

Queen Elizabeth II Medical Centre Car Parking Project

Project Number: BMW14583/10

State Deed of Charge

The State of Western Australia (**State**)

Capella Parking Pty Limited (ACN 151 427 119) in its capacity as trustee
for the Capella Parking Unit Trust (**Project Co**)

Capella Parking Finance Co Pty Limited (ACN 147 432 648) (**Finance
Co**)

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Date

Parties

The State of Western Australia (**State**)

Capella Parking Pty Limited (ACN 151 427 119) of Level 4, Podium Building, 120 Collins Street, Melbourne, Vic, 3000 in its capacity as trustee of the Capella Parking Unit Trust (**Project Co**)

Capella Parking Finance Co Pty Limited (ACN 147 432 648) of Level 4, Podium Building, 120 Collins Street, Melbourne, Vic, 3000 (**Finance Co**)

Background

- A. The background to the Project is set out in the Project Agreement.
- B. This charge sets out the terms on which each of Project Co and Finance Co grants a first ranking fixed and floating charge to the State over its entire assets and undertaking as security for the performance of its obligations in accordance with the State Project Documents.

1. Definitions and interpretation

1.1 General

Except as otherwise expressly stated in this document, expressions used in this document have the meaning given to them in the Project Agreement.

1.2 Definitions

In this document:

Attorney means any attorney appointed under this document.

Charged Debts means, in relation to a Chargor, all book debts and other debts, actual or contingent, at any time owing to a Chargor, together with all books or documents of account or records evidencing or recording such debts (including the Insurances).

Charged Property means, in relation to a Chargor, all of that Chargor's assets, undertakings and rights, both present and future, including the uncalled and called but unpaid capital of that Chargor and any PPSA retention of title property of that Chargor.

Chargor means each of Project Co and Finance Co and **Chargors** means both of them.

Obligations means:

- (a) all the Liabilities of Project Co to the Secured Beneficiaries in accordance with Schedule 11 (Access and Parking Requirements) of the Project Agreement; and
- (b) in relation to each Chargor, all the Liabilities and obligations of the Chargor to the State, the Trust and the Delegate in connection with any State Project Document,

and includes any Liabilities or obligations which:

- (c) are liquidated or unliquidated;
- (d) are present, prospective or contingent;

- (e) are in existence before or come into existence on or after the date of this document;
- (f) relate to the payment of money or the performance or omission of any act;
- (g) sound in damages only; or
- (h) accrue as a result of any default in accordance with the State Project Documents,

and irrespective of:

- (i) whether that Chargor is liable solely, jointly or jointly and severally with another person; or
- (j) the capacity in which that Chargor, the Secured Beneficiaries, the State, the Trust or the Delegate comes to owe or be owed that Liability or obligation.

Permitted Security Interest means:

- (a) a security interest arising by operation of Law or arising in the ordinary course of business and which are not overdue;
- (b) a Financier's Security (as defined in the Finance Side Deed);
- (c) a Security Interest:
 - (i) to which the State has given its prior consent; and
 - (ii) which secures Financial Indebtedness to which the State has given its prior consent; and
- (d) a Security Interest in connection with:
 - (i) a transfer of an account or chattel paper;
 - (ii) a commercial consignment; or
 - (iii) a PPS lease,

to the extent that the transaction does not secure payment or performance of an obligation.

Power means any right, power, authority, discretion, remedy or privilege conferred on the State, a Receiver or any attorney or agent appointed under this document in connection with this document.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Project Agreement means the document entitled "Queen Elizabeth II Medical Centre Car Parking Project – Project Agreement" between the State and Project Co dated on or about the date of this document.

Receiver means a receiver or receiver and manager appointed by the State in accordance with this document and if more than one, then each of them, including any servant, agent or delegate.

