

**POLSON HIGGS NOMINEES LIMITED**

and

**DUNEDIN CASINOS LIMITED**

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**TRUST DEED**

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**ANDERSON LLOYD**

**LAWLINK**

**SOLICITORS**

**DUNEDIN, QUEENSTOWN & CHRISTCHURCH**

**NEW ZEALAND**

**Tel: 64 3 477 3973**

**Fax: 64 3 477 3184**

**E-mail: [lawyers@andersonlloyd.co.nz](mailto:lawyers@andersonlloyd.co.nz)**

**Private Bag 1959**

**Dunedin**

THIS TRUST DEED is made the 16 day of June 2000

**PARTIES:**

1. **POLSON HIGGS NOMINEES LIMITED** a duly incorporated company having its registered office at Dunedin (called "the Trustee")
2. **DUNEDIN CASINOS LIMITED** a duly incorporated company having its registered office at Dunedin (called "the Founding Donor")

**BACKGROUND:**

- A. The Founding Donor is desirous of creating a charitable trust for the benefit of various charities.
- B. The Trustee has agreed to administer the Trust.
- C. The Trustee is holding the sum of \$100.00 for the purposes of this Deed for the charities (as hereinafter defined).
- D. The parties hereto wish to record the terms upon which such moneys are held and any further moneys held by the Trustee from time to time under the terms of this Deed may be held.

**THIS DEED RECORDS** and it is declared as follows:

**SECTION I**

- 1.1 That this Deed shall be construed as and take effect as a declaration of trust made in New Zealand.
- 1.2 In this Deed unless the context otherwise required:
  - (a) "General Trust Fund" means:
    - (i) The said sum of \$100.00 paid to the Trustee by the Founding Donor.
    - (ii) All moneys, land, properties, mortgages and other assets both real and personal which may at any time hereafter be paid, conveyed, transferred or handed over to the Trustee for the general purposes of charities by the Founding Donor and any person or persons, firm or

company which at any time may be added to and form part of the General Fund hereby established.

- (iii) The investments and property from time to time representing such money, investments and property and accretions thereto or any part or parts thereof.

- (b) "Charities" means:

Those charities for the time being accepted by the Trustee as being suitable for the purposes of this Deed and currently approved by the appropriate fiscal authority in New Zealand as being for charitable purposes and being:

- (i) For the relief of poverty; or
- (ii) The advancement of education; or
- (iii) The advancement of religion; or
- (iv) The advancement of sport; or
- (v) Any other charitable purpose beneficial to the community.
- (vi) For the funding of treatment of gambling disorders by persons and organisations in the community and related activities.

- (c) "Specific Charity" means any charity or group of charities specifically nominated by the Founding Donor or a Donor and approved by the Trustee and approved by the appropriate fiscal authority as being for a charitable purpose or purposes. The Committee on Problem Gambling Management is deemed to be a Specific Charity.
- (d) "Charitable Trustees" means those persons appointed by the Founding Donor's nominee pursuant to the provisions of Section III hereof.
- (e) "Authorised Investments" means any of the investments set forth in Section IV hereof.
- (f) "Specified Investments" means any investments in real or personal property held by the Trustee and originally donated by the Founding Donor or any donor whether or not on such terms as the Trustee may agree to.;
- (g) "Trustee" means the said Polson Higgs Nominees Limited or any trustee for the time being subsequently appointed.
- (h) "Donor" means any person, including the Founding Donor, donating moneys or other real or personal property to the Trustee or creating any benefit in favour of the Trustee to be held on the terms of this Deed.

- (i) "Donation" means any moneys or real or personal property transferred or assigned to or otherwise to be held for or by the Trustee for and upon the trusts of this Deed.
  - (j) "Trust Funds" means the total of the General Trust Fund.
- 1.3 The title of the charitable trust created pursuant to this Deed shall be the **DUNEDIN CASINOS CHARITABLE TRUST** (hereinafter referred to as "the Trust").

## **SECTION II**

- 2.1 The Trustee may accept any donation from any Donor and the Trustee shall hold such Donation on the terms of the General Trust Fund.
- 2.2 On receipt of any donation the Trustee shall invest or cause to be invested such donation (and shall have the power to so invest) in Authorised Investments.
- 2.3 The Trustee shall have an absolute discretion to refuse to accept a donation if:
  - (a) Such donation might affect the charitable status of the Trust;
  - (b) The investments as directed by the Donor might affect the charitable status of the Trust;
  - (c) Such donation would be contrary to the spirit and intention of the Trusts established by this Deed.

**OR** for such other reason as the Trustee in its sole and uncontrolled discretion shall consider proper.

**AND** the Trustee shall not be bound or obliged to give any reason in the exercise of such discretion.

## **SECTION III**

### **CHARITABLE TRUSTEES**

- 3.1 The Trustee shall appoint Charitable Trustees at the direction of the Chairperson of Directors for the time being of Dunedin Casinos Limited to advise the Trustee on:
  - (a) The bodies, societies, or other charities that are recommended as Charities for the purposes of this Deed.

- (b) The compilation of lists of charities being charities in the opinion of the Charitable Trustees that are suitable for receiving distributions in any one year and the amendment of such lists and any order of preference for payments thereto.
  - (c) Any other matter, act or thing relevant to the donations, the income from the General Trust Fund and the charities.
- 3.2 The Trustee shall call meetings of the Charitable Trustees at least once in each calendar year and at such other times as:
  - (a) The Trustee may decide.
  - (b) Any two of the Charitable Trustees may determine by notice given to the Trustee to that effect.
- 3.3 The quorum for a meeting of the Charitable Trustees shall be two Charitable Trustees and such meeting shall appoint a Chairperson from their number and in the case of an equality of votes on the appointment of Chairperson, that person longest in office shall be Chairperson and if there shall be more than one, then that person decided by lot.
- 3.4 At least seven days notice in writing shall be given to all Charitable Trustees of any meeting of them unless all the Charitable Trustees unanimously waive such notice requirement. Such notice shall specify the place, date and time for the meeting.
- 3.5 At any meeting of Charitable Trustees, any decision shall be made by a majority vote and for the purpose of voting, each Charitable Trustee shall have one vote. The Chairperson shall have a second or casting vote.
- 3.6 Minutes shall be kept of all meetings of the Charitable Trustees and such minutes shall be made available to the Trustee.
- 3.7 The Trustee shall be entitled to attend and speak at all meetings of the Charitable Trustees but shall not be entitled to vote thereat.
- 3.8 Any Charitable Trustee may resign from such position by notice in writing to the Trustee.
- 3.9 Any further Charitable Trustees may be appointed by the Trustee at the direction of the Chairperson of Directors for the time being of Dunedin Casinos Limited. This power of appointment is however subject to and conditional upon the approval of the Casino Control Authority.
- 3.10 The number of Charitable Trustees shall be not less than three and not more than five.
- 3.11 The Trustee may remove, on the advice of the Chairperson of Directors for the time being of Dunedin Casinos Limited, any Charitable Trustee without being obliged to give any reason therefor and may accept the retirement of any Charitable Trustee at

any time. This power of removal is however subject to and conditional upon the approval of the Casino Control Authority.

- 3.12 The Charitable Trustees shall be entitled to an indemnity from the Trustee in respect of all costs expenses and claims properly incurred in the carrying out of their functions **PROVIDED THAT** in the case of out of pocket disbursements such indemnity shall be limited to those items approved in writing by the Trustee.
- 3.13 The first Charitable Trustees shall be:

**DAVID JOHN HENRY**

**GILLIAN HILARY BREMNER**

**RON MCMILLAN ESPLIN**

**STEVE MARK DAVIE**

**SIR CLIFFORD GEORGE SKEGGS** all of Dunedin, and the first Chairperson shall be the said **SIR CLIFFORD GEORGE SKEGGS**.

#### **SECTION IV**

#### **DISTRIBUTION OF MONEYS**

- 4.1 For the purpose of clause 4.2 of this Deed, the Trustee may (after receiving the advice of the Charitable Trustees) establish a list or lists of charities (whether by region or otherwise).
- 4.2 At least once in each calendar year and at such other times as the Trustee may determine and after consultation with the Charitable Trustees, the Trustee shall distribute to Charities or Specific Charities such moneys as the Trustee considers proper and which are available from the General Trust Fund for distribution **PROVIDED HOWEVER** that distributions in favour of the Committee on Problem Gambling Management shall not exceed 50% of such distributions in any one financial year **AND PROVIDED FURTHER HOWEVER** that any distribution shall be conditional upon the prior approval of the Charitable Trustees.
- 4.3 Subject to any direction to the contrary by any relevant Authority (other than the Founding Donor) and after receiving the advice of the Charitable Trustees the Trustee shall have full power and discretion in respect of the General Trust Fund:
- (a) To establish such reserves of income or capital as it shall consider appropriate; and
  - (b) To capitalise any income from any income year to form part of the capital of the Trust Funds or to carry the same forward as undistributed income; and
  - (c) To distribute income or capital in such amounts (if any) and in such manner as it shall see fit.

## SECTION V

### POWERS OF TRUSTEE

- 5.1 To sell all or any part of the Trust Funds whether real or personal either by public auction or private contract to whomsoever and in such manner and subject to such terms and conditions as the Trustee shall in its absolute and uncontrolled discretion think fit.
- 5.2 To let any property forming part of the Trust Funds or any part or parts thereof either from year to year or for any term of years or otherwise at such rent and subject to such covenants and conditions as the Trustee in its absolute discretion thinks fit and also to accept surrenders of leases and tenancies and generally to manage the same as it thinks fit.
- 5.3 To postpone the sale, calling in and conversion of the Trust Funds whether real or personal or any part thereof for so long as it thinks fit notwithstanding that it may be of a wasting speculative or reversionary nature.
- 5.4 To appropriate and partition any real and personal property forming part of the Trust Funds in or towards the share of any charity sharing in the Trust Funds hereinbefore contained and for such purpose to fix the value of any real or personal property so appropriated as it thinks fit and every such valuation appropriation and partition shall be binding and final.
- 5.5 To settle and determine all questions whatsoever which may arise in relation to the Trust Funds or any part thereof and also to determine whether any money for the purpose of these presents is to be considered as income or capital and what expense ought to be paid out of the income or capital respectively and also to apportion blended funds **AND PROVIDED THAT** the Trustee may have regard to the following:
  - (1)
    - (a) Any bonus shares which may accrue to the Trust Funds may be treated for all purposes and forming part of the capital of the Trust Fund notwithstanding that the resolution creating such bonus shares declares them to be income.
    - (b) Any proceeds of the sale of rights or entitlements accruing in respect of shares may be treated as capital or as income as the Trustee shall decide.
  - (2) In order to ascertain the net annual income the Trustee may:
    - (a) Instead of commencing the accounting period to ascertain such income at a specified date to adopt any annual accounting period used immediately prior to that date and continue that accounting period

current at that date and apportion the income so ascertained on the basis that it had accrued evenly over the accounting period:

- (b) Instead of making up accounts as at the date of any partial distribution hereunder make up accounts at the end of the accounting period current at the date or dates of distribution as aforesaid and apportion the income so ascertained on the basis that it had accrued evenly over the account period;
  - (c) Account for income solely or partly on a cash basis instead of on an accrual basis and not apportion income wholly or partly.
- 5.6 To accept money from time to time on deposit with allowance for interest or otherwise in such manner and on such terms as the Trustee shall in its absolute discretion think fit.
- 5.7 To open bank accounts or other accounts with any bank, firm, company or person and for such purpose to delegate the right to operate on any such account to any person or persons without being liable for the acts of any such person in so operating such accounts and generally to enter into and arrange such banking arrangements and accommodation as may be necessary for the administration of the Trust Fund.
- 5.8 To act or appoint one of its employees or such other person as the Trustee shall consider suitable to act as a Director or an officer or in any other capacity with any Company in which any part of the Trust Funds is invested.
- 5.9 In respect of and in connection with this Deed, any matter in relation to this Deed and its services as Trustee pursuant to the Deed, the Trustee shall be entitled to remuneration and also all costs, charged and expenses (including travelling expenses) reasonably incurred by or on behalf of the Trustee. Without limiting the generality of the foregoing, such matters and services include:
- (i) Any action taken by or required of the Trustee pursuant to the provisions of this Deed or of any Deed collateral or supplemental hereto;
  - (ii) The carrying out by the Trustee of any right, power, duty or privilege by this Deed;
  - (iii) The remuneration of any Charitable Trustee from the Trust Funds and the reimbursement of his/her expenses;
  - (iv) The employing of any chartered accountant, solicitor, barrister or other expert from whom the Trustee seeks any advice, reports, comments or other information;
  - (v) Any other matter from time to time the Trustee shall consider necessary and proper.
- 5.10 The Trustee may retire at any time on sixty days notice to the Chairperson of Directors for the time being of Dunedin Casinos Limited subject to the appointment of



a suitably qualified Trustee as replacement therefore such replacement Trustee to be approved by the said Chairperson of Directors of Dunedin Casinos Limited and in default thereof by the Court. The Replacement Trustee must also be conditional upon the prior approval of the Casino Control Authority.

- 5.11 If the Trustee for any reason ceases to be Trustee or is unable or unfit to continue to act as Trustee (excepting only on the retirement of the Trustee) then the Chairperson of Directors for the time being of Dunedin Casinos Limited shall be entitled to appoint a new Trustee and failing such appointment the power to appoint a new Trustee shall be by the Court.

## SECTION VI

### MISCELLANEOUS

#### INCIDENTAL PROVISIONS RELATING TO TRUSTEE POWERS OF INVESTMENT

- 6.1 Any moneys subject to the trusts herein contained which might or ought to be invested may at the discretion of the Trustee be invested in the name of the Trustee or of its nominees in any of the Authorised Investments or may be placed on deposit either at call or for a fixed term in the name of the Trustee or its nominee at any Bank or Merchant Banks (as approved by the Trustee) and the Trustee may at any time vary such investments for others of a like nature and from time to time deal with or dispose of all such investments.

#### SUPPLEMENTAL POWERS OF TRUSTEE

- 6.2 Additional to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder, it is expressly declared that the Trustee and the Charitable Trustees in relation to this Deed may without liability for loss obtain, accept and act on or decline and elect not to act on:
- (a) The opinion or advice of or any information obtained from any barrister, solicitor, valour, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by the Trustee or Charitable Trustees or otherwise and whether purporting to be conveyed by writing, telegram, teleprinter, message, radiogram, cablegram or other similar mode of communication and although the same may contain some error or shall not be authentic;
  - (b) The audited accounts of the Trust Funds;
  - (c) Any interim accounts prepared on behalf of the Trustee.

### DISCRETION AS TO POWERS

- 6.3 Save as herein otherwise expressly provided, the Trustee shall as regards all trusts, powers, authorities and discretions vested in it by this Deed, have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and as to the commencement, prosecution, variation, discontinuance or compromise of any action, proceeding or claim and provided it shall not have acted fraudulently, it shall be in no way responsible for any loss costs damages expenses or inconvenience that may result from the exercise or non-exercise thereof.

### DELEGATION BY TRUSTEE

- 6.4 The Trustee whenever it thinks it expedient, may:

- (a) Delegate at any time or times and to any person or persons any of the trustees, powers, authorities, or discretions vested in the Trustee by this Deed which can not conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including the giving of power to sub-delegate) as the Trustee may think fit and the Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of such delegate or sub-delegate;
- (b) Instead of acting through its permanent employees, employ in the carrying out of any of the trusts, powers, authorities or discretions hereby vested in it or in the conduct of the Trust pay an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money;
- (c) Delegate from time to time and at any time to any one of its officers any of the trusts, powers, authorities and discretions vested in the Trustee by this Deed which owing to the place in which they are to be or may require to be exercised, can not conveniently be exercised by the Trustee; and
- (d) Apply to the Court for directions in relation to any question arising hereunder.

### INDEMNITY OF TRUSTEE

- 6.5 Without prejudice to the right of indemnity by law given to trustees, the Trustee and every attorney, manager, agent or other person appointed by the Trustee pursuant to this Deed shall be entitled to be indemnified out of the Trust Funds in respect of all liabilities and expenses incurred by it or him/her in the execution or purported execution of the trusts hereof or any powers, authorities or discretions vested in it or him/her pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted or in any way relating to

the Trust Funds other than a claim arising out of a wilful default or wilful breach of trust and the Trustee may retain and pay out of any moneys in its hands arising from the trust of this Deed, all sums necessary to effect such indemnity and also the remuneration and disbursements of the Trustee as herein provided and the Trustee shall have a charge on the Trust Funds for all moneys payable to it under this clause or otherwise howsoever arising out of and in connection with this Deed.

### **FIDUCIARY RELATIONSHIP**

- 6.6 (a) Nothing in this Deed shall be deemed to prohibit any Trustee or its holding company or any of its subsidiaries or any of the subsidiaries of its holding company (all hereinafter in this clause where the context permits being included in the expression "the Trustee") or its directors or officers from investing in any of the Authorised Investments or any Specified Investments and in particular and without prejudice to the generality of the foregoing, it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary vicarious or professional capacity nor shall the acting in such capacity as aforesaid be deemed a breach of any of the obligations hereby established or otherwise imposed or implied by law out of a fiduciary relationship between the Trustee on the one hand and charities on the other hand.
- (b) Nothing in this Deed shall prohibit the Trustee from undertaking any financial or agency service in respect of the Trust and the Trustee shall be entitled to it normal charges in respect of the same.

### **TRUSTEE MAY CONCUR IN MODIFICATIONS**

- 6.7 The Trustee may at any time concur in making an alterations, modifications, variations or additions to this Deed if in the opinion of the Trustee:
- (i) the same is made to correct a manifest error;
  - (ii) is of a formal or technical nature;
  - (iii) is necessary to give the Trustee any further powers or discretions consistent with the terms of this Deed including a revision of the Trustees power of investment to make allowance for the continuing development of financial and security markets;
  - (iv) is to allow the Trusts herein created to continue to be approved or to be approved by any relevant fiscal authority.

**PROVIDED THAT** no such alteration, modification, variation or addition shall be made if its nature or effect would be such as to derogate from the exclusive charitable

nature of these presents **AND PROVIDED FURTHER THAT** such alteration, modification, variation or addition is conditional upon the prior approval of the Casino Control Authority.

- 6.8 Should the Trust Fund be dissolved or wound up or should for any reason the General Trust Funds cease to be able to be applied exclusively for charitable purposes in accordance with the provisions hereof, then the General Trust Funds shall be paid over or distributed to one or more charitable organisations approved by the Trustee after consultation with the Charitable Trustees having charitable objects for purposes within New Zealand.
- 6.9 Notwithstanding anything hereinbefore contained on any dissolution or winding up of the Trust or distribution pursuant to clause 6.8 hereof, in no circumstances shall any part of the Trust Funds be paid or applied to any Donor unless such Donor is a person otherwise falling within clause 6.8 hereof.

**IN WITNESS WHEREOF** these presents have been executed the day and year first hereinbefore written.

The common seal of **POLSON HIGGS** )  
**NOMINEES LIMITED** was )  
 hereunto affixed in the presence of: )

*John - Director*  
*John - Director*

*Wells*

*Clark*

*Dunedin*

The common seal of **DUNEDIN** )  
**CASINOS LIMITED** was hereunto )  
 affixed in the presence of: )

*[Signature]*  
*Three*