Rate and 2% per annum on the first Business Day of each month and will accrue daily and be calculated monthly in arrears on the basis of the actual number of days elapsed and a 365 day year and added to the amount owing by the Company to the State and may be debited to any account of the Company with the State and itself accrue interest in accordance with this clause.
- 25.8 All moneys payable by the Company to the State under clause 25.5 and all interest payable under clause 25.7 must be paid by the Company to the State on demand.
- 26. Continuity of interest of Company**
- 26.1 If the Casino Licence is cancelled or if this document is terminated, the provisions of clauses 26.2 to 26.8 will apply and shall continue to bind the parties.
- 26.2 If the Casino Licence is cancelled after the date specified in clause 23.2(b), the Company shall not be entitled to a refund of the Licensing Payment Amounts or any part of them.
- 26.3 If the Casino Licence is cancelled before the last date of the period specified in clause 23.2(b) on grounds for disciplinary action-
- (a) which are specified in paragraphs (a), (b) or (d) of the definition of grounds for disciplinary action in section 20(1) of the Casino Control Act; or
  - (b) (i) which are specified in paragraphs (c) or (e) of the definition of grounds for disciplinary action in section 20(1) of the Casino Control Act; and
  - (ii) the grounds arose, directly or indirectly, as a result of any act or omission of the Company, or any director of the Company or any Sponsor;
- the Company shall not be entitled to a refund of the Licensing Payment Amounts or any part of them.
- 26.4 If the Casino Licence is cancelled before the last date of the period specified in clause 23.2(b) on grounds other than those specified in clause 26.3, the State must refund the Licensing Payment Amounts to the Company as follows-
- (a) the refund must be made within 3 months after the cancellation of the Casino Licence;
  - (b) the amount of the refund shall be that amount which bears the same proportion to the amount of the Licensing Payment Amounts as the unexpired portion as at the date of cancellation of the Casino Licence of the period commencing on the Licensing Date and terminating on the last day of the period specified in clause 23.2(b) bears to the whole of that period.

52.

- 26.5 If the Casino Licence is cancelled or surrendered at any time, and the State determines that it wishes a licence to be granted to a person other than the Company for the operation of a casino in the Melbourne Casino Complex, the following provisions will apply-
- (a) the State shall give a notice to the Company informing the Company that the State requires the Company to grant to the new casino operator a sub-lease of the Melbourne Casino and the Company must do so in accordance with clauses 26.5(b) to (i) inclusive;
  - (b) the sub-lease will commence on the date of issue of the new licence and end on the termination of the new licence or the termination of the Site Lease, whichever is the earlier;
  - (c) the initial rental payable under the sub-lease will be the market rental as at the date of commencement of the sub-lease of the Melbourne Casino, as agreed between the State and the Company, and will be payable monthly in advance on the first Business Day of each month;
  - (d) the sub-lease rent will be reviewed annually to the market rental as agreed between the sub-lessor and the sub-lessee, and failing agreement, determined in accordance with clause 26.6 as if a notice had been issued under this clause on the anniversary of the commencement of the sub-lease;
  - (e) the sub-lessee will be liable to pay to the sub-lessor all outgoings which are properly attributable to the occupation and use of the Melbourne Casino;
  - (f) the sub-lease will contain all appropriate rights, including rights of access and egress over the Melbourne Casino Complex to the Melbourne Casino, as are necessary to enable the casino operator to operate a casino in the Melbourne Casino Complex;
  - (g) the other terms and conditions of the sub-lease will be similar to the terms and conditions of the Site Lease in so far as they relate to the Melbourne Casino and to the extent that it is appropriate to include them in the sub-lease;
  - (h) the form of the sub-lease shall be as determined by the State;
  - (i) the Company must use its best endeavours to facilitate the operation of the Melbourne Casino within the Melbourne Casino Complex and this obligation shall also be a term of the sub-lease.
- 26.6 If within 1 month after the service of the notice under clause 26.5 the State and the Company have not agreed on the market rental to be payable under the sub-lease, the market rental will be determined in accordance with the following provisions-
- (a) within 10 Business Days after the expiration of the period of 1 month from the date of service of the notice, the State and the Company will each

53.

appoint a valuer (each a "Representative Valuer") to act on its behalf in relation to the determination of the market rental of the Melbourne Casino;

- (b) an independent valuer ("Independent Valuer") will be appointed-
  - (i) by agreement in writing by the Representative Valuers; or
  - (ii) failing such agreement within 20 Business Days after the appointment of the Representative Valuers, then at the request of either Representative Valuer by the President of the Victorian Division of the Australian Institute of Valuers and Land Economists Inc;
- (c) the Independent Valuer must as soon as practicable establish a procedure by which submissions are to be made by each Representative Valuer as to the market rental of the Melbourne Casino but so that all submissions are made to the Independent Valuer within 20 Business Days of his appointment;
- (d) following completion of the period referred to in clause 26.6(c) the Independent Valuer must consider the submissions made, seek further submissions if required and, within 20 Business Days after the end of the period referred to in clause 26.6(c) and having regard to the matters referred to in clause 26.7, determine the market rental of the Melbourne Casino;
- (e) in determining the market rental of the Melbourne Casino the Independent Valuer will be acting as an expert and not as an arbitrator and his decision will be final and binding on the parties.

26.7 In determining the market rental of the Melbourne Casino under clause 26.6 the Independent Valuer must have regard to all matters to which the valuer believes the valuer should have regard to in making such a determination including but not restricted to casino facilities in Australia and overseas, first class international hotels, major convention facilities and other entertainment and tourist related facilities.