Receiver Appointment Event means:

- (a) a notice has been given by the State to terminate the Project Agreement in connection with an Event of Default or an Immediate Termination Event and

Project Co (or its Financiers in accordance with the Finance Side Deed) have no further right to pursue a remedy of the matter or circumstance giving rise to the termination right; or

- (b) the State has elected to exercise a Step-In Right in accordance with the Project Agreement and Project Co has failed in whole or part to comply with Clause 28.4 (Project Co to assist the State) of the Project Agreement.

Secured Beneficiaries means the members of Staff who hold Staff access passes and for whom the State holds on trust the benefit of the promises made to Staff in Schedule 11 (Access and Parking Requirements) of the Project Agreement.

Secured Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Security Interest means a security interest under the PPS Act and a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

Step-In Rights means the step-in rights granted to the State in accordance with Clause 28 (Step-in) of the Project Agreement.

1.3 Interpretation

In this document unless the context otherwise requires:

- (a) (**references**): references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) (**includes**): the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) (**or**): the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) (**party**): a reference to a "party" is to a party to this document;
- (e) (**other persons**): a reference to any party or person includes each of their trustees, legal representatives, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) (**Authority**): a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, institute, association or body;
- (g) (**this document**): a reference to this document or to any other deed, agreement, document or instrument includes a reference to this document or

such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;

- (h) **(Law)**: a reference to any Law or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this document;
- (l) **(inclusive)**: a reference to this document includes all Schedules and Attachments;
- (m) **(Clauses)**: a reference to:
 - (i) a Clause is a reference to a Clause of this document: and
 - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears;
- (n) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) **(\$)**: a reference to "\$" is to Australian currency;
- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this document or any part;
- (s) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this document; and
- (u) **(PPS)**: unless expressed to the contrary:
 - (i) "PPSA retention of title property" has the meaning which it is defined to have in the *Corporations Act 2001*; and
 - (ii) a reference to a term which is defined in the PPS Act has the meaning it has in the PPS Act.

1.4 Provisions limiting or excluding Liability

Any provision of this document which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.5 Business Day

If the day on or by which any thing is to be done in accordance with this document is not a Business Day, that thing must be done on the next Business Day.

1.6 Consents

A consent or approval in accordance with this document from the state may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State thinks fit, unless this document provides otherwise.

1.7 Conditions Precedent

The satisfaction or waiver of the Conditions Precedent in accordance with the Project Agreement, is a condition precedent to the coming into operation of this document (other than this Clause 1.7).

2. Delegation

2.1 Parties' representatives

The parties may exercise any of their rights, functions and powers or perform any of their obligations in accordance with this document through their representatives appointed in accordance with the Project Agreement.

2.2 Further State delegations

- (a) The State may at any time delegate the exercise of any power or authority of the State Representative in accordance with this document to a person other than the State Representative and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with paragraph (a), the State will promptly notify the Chargors of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power) and of any termination or variation to that delegation.
- (c) Any direction given by a State delegate in accordance with its delegation in accordance with this Clause 2.2 will be deemed to be a direction of the State.

3. Charge

3.1 Charge and release

- (a) Each Chargor charges its Charged Property to the State to secure the due and punctual performance of the Obligations and payment of the Secured Money.
- (b) The State is under no obligation to grant a release of the Charged Property from this document unless at the time the release is to be provided:
 - (i) no Secured Money is owing (whether actually, contingently, or prospectively);

- (ii) no Obligations remain to be satisfied; and
- (iii) it is not reasonably foreseeable that there could be any Secured Money owing or Obligations to be satisfied in the future.

3.2 Priority amount

- (a) The maximum prospective liability secured by this document for the purpose of fixing priorities under section 282 of the Corporations Act 2001 but for no other purpose is \$300,000,000.
- (b) This Charge secures the payment of all prospective liabilities from time to time of the Chargors to the State and the amount secured is not limited to the amount specified in paragraph (a).

