

Queensland



ANNO TRICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE



No. 7 of 1983

An Act with respect to the authorization and ratification of an agreement to be entered into for and on behalf of the State of Queensland with The Trustees Executors and Agency Company Limited and Jupiters Management Limited; and for purposes associated therewith and consequent thereupon

[ASSENTED TO 28TH MARCH, 1983]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title.** This Act may be cited as the *Jupiters Casino Agreement Act 1983*.

**2. Making of Agreement authorized.** (1) The Treasurer of Queensland is hereby authorized to make, for and on behalf of the State of Queensland, with The Trustees Executors and Agency Company Limited, a company duly incorporated by law and having its principal office in the said State at First Floor, 307 Queen Street, Brisbane, and Jupiters Management Limited, a company duly incorporated by law and having its registered office at 29 Elkhorn Avenue, Surfers Paradise in the said State, an agreement substantially in accordance with the form of agreement set out in the Schedule.

(2) The agreement made pursuant to the authority conferred by this section is in this Act referred to as "the Agreement".

**3. Executed Agreement to have the force of law, and ratification thereof.** (1) Upon the making of the Agreement—

(a) the provisions thereof shall have the force of law and take effect as if the Agreement were an enactment of this Act; and

(b) the Agreement shall be deemed for the purposes of section 19 of the *Casino Control Act 1982* and for all other purposes to be ratified by Parliament.

(2) The date of the making of the Agreement shall be notified by Proclamation.

**4. Variation of Agreement.** (1) The Agreement may be varied pursuant to agreement between the Treasurer or other Minister of the Crown for the time being charged with the administration of this Act for and on behalf of the State and the other parties to the Agreement with the approval of the Governor in Council by Order in Council, and a provision of the Agreement shall not be varied except in such manner.

(2) A purported variation of the Agreement not made and approved in such manner is void and of no legal effect.

(3) Unless and until the Legislative Assembly, pursuant to section 5 (4), disallows by resolution an Order in Council approving a variation of the Agreement made in such manner, the provisions of the agreement making the variation shall have the force of law and take effect as if such agreement were an enactment of this Act.

(4) Nothing contained in this section or in the Agreement shall be construed to restrict the Parliament in making laws that affect the rights and obligations of the parties to the Agreement under the Agreement or any variation thereof.

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**5. Orders in Council.** (1) Any Order in Council provided for in the Agreement may be made by the Governor in Council and, in addition, the Governor in Council may from time to time make all such Orders in Council not inconsistent with the Agreement or with any agreement varying the Agreement as he shall think necessary or expedient to provide for, enable and regulate the carrying out of the provisions of the Agreement or any of them.

(2) Any such Order in Council may be revoked or altered by another Order in Council that is not inconsistent with the Agreement or with any agreement varying the Agreement.

(3) Every such Order in Council shall—

(a) be published in the Gazette;

(b) upon publication in the Gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;

(c) be laid before the Legislative Assembly within 14 sitting days from such publication in the Gazette.

(4) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days from the day any such Order in Council has been laid before it disallowing such Order in Council or any part thereof, that Order in Council or part shall thereupon cease to have effect, but without prejudice to the making of a further Order in Council.

(5) If any Order in Council is not laid before the Legislative Assembly in accordance with subsection (3) (c), it shall be void and of no effect.

(6) A failure to lay an Order in Council before the Legislative Assembly in accordance with subsection (3) (c) or a disallowance of an Order in Council shall not affect the validity of anything done prior to that failure or disallowance.

## SCHEDULE

[s. 2]

AN AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 1983 between the STATE OF QUEENSLAND (hereinafter called "the State") of the First Part and THE TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED a Company duly incorporated by law and having its principal office in the State of Queensland at First Floor, 307 Queen Street, Brisbane as trustee of the Jupiters Property Trust (hereinafter called "the Trustee") of the Second Part and JUPITERS MANAGEMENT LIMITED a Company duly incorporated by law and having its registered office at 29 Elkhorn Avenue, Surfers Paradise in the State of Queensland (hereinafter called "the Manager") of the Third Part.

## WHEREAS:

- A. The State has resolved to permit the establishment and operation of casinos in the State of Queensland by licensing one casino facility in Northern Queensland and one in Southern Queensland.
- B. The State has set out its objectives and considerations in its Brief to Finalists in which the State considered the following objectives and considerations as being of paramount importance to the establishment and operation of casinos in the State of Queensland:—
  - (i) an applicant shall establish an Hotel-Casino Complex of the highest standard and operate that complex on an impeccable basis;
  - (ii) the establishment of the Hotel-Casino Complex shall be of maximum enhancement to the tourist industry of Queensland by the provision of an international class hotel, casino and convention centre with the best standard of ancillary amenities such as restaurants, entertainment theatres, sporting and other community facilities;
  - (iii) the permitted establishment and operation of the Casino will give significant community benefits;
  - (iv) that by the operation of the Casino the revenue of the State will be enhanced.
- C. The Company by its First Stage Submission and Second Stage Submission indicated its intentions in respect of the establishment and operation of a casino in Southern Queensland and the State has agreed to enter into negotiations with the Company as the preferred applicant for the issue to it or the Trustee of a Casino Licence for Southern Queensland as aforesaid.
- D. The said negotiations have been completed with the Company and the Trustee as hereinafter provided and the Minister has agreed, subject to ratification by an Act of Parliament



and upon the terms of this Agreement, to issue a casino licence to the Trustee to permit the playing and conducting in the Casino of such games as may be approved by the Minister at any time and from time to time pursuant to the Control Act.

- E. The State acknowledges that the establishment of the Complex as hereinafter defined is a large scale development project requiring a very large capital expenditure and that it is necessary to give to the Trustee the security and assurances contained herein to enable the provision of capital for the establishment of the Complex.
- F. It is desirable that in consideration of the Trustee and Manager entering into their and each of their respective obligations on their parts hereinafter set out that the Trustee should be granted the entitlements benefits and privileges hereinafter mentioned.
- G. Whilst the parties recognise that the power of the Parliament of the State of Queensland to make laws is absolute and cannot be taken away by an Agreement made by the State, it is the intention of the State that the titles, rights and privileges of the Trustee be not derogated from by the State in any manner whatsoever except as hereinafter provided.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

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

PART I—PRELIMINARY

PART II—DEVELOPMENT OF THE COMPLEX AND RELATED MATTERS

PART III—CORPORATE ORGANISATION AND RELATED MATTERS

PART IV—GRANTING OF CASINO LICENCE AND RELATED MATTERS

PART V—GRANTING OF LIQUOR LICENCE AND RELATED MATTERS

PART VI—CASINO OPERATIONS AND REVIEW THEREOF

PART VII—TERMINATION

PART VIII—GENERAL

PART I—PRELIMINARY

2. In this Agreement unless the context otherwise indicates or requires, the terms following shall have the meanings respectively assigned to them:

“this Agreement”—means this agreement and the schedules thereto and all amendments to such agreement or schedules.

“Agreement Act”—means the *Jupiters Casino Agreement Act 1983*.

- “Brief to Finalists”—means that document which is headed “Introduction of Casino Operations to Queensland—Brief to Finalists” and is dated October, 1981 and which explains the State’s detailed conditions and requirements for awarding a casino licence and further describes the submission format necessary for review and assessment by the State.
- “Brisbane region”—means that area of the State of Queensland which is within a radius in any direction of one hundred and twenty (120) kilometres from the site, but excluding that area within the Gold Coast region.
- “Casino”—means those areas of the Complex identified in the schematic design drawings as the areas to constitute the Casino in this particular case. Notwithstanding the inclusion or not of the following areas in the schematic design drawings, the term includes not only areas for the conduct and playing of games but also those ancillary areas which relate directly to the operation and functioning of the Casino and which include money counting, surveillance, accounting and storage.
- “Casino gross revenue”—means Casino gross revenue as defined in the Control Act.
- “Casino Licence”—means a licence to be granted pursuant to the Control Act in respect of the Casino.
- “commissioning”—means the checking, testing and acceptance of the operational readiness and procedures for the various components of the Complex by the State and the Manager.
- “Company”—means Jupiters Hotel Pty. Ltd. a company duly incorporated in the State of Queensland.
- “Companies Code”—means the *Companies (Queensland) Code*.
- “Complex”—means the Hotel Casino Complex constructed or to be constructed in accordance with the schematic design drawings and pursuant to this Agreement established within the area of which will be the Casino and other businesses or amenities referred to in the schematic design drawings.
- “Control Act”—means the *Casino Control Act 1982*.
- “Design and Construction Programme”—means the programme for the design, documentation, construction, fit-out, commissioning and completion of the Complex as contained in the First Schedule hereto.
- “Development Agreement”—means that proposed Agreement a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.
- “Facility Letter”—means the Facility Letter given by Australia and New Zealand Banking Group Limited and CitiNational Limited and which is a Schedule to the Foundation Agreement.