26.8 If following the expiration of the Casino Licence the State determines that it wishes a licence to be granted to a person other than the Company for the operation of a casino in the Melbourne Casino Complex, the provisions contained in clauses 26.5 to 26.7 will apply with all necessary changes in point of detail so as to confer a sub-lease on the new licensee.

## **PART 7 - GENERAL**

### **27. Warranties of the Company**

27.1 The Company makes the Warranties to the State as at the date of this document and for each day up to and including the Licensing Date.

54.

27.2 Each Warranty shall be construed separately and the meaning of each shall in no way be limited by reference to any other representation or warranty contained in this document.

**28. Company relies on own judgment**

28.1 Save where a statement, representation or warranty is given in its favour under this document or any Transaction Document, the Company acknowledges that it is entering into this document and the other Transaction Documents in reliance on its own judgment and following review of the Site and the Temporary Casino Site and the business opportunity provided by, among other things, the Casino Licence, and not in reliance on any conduct of or statements, warranties or representations made to the Company or to any other person by or on behalf of the State or any of its servants, agents or consultants.

28.2 Save for any statement, representation or warranty made in its favour under this document or any Transaction Document, the Company acknowledges and agrees that no action lies against the State or any of its servants, agents or consultants and that no compensation of any kind is payable to the Company in relation to anything done or purported to be done or not done for the purposes of the establishment or operation of the Temporary Casino, Temporary Casino Complex, Melbourne Casino or Melbourne Casino Complex prior to the execution of this document.

28.3 Nothing in this clause 28 limits any liability of Golder Associates Pty Ltd to the Company.

**29. Indemnity**

29.1 The Company indemnifies and will keep indemnified the State and its servants, agents and consultants in respect of all actions, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this document or relating to the Company's operations (including but not limited to the operations of the Temporary Casino Complex and the Melbourne Casino Complex) or arising out of or in connection with the construction, financing, maintenance or use of the Temporary Casino Complex or the Melbourne Casino Complex except expenses of the Authority which are covered by the Casino Supervision and Control Charge.

29.2 The indemnity in clause 29.1 does not apply to the extent that any actions, claims, demands or costs arise as a result of the negligence or wilful default of the State.

29.3 Casino Supervision and Control Charge reimburses the Authority for expenses incurred in respect of-

- (a) the supervision and monitoring by the Authority of the establishment of the Temporary Casino and the Melbourne Casino; and
- (b) the supervision of the Temporary Casino and the Melbourne Casino by the Authority.

**30. Confidentiality**

- 30.1 All documents and information provided by one party to another party under this document must be kept confidential and not disclosed to any person without the consent of the other party unless-
- (a) the information is in the public domain;
  - (b) disclosure is required by law;
  - (c) the disclosure is necessary for the purpose of obtaining any consent, authorisation, approval or licence from any government or public body or authority;
  - (d) it is necessary or desirable that the disclosure be made to any taxation or fiscal authority;
  - (e) the disclosure is made on a confidential basis to the officers, employees or agents of a party or to the professional advisers of a party for the purposes of obtaining professional advice in relation to any Transaction Document or the enforcement of any Transaction Document or otherwise for the purpose of consulting those professional advisers;
  - (f) the disclosure is made by the Company on a confidential basis to any actual or prospective financier or agent of a financier to the Company;
  - (g) the disclosure is necessary in relation to any procedure for discovery of documents or any proceedings before any court, tribunal or regulatory body; or
  - (h) the disclosure is necessary for the purposes of obtaining listing on the Australian Stock Exchange.
- 30.2 The obligations in clause 30.1 shall apply after termination of this document.

**31. Day of payment**

If any day for the payment of money under this document falls on a day which is not a Business Day, the payment will be due on the next day which is a Business Day.

**32. Notices**

- 32.1 A notice or approval required or to be given under this document must be-
- (a) in writing;
  - (b) delivered by hand or served by prepaid post or facsimile to the recipient at its address or facsimile number appearing in this clause or such other address or facsimile number as the recipient may have notified the other party-

56.

~~(i) in the case of the State-~~

~~The Secretary to the Department of Treasury  
1 Treasury Place  
MELBOURNE VIC 3000  
Facsimile: (03) 651 6228~~

~~with a copy to the Authority-~~

~~Chairman  
Victorian Casino Control Authority  
Level 27, 459 Collins Street  
MELBOURNE VIC 3000~~

~~Facsimile: (03) 621 1803 (10thDV)~~(i) in the case of the State-

The Secretary to the Department of Treasury and Finance  
1 Treasury Place  
MELBOURNE VIC 3000

Facsimile: (03) 9651 6228with a copy to the Authority-

Chairman  
Victorian Commission for Gambling and Liquor Regulation  
49 Elizabeth Street  
RICHMOND VIC 3121

Facsimile: (03) 9651 3777 (10thDV)~~(ii) in the case of the Company-~~

~~Lloyd J. Williams  
Chief Executive Officer  
Crown Casino Ltd.  
311 Glenferrie Road  
MALVERN VIC 3144~~

~~Facsimile: (03) 823 6105 (10thDV)~~(ii) in the case of the Company-

Chief Executive Officer  
Crown Melbourne Ltd.  
8 Whiteman Street  
SOUTHBANK VIC 3006

57.