3.3 Nature of Charge

This charge constitutes:

- (a) a fixed charge over any interest of the Chargors in any present or future:
 - (i) land;
 - (ii) goods, plant and equipment (other than stock in trade);
 - (iii) marketable security or unit in a unit trust;
 - (iv) goodwill attaching to any property or business;
 - (v) licence;
 - (vi) uncalled and called but unpaid capital of the Chargors and premiums on capital of the Chargors;
 - (vii) books of account and other documents, records and software relating to the Chargors' business and activities;
 - (viii) title document to any property;
 - (ix) intellectual property rights, including all patents, copyrights, trade and service marks, business names, designs, trade secrets and confidential information whether registered or not and any rights relating to any of them;
 - (x) encumbrance over any property; and
 - (xi) benefit of any contracts to which a Chargor is a party, including any insurance policies; and
- (b) a floating charge over the balance of the Charged Property.

3.4 Priority

This charge is a first ranking security and takes priority over all other Security Interests given by the Chargors.

3.5 Dealing with Charged Property

Except if:

- (a) the State has elected to terminate the Project Agreement due to an occurrence of an Event of Default or an Immediate Termination Event; or
- (b) Project Co is in breach of its obligations in accordance with Clauses 10.4 (State's right to inspect and test), 19.2 (Obligations approaching end of Operating Phase), 28.4 (Project Co to assist the State) or 29.3 (Termination for Event of Default) of the Project Agreement,

each Chargor may in connection with any part of its Charged Property deal with and pay or apply that part of the Charged Property in the ordinary course of its ordinary business without requiring the consent of the State and where any release from this document of any asset forming part of the Charged Property is necessary to enable a Chargor to so deal with the Charged Property, the State must provide such release as soon as practicable after a request in writing from that Chargor.

3.6 Automatic crystallisation

The floating charge will automatically convert into a fixed charge over any part of the Charged Property:

- (a) on a Chargor dealing or attempting to deal with that part of the Charged Property other than in accordance with this document;
- (b) on the State taking any steps to enforce this document after it is entitled to do so;
- (c) on any person proposing to take any action or any action being taken to obtain any writ, order, notice or other thing relating to any distress, attachment or other execution against that part of the Charged Property;
- (d) which is subject to a security interest in favour of any other person, on that person taking any action to exercise any right in respect of that security interest against that part of the Charged Property;
- (e) on the issue of a notice by the Commissioner of Taxation, or its delegate, in accordance with:
 - (i) Section 255 of the *Income Tax Assessment Act 1936* (Cth);
 - (ii) Section 260-5 of Schedule 1 of the *Taxation Administration Act 1953* (Cth); or
 - (iii) any similar Law,
 which will affect any Charged Property; and
- (f) an authority taking any step which may result in an amount of Tax or an amount owing to an Authority ranking ahead of the floating charge in connection with any Charged Property; and
- (g) the charge becoming fixed over any Charged Property by operation of Law.

3.7 Reinstatement of floating charge

If the floating charge has converted into a fixed charge over any part of the Charged Property, the State may serve a notice on a Chargor stating that the fixed charge is to convert into a floating charge and describing the property affected by the notice, whereupon at which time the fixed charge will convert into a floating charge over the property described in that notice.

3.8 Fixed charge over Charged Debts

If the floating charge has converted into a fixed charge over any Charged Debt:

- (a) the Chargors must not release, discharge, waive, vary, settle, compromise, discount or write off any Charged Debt or allow any right of set-off to arise in respect of it;
- (b) the State may give notice to a Chargor that the State intends to collect that Charged Debt and, after the State gives that notice, the Chargor must not take any step to collect that Charged Debt; and
- (c) the Chargor must, on receipt of any proceeds of that Charged Debt, pay that money into an account nominated by the State either with the State or another person and of which State is the sole or a joint signatory.

3.9 Payment of Secured Money

- (a) The Chargors must pay the Secured Money and satisfy or procure the satisfaction of the Obligations to the State in accordance with any agreement which obliges the Chargors to pay it and, in the absence of agreement, as the State reasonably requires.
- (b) Subject to any express provision to the contrary in any Project Document, the State may appropriate any payment towards the satisfaction of any money due for payment by a Chargor in connection with this document in any way that the State thinks fit and despite any purported appropriation by a Chargor.
- (c) The Chargors must pay interest on that part of the Secured Money which is from time to time owing by Project Co to the State in accordance with the Project Agreement.