- “First Stage Submission”—means the submission delivered by the Company to the State dated the twentyeighth day of July 1981 which was in response to the State’s initial request for submissions to establish a casino in Southern Queensland.
- “fit-out”—means the application of finishing material, furniture, fittings, furnishings and such other built-in and loose items required to bring the Complex to an operating condition.
- “Foundation Agreement”—means that proposed Agreement a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.
- “Founders”—means the parties to the Foundation Agreement (other than the Trustee and the Manager) and any additional person added as a Founder in accordance with the Foundation Agreement and this Agreement.
- “gaming” or “gambling”—means the playing in the Casino of any game.
- “gaming machine”—means any electronic, electrical or mechanical contrivance or machine that is constructed or adapted for use in a game of chance, where the game is played or commenced by the insertion in a slot or other aperture of money or money’s worth in the form of cash or tokens, or by payment of money or money’s worth by any other means and includes any contrivance or machine used for the purpose of a game of chance where the game is played partly by means of the contrivance or machine and partly by any other means, but only if the element of chance in the game is provided by means of the contrivance or machine.
- “Gold Coast region”—means that area of the State of Queensland which is within a radius in any direction of sixty (60) kilometres from the site.
- “Jupiters Property Trust”—means the trusts constituted by the Trust Deed.
- “Manager”—means Jupiters Management Limited and any other Manager for the time being under the Trust Deed.
- “Minister”—means the Treasurer or other Minister of the Crown for the time being charged with the administration of the Control Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.
- “Minister’s nominated representative”—means an officer of the Queensland Public Service nominated in writing by the Minister to the Manager and who shall be authorised by the Minister pursuant to this Agreement to act on his behalf on only those matters prescribed in writing by the Minister and which are directly related to the design, construction, fit-out and commissioning of the complex.
- “Northern Queensland”—means that area of the State of Queensland which is north of the Tropic of Capricorn.

- “Operative Date”—means the date upon which this Agreement is entered into or the date upon which the conditions contained in sub-clause (b) of Clause 41 hereof are satisfied, whichever is the later.
- “person”—includes a company, corporation, firm and any other body of persons having legal entity as such body as well as a natural person.
- “schematic design drawings”—means the plans, drawings and other data delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto. The term includes all variations thereto as hereinafter provided.
- “Second Stage Submission”—means that submission delivered by the Company to the State dated the Eighth day of December 1981 which was lodged in response to the State’s Brief to Finalists.
- “site”—means all that piece or parcel of land in the County of Ward Parish of Gilston being Portion 299 and containing an area of 6.012 hectares as contained in Deed of Grant Volume 5928 Folio 41 and which is situate on Broadbeach Island, Broadbeach in the State of Queensland. The expression extends to and includes any future description consequent upon any resurvey of the site.
- “Southern Queensland”—means that area of the State of Queensland which is south of the Tropic of Capricorn.
- “Trust Deed”—means that proposed Deed a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.
- “Trust Fund”—means all the cash and investments and all other property whatsoever for the time being held by the Trustee upon the trusts as are provided for in the Trust Deed.
- “Trustee”—means The Trustees Executors and Agency Company Limited and any other person who for the time being is the trustee of the Jupiters Property Trust.
- “Trustee’s Contractor”—means the Contractor referred to in Clause 36 hereof.
- “Unit”—means that interest or part of the Trust Fund as is provided for in the Trust Deed.
- “Unit Holder”—means the person who for the time being is registered under the provisions of the Trust Deed as the holder of a Unit and includes persons jointly so registered.
- “works”—means all design, construction, fit-out and commissioning works of any nature whatsoever necessarily required for the completion of the Complex and shall include all excavations and ancillary works preparatory to and associated therewith whether on or off the site.

3. The singular includes the plural and the plural includes the singular.

4. Any reference to any Act or Acts unless the context otherwise requires shall include that Act or those Acts and any Act amending the same or in substitution therefor.

5. The State acknowledges and confirms that the Governor in Council has given his approval for the Minister for and on behalf of the State to enter into this Agreement with the Trustee and the Manager and that this Agreement is an agreement made pursuant to Section 19 of the Control Act.

6. The benefits that are expressed to be conferred upon, and the obligations that are expressed to be imposed upon, the Trustee pursuant to this Agreement shall be so conferred and imposed upon the Trustee and the Manager in accordance with the respective functions powers and responsibilities of the Trustee and the Manager set forth in the Trust Deed and to that intent the following shall apply:—

- (a) the Trustee shall be registered pursuant to a Nomination of Trustee as proprietor of an estate in fee simple in the site and the legal owner of the Complex;
- (b) the Casino Licence and any other licence to be granted in accordance with this Agreement shall be granted to and held by the Trustee as is provided in this Agreement.

7. Neither the State nor any person to whom the Trustee is liable:

- (a) under or pursuant to this Agreement or the Agreement Act or an agreement entered into by the Trustee in pursuance of any of the matters provided for or contemplated in this Agreement or the Agreement Act;
- (b) under or pursuant to any of the Agreements specified in the Third Schedule hereto;
- (c) under or pursuant to the Control Act;
- (d) in respect of or incidental to the acquisition by the Trustee of the site, the design and construction of the Complex and the management and operation of the Complex

shall be entitled to have recourse, in satisfaction of such liability, to any assets held by the Trustee in its personal capacity or in its capacity as Trustee of any trust other than the Jupiters Property Trust and the recourse of the State and/or any such person shall be limited to the Trust Fund

**PROVIDED THAT** nothing in the foregoing provisions of this clause shall limit the liability of the Trustee to the Unit Holders for breach of trust where the Trustee fails to show the degree of care and diligence required of a Trustee having regard to the powers, authorities or discretions conferred on the Trustee by the Trust Deed.

8. (a) This Agreement shall be subject to and conditional upon:

- (i) the Development Agreement;
- (ii) the Foundation Agreement; and
- (iii) the Trust Deed,

being duly entered into by the respective parties thereto prior to, or not later than 14 days after, the date of this Agreement or such extended period as may be approved by the Minister in the form of agreement that in each case is in accordance with the copy thereof tabled in Parliament or in such other terms as are approved by the Minister.

- (b) If the conditions contained in sub-clause (a) of this Clause shall not have been satisfied within the period referred to therein, this Agreement shall thereupon cease and determine and none of the parties to this Agreement will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement or in anticipation of the coming into force of this Agreement.

9. The terms of this Agreement, and specifically so far as they give to the Trustee the entitlements, benefits and privileges as aforesaid, may only be varied pursuant to an agreement in writing made between the State, the Trustee and the Manager with the approval of the Governor in Council by Order in Council.

10. The State shall exempt from stamp duty or similar duty:—

- (a) this Agreement;
- (b) any contract entered into by the Trustee and/or the Manager for the purposes of this Agreement or any document ancillary to such contract or in implementation thereof where the other party to such contract or such document is the State, a State Corporation or State Instrumentality;
- (c) the contract of sale and the instrument of conveyance, whether by a Nomination of Trustee or otherwise, evidencing the transfer of the site in fee simple from the Company to the Trustee;
- (d) any copy of any of the aforesaid documents.

11. The Minister shall have the authority to decide all matters on behalf of the State pertaining to or connected with this Agreement unless the Governor in Council is specifically stated as the approving authority.

12. Upon this Agreement being entered into the provisions of this Agreement shall have the force of law as though this Agreement were an enactment of the Agreement Act.

13. Notwithstanding anything contained in any Act or other statutory provision or rule of law enacted by the State it is hereby acknowledged that any act by the State, the Trustee or the Manager, connected with, or pertaining to the obligations, titles, rights and privileges of the parties contained in this Agreement, which would, but for the enactment of the Control Act and the Agreement Act be illegal shall not be illegal.

14. The Trustee as the holder of the Casino Licence may mortgage charge or otherwise encumber:—

- (a) the Casino Licence to be granted pursuant to Clause 45 of this Agreement;
- (b) the Complex; and
- (c) the rights and benefits of the Trustee under this Agreement

in accordance with Section 32 of the Control Act

PROVIDED HOWEVER that the Minister shall be deemed to have consented to the execution by the Trustee—

- (i) of the securities referred to in the Facility Letter and to the granting of the security constituted by or provided for in the Facility Letter, and
- (ii) of the Bill of Encumbrance referred to in the Development Agreement,

and to have approved of the Mortgagee and the Encumbrancee under those proposed securities as the person to whom such security is to be given in the terms of and in accordance with Section 32 of the Control Act.

15. The State, the Trustee and the Manager shall each pay its own costs in respect of this Agreement.

#### PART II—DEVELOPMENT OF THE COMPLEX AND RELATED MATTERS

16. The State accepts and approves the site as the area upon which the Complex shall be developed and constructed in terms of this Agreement.

17. (a) Notwithstanding the provisions of the *Local Government Act 1936–1982* or any by-law thereunder, the State agrees—
- (i) that all that land comprising the site shall in respect of any Town Planning Scheme in force in the Local Authority Area in which the said land is situated be deemed to be included in the Special Facility Zone;
  - (ii) that the said Zone shall be deemed to be appropriate to the use which the said land and the Complex is put for the purposes of this Agreement; and

- (iii) that the said land shall be deemed to remain so zoned for the purposes of this Agreement, so that the use to which the Trustee and any person claiming through or under the Trustee may put the said land, and the erection and use of the Complex thereon, may be undertaken and carried out without any interference or interruption by any Local Authority or by any other Corporation or Instrumentality of the State or by any person on the grounds that such use is contrary to any Town Planning Scheme or by-law of any Local Authority or any other statutory town planning provision.
- (b) The State agrees—
- (i) that the relevant scheme maps for the Town Planning Scheme of the Local Authority Area shall be appropriately endorsed by the Local Authority and the Director of Local Government to give effect to sub-clause (a) of this Clause; and
- (ii) that the particular purpose to be indicated by red or black lettering on such scheme maps shall be “Hotel-Casino Complex purposes pursuant to the *Jupiters Casino Agreement Act 1983*”.
18. The Manager warrants that:—
- (a) all matters, other than those matters referred to in Clause 17 hereof, which require the consent, permission or approval of the Local Authorities and Statutory Bodies with respect to the design, development, construction and commissioning for operation of the Complex have been or will be satisfactorily negotiated with such Local Authorities and Statutory Bodies and as set out in the Second Schedule hereto; and
- (b) the financial contributions which the Trustee is required to make as a consequence of the matters referred to in paragraph (a) of this Clause have been or will be duly agreed upon.
19. (a) The Trustee shall make the financial contributions to the Local Authority, Statutory Bodies and those sporting and community bodies which are set out in the Second Schedule hereto in the manner and for the purposes referred to in the said Schedule.
- (b) The State acknowledges and agrees that the contributions referred to in sub-clause (a) of this Clause include the contributions which the Trustee has agreed to make to carry out the obligations in respect of the provisions of an off-site recreational facility.



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20. (a) The design, construction, fit-out and commissioning of the Complex or any stage thereof as hereinafter provided for shall, subject to the provisions of Clause 17 hereof, comply with the requirements of all regulations and by-laws of all relevant Local Authorities and Statutory Bodies and all Acts of the State and the Commonwealth applicable thereto and in particular the *Fire Safety Act 1974–1979*, the *Building Act 1975–1981* and the *Factories and Shops Act 1960–1982*.
- (b) The parties acknowledge that compliance by the Trustee and/or the Manager with the provisions of sub-clause (a) of this Clause shall in no manner whatsoever compel or require the Trustee and/or the Manager to carry out any additional works or to make any financial contributions to any such authorities or bodies in respect of the design, construction, fit-out and commissioning of the Complex which are in addition to those provided for in Clauses 18 and 19 hereof save and except such additional works or financial contributions which would be usual for the design, development, construction, fit-out and commissioning of the Complex and which could not have reasonably been foreseen at the commencement of the works and of which the Governor in Council has approved.

21. The Trustee shall within forty-five (45) days of the Operative Date complete the purchase of the site and as soon as practicable thereafter ensure that it is registered as proprietor pursuant to a Nomination of Trustee of that Land for an estate in fee simple free from all encumbrances.

PROVIDED HOWEVER that should any reason other than the default of the Trustee completion not be effected as aforesaid then the Trustee shall be entitled to extend the said period of forty-five (45) days for completion by so many days as may be necessary to complete such purchase as aforesaid provided that it shall have taken all steps as may be necessary to enforce its rights under the contract for such purchase within the said period of forty-five (45) days.

22. The parties acknowledge that the schematic design drawings set out the general design and reflect the planning objectives of the State and the Manager for the design, development, construction, fit-out and commissioning of the Complex and the State accepts such schematic design drawings as complying with its planning objectives and requirements.

23. The Manager warrants that:—

- (a) the Complex shall be designed, developed, constructed, fitted out and commissioned for operation in accordance with the schematic design drawings and the further working drawings

and specifications which are hereinafter provided for together with any approved alterations or modifications thereto pursuant to Clause 28 hereof; and

- (b) the Complex shall be completed and ready for operation and use by the public not later than the Second day of April 1986 in the event that construction of the Complex is commenced not later than the First day of May, 1983 subject only to any extensions of those dates which may be approved by the Manager on behalf of the Trustee pursuant to the Development Agreement and monitored by the State.

24. The Manager shall within eighteen (18) weeks of the Operative Date or such longer period as approved by the Minister submit to the Minister for his approval the following items:—

- (a) an engineering survey drawing indicating all site alignments and constraints and all metes and bounds of the site all ownership and controls as well as the names of any abutting roads waterways service lines and other material matters both existing and proposed;
- (b) a Schedule identifying the nature and degree of access to all facilities by people who may not be attending the Complex;
- (c) a detailed site development master plan or plans clearly indicating the full intentions of the Manager for the development of the Complex which shall contain all intended stages of development;
- (d) all final schematic design drawings;
- (e) a budget estimate of costs for the works prepared by a Quantity Surveyor in accordance with the current National Public Works Conference Cost Control Manual;
- (f) a proposal detailing the intended method of carrying out all phases of the development of the Complex including the type of contract documentation to be used, the system, including the provision for Ministerial review and approval, for the calling of tenders and appointment of sub-contractors, nominated sub-contractors, trade contractors and the method for completing construction, fit-out and the commissioning of the Complex;
- (g) an itemised design and construction programme for all phases of the development of the Complex up to and including the time of commissioning the Complex for operation which may at the option of the Manager provide for the works to be staged to permit pursuant to Clause 35 hereof any part of the Complex to open for use by members of the public before the whole of the Complex is completed;
- (h) a projected and itemised cash-flow forecast up to and including the commissioning stage on a financial year matrix.

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25. (a) The State acknowledges and confirms that the Manager intends to prepare or cause to be prepared all necessary documents and drawings for the design and construction of the Complex other than the documents and drawings contemplated in Clauses 24 and 26 hereof and to carry out or cause to be carried out the construction of the Complex in stages and that as the said necessary documents and drawings for each stage are completed to submit all such documents and drawings to the Minister for his approval.
- (b) The Manager shall, not later than the dates contemplated in the design and construction programme, submit to the Minister for his approval the following drawings and documents so far as they relate to that part of the works which the Manager intends to commence as the next ensuing stage:—
- (i) working drawings and specifications;
  - (ii) pre-tender contract documentation;
  - (iii) nominations of sub-contractors;
  - (iv) equipment and fit-out documentation.
26. (a) The Manager shall, not less than thirty (30) days prior to the commencement of any works or any part thereof which relate directly to the Casino, submit to the Minister for his approval, all working drawings and specifications relating to such items of construction and in particular the following details:—
- (i) Casino floor layouts showing placement of gaming tables and closed circuit television cameras;
  - (ii) the design of the reflected ceiling showing the location of catwalks, closed circuit television cameras, viewing panels, lights and other fittings and services;
  - (iii) plans of cashier's cages, count rooms and all security areas including access thereto;
  - (iv) plans of areas to be used for inspectors appointed under the Control Act and the Casino security staff;
  - (v) the electrical installations and in particular for:—
    - (A) closed circuit television system;
    - (B) alarm system;
    - (C) telephone installations;
    - (D) emergency link to local police headquarters;
    - (E) auxiliary power and lighting provisions;
  - (vi) the master-key system proposed; and
  - (vii) the proposed construction, supply or fit-out of the preceding items.
- (b) The Manager shall ensure that all materials, fittings and equipment utilised in the construction, fit-out and operation

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of those areas specified in sub-clause (a) shall be of a high standard of manufacture and of a quality commensurate with an international class hotel-casino.

27. The Manager shall in sufficient time to allow the Minister to consider but in any event prior to the date upon which the Manager intends to open for use by the public any part of the Complex submit to the Minister for his approval details of the following matters so far as they relate to that part of the Complex which the Manager intends to open as aforesaid:—

- (a) fire safety procedures;
- (b) emergency shelter arrangements;
- (c) crowd control procedures;
- (d) armoured vehicle transfer arrangements;
- (e) vehicle control and parking arrangements.

28. (a) The parties acknowledge that variations to the schematic design drawings and the working drawings and specifications to be provided pursuant to this Agreement may be necessary. The Manager shall submit to the Minister's nominated representative details of any such variations that are proposed and shall not make any such variations without the prior approval in writing of the Minister.

(b) If, in the opinion of the Manager or Trustee's Contractor, it is necessary to make variations as aforesaid as a matter of urgency then the Manager shall be permitted to carry out such variations and it shall as soon as is practicable advise the Minister's nominated representative of such variations so as to obtain the Minister's approval.

29. (a) If upon the submissions detailed in Clauses 24, 25, 26, 27 or 28 hereof having been made, the Minister does not approve the whole or any part of such submissions he shall issue a notice to show cause why that part should not be altered, replaced or withdrawn and cause such notice to be delivered to the Manager;

(b) The notice shall state the grounds upon which the Minister does not approve the whole or such part of the submission and shall allow such time as may be reasonable, but not less than thirty (30) days, by which cause may be shown;

(c) The Manager may endeavour to show cause by written, oral or any other type of further submission to the Minister at any time on or before the day specified in the notice by which cause may be shown, and may in showing cause, introduce such further alternative proposals for consideration by the Minister as it deems necessary;

- (d) The Minister shall give all further submissions forwarded to him in answer to the show-cause notice all due consideration and if, in his opinion:—
  - (i) insufficient cause is shown or, where no cause is shown, direct that the Manager modify its submission in such manner as will satisfy him; or
  - (ii) sufficient cause is shown accept and approve the submission of the Manager in its original form or subject to any modification which he directs;
- (e) In his consideration of all submissions made to him pursuant to Clauses 24, 25, 26, 27 or 28 hereof or pursuant to this Clause the Minister shall have regard to the general design and planning objectives of the State and the Manager contained in the schematic design drawings, subject to such variations thereto as shall have been approved where approval is required.

30. The Minister shall approve or not approve the necessary documents and drawings which the Manager is required to lodge with the Minister for approval hereunder within thirty (30) days of receiving same from the Manager and if he has not communicated his approval or delivered a show-cause notice pursuant to Clause 29 hereof to the Manager within the said thirty (30) days then the Manager shall be deemed to have received approval from the Minister and may proceed with that part of the works for which approval was sought.

- 31. (a) The Minister, and any persons appointed in writing by the Minister or the Minister's nominated representative, shall at all times have free access to the site for the purpose of inspecting and measuring the progress of the works and undertaking tests,  
PROVIDED THAT, in doing so, such persons shall not interfere with the progress of the works except for the purpose of exercising any powers hereby conferred,  
AND PROVIDED FURTHER that on entering the site, such persons shall inform the senior representative of the Trustee's Contractor on the site of their presence.
- (b) The Minister's nominated representative shall be available during all normal working hours, and as often as may be necessary, for consideration of all drawings and specifications and consideration and consultation of any other technical matters connected with design, construction, fit-out and commissioning of the Complex.
- (c) The Minister's nominated representative shall from time to time give to the Manager notice in writing of all inspections, measurements and tests that he proposes to carry out during the progress of the works sufficiently in advance of the proposed dates of completion of the work to be inspected, measured or tested so as not to delay the completion

thereof and the Manager shall ensure that no part of the works is covered up or otherwise made inaccessible before any required inspection, measurement or test is completed PROVIDED HOWEVER that should the Minister's nominated representative not carry out the inspection, measurement or test on the day appointed by the Trustee's Contractor and advised to the Minister's nominated representative the Trustee's Contractor shall be at liberty to continue the works.

32. (a) The Manager shall provide an on-site secure office for the exclusive use by the Minister's nominated representative and any other representative nominated by the Minister as hereinbefore referred to during the carrying out of the works. Such office shall be in a location to be agreed upon by the Minister's nominated representative and the Manager and shall have its own separate access and be of a standard that is, and with facilities that are, not less than that provided for the Trustee's Contractor.
- (b) The Manager shall maintain such office in a clean condition for the duration of its occupancy by the Minister's nominated representative.

33. Project advisory meetings shall be held on a monthly basis and from time to time as may be agreed upon by the Minister's nominated representative and the Manager during the design documentation, construction, fit-out and commissioning stages. The principal purposes of these meetings are to monitor design, development, contract documentation and progress of the works, to provide advice by the Minister's nominated representative to the Manager in respect of compliance with the State's requirements during the various stages of the development of the Complex and to discuss any urgent matters which may arise from time to time. Such meetings shall be chaired by the Minister's nominated representative and attended by the Manager's nominated representative and such others as may be determined by these persons from time to time. The Manager shall provide accurate minutes to the Minister's nominated representative within one (1) week after such meetings.

34. The Manager shall provide three copies of all plans, specifications and other such material to the Minister as may be required pursuant to this Agreement or in accordance with any procedure for inspection of the works as may from time to time be advised by the Minister or the Minister's nominated representative to the Manager.

PROVIDED HOWEVER that the Manager shall not be obliged to provide working drawings relating to the installation of the security surveillance and alarm systems to be incorporated into the Complex but shall be required

- (a) to deliver to the Minister particulars of such systems to show how they operate and that they are adequate for the purposes for which they are intended;

- (b) make available at the office of the Manager the working drawings as aforesaid for perusal by the Minister's nominated representative and such other persons as may be specified by the Minister's nominated representative and agreed to by the Manager;
- (c) to promptly advise the Minister's nominated representative of any variations proposed for such systems; and
- (d) to maintain an up-to-date set of working drawings of such systems and to make such drawings available at the office of the Manager to the Minister or to a person nominated by him and agreed to by the Manager.

35. The Manager may at any time during the construction of the Complex apply to the Minister for approval to open such part or parts of the Complex as may be completed and ready for operation notwithstanding that the whole of the Complex is not so complete and the Minister shall not unreasonably withhold his approval to any such application

PROVIDED THAT it shall be a condition precedent to his approval to open the Casino part of the Complex and to issue a casino licence in accordance with Clause 45 hereof for the Manager to have completed and to have ready and available for occupation by members of the public at least two hundred (200) hotel guest rooms.

36. The State accepts and approves the appointment of JENNINGS CONSTRUCTION LIMITED as the Trustee's Contractor and project manager for the design, development, construction, fit-out and commissioning of the Complex in terms of the Development Agreement.

- 37. (a) The parties acknowledge that the Trustee may at some time in the future further develop the site by increasing the facilities which are presently contained in the Complex as are identified in the schematic design drawings by constructing a further residential and/or commercial building upon that part of the site which is identified in the schematic design drawings for that purpose.
- (b) The State agrees that the provisions of Clause 17 hereof shall extend to and include such further development if the Governor in Council is satisfied that the proposed further development is of a like nature to that included in the original Complex or otherwise that the further development is not an undesirable development of the site.
- (c) The State agrees that the Trustee may carry out such further development provided that the Manager shall before

commencing any construction deliver to the Minister for his approval schematic design drawings containing particulars of the further development and, in the event that the Minister does not approve the proposed further development or any part thereof in the form set out in the schematic design drawings as aforesaid, the provisions of Clauses 29 and 30 hereof shall extend and apply to the submission made by the Manager hereunder.

- (d) The Trustee shall, before commencing such further development, negotiate with the Local Authority and statutory bodies and agree upon all matters (including financial contributions) which but for Clause 17 hereof as extended by this Clause would require the consent, permission or approval of the Local Authority and statutory bodies with respect to the design, development, construction and commissioning for operation of the buildings and structures comprising the further development.

38. The performance by the Trustee and the Manager respectively of the terms and conditions herein contained or referred to as relate to the design, development, construction fit-out and commissioning of the Complex, is subject to, and is contingent upon, events, happenings or contingencies which interfere with the performance of such terms and conditions and which in the absence of fault or negligence on the part of the Trustee and/or the Manager as the case may be, are beyond the reasonable control of the Trustee and/or the Manager as aforesaid, including but not restricted or limited to accidents, acts of God, force majeure, earthquakes, floods, storms, tempests, washaways, fires, acts of war, acts of public enemies, riots, civil commotions, strikes, lockouts, bans, "go-slow" activity, stoppages, restraints of labour or other similar acts (whether partial or entire), acts or omissions of any Government or any instrumentality (whether legislative, executive or administrative) of the Commonwealth or of any other government or governmental authority or instrumentality (whether legislative, executive or administrative), shortages of labour or materials, reasonable inability to obtain contractors, delays of contractors, inability or delay in obtaining any Government or local authority or any other approval, permit or licence, and delays arising from any other cause whether of a kind specifically enumerated above or otherwise, which are not reasonably within the control of the Manager and/or Trustee as aforesaid, and, upon the occurrence of any one or more of such events, the Trustee and/or the Manager shall not be liable to the State in any manner whatsoever as a result of such delay or failure to perform and observe any of the terms and conditions herein contained.

PROVIDED HOWEVER that the provisions of this Clause shall not excuse any failure to comply with the provisions of Clause 28 hereof.



**PART III—CORPORATE ORGANISATION AND RELATED MATTERS**

39. The Manager in the performance of its functions pursuant to the Foundation Agreement and the Trust Deed shall:—

- (a) issue to each Founder in accordance with the provisions of the Foundation Agreement the respective number of Units set forth below:

(i) Jennings Industries Limited	Twenty Million (20,000,000) Units
(ii) Superannuation Fund Investment Trust	Twenty Million (20,000,000) Units
(iii) New Founders	Thirty-five Million (35,000,000) Units

at a selling price of One Dollar (\$1.00) per Unit which shall be payable by instalments and secured in the manner set out in paragraphs (d), (e), (f) and (g) of this Clause;

**PROVIDED THAT:**

- (i) the above issue of Units shall include the following issue to the Founders of the initial one thousand (1,000) Fully Paid Units pursuant to the Foundation Agreement and the Trust Deed:
- |  |                                      |
|--|--------------------------------------|
| (A) Jennings Industries Limited          | Five hundred (500) Fully Paid Units  |
| (B) Superannuation Fund Investment Trust | Five hundred (500) Fully Paid Units; |
- and
- (ii) the respective numbers of Units to be issued by the Manager to the Founders may be varied in accordance with the Foundation Agreement and sub-paragraph (B) of Clause 41 (b) (i) hereof;
- (b) offer, and upon acceptance, issue to the public, Units, each at a selling price of One Dollar (\$1.00), to a total value which is not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000) and subject to the requirements of the Australian Associated Stock Exchanges and the National Companies and Securities Commission it is the intention of the Manager that the offer pursuant to this paragraph shall in the first instance be directed to members of the public resident in Queensland and that the spread of holders shall be as wide as is reasonably practicable. The minimum holding shall be five hundred (500) Units and in carrying out the allotment the Manager and its underwriters shall accord priority primarily to Queensland residents and secondly to applications for minimum holdings as full or partial allotments;
- (c) utilize the syndicated bridging and standby facilities to be arranged and managed by Australia and New Zealand

Banking Group Limited and CitiNational Limited pursuant to and upon the terms and conditions set forth in the Facility Letter;

- (d) obtain from Jennings Industries Limited, within thirty (30) days of the Operative Date a guarantee, bond or letter of credit, given or confirmed by:
  - (i) an Australian trading bank; or
  - (ii) an insurance company or financial institution approved in writing by the Trustee, the Manager and the Minister, and in each case in a form that is approved in writing by the Trustee, the Manager and the Minister to secure the due payment of the total selling price outstanding from time to time and payable by Jennings Industries Limited for the Units as listed in paragraph (a) of this Clause;
- (e) obtain from Superannuation Fund Investment Trust, within thirty (30) days of the Operative Date, written advice in a form that is approved in writing by the Trustee, the Manager and the Minister confirming that Superannuation Fund Investment Trust will pay the total selling price payable by Superannuation Fund Investment Trust for the Units as listed in paragraph (a) of this Clause;
- (f) obtain from any new Founder or Founders added in accordance with sub-clause (b) of Clause 41 within thirty (30) days of the Operative Date either a guarantee, bond or letter of credit complying with the requirements set out in paragraph (d) of this Clause or a letter of advice complying with the requirements set out in paragraph (e) of this Clause to secure the due payment of the total selling price outstanding from time to time and payable by that Founder or Founders for the Units to be issued pursuant to paragraph (a) of this Clause

PROVIDED THAT such security shall be a guarantee, bond or letter of credit as aforesaid unless the Trustee, the Manager and the Minister agree to accept a letter of advice as aforesaid;

- (g) hold any such guarantee, bond, letter of credit, or written advice referred to in paragraphs (d), (e) and (f) of this Clause until such time as the total selling price for the Units in respect of which the same shall have been given shall have been duly paid;
- (h) ensure that the amount of the selling price per Unit that is paid up in respect of the Units issued to the Founders pursuant to paragraph (a) of this Clause shall at all times be equal to or exceed the amount of the selling price per Unit that is paid up in respect of the Units issued to the public pursuant to paragraph (b) of this Clause;

- (i) refrain from issuing any Units other than those provided for in paragraphs (a) and (b) of this Clause unless the Governor in Council has approved such issue;
- (j) refrain from entering into any loan agreement other than the Facility Letter and any agreement to be entered into pursuant to that Letter without the prior written approval of the Minister;
- (k) after the issue of Units listed in paragraph (a) of this Clause, refrain from registering any transfer by a Founder whereby the holding of Units by that Founder shall be reduced below that number of Units being not less than thirty-three and one-third per centum (33 $\frac{1}{3}$ %) of the total number of Units actually issued to that Founder pursuant to this Part of this Agreement without the prior approval of the Governor in Council;
- (l) when directed by the Governor in Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever enforce the disposal of any Units held by any person in accordance with the procedure in that respect set forth in the Trust Deed, PROVIDED THAT the Governor in Council shall not issue a direction to dispose of such Units unless the person holding such Units is considered not to be a suitable person to be the holder thereof having regard to those matters specified in Section 20 of the Control Act;
- (m) when directed by the Minister require the production of a statutory declaration by any person registered as the holder of any Units setting forth the name and address of any person entitled to the same and full particulars of that entitlement.

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

- (a) issue at par one hundred and fifty thousand (150,000) ordinary shares in the capital of the Manager with a nominal value of One Dollar (\$1.00) each to the Founders in the respective classes set forth in the Articles of Association of the Manager in proportion to the respective Units actually issued pursuant to this Part of this Agreement (including the subscribers' shares)  
PROVIDED HOWEVER that any such shares may be held by a nominee, approved of in writing by the Minister, on behalf of any such party;
- (b) refrain from issuing allotting reallothing or otherwise disposing of any shares in the capital of the Manager other than those provided for in paragraph (a) of this Clause, except—
  - (i) with the approval of the Governor in Council; or

- (ii) the issuing of shares to each of the shareholders for the time being in proportion to their respective shareholders;
- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director of the Manager;
- (d) obtain the prior approval of the Governor in Council to the registration of any transfer of shares in the capital of the Manager;
- (e) when directed by the Governor in Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the shares of any shareholder in the Manager in accordance with the procedure in that respect set forth in the Articles of Association of the Manager,

PROVIDED THAT the Governor in Council shall not issue a direction to dispose of such shares unless the shareholder is considered not to be a suitable person to be a shareholder having regard to those matters specified in Section 20 of the Control Act;

- (f) enforce the vacating from office of any director of the Manager in accordance with any direction to that effect by the Governor in Council;
  - (g) refrain from entering into any loan agreement without the prior approval in writing of the Minister.
41. (a) The State accepts and approves of the participation of the Trustee, the Manager and the Founders in the Foundation Agreement and to the form of the trust and corporate organisation and the method of financing set forth in the Foundation Agreement.
- (b) This Agreement shall be subject to and conditional upon the following:—
- (i) a new Founder or Founders being added as a party or parties to the Foundation Agreement in accordance with this Agreement and the Foundation Agreement upon the basis that the Manager shall issue to such new Founder or Founders:
    - (A) a total number of Units equal to the number of Units provided for in respect of the new Founders in paragraph (a) of Clause 39 hereof; or
    - (B) a total number of Units more or less than the number of Units provided for in respect of the new Founders in paragraph (a) of clause 39 hereof and in such case the respective numbers of Units to be issued to Jennings Industries Limited and/or Superannuation Fund Investment Trust pursuant to paragraph (a) of

Clause 39 hereof shall be varied so that the total number of Units to be issued to the Founders pursuant to paragraph (a) of Clause 39 hereof shall be seventy-five million (75,000,000); and

- (ii) Such approvals (if any) as may be necessary from the Foreign Investment Review Board of the Commonwealth of Australia to the participation of any new Founder upon terms and conditions acceptable to such new Founder.
- (iii) the appointment of an independent operator of international standing and reputation to provide management services in respect of the casino and the hotel operations of the Complex or of independent operators of such standing and reputation to provide management services in respect of the separate operations of the said casino and the said hotel in accordance with the Foundation Agreement;
- (c) If the conditions contained in sub-clause (b) of this Clause shall not have been satisfied within the period of ninety (90) days from the date of this Agreement or such extended period as may be agreed upon in writing by the parties to this Agreement, this Agreement shall thereupon cease and determine and none of the parties to this Agreement will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement or in anticipation of the coming into force of this Agreement.
- (d) For the purposes of this Agreement, the date upon which the conditions contained in sub-clause (b) of this Clause shall be satisfied shall be the last to occur of the following:
  - (i) the date of execution of the supplementary agreement to be entered into pursuant to paragraph (c) of Clause 42 hereof and the Foundation Agreement;
  - (ii) the date of the Order in Council whereby the approval of the Governor in Council is given to the addition of the new Founder or Founders and (if applicable) the variation of the respective numbers of Units to be issued to the Founders pursuant to paragraph (a) of Clause 39 hereof;
  - (iii) the date upon which the Manager shall have been advised in writing by all new Founders, in respect of whose participation approval of the said Foreign Investment Review Board is required, that all such approvals have been given upon terms and conditions satisfactory to the respective Founders (if applicable).
  - (iv) the date of execution of the appointment or appointments of the operator or operators in accordance with sub-clause (b) (iii) of this Clause;

42. The following shall be conditions of this Agreement:—

- (a) that there shall be no amendment or variation of the terms or conditions of the Foundation Agreement or any agreement being a schedule to the Foundation Agreement after the execution of those documents without the prior approval in writing of the Minister;
- (b) that no party to the Foundation Agreement shall be released or discharged from its obligations under the Foundation Agreement without the prior approval in writing of the Minister;
- (c) that no party shall be added to the Foundation Agreement without the prior approval of the Governor in Council and without such party entering into a supplementary agreement in a form approved by the Minister agreeing to be bound by the provisions of the Foundation Agreement as if an original Founder;  
PROVIDED THAT the addition of a new Founder or Founders pursuant to Clause 41 (b) hereof and any consequential variation of the respective numbers of Units to be issued to the Founders pursuant to paragraph (a) of Clause 39 hereof shall require the prior approval of the Governor in Council;
- (d) that the form of the trust and corporate structure and the method of financing set forth in the Foundation Agreement (subject to any approved amendment or variation) shall be substantially followed and adhered to;
- (e) that the Trust Deed shall not be altered or amended without the prior approval in writing of the Minister;
- (f) that the Memorandum and Articles of Association of the Manager shall not be altered or amended without the prior approval in writing of the Minister;
- (g) that the appointment of the respective auditors under the Trust Deed and of the Manager shall be in accordance with the provisions of the Trust Deed and the Companies Code but no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister;
- (h) that the total number of Units to which any person shall be entitled (other than a holding by a Founder in accordance with Clause 39 hereof) shall not exceed five per centum (5%) of the total number of the Units in issue at any time without the approval in writing of the Minister;
- (i) that the total number of Units to which a foreign person or foreign persons shall be entitled shall not exceed forty per centum (40%) of the total number of the Units in issue at any time

PROVIDED THAT the Minister may by notice in writing exempt any holding of specified Units by a specified person

from the provisions of this paragraph for a specified period and during that period such Units shall be disregarded for the purposes of this paragraph.

43. Notwithstanding Clause 42 hereof, an entitlement to Units in excess of either of the limitations contained in paragraphs (h) and (i) of Clause 42 hereof shall not constitute a breach of the conditions of this Agreement if the Manager shall have acted forthwith to bring about the disposal of the relevant Units in accordance with the powers in that behalf contained in the Trust Deed upon its becoming aware of that entitlement and its being in excess of the relevant limitation.

44. For the purposes of this Part:—

(a) "Foreign person" means—

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

PROVIDED HOWEVER that—

- (A) a corporation incorporated in Australia and having its shares listed for quotation in the official list of a stock exchange in Australia and which is the registered holder or the beneficial owner of not more than one per centum (1%) of all Units for the time being created and not cancelled;
- (B) a corporation incorporated in Australia which is the registered holder or beneficial owner of not more than one quarter of one per centum ( $\frac{1}{4}$ %) of all Units for the time being created and not cancelled

shall not be, for the purposes of this Agreement, a foreign person unless the Minister deems it to be a foreign person.

- (b) "Foreign corporation" means—a corporation incorporated elsewhere than in Australia or any Australian External Territory.
- (c) A person shall be taken to hold a controlling interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than fifteen per centum (15%) of the voting power in the corporation or holds interests in not less than fifteen per centum (15%) of the issued shares in the corporation.
- (d) Two or more persons shall be taken to hold an aggregate controlling interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than forty per centum (40%) of the voting power in the corporation or hold interests in not less

than forty per centum (40%) of the issued shares in the corporation.

- (e) The following persons are associates of a person:—
- (i) the person's spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
  - (ii) any partner of the person;
  - (iii) any corporation of which the person is an officer;
  - (iv) where the person is a corporation—any officer of the corporation;
  - (v) any employee or employer of the person;
  - (vi) any officer of any corporation of which the person is an officer;
  - (vii) any employee of a natural person of whom the person is an employee;
  - (viii) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person, or where the person is a corporation, of the directors of that corporation;
  - (ix) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
  - (x) any corporation in which the person holds a controlling interest;
  - (xi) where the person is a corporation—a person who holds a controlling interest in the corporation;
  - (xii) any person who is, by virtue of this paragraph, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph).
- (f) A reference to a person being entitled to Units or a stipulated percentage of the same shall have the same meaning as a reference in *Division 4* of PART IV of the *Companies Code* to a person being entitled to a stipulated percentage of the voting shares in a company and that person's entitlement shall be calculated in the manner prescribed for calculation of substantial shareholdings in *Division 4* of PART IV of the *Companies Code* as if that Division applied and as if Units were voting shares.

#### PART IV—GRANTING OF CASINO LICENCE AND RELATED MATTERS

45. (a) Upon the Minister being satisfied of compliance by the Trustee and the Manager with:—
- (i) their respective obligations under this Agreement;
  - (ii) the relevant provisions of the Control Act; and



- (iii) any provisions of the Agreement Act;  
to be complied with up to the time of the grant of the Casino Licence there shall be granted to the Trustee pursuant to the Control Act a casino licence authorising subject to Section 63 thereof, the conduct and playing in the Casino of the games set out hereunder:
- blackjack;
  - roulette;
  - baccarat;
  - craps;
  - keno;
  - two-up;
  - mini dice;
  - big six;
  - big and small.

PROVIDED HOWEVER that should the Trustee apply to open only the Casino part of the Complex then subject to the provisions of Clause 35 hereof and upon the Minister approving the Trustee's application the Trustee shall be deemed so far as relates to the Casino part of the Complex to have complied with the matters set out in (i), (ii) and (iii) of this sub-clause.

- (b) Subject to the Casino Licence having been granted pursuant to sub-clause (a) of this clause the Trustee or the Manager may apply to the Minister at any time for approval to play in the Casino any game commonly played in a casino whether in Australia or elsewhere or any variation or derivative thereof no matter how played including any game played by the use of any gaming machine where such use is at the time of the application lawful in accordance with the laws of the State of Queensland and upon approval of such application and the Trustee's and the Manager's compliance with any relevant provisions of the Control Act in relation thereto the Minister shall take all such steps as are necessary so that the conduct and playing of such game in the Casino is duly authorised by the said Casino Licence.
- (c) In the event of the State authorising, permitting or approving in any manner whatsoever pursuant to any Act the conduct or playing of any game by use of any gaming machine commonly known as a "poker machine" or any variation or derivative thereof or any gaming machine of a like class or description THEN the Trustee or the Manager may apply to the Minister pursuant to sub-clause (b) of this Clause for approval to play any such game in the Casino.

46. (a) Subject as hereinafter provided, the State shall not either before or during the periods of exclusivity hereinafter provided for respectively, notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing in a casino of any game commonly played in casinos whether in Australia or elsewhere or any variation or derivative thereof no matter how played and in particular any game which the Trustee is authorised to conduct and play under such Casino Licence or the use of any premises of whatsoever nature for the conduct and playing of any such game for a period of five (5) years in Southern Queensland from the date upon which the Trustee opens the Casino for operation and use by members of the public and in the Brisbane region of the said State for a period of seven (7) years from the abovementioned date of first opening and in the Gold Coast region of the said State for a period of ten (10) years from the abovementioned date of first opening.
- (b) The State shall not, except in a casino licensed pursuant to the Control Act, whether before, during or after the period of exclusivity set out in sub-clause (a) of this Clause and notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing of any of the games set out and named in sub-clause (a) of Clause 45 hereof or any variation or derivative of such games by the use of any gaming machine.
- (c) Nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever pursuant to any Act for the time being in force in the State the conduct or playing of games by the use of gaming machines save and except—
- (i) gaming machines referred to in sub-clause (b) of this Clause; and
- (ii) gaming machines that are declared by the Minister by notification published in the Government Gazette to be casino gaming machines as provided for in sub-clause (d) of this Clause.
- (d) The parties hereto agree that the following provisions shall apply with respect to the declaration and notification of gaming machines as casino gaming machines:
- (i) the Minister may at any time in his discretion or upon receipt of an application by the Trustees or the Manager, make a declaration and notification in respect of any gaming machine including any gaming machine referred

- to in sub-clause (b) of this Clause but the non-existence of a notification shall not limit or affect the operation of sub-clause (b) of this Clause;
- (ii) the Minister shall within ninety (90) days of the receipt thereof or such extended period as he may require consider and determine every application made to him in respect of a gaming machine and, where the Minister refuses the application, he shall notify the applicant in writing of the reasons for his refusal;
  - (iii) the Minister may in his absolute discretion refuse to make a declaration and notification in respect of any gaming machine commonly known as a "poker machine" or any variation or derivative thereof or any gaming machine of a like class or description;
  - (iv) where an application is made to the Minister in respect of any gaming machine other than a gaming machine referred to in paragraph (iii) of this sub-clause, the Minister shall consider the application and subject to Section 63 of the Control Act he shall determine whether in all the circumstances of the application it is reasonable that it be granted. The Minister shall consider all material submitted to him in writing by the applicant and the State and, in particular he shall consider whether it has been established to his reasonable satisfaction that the gaming machine is of a class or description that should be reserved for use in a casino licensed pursuant to the Control Act;
  - (v) no such declaration and notification shall be revoked, amended or varied without the prior consent in writing of the Trustee.
- (e) Subject always to the State giving due effect to the foregoing provisions of this Clause, nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever and whether pursuant to the *Art Unions and Amusements Act 1976-1981* or any other Act for the time being in force in the State of Queensland—
- (i) any art union or lottery that is of a class or description commonly conducted or played in Australia or elsewhere at the date of execution of this Agreement no matter how played; and
  - (ii) any art union or lottery that is a variation or derivative thereof or that is of a like class or description no matter how played.

47. Subject to the provisions of the Control Act and Clause 51 hereof the amount of the casino tax to be paid by the Manager or the Trustee from the Trust Fund shall be in each month in each year the amount equal to twenty per centum (20%) of Casino gross revenue for the month in question.

## PART V—GRANTING OF LIQUOR LICENCE AND RELATED MATTERS

48. The State shall take all steps as may be reasonable and necessary to ensure that:—

- (a) the *Liquor Act* 1912–1982 is amended so as to create a new type of liquor licence to be known as a Casino liquor licence; and
- (b) the amendments to the *Liquor Act* 1912–1982 as aforesaid shall be enacted to give effect to the entitlements rights and benefits to be granted by and referred to in Clause 49 hereof so that the Trustee shall be granted a Casino liquor licence contemporaneously with the granting of a casino licence pursuant to Clause 45 hereof.

49. The Casino liquor licence shall relate to the whole of the Complex and shall permit the Manager and any person claiming through or under the Manager as nominee of the Trustee, *inter alia*, to sell or supply liquor:

- (a) for consumption in the whole of the Complex and any part or parts thereof except the Casino on the days and between the hours (if any) that are specified in the Casino liquor licence;
- (b) for removal from the Complex;
- (c) for consumption in the Casino on the days and between the hours that the Casino is open for operation and use by the public.

## PART VI—CASINO OPERATIONS AND REVIEW THEREOF

50. The State agrees that the Manager may open and operate the Casino for use by the public on any day in any year save and except those days in any year which the Manager is precluded from so opening pursuant to Section 61 (8) of the Control Act for any number of hours on any such day which may be approved by the Minister from time to time

PROVIDED HOWEVER that the Minister shall not restrict the number of hours in which the Casino is open as aforesaid to less than eighteen (18) hours in any one day unless requested by the Manager in writing so to do.

51. The State agrees to review the rate of casino tax, the amount of fees and the rate of the community benefit levy as defined in the Control Act payable by the Trustee and the terms and conditions of the operation of the Casino in any circumstances of whatsoever nature arising which in the opinion of the Minister are likely to have an adverse impact on the viability of the Casino.

PART VII—TERMINATION

52. This Agreement, save and except the rights and obligations of the parties hereto and any mortgagee pursuant to Clause 53 hereof, may be terminated by the Minister in any of the following events:

- (a) If there is a substantial breach by any of the parties hereto other than the State of its obligations under this Agreement in respect of which the Minister shall have delivered to each of such parties and to any mortgagee a notice in writing setting forth particulars of the breach or default and which shall not have been remedied to the satisfaction of the Minister or taken steps to the satisfaction of the Minister to remedy within ninety (90) days from the date of such notice;
- (b) If any distress or execution is levied against the Trust Fund which is for an amount in excess of ONE MILLION DOLLARS (\$1,000,000.00) and which is not discharged within thirty (30) days from the date upon which the levy is made;
- (c) If subject to the provisions of Clause 14 hereof the benefit of this Agreement is in any way whatsoever pledged, encumbered, mortgaged or assigned without the prior written consent of the Minister in accordance with the provisions of Section 32 of the Control Act;
- (d) If any casino licence in respect of the Casino is at any time cancelled or surrendered.

53. (a) In the event that the Casino Licence is cancelled or suspended for any reason whatsoever, other than a suspension referred to in Clause 57 hereof, the following provisions shall apply:—

- (i) The Governor in Council shall appoint an Administrator:—
  - (A) in the case of cancellation of the licence as aforesaid within seven (7) days of the date of such cancellation; or
  - (B) in the case of suspension of the licence as aforesaid for a period of not less than ninety (90) days, within seven (7) days of the date of receipt by the Minister of a request from the Trustee to appoint an Administrator.
- (ii) In the event of a receiver and manager having been approved or appointed prior to either provision (i) (A) or provision (i) (B) of this sub-clause becoming effective, the Governor in Council shall appoint that person as Administrator for the purposes of this Agreement.
- (iii) Notwithstanding the provisions of Sections 19 and 21 of the Control Act the Governor in Council shall within the period of seven (7) days referred to in provision (i) of this sub-clause grant a casino licence to the Administrator.

- (iv) The Administrator shall pursuant to the Casino Licence to be granted pursuant to provision (iii) of this sub-clause manage and operate in accordance with the provisions of the Control Act the Casino as the agent of the Trustee.
- (v) The Trustee and/or the Administrator if such Administrator has been appointed pursuant to provision (ii) of this sub-clause may at any time and from time to time but always subject to the rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of Section 32 of the Control Act during a period of twelve (12) calendar months from the date of the appointment of the Administrator introduce a proposed assignee to whom the provisions of Section 32 of the Control Act shall apply as if such assignee was proposed by a mortgagee wishing to enforce its security.
- (vi) Should the proposed assignee be acceptable to the Governor in Council in the terms of provision (v) of this sub-clause the Governor in Council shall terminate the appointment of the Administrator and assign to the proposed assignee in accordance with the procedure set out in Section 32 of the Control Act the Casino Licence issued to the Administrator.
- (vii) In the event that the Trustee and/or the Administrator are unable to introduce an acceptable assignee as hereinbefore provided in provision (v) of this sub-clause the Administrator shall while continuing to operate the Casino as hereinbefore in this Clause provided but always subject to any rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of Section 32 of the Control Act dispose of the Complex and arrange for the assignment of the Casino Licence at the highest attainable price to the assignee who is approved by the Governor in Council as if that assignee had been nominated by a mortgagee seeking to enforce its security in accordance with Section 32 of the Control Act.
- (viii) The Casino Licence granted to an Administrator shall not be cancelled or suspended prior to its assignment as referred to in provision (vi) of this sub-clause but the Governor in Council may from time to time within his discretion remove an Administrator and appoint another Administrator in his place and shall remove an Administrator who is not a receiver or manager approved pursuant to Section 32 (2) (b) of the Control Act and replace him with an Administrator who becomes so approved.
- (ix) If the term of any suspension mentioned in provision (i) of this sub-clause is reduced after a request for the appointment of an Administrator has been made, the

Governor in Council shall terminate the appointment of any Administrator he has appointed following a request that the appointment be so terminated and:

- (A) if the Trustee's Casino Licence has been cancelled, he shall assign to the Trustee the Casino Licence granted to the Administrator; or
  - (B) if the Trustee's Casino Licence has not been cancelled, he shall cancel the Casino Licence granted to the Administrator.
- (x) An Administrator may be appointed on such terms which are not inconsistent with this Clause as the Governor in Council considers desirable in the circumstances of the appointment.
- (b) The parties hereto acknowledge confirm and agree that any termination of this Agreement pursuant to the provisions of Clause 52 hereof shall not in any manner whatsoever terminate or reduce the effect of sub-clause (a) of this Clause and the rights and obligations of the parties and any mortgagee therein referred to shall maintain continue and be of full force and effect as if this Agreement had not been terminated.

54. In the event that this Agreement is terminated for any reason whatsoever or the Casino Licence to be granted pursuant to Clause 45 hereof be cancelled or suspended for any reason whatsoever then nothing contained in this Agreement or any other statutory provision hereinbefore mentioned in Clause 17 hereof shall preclude the Trustee or any person claiming through or under it as the case may be from continuing to erect, complete and use the Complex as the case may be without any interference or interruption by any Local Authority or by any other Corporation or Instrumentality of the State or by any person on the grounds that such operations are contrary to any town planning scheme or by-law of any Local Authority or any other statutory town planning provision as if this Agreement was not so terminated or the Licence to be granted as aforesaid was not cancelled or suspended

PROVIDED HOWEVER that no person, other than an Administrator appointed pursuant to Clause 53 hereof, shall continue to use or operate the Casino part of the Complex as a casino in the event that the Casino Licence is cancelled or suspended as aforesaid.

55. The State acknowledges and agrees that the Casino liquor licence contemplated by Clause 48 hereof shall notwithstanding any termination of this Agreement by whatsoever means or any cancellation or suspension of the Casino Licence to be granted pursuant to Clause 45 hereof by whatsoever means not be cancelled or suspended but rather shall remain in full force and effect so far as it relates to all areas of the Complex other than the Casino until it shall be cancelled or suspended pursuant to the provisions of the Liquor Act as amended.

## PART VIII—GENERAL

56. The State accepts and approves the appointment of JUPITERS MANAGEMENT LIMITED as the Manager of Jupiters Property Trust in the terms of the Trust Deed.

57. (a) If at any time there shall be no current lease or casino management agreement in respect of the Hotel-Casino Complex or the Casino entered into by the Trustee which shall have received the approval of the Governor in Council pursuant to Section 28 of the Control Act so that the Trustee shall be the Casino operator within the meaning of the Control Act, the Trustee may apply to the Minister and the Minister shall on such application forthwith suspend the Casino Licence upon the following basis:

- (i) the suspension shall be effective on and from the time of closure of the operations of the Casino immediately preceding the making of the application;
  - (ii) the period of such suspension shall be until a lease or casino management agreement in respect of the Hotel-Casino Complex or the Casino shall have been executed and received the approval of the Governor in Council pursuant to Section 28 of the Control Act;
  - (iii) a suspension of the Casino Licence shall, while it remains in force, have the same effect as a cancellation of such licence, without prejudice to the exercise of the powers of the Minister, the Director or any inspector under the Control Act, but the Trustee shall not during such period incur any penal or other liability under this Agreement or the Control Act.
- (b) A failure by the Trustee to comply with PART V of the Control Act shall not constitute an offence under Section 119 of that Act.

58. The appointment of a new trustee and/or a new manager of the Jupiters Property Trust pursuant to the Trust Deed shall be subject to the following:—

- (a) the prior approval of the Governor in Council; and
- (b) the prior execution by such new trustee and/or manager of a deed in such form as the Minister may require whereby such new trustee and/or manager undertakes to the other parties to this Agreement to be bound by all of the terms and conditions on the part of the Trustee or the Manager hereunder, as the case may be, as from the date of such appointment and upon such appointment the retiring trustee and/or manager, as the case may be, shall be absolved and



released from all such terms and conditions hereunder and such new trustee and/or manager shall and may thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the Trustee and/or the Manager, as the case may be, hereunder as fully and effectually as though such new trustee and/or manager had been originally named as a party hereto.

59. All approvals notices and other writing required or appropriate to be given under the provisions of this Agreement shall be deemed to be properly served if delivered in writing personally or sent by registered post to—

- (a) the Minister at the Executive Building, 100 George Street, Brisbane in the State of Queensland; or
- (b) the Trustee at its office at 307 Queen Street, Brisbane in the State of Queensland; and
- (c) the Manager at 29 Elkhorn Avenue, Surfers Paradise in the State of Queensland,

or to such other persons or addresses as each party shall from time to time designate in writing to the other and any such notice or other writing sent by registered post shall unless the contrary be proved be deemed to have been so given when it would have been delivered in the ordinary course of post.

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

61. The law of this Agreement shall be the law of the State of Queensland.

62. In any case in which the Minister may under this Agreement make or give conditions or directions to persons, the Minister may in his absolute discretion amend or revoke and replace those conditions or directions but not so as to delay or adversely affect the Trustee or the Manager or those persons claiming through or under them or either of them.

63. The Trustee and the Manager shall make available for inspection by the Minister or his nominee duly authorised in writing all information held in respect to the ownership, unitholdings, shareholdings, directors or corporate structure of the Jupiters Property Trust or the Manager, and all minutes of meetings of unitholders, shareholders and directors and other records relating thereto.

64. (a) The Minister or his nominee duly authorised in writing shall be entitled to attend and to speak at any meeting of Jupiters Property Trust or the Manager as though he were a unitholder in the Trust or a director of the Manager but nothing contained in this Section shall confer on the Minister or his nominee a right to vote.
- (b) The Trustee and the Manager shall deliver to the Minister a copy of all notices that are forwarded to unitholders or directors advising of such meetings in the same manner and time frame as if the Minister were a unitholder or a director.

65. In any case in which the Trustee is obliged to perform or do an act or thing by or within a time specified in this Agreement the Minister may at any time and from time to time in his absolute discretion extend the time specified for performing or doing that act or thing.

66. (a) This Agreement has been executed for and on behalf of the State by the Treasurer of the State of Queensland in accordance with the authority granted by the Governor in Council. Concurrent with the execution hereof, the Minister has delivered to the Trustee a certified copy of the Minute of the Governor in Council setting forth such approval and authorizing the execution of this Agreement.
- (b) This Agreement has been executed under the common seal of the Trustee pursuant to the resolution passed at a meeting of the Directors on the \_\_\_\_\_ day of \_\_\_\_\_ 1983 and in pursuance of the powers vested in the Directors under the Trustee's Memorandum and Articles of Association.
- (c) This Agreement has been executed under the Common Seal of the Manager pursuant to the Resolution passed at a meeting of the Directors on the \_\_\_\_\_ day of \_\_\_\_\_ 1983 and in pursuance of the powers vested in the Directors under the Manager's Memorandum and Articles of Association.

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

SIGNED by

the Treasurer of the State of Queensland for and on behalf of the State of Queensland in the presence of:—

A Justice of the Peace

THE COMMON SEAL of THE TRUSTEES EXECUTORS AND AGENCY COMPANY LIMITED was hereunto affixed by authority of the Board of Directors in the presence of a Director and the Secretary and in the presence of:—

A Justice of the Peace

THE COMMON SEAL of JUPITERS MANAGEMENT LIMITED was hereunto affixed by authority of the Board of Directors in the presence of a Director and the Secretary and in the presence of:—

A Justice of the Peace

FIRST SCHEDULE  
DESIGN AND CONSTRUCTION PROGRAMME  
(For Details refer Network Drawing No. SD A25c)

Activity	Start	Finish	Operational *
1. Design Development .. .. .	2-83	4-83	
2. Documentation .. .. .	3-83	12-83	
3. Building Permits .. .. .	4-83	10-83	
4. Bridge Reinforcement .. .. .	3-83	4-83	
5. Possession of Site .. .. .	4-83	..	
6. Pile Testing .. .. .	4-83	5-83	
7. Construction Start .. .. .	5-83	..	
8. Pre-Contract Administration .. .. .	2-83	4-83	
9. Site Establishment .. .. .	4-83	5-83	
10. Hotel Structure .. .. .	5-83	3-85	
11. Hotel Finishes .. .. .	4-84	11-85	
12. Hotel Services .. .. .	2-84	11-85	
13. Hotel Commissioning .. .. .	11-85	3-86	Apr. '86*
14. Casino Structure .. .. .	9-83	12-84	
15. Casino Finishes .. .. .	9-84	5-85	
16. Casino Services .. .. .	5-84	5-85	
17. Casino Commissioning .. .. .	6-85	11-85	Dec. '85*
18. Carpark Structure .. .. .	9-83	5-85	
19. Carpark Services .. .. .	2-85	6-85	
20. Landscaping .. .. .	12-84	11-85	
21. Convention Structure .. .. .	12-84	5-85	
22. Convention Finishes .. .. .	5-85	11-85	
23. Convention Services .. .. .	2-85	11-85	
24. Convention Commissioning .. .. .	12-85	3-86	Apr. '86*
25. Northern Bridge .. .. .	11-84	5-85	
26. Southern Bridge .. .. .	8-83	11-83	
27. Final Commissioning of Services and Final Clean .. .. .	10-85	12-85	
28. Final Completion .. .. .	3-86	..	Apr. '86*

SECOND SCHEDULE  
CONTRIBUTIONS TO LOCAL AUTHORITIES, STATUTORY, SPORTING AND  
COMMUNITY BODIES

PART A (Clause 18)

Authority	Requirement	Amount
1. Albert Shire Council ..	Headworks Charges .. ..	\$300,000
2. Lands Department .. ..	Access over Crown Land ..	At Manager's Cost
3. Lands Department and Gold Coast City Council	Landscaping of Adjacent Land	At Manager's Cost
4. Harbours and Marine Department	Bridge Construction .. ..	At Manager's Cost
5. Main Roads Department ..	Access Roads, Bridges, Traffic Signals and Highway Upgrading	At Manager's Cost
PART B (Clause 19)		
6. Albert Shire Council ..	Carrara Sports Complex ..	\$1,200,000
7. Surfers Paradise Golf Club	Additional Golf Facilities to International Level	\$250,000
8. Sports Organisation (to be selected)	Additional Sports Facilities ..	\$500,000 (equity)
9. Nearby Golf Club (to be selected)	Golf Club Playing Rights ..	\$50,000 (Playing Rights)

## THIRD SCHEDULE

## DOCUMENTS TO BE TABLED IN PARLIAMENT

1. Foundation Agreement between Jennings Industries Limited and Superannuation Fund Investment Trust.
  2. Memorandum of Association of Jupiters Management Limited (the Manager).
  3. Articles of Association of Jupiters Management Limited (the Manager).
  4. Trust Deed between The Trustees Executors and Agency Company Limited (the Trustee) and Jupiters Management Limited (the Manager).
  5. Development Agreement between the Trustees Executors and Agency Company Limited (the Trustee) and Jennings Construction Limited (the Trustee's Contractor).
  6. Schematic design drawings numbered 1 to 26, each page of which is signed by each of the parties hereto for the purposes of identification.
  7. Letters relating to contributions referred to in the Second Schedule hereof.
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