Facsimile: (03) 9292 7041 (10thDV)

- 32.2 A notice or approval given in accordance with clause 32.1 is taken to be received-
- (a) if hand delivered, on the day of delivery if delivered before 4.00 p.m. on a Business Day and otherwise on the Business Day next following;
  - (b) if sent by prepaid post, 3 days after the date of posting; or
  - (c) if sent by facsimile, on the day on which the message confirmation is received if received before 4.00 p.m. on a Business Day and otherwise on the Business Day next following.
- 32.3 The provisions of clause 32 are in addition to any other mode of service permitted by law.
- 32.4 A copy of each notice given under this document to the State must be given to the Authority.
- 33. Costs and stamp duty**
- 33.1 Each party must pay its own costs of preparing and executing this document.
- 33.2 The Company must pay all stamp duty on this document and on any document executed to give effect to this document.
- 34. No waiver**
- A failure of a party at any time to require full or part performance of any obligations under this document will not affect in any way the rights of that party to require that performance subsequently.
- 35. Governing law**
- 35.1 This document is governed by the laws applying in Victoria.
- 35.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and courts entitled to hear appeals from those courts.
- 36. Assignment**
- 36.1 The Company must not without the prior written consent of the State-
- (a) assign any of its rights under this document; or
  - (b) effect the assumption of any of its duties and obligations under this document by any other person, other than pursuant to a Permitted Encumbrance as defined in the Casino Agreement.

58.

- 36.2 The State may assign, transfer or dispose of its rights under this document or any other Transaction Document-
- (a) to the Authority or to any agency of the government of the State or statutory authority or corporation which has taken over the objects and functions of the Authority under the Casino Control Act; or
  - (b) with the approval in writing of the Company to any person, such approval not to be unreasonably withheld;

provided that the assignee enters into an agreement with the Company agreeing to be bound by the provisions of this document and each other Transaction Document to which the State is a party.

**37. Further assurances**

Each party must do or cause to be done anything necessary or desirable to give effect to this document, and will refrain from doing anything which might prevent full effect being given to this document.

**38. Counterparts**

- 38.1 This document may be executed in any number of counterparts.
- 38.2 All counterparts taken together will be deemed to constitute the one document.

**39. Severability**

- 39.1 The parties agree that a construction of this document which results in all provisions being enforceable is to be preferred to a construction which does not so result.
- 39.2 If, despite the application of clause 39.1, a provision of this document is illegal or unenforceable-
- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - (b) in any other case, the whole provision is severed, and the remainder of this document continues to have full force and effect.
- 39.3 Clause 39.2 does not apply where its application alters the basic nature of this document or is contrary to public policy.

**40. Interpretation**

- 40.1 In this document, unless the context otherwise requires or the contrary intention appears-
- (a) the singular includes the plural and vice versa and words importing a gender include other genders;

## 59.

- (b) terms importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (c) a reference to any legislation, statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Commonwealth) or the equivalent State legislation, as applicable, and includes any re-enactment or amendment to that legislation, statutory instrument or regulation;
- (d) other grammatical forms of defined words or phrases have corresponding meanings;
- (e) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this document and a reference to this document includes any schedules and annexures;
- (f) where a party comprises two or more persons the provisions of this document binding that party bind those persons jointly and severally;
- (g) terms defined in the Corporations Law as at the date of this document have the meanings given to them in the Corporations Law at that date;
- (h) "party" means a party to this document;
- (i) a reference to a party to this document or any other document or agreement includes its successors and permitted assigns;
- (j) a reference to a document or agreement, including this document, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (k) a reference to "\$A", "dollar", "AUD" or "\$" is a reference to Australian currency;
- (l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (m) a reference to a specific time for the performance of an obligation is a reference to that time in the State.

40.2 In this document headings are for ease of reference only and do not affect the construction of this document.

#### 41. **General obligations**

##### 41.1 The Company must-

- (a) maintain its corporate existence;

60.

- (b) comply with all laws applicable to the matters the subject of this document from time to time in force including, without limitation, the ~~Gaming Machine Control Act~~ Gambling Regulation Act 2003 (10thDV), and all mandatory requirements of any Public Authority;
- (c) obtain and renew at the proper times and maintain all Authorisations required-
  - (i) for the Company to perform its obligations under this document;
  - (ii) for the Company to perform its obligations under each Transaction Document; and
  - (iii) to allow this document and each Transaction Document to be enforced against it;
- (d) obtain and renew at the proper times and maintain all licences and other Authorisations required or advisable or relied on for or in connection with the carrying on of the Company's business;
- (e) comply with the terms and conditions of each Lease to which it is a party where a failure to do so would have a material adverse effect on the Casino Assets or the operation of the Temporary Casino or the Melbourne Casino;
- (f) comply with its payment obligations under any agreement for the purchase of property where a failure to do so would have a material adverse effect on the Casino Assets or the operation of the Temporary Casino or the Melbourne Casino;
- (g) protect the Casino Assets and at the Company's expense prosecute or defend all legal proceedings that are, or the defence of which is, necessary or advisable for the protection of the Casino Assets to the extent appropriate in accordance with prudent business practice; and
- (h) carry out all work reasonably and properly required by any Public Authority in relation to the Casino Assets where a failure to do so would have a material adverse effect on the Casino Assets or the operation of the Melbourne Casino or the Temporary Casino.

41.2 The Company must not, without the prior consent in writing of the State-

- (a) Deal with or Dispose of any of the Casino Assets other than by way of maintenance, repair or replacement;
- (b) Deal with or Dispose of any of the Casino Assets other than in the ordinary course of the Company's business;
- (c) execute, create or permit to subsist any Encumbrance over or affecting the Casino Assets other than a Permitted Encumbrance;
- (d) pull down, alter, extend or remove any building, improvement or fixture forming part of the Casino Assets where to do so would materially

61.

adversely affect the Casino Assets or the operation of the Melbourne Casino or the Temporary Casino;

- ~~(e) take on or under a Lease, or acquire for consideration, any asset other than in the ordinary course of the Company's business;(EDV)~~
- (e) declare or pay a dividend if a demand has been properly made on the Company under this document or any Transaction Document and has not been satisfied in full;
- (f) do anything or allow anything to be done in derogation of the rights of the State or any other party under any Transaction Document;

except to the extent permitted by clause 29 of the Casino Agreement.

## SCHEDULE TWO

### DRAWINGS

1. Schematic design drawings described in the following list relating to the Melbourne Casino Complex, each of which has been initialled by or on behalf of the State's Nominated Representative and the Company for the purposes of identification.

#### Casino Complex

<u>Locality Plan</u>		<u>Scale 1:1000</u>
<u>Floor Plan, Level Ground/M</u>	<u>RL 2.4/6.0</u>	<u>Scale 1:500</u>
<u>Floor Plan Level 1</u>	<u>RL 9.0/9.6</u>	<u>Scale 1:500</u>
<u>Floor Plan Level 2</u>	<u>RL 13.8/14.6/15/6</u>	<u>Scale 1:500</u>
<u>Floor Plan Level 3</u>	<u>RL 16.4/17.2/18.3</u>	<u>Scale 1:500</u>
<u>Roof Plan Level 4</u>	<u>RL 20.4</u>	<u>Scale 1:500</u>
<u>Hotel Tower Plan</u>		<u>Scale 1:200</u>
<u>Floor Plan level B2</u>	<u>RL 3.9</u>	<u>Scale 1:500</u>
<u>Floor Plan Level B1</u>	<u>RL 0.8</u>	<u>Scale 1:500</u>
<u>River Elevation</u>		<u>Scale 1:500</u>
<u>Longitudinal Section and Whiteman Street Elevation</u>		<u>Scale 1:500</u>
<u>Clarendon Street and Queensbridge Square Elevation</u>		<u>Scale 1:500</u>
<u>Crown Entertainment and Wintergarden Section</u>		<u>Scale 1:500</u>

#### Temporary Casino

<u>Locality Plan</u>		<u>Scale 1:500</u>
<u>Ground Level Plan</u>		<u>Scale 1:100</u>
<u>Galleria Plan</u>		<u>Scale 1:100</u>
<u>Concourse Plan</u>		<u>Scale 1:100</u>
<u>Concourse West Plan</u>		<u>Scale 1:100</u>
<u>External Elevations</u>		<u>Scale 1:200</u>
<u>Ground Floor Staff Area Facilities Plan</u>		<u>Scale 1:100</u>
<u>Galleria Level Garden Terrace Floor Plan and Reflected Ceiling Plan</u>		<u>Scale 1:100</u>

#### Temporary Casino South Extension

<u>Promenade Floor and Ceiling Plan</u>		<u>Scale 1:100</u>
<u>Galleria and Concourse Floor Plan</u>		<u>Scale 1:100</u>
<u>Sections, South Extension Elevations, South Extension</u>		<u>Scale 1:100</u>
<u>Galleria and Concourse Table/Furniture/Slot Machine Plans</u>		<u>Scale 1:100</u>
<u>Staff Uniform Storage and Change Facility Site Plan</u>		<u>Scale 1:100</u>
<u>Staff Uniform Storage and change Facility Floor Plan</u>		<u>Scale 1:100</u>
<u>Staff Uniform Storage and Change Facility - Elevations and Sections</u>		<u>Scale 1:50</u>

2.

**OffSite Options/Infrastructure**Off-Site Ancillary Works Scale 1:1000**Traffic Management**Pedestrian and Vehicular Circulation Scale 1:1000Road Network Drawing 1B Scale 1:500Road Network Drawing 2 Scale 1:500Road Network Drawing 3 Scale 1:500Road Network Drawing 4 Scale 1:500Road Network Drawing 5 Scale 1:500Road Network Overall Layout Plan Scale 1:1000

2. Schedule of Finishes compiled to August 1993, describing external and internal finishes relating to the Melbourne Casino Complex, initialled on each page by the State's Nominated Representative and the Company for the purposes of identification. (FDV)

**SCHEDULE 6 (DV6)****Components of Global GST**

(1) Amounts wagered by CBP less monetary prizes paid to CBPs

(2) CBP bad debts recovered

(3) Total amounts wagered by CBPs = (1) + (2)

(4) Other amounts paid to CBPs

(5) Bad debts written-off in respect of CBPs

(6) Total other deductible payments to CBPs = (4) + (5)

(7) Sub-total = (3) – (6)

(8) GST base for CBPs = (7)

(9) Amounts wagered by OPs less monetary prizes paid to OPS

(10) OP bad debts recovered

(11) Total amounts wagered by OPs = (9) + (10)

(12) Other amounts paid to OPs

(13) Bad debts written-off in respect of OPs

(14) Total other deductible payments to OPs = (12) + (13)

(15) Sub-total = (11) – (14)

(16) GST base for OPs = (15)

(17) Sub-total for all players = (8) + (16)

(18) Carried forward losses

(19) Other adjustments

(20) Global GST base attributable to all players = (17) – (18) + (19)

(21) Global GST attributable to all players = 1/11th of (20), if (20)>0; = Zero, otherwise

(22) Global GST Adjustments

**For use in reconciling to period's proforma**

(23) Losses to carry forward to next period = -(20), if (20)<0; = Zero, otherwise

2.

**For use in reconciling to State tax credit**(24) Losses to carry forward in respect of CBP activity(25) Losses to carry forward in respect of OP activity(26) Other adjustments to carry forward in respect of CBP activity(27) Other adjustments to carry forward in respect of OP activity**(28) Please itemise and briefly explain all items included at (19) and (22) above in the space below: (or by way of Certified attachment)**I certify that the amount included at (21) above is the amount that will be included in the GST return to be lodged under Division 31 of the GST Act as being the amount of Global GST calculated in accordance with Division 126 of the GST Act.Authorised officerWitnessing officerSigned:Signed:Name:Name:Position:Position:(DV6)

3.

**ANNEXURE 1 (10thDV)****Regulatory Certainty****1. Regulatory Events**

1.1. Compensation is payable by the State to the Company if, after the date of the Tenth Deed of Variation, during the term of the Casino Licence, and without the Company's prior written consent, the State or the Authority or any State authority or State body takes any action or series of actions which has the effect of:

- (a) removing, reducing, amending or rendering ineffective (partially or wholly) the then current exemption from the prohibition on smoking within the VIP areas at the Melbourne Casino Complex (being, as at the Tenth Variation Commencement Date, those areas declared pursuant to section 3E of the Tobacco Act 1987 as smoking areas) (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions); or
- (b) adversely impacting the earnings before interest, taxes, depreciation and amortisation ( "**EBITDA**" ) of the Company by:
  - (i) reducing any maximum bets on Table Games, Semi Automated Table Games and Fully Automated Table Games or gaming machines (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);
  - (ii) removing, reducing in number or amending or restricting the then current manner in which gaming machines in unrestricted mode within the Melbourne Casino are permitted to operate;
  - (iii) removing, reducing in number or restricting or amending the then current manner in which Automated Teller Machines are permitted to operate within the Melbourne Casino Complex (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions);
  - (iv) introducing any form of mandatory pre-commitment other than the requirement for players of gaming machines operating in unrestricted mode to set time and net loss limits using the state-wide pre-commitment system (except where all other Australian State and Territory Governments have introduced mandatory pre-commitment with a similar effect); or
  - (v) restricting or amending the then current manner in which the Company's loyalty scheme is permitted to operate (except where all other Australian State and Territory Governments have taken substantially the same action or series of actions).

(each such action or series of actions is a "**Trigger Event**" )

**2. Methods of Calculating Compensation - Trigger Events**

4.

## 2.1. Calculation of Compensation

In the event of a Trigger Event, subject to the rest of this clause 2, the Company will be entitled to compensation, calculated as follows:

$$\mathbf{C} = (\mathbf{M} \times \mathbf{A})$$

Where:

C is the amount of compensation;

A is the annualised negative impact on the EBITDA of the Company (normalised for a theoretical win rate of 1.35% applied to turnover of Commission Based Players) as a result of the Trigger Event; and

M is the multiple applicable at the time the relevant action or the first action in a relevant series of actions by the State or the Authority (or State authority or State body) occurred as set out in the table below:

<u>Financial Year</u>	<u>Multiple (M)</u>
<u>FY15 to FY30 (inclusive)</u>	<u>10.5</u>
<u>FY31</u>	<u>10.0</u>
<u>FY32</u>	<u>9.5</u>
<u>FY33</u>	<u>9.0</u>
<u>FY34</u>	<u>8.5</u>
<u>FY35</u>	<u>8.0</u>
<u>FY36</u>	<u>7.5</u>
<u>FY37</u>	<u>7.0</u>
<u>FY38</u>	<u>6.5</u>
<u>FY39</u>	<u>6.0</u>
<u>FY40</u>	<u>5.5</u>
<u>FY41</u>	<u>5.0</u>
<u>FY42</u>	<u>4.5</u>
<u>FY43</u>	<u>4.0</u>

5.

<u>FY44</u>	<u>3.5</u>
<u>FY45</u>	<u>3.0</u>
<u>FY46</u>	<u>2.5</u>
<u>FY47</u>	<u>2.0</u>
<u>FY48</u>	<u>1.5</u>
<u>FY49</u>	<u>1.0</u>
<u>FY50</u>	<u>0.5</u>

## 2.2. Cap on compensation

- (a) In respect of all Trigger Events occurring in any term of a Victorian Government ( "Term" ) the amount of compensation (C) will not exceed the cap determined in accordance with paragraph (b) regardless of the number or types of Trigger Events occurring in that Term.
- (b) The cap for the period from the Tenth Variation Commencement Date to 30 June 2015 will be \$200,000,000. On 1 July 2015 and each 1 July thereafter (each being an "Adjustment Date" ), the cap will be adjusted in accordance with the formula set out below:

$$\text{cap} = \frac{X}{Y} \times Z$$

Where:

cap is the amount of the cap on and from the Adjustment Date;

X is the CPI number published for the quarter ending immediately before the Adjustment Date;

Y is the CPI number published for the quarter ending immediately before the previous Adjustment Date or, where there is no previous Adjustment Date, the quarter ending immediately before the Tenth Variation Commencement Date;

Z is the amount of the cap calculated in accordance with this formula on the previous Adjustment Date; and

CPI number is the Consumer Price Index (All Groups for Melbourne) published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

The cap will be adjusted on each Adjustment Date in accordance with this clause 2.2(b) regardless of whether, at any time prior to the Adjustment Date, a claim for compensation has been made by the Company or a payment of compensation has been made by the State.

6.

- (c) The cap that is applicable to any compensation payable in respect of a Trigger Event which occurs in a Term ( "Applicable Cap" ) is the cap applicable at the time at which the relevant action or the first of any series of actions which constitutes that Trigger Event occurs.
- (d) If the compensation paid with respect to one or more Trigger Events occurring in a Term equals the Applicable Cap, no further compensation is payable to the Company with respect to any other Trigger Event that occurs during that Term.
- (e) No compensation will be payable in any Term for any action or series of actions which constitutes a Trigger Event which occurred in a prior Term and for which compensation has already been paid (or not paid as a result of the cap). However, for the avoidance of doubt, the amount of compensation payable in respect of Trigger Events which occur during a Term will not be affected by any payment of compensation made in relation to any Trigger Event which occurred during a prior Term.
- (f) For the purposes of this Annexure, the Term of each Victorian Government ends when a new Victorian Government is sworn in following a Victorian general election. For the avoidance of doubt, the Company's entitlement to compensation in relation to Trigger Events which occur in any Term will not be extinguished as a result of a change of government following a Victorian general election.

### 2.3. **Exclusions**

No compensation will be due or payable to the Company under clause 24A.3 and this Annexure 1 with respect to actions which:

- (a) have an adverse impact on the Company's EBITDA of less than \$1 million per annum as assessed by the Company acting reasonably;
- (b) arise directly from disciplinary action validly taken against the Company; or
- (c) advertise or promote the Victorian government's responsible gambling, responsible service of alcohol or "quit smoking" programs, provided such actions are not targeted solely at the Company.

### 3. **Process for Determining Compensation Payable**

- (a) Where the Company is entitled to recover any amount (whether by payment, discount, credit or otherwise) from any third party (including from an insurer or under an indemnity or guarantee) in relation to any matter for which a claim for compensation under this Annexure 1 could be made or brought against the State by the Company, the State is nevertheless liable for that Claim (the "Relevant Claim") but, if and to the extent the Relevant Claim is satisfied by the State, the Company must assign to the State the benefit it may receive of any proceeds, debts, claims or other actions from any third party in respect of the Relevant Claim, and otherwise hold such benefit on trust for the State, save where to do so would be contrary to or in breach of the Company's insurer's rights of subrogation.

7.

- (b) The Company is obliged to take all reasonable steps to mitigate any loss that may otherwise arise in relation to any matter or for which a claim for compensation under this Annexure 1 could be made or brought against the State by the Company.
- (c) The Company will not be entitled to make a claim under this Annexure 1 to the extent it has received (or, as a result of the cap, not received) a compensation payment under this Annexure 1 in respect of the same Trigger Event.
- (d) The Company agrees that any compensation payable under this Annexure 1 is the entire remedy for the occurrence of the Trigger Events which may occur and it will not seek any other remedy against the State in connection with the Trigger Events.
- (e) If the Company becomes aware that a Trigger Event has occurred, the Company must promptly provide a written notice to the State which must set out in reasonable detail the Trigger Event and, at any time within 2 years from becoming aware that a Trigger Event has occurred, the Company may provide a written notice ( "**Compensation Notice**" ) to the State which must state that it is a Compensation Notice under this Annexure 1 and set out in reasonable detail:
  - (i) the Trigger Event giving rise to the claim for compensation; and
  - (ii) the amount which the Company considers to be the compensation payable ( "**Compensation Payable**" ) by the State to the Company in respect of the relevant Trigger Event.
- (f) Within 3 months after the Company provides the Compensation Notice to the State under clause 3(e), the State must by written notice to the Company, either:
  - (i) accept the amount set out in the Compensation Notice as the "Compensation Payable" in which case that amount will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event; or
  - (ii) request from the Company such further details in relation to, or clarification of, information provided in the Compensation Notice or the methodology used to determine the amount set out in the Compensation Notices as the "Compensation Payable" as the State may reasonably require to assist the State in understanding the impact of the Trigger Event on the Company's EBITDA or the calculation of the amount set out in the Compensation Notice as the "Compensation Payable"; or
  - (iii) dispute the correctness of the amount set out in the Compensation Notice as the "Compensation Payable" setting out in reasonable detail:
    - (A) the basis on which the State disputes the amount set out in the Compensation Notice as the "Compensation Payable"; and
    - (B) the amount which the State considers to be the Compensation Payable or, if not precisely known, its best estimate of that amount.
- (g) If the State submits a request for further details or clarification under clause 3(f)(ii):

8.

- (i) the Company must provide such further details or clarification to the extent that it can reasonably do so promptly following the request; and
- (ii) within 20 Business Days of receipt of the response from the Company, the State must by written notice to the Company, either:
  - (A) accept the amount set out in the Compensation Notice as the "Compensation Payable", in which case that amount will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event; or
  - (B) dispute the correctness of the amount set out in the Compensation Notice as the "Compensation Payable".
- (h) If the State does not take any of the actions required of it under and within the time frames set out in clause 3(f) and 3(g)(ii), the amount set out in a Compensation Notice as the "Compensation Payable" will constitute the compensation payable by the State to the Company in respect of the relevant Trigger Event.
- (i) If the State issues a notice in accordance with clause 3(f)(iii) or 3(g)(ii)(B) (a "**Compensation Dispute Notice**"): 
  - (i) the dispute must be resolved in accordance with the procedure set out in clause 3(j); and
  - (ii) the compensation (if any) payable by the State to the Company in respect of the relevant Trigger Event will be the amount (if any) determined in accordance with clause 3(j).
- (j) If the State issues a Compensation Dispute Notice in accordance with clause 3(f)(iii) or 3(g)(ii)(B) then the following procedure will apply:
  - (i) Within 20 Business Days of the State giving the Compensation Dispute Notice ( "**Negotiation Period**" ), the Senior Management Representative from each of the parties must meet at least once to attempt to resolve the dispute ( "**Dispute**" ).
  - (ii) The Senior Management Representatives may meet more than once to resolve the Dispute. The Senior Management Representatives may meet in person, via telephone, videoconference or any other agreed means of instantaneous communication to effect the meeting.
  - (iii) Each party warrants that its Senior Management Representative has full authority to resolve any dispute as to the compensation payable.
  - (iv) If the Senior Management Representatives are unable to resolve the Dispute during the Negotiation Period, the State must nominate an Expert by notice in writing to the Company within 30 Business Days from the date of expiration of the Negotiation Period ( "**Nomination Period**" ).

9.

- (v) Within the Nomination Period, the Company must also nominate an Expert by notice in writing to the State.
- (vi) Within 30 Business Days of the date of expiration of the Nomination Period, the Experts so nominated will endeavour jointly to determine the compensation (if any) payable in accordance with clause 3(j)(vii). The Experts must give to the parties any joint determination and their reasons in writing within that 30 Business Day period. If the experts jointly determine that compensation is payable, the written determination must set out the Experts' calculation of each component of the formula.
- (vii) In determining the compensation (if any) payable, each Expert must:
  - (A) act as expert and not as arbitrator;
  - (B) have regard to the provisions of this Agreement and apply the principles set out in Annexure 1; and
  - (C) have regard to any written submissions made to it by the State and the Company, and either Expert may make such enquiries as it considers in its absolute discretion to be necessary or desirable.
- (viii) If either the Company or the State has failed to nominate an Expert within the Nomination Period, the determination of the compensation (if any) payable will be made within 30 Business Days of the date of expiration of the Nomination Period by the sole Expert nominated by either the Company or the State as the case may be.
- (ix) If the Experts are unable jointly to determine the Dispute within the period of 30 Business Days referred to in clause 3(j)(vi), then the Company and the State jointly must, within 2 Business Days of the expiry of that period, request the Law Institute of Victoria President to nominate, within 10 Business Days of the date of the request, another Expert ( "Umpire" ) to make a final determination of the compensation (if any) payable in accordance with the following provisions of this clause 3(j).

The Umpire must give its determination and its reasons in writing within 30 Business Days of its appointment. If the Umpire determines that compensation is payable, the written determination must set out the Umpire's calculation of each component of the formula.
- (x) Any determination of the Experts (or, in the circumstances contemplated by clause 3(j)(viii), the sole Expert) or the Umpire in accordance with this Annexure 1 will be final and binding on the parties in respect of the relevant Trigger Event. However, within 20 Business Days of the determination being notified to the Parties, either the Company or the State is entitled to make an application to the court for a declaration that, in reaching the determination, the Experts, the sole Expert or the Umpire, as the case may be, made an error in relation to a question of law.

10.

- (xi) If the court issues a declaration to the effect that an error has been made in relation to the relevant question of law, whichever of the Company or the State sought the declaration must immediately inform the Experts, the sole Expert or the Umpire, as the case may be, provide them with a copy of the declaration and request that they issue an updated determination, together with reasons, in writing within 20 Business Days of receiving a copy of the declaration. That updated determination will be final and binding on the parties in respect of the relevant Trigger Event.

If the updated determination is to be issued by the Experts and they are unable to agree on the determination within the period of 20 Business Days referred to above, the matter must be referred to the Umpire in accordance with clause 3(j)(ix).

- (xii) If the court issues a declaration to the effect that no error has been made in relation to the relevant question of law, the original determination of the Experts, the sole Expert or the Umpire, as the case may be, will be final and binding on the parties in respect of the relevant Trigger Event.
- (xiii) To the extent of any inconsistency between the terms of this Agreement and the applicable rules for expert determination published by the Law Institute of Victoria, the terms of this Agreement prevail.
- (xiv) In determining the compensation (if any) payable, the Umpire:
- (A) must act as expert and not as arbitrator;
  - (B) must have regard to the provisions of this Agreement and apply the principles set out in Annexure 1;
  - (C) must have due regard to any evidence submitted by the Experts appointed in accordance with clauses 3(j)(iv) and (v) as to their respective assessments of the compensation (if any) payable;
  - (D) must act fairly and impartially as between the parties, giving each party a reasonable opportunity to:
    - (I) put its case and deal with the case of the opposing Party; and
    - (II) make submissions on the conduct of the expert determination;
  - (E) subject to clauses 3(j)(xiv)(A) to 3(j)(xiv)(D), inclusive, may:
    - (I) proceed in any manner he or she thinks fit;
    - (II) conduct any investigation which he or she considers necessary to resolve the Dispute;
    - (III) examine such documents, and interview such persons, as he or she may require and may make such directions for the conduct of the determination as he or she considers necessary;

11.

- (F) must within 3 Business Days of nomination, disclose to the parties any:
- (I) interest he or she has in the outcome of the determination;
  - (II) conflict of interest;
  - (III) conflict of duty;
  - (IV) personal relationship that the Umpire has with either party, or either party's representatives or Experts; and
  - (V) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- within 5 Business Days of receipt of any disclosure referred to in this paragraph (F) a party may object to the Umpire. If so, the Company and the State jointly must, within a further 2 Business Days, request the Law Institute of Victoria President to nominate, within 10 Business Days of the date of the request, a replacement Umpire for the purpose of this clause 3; and
- (G) must not communicate with one party without the knowledge of the other party.
- (xv) Each party must do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the expert determination process contemplated by this clause 3.
- (k) Within 20 Business Days of the amount of compensation that is payable by the State to the Company being agreed or determined in accordance with this clause 3, the State must pay that amount to the Company in cleared funds.
- (l) Except as contemplated in clause 3(m), each party must bear its own costs in complying with this clause 3.
- (m) (i) Subject to paragraph (ii), the aggregate costs of the Experts (and the Umpire, if applicable) will be borne equally by the parties.
- (ii) If the amount of compensation that is payable by the State is determined by an Expert, Experts or Umpire and is:
- (A) more than 10% below the amount set out in the Company's Compensation Notice under clause 3(e), the Company will bear the costs of the Expert, Experts and Umpire, as applicable; or
  - (B) more than 10% above the amount set out in the Company's Compensation Notice under clause 3(e), the State will bear the costs of the Expert, Experts and Umpire, as applicable.
- (n) Nothing in this clause 3 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute as to the compensation payable.

12.

(o) Time is of the essence of the parties' obligations under this clause 3.

13.

FDV = First Deed of Variation

SDV = Second Deed of Variation

TDV = Third Deed of Variation

FODV = Fourth Deed of Variation

FIDV = Fifth Deed of Variation

SVDV = Seventh Deed of Variation

EDV = Eighth Deed of Variation

NDV = Ninth Deed of Variation

10thDV = Tenth Deed of Variation

## **Additional undertakings from Seventh Deed of Variation (stand-alone - separate to agreement)**

### **4. Payment to the State**

4.1 The Company agrees to pay to the State \$18 million ('Payment') by 6 instalments of \$3 Million each payable within 30 days of invoice from the State for each instalment the first of which is to be issued on the date of ratification of this Deed in accordance with clause 2 and the further invoices to be issued on each anniversary of this Deed in the 5 years following.

4.2 The Payment will be paid by the State into a Trust Account established under Part 4 of the Financial Management Act 1994 in order that the principal and interest shall be applied by the State for the construction of high profile cultural facilities in the Southbank Arts Precinct Area.

4.3 If the Company fails to make the Payment on the due date, without prejudice to any other right or remedy arising because of that failure, the Company must pay to the State interest (calculated daily) on the amount in default (including accrued interest) at the Default Rate for the period from the due date until payment is made (including all interest due under this clause).

4.4 This clause 4 and clauses 5 and 6 are not conditions of the Casino Licence and their performance is not to be taken into account in the regulation of the Company under the Casino Control Act 1991 or the Casino (Management Agreement) Act 1993. Any breach of these clauses will not be taken to be a breach of the Management Agreement and in particular for the purposes of clause 25.2 of the Management Agreement.

### **5. Alternative Project**

5.1 The Company agrees to construct or procure an alternative project the nature and the timing of which is to be determined at the sole discretion of the Company. The Company, at its cost, shall be solely responsible for obtaining all permits and approvals necessary for such alternative project.

5.2 The estimated cost of the alternative project shall be not less than the estimated cost of constructing the Lyric Theatre of \$42 million, the amount determined on 9 March 2001 by a quantity surveyor appointed by the State.

5.3 The Company shall submit drawings, plans, specifications and details relating to the alternative project to the State so that the State may have the estimated cost thereof verified by a quantity surveyor to be appointed by the State, acting reasonably. If the estimated cost so verified is less than \$42 million, the Company agrees to construct or procure a further stage or stages of the alternative project (the nature and the timing of which is to be determined at the sole discretion of the Company) to make up the shortfall in estimated cost. Clauses 5.1 and 6, and the verification process in this clause apply to any such further stage.

15.

## **6. Location of the Alternative Project**

6.1 The Company may give notice to the State as to whether the alternative project will:

(a) form part of the Melbourne Casino Complex; or

(b) not form part of the Melbourne Casino Complex, but be located on land within the area bounded by Queensbridge Street, City Road, Clarendon Street and Whiteman Street and that such land:

(i) is designated by the Company as part of the Site; or

(ii) will not be part of the Site.

6.2 (a) If clause 6.1(a) applies, the parties must, within 6 months after the date of the notice under clause 6.1, enter into a further Deed of Variation of the Management Agreement that will provide for the alternative project to be part of the Melbourne Casino Complex and subject to the Company's discretion under clause 5.1 and to all the requirements mutatis mutandis of the Management Agreement and the Casino (Management Agreement) Act 1993.

(b) If clause 6.1(b)(i) applies the Minister may approve or reject the Company's designation of that land as part of the Site. If the Minister approves that designation, the Minister must cause the Melbourne Casino Area to be increased, under section 128C(1)(b) of the Casino Control Act, so that it is the same area as the Site, within 6 months after the date of the notice under clause 6.1. The alternative project will not constitute a change to the Drawings.

## **7. Force Majeure Event**

None of the negotiation, preparation and execution of this Deed, its ratification under clause 2 or any of the circumstances relating to or giving rise to the creation of this Deed has or will cause or create any Government Action, Force Majeure Event or breach of obligation under any Transaction Document and the Company and the State so acknowledge.

## **8. Confirmation of other terms**

The parties acknowledge and confirm that except as varied by this Deed the terms and conditions of the Management Agreement remain in full force and effect.

## **9. Entire Agreement**

This Deed is the entire agreement between the parties concerning the subject matter and replaces all previous representations, communications and agreements on the subject matter.

## **10. General provisions**

Clauses 33 and 35 to 40 (inclusive) of the Management Agreement apply to this Deed as if expressly included in this Deed.

16.