3.10 Credit balances of other accounts

In determining the amount of the Secured Money, no credit need be allowed by the State for any credit balance in any joint or other account of a Chargor with the State, or for any other money owing by the State to a Chargor.

3.11 No deduction for Taxes and no set-off or counterclaim

All payments of Secured Money by the Chargors to the State must be paid:

- (a) free of any set-off or counterclaim; and
- (b) subject to any Law, without deduction or withholding for any present or future Taxes unless a Chargor is compelled by law to deduct or withhold the same, in which case the Chargor will pay to the State any additional amounts necessary to enable the State to receive, after all deductions and withholding for such Taxes, a net amount equal to the full amount which would otherwise have been payable had no such deduction or withholding been required to be made.

3.12 Merger

If the liability of a Chargor to pay to the State any money payable in accordance with this document becomes merged in any deed, judgment, order or other thing, the Chargor must pay interest on the amount owing from time to time in accordance with that deed, judgment, order or other thing at the higher of the rate payable in accordance with this document and that fixed by or payable in accordance with that deed, judgment, order or other thing.

4. Representations and warranties

4.1 Nature

Each Chargor represents and warrants that:

- (a) **(binding obligations)**: each Project Document constitutes the valid and legally binding obligations of each party which is named in it as a party and is enforceable against that party in accordance with its terms;
- (b) **(priority)**: each security interest which each Project Document purports to create exists and has the priority which the State has agreed to;
- (c) **(no contravention)**: the unconditional execution and delivery of, and compliance with its obligations by each party in accordance with the Project Documents do not contravene:
 - (i) any law to which it or any of its property is subject or any order or directive from a government body binding on it or any of its property; or
 - (ii) the constituent documents of any corporate party, any agreement or instrument to which a party is a party or any obligation of a party to any other person;
- (d) **(full and correct disclosure)**: all information given to the State in connection with this document is correct, complete and not misleading;
- (e) **(no trust)**: except as notified to the State before the date of this document, no party enters into a Project Document as trustee of any trust; and
- (f) **(sole owner and no encumbrances)**: it is the sole legal and beneficial owner of the property it purports to own, and the Charged Property is free from encumbrances, other than the Permitted Security Interests.

4.2 General

The Chargors agree that the State enters into this document in reliance on each representation and warranty.

4.3 Representations and warranties repeated

Each representation and warranty in this document will be repeated on the first Business Day of each Quarter whilst any of the Secured Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

5. General obligations

5.1 Prohibited dealings

- (a) Except in accordance with the Financing Documents, the Chargors must not:
 - (i) transfer, lease or otherwise dispose of or deal with any part of the Charged Property which is for the time being subject to the fixed charge or allow any person to acquire any interest (except an encumbrance permitted by the State) in any such Charged Property.

- (ii) assign, transfer or deal with or attempt to assign, transfer or deal with or enter into any agreement, arrangement or course of dealing to hold to the account of or on trust for any person, or permit any set off or combination of accounts in connection with, any Charged Debts.
- (b) The Chargors must not do or permit any act, omission or thing whereby the Charged Property becomes or could be liable to surrender, forfeiture or cancellation.
- (c) Subject to paragraph (d), each Chargor may in the ordinary course of its ordinary trading business dispose of any estate or interest in that part of its Charged Property which is for the time being subject to the floating charge.
- (d) The Chargors must ensure the Charged Property is not encumbered, other than in accordance with a Permitted Security Interest.

5.2 The State may enter

The State and its nominees may at any reasonable time enter on any property owned, used or occupied by a Chargor for any purpose related to this document.

5.3 State assumes no obligations

The State will not be deemed by virtue of this document to have assumed any Liability or obligation of the Chargors.

5.4 Documents of title and other securities

Except to the extent otherwise agreed in the Financing Documents, the Chargors will lodge with the State all documents of title, all certificates and other indicia of the Chargors' title or interest in any marketable securities, all negotiable instruments other than cheques, and all other documents of title to the whole or part of the Charged Property, immediately on receipt of the same.

6. Receivers

6.1 Agent

- (a) Subject to paragraph (b), a Receiver is the agent of each relevant Chargor who alone is responsible for the Receiver's acts and omissions and remuneration.
- (b) The State may appoint a Receiver as the agent of the State and delegate to a Receiver any of the State's rights in accordance with this document.

6.2 Powers

- (a) A Receiver has the right in relation to any property in respect of which the Receiver is appointed, unless limited by the terms of the Receiver's appointment, to do everything that the relevant Chargor may lawfully authorise an agent to do on behalf of the relevant Chargor in relation to that property and, without limitation, a Receiver may in relation to that property exercise:
 - (i) the rights capable of being conferred on receivers and receivers and managers by the *Corporations Act 2001* and the laws of any relevant jurisdiction;
 - (ii) the rights set out in Clauses 7.3 to 7.7;

- (iii) the rights of the relevant Chargor and the directors of the relevant Chargor; and
 - (iv) any other rights the State may by notice to a Receiver give to a Receiver.
- (b) The State may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times as the State thinks fit give to, or remove from, a Receiver all or any of the rights referred to in paragraph (a).

6.3 Indemnity

The State may give any indemnities to the Receiver concerning the performance of the Receiver's duties as are reasonably required by the Receiver and as permitted by Law. If the State is obliged to pay any money in accordance with any indemnity, that money will become part of the Secured Money.

7. Default powers

7.1 General

The State may, while a Receiver Appointment Event subsists, give a notice in accordance with Clause 7.2, following which the State may exercise any or all of the rights set out in Clauses 7.3 to 7.7 in any manner and at any time that it thinks fit, even if a Receiver has been appointed.

7.2 Acceleration

The State may, while a Receiver Appointment Event subsists, by notice to the Chargors determine that the Secured Money which is then owing is immediately due for payment, and on receipt of the notice, the Chargors must immediately pay in full the amounts referred to in that notice.

7.3 Statutory and implied powers

The State may, while a Receiver Appointment Event subsists, exercise all rights capable of being conferred by the statutes and other laws of any relevant jurisdiction on mortgagees under mortgage deeds or otherwise.

7.4 Sale

The State may, while a Receiver Appointment Event subsists, sell the Charged Property in such manner and on terms as the State thinks fit, and the State may:

- (a) purchase at any auction;
- (b) disclose or not disclose any reserve price;
- (c) rescind any contract of sale and resell the property without being liable for any loss;
- (d) advertise or not advertise the sale of the Charged Property;
- (e) make any agreements or arrangements relating to the sale; and
- (f) apportion costs, expenses and purchase money between items of property sold.

7.5 General dealings

The State may, while a Receiver Appointment Event subsists:

- (a) carry on any business or activity of the Chargors, manage, develop, quietly enjoy and otherwise deal with the Charged Property, exercise, grant, vary and acquire rights, and assume, perform and vary obligations in relation to the Charged Property, in such manner as the State thinks fit, whether in the name of a Chargor or otherwise; and
- (b) use the property and services of the Chargors and the services of its personnel in the exercise of any rights in accordance with this document.

7.6 Ancillary powers

The State may, while a Receiver Appointment Event subsists:

- (a) execute any deed or other document as attorney for a Chargor for the purpose of exercising any of the State's rights in accordance with this document;
- (b) employ or engage any person on behalf of a Chargor for the purpose of exercising any of the State's rights in respect of the Charged Property and dismiss any employee or contractor of a Chargor;
- (c) on behalf of a Chargor, commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to the Charged Property;
- (d) on behalf of a Chargor, give receipts for and release, waive, vary, settle, compromise, discount or write off any Charged Debt;
- (e) do anything incidental or conducive to the exercise of any of its other rights in accordance with this document.

7.7 Appoint Receivers

- (a) The State may, while a Receiver Appointment Event subsists:
 - (i) either before or after it has taken possession of the Charged Property, appoint any one or more persons to be a Receiver of the Charged Property or a part of it;
 - (ii) if more than one person is appointed as Receiver of any property, empower them to act jointly or jointly and severally;
 - (iii) remove the Receiver, appoint another in his or her place if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and
 - (iv) fix the remuneration of the Receiver.
- (b) Unless the State is otherwise entitled to appoint a Receiver in accordance with paragraph (a), the State must withdraw the appointment of the Receiver appointed due to a failure by Project Co to comply in whole or in part with Clause 28.4 (Project Co to assist the State) of the Project Agreement, as soon as practicable after the State ceases to exercise its Step-In Rights.

8. Exercise of default rights

8.1 The State in possession

If the State, a Receiver or an Attorney exercises its rights in accordance with this document or takes possession of the Charged Property, it will not be liable to account as a mortgagee in possession.

8.2 Exclusion of legislation

- (a) The provisions implied in mortgages by any statute are for the purposes of this document negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this document.
- (b) Any statutory restrictions (other than mandatory restrictions) on any right of the State, a Receiver or an Attorney to lease or otherwise deal with the Charged Property do not apply to the rights of those persons in accordance with this document.

8.3 Notice

- (a) The State, a Receiver and an Attorney may, to the extent that any applicable law permits, exercise any right in accordance with this document in relation to a Receiver Appointment Event without first giving notice to the Chargors or allowing the lapse of any period of time and the Chargors and the State dispense with any requirement in accordance with any statute that notice be given by the State, a Receiver or an Attorney, as the case may be, or that it allow the lapse of any period of time before exercising a right.
- (b) If an applicable law requires that a notice be given or a lapse of time occur before any right can be exercised, then if no particular period of notice or lapse of time is required or a period or lapse of time is required but can be shortened by agreement, the period of notice or lapse of time is one day.

8.4 Application of money

Subject to any mandatory statutory requirements and to the rights of the holder of any security interest ranking in priority to, or pari passu with, this security, the money received from the exercise of any right against the Secured Property must be applied by the State, a Receiver or an Attorney as follows:

- (a) **(incidental to exercise of Powers):** in payment of all costs, charges, expenses and disbursements incurred in or incidental to the exercise or attempted exercise of any of the Powers;
- (b) **(outgoings):** in payment of any other outgoings as the Receiver or the State thinks fit;
- (c) **(payment of prior encumbrances):** in payment of any Security Interests of which the State is aware which have priority to this document, in the order of their priority;
- (d) **(payment of Secured Money):** in payment of the balance of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;
- (e) **(subsequent encumbrances):** in payment of subsequent Security Interests of which the State is aware in the order of their priority; and

- (f) **(surplus)**: the surplus (if any) belongs to the Chargors but does not carry interest.

8.5 Third party dealings

Any person dealing with the State, a Receiver or an Attorney in relation to the exercise by any of them of a right in accordance with this document need not be concerned to enquire whether:

- (a) the right is exercisable or properly exercised;
- (b) the Receiver or Attorney is properly appointed; or
- (c) any money paid by it to the State, a Receiver or an Attorney is properly applied,

and the title of that person to any property acquired by it from the State, Receiver or Attorney will not be adversely affected by the right not being exercisable or any improper appointment, exercise of the right or application of money by the State, a Receiver or an Attorney of which it does not have actual notice.

8.6 Money received

In applying any money towards satisfaction of the Secured Money, the Chargors will be credited only with as much of the money available for that purpose as will be actually received by the State or the Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

8.7 Application of payments or credits

The State and the Receiver have an absolute discretion to apply any payment or credit received by it in accordance with this document in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, notwithstanding any principle or presumption of Law to the contrary or any direction given at the time of receipt, and without the need to communicate its election to any person.

8.8 Reliance on certificate

In making any payment to any other holder of a Security Interest, the State and the Receiver may rely on a certificate from that holder of a Security Interest as to the amount secured. They are not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Security Interest.

9. Preservation of the State's rights

9.1 Primary obligations

The Chargors' obligation to pay the Secured Money is a primary obligation and the State is not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Chargors of the Secured Money.

9.2 Preservation of Chargors' obligations

The Chargors' obligations and the State's rights in accordance with this document will not be affected by anything which but for this Clause 9.2 might abrogate, prejudice or limit them or the effectiveness of this document.

9.3 Suspension of Chargors' rights

The Chargors:

- (a) waive any right to be subrogated to, or otherwise have the benefit of, this document until the Secured Money has been satisfied in full and in the reasonable opinion of the State any payment towards the satisfaction of the Secured Money is not void, voidable or otherwise unenforceable or refundable; and
- (b) must not exercise a right of set-off or counterclaim which reduces or extinguishes the obligation of the Chargors to pay the Secured Money,

and the State is not obliged to marshal in favour of the Chargors any security or any property that the State has an interest in or may be entitled to receive.

9.4 Reinstatement of rights of the State

If a transaction or payment relating to the Secured Money is void, voidable or otherwise unenforceable or refundable:

- (a) the State is entitled against the Chargors to all rights in accordance with this document that it would have had if the transaction or payment was not void, voidable or unenforceable or refundable; and
- (b) the Chargors must do all things and sign such documents necessary or convenient to restore to the State the security interests created by this document and its rights in accordance with this document immediately before that transaction or payment.

10. Limit of Liability

10.1 Waiver by Chargors

The Chargors waive in favour of the State:

- (a) all rights against the State and any other person, estate or assets as far as is necessary to give effect to any provision of this document;
- (b) promptness and diligence on the part of the State, and any other requirement that the State take any action or exhaust any right against any other person before enforcing this document; and
- (c) all rights inconsistent with the provisions of this document, including any rights of contribution or subrogation which the Chargors might otherwise be entitled to claim or enforce.

10.2 No Liability for Loss

To the extent permitted by Law, neither the State nor any Receiver will be liable or otherwise accountable for any omission, delay, mistake, loss or irregularity in or concerning the exercise, attempted exercise, non-exercise or purported exercise of any Power, except for fraud, an unlawful act or omission or wilful misconduct.

10.3 No Liability to account

To the extent permitted by Law, neither the State nor any Receiver will, by reason of the State or the Receiver entering into possession of the Charged Property, be liable to account as mortgagee or chargee in possession, or for any loss on realisation, or for any

default, omission, delay or mistake for which a mortgagee or chargee in possession might be liable, except for fraud, an unlawful act or omission or wilful misconduct. The Liability of the State and of the Receiver will be for actual receipts only.

10.4 No conflict

The State and any Receiver may exercise any Power notwithstanding that the exercise of that Power involves a conflict between any duty owed to a Chargor by the State or that Receiver and any duty owed by the State or Receiver to any other person, or the interests of the State or Receiver. No contract will be void or voidable by virtue of that conflict of duty or interest, nor will the State or Receiver be liable to account to a Chargor or any other person for any money or property as a result of that conflict.

10.5 No notice or enforcement

The State need not give any notice of this document to any debtor of a Chargor, or to any purchaser, or to any other person, or enforce payment of any money payable to a Chargor, or realise any of the Charged Property, or to take any steps or proceedings for that purpose.

11. Attorney

11.1 Appointment

Each Chargor irrevocably appoints the State as its attorney with the power, at any time, to do all acts and things which that Chargor is obliged to do in accordance with this document and which that Chargor has failed to do within 20 Business Days of being requested to do so by the State, or which in the Attorney's opinion are necessary or expedient in connection with the Charged Property, the protection or perfection of the State's interest in the Charged Property or to enable the exercise of any right of the State in relation to this document.

11.2 General

- (a) Any Attorney may exercise any right solely for the benefit of the State, even if the exercise of the right constitutes a conflict of interest or duty.
- (b) Each Chargor by this document ratifies anything done or not done by the Attorney in accordance with the power of attorney.
- (c) The power of attorney is granted:
 - (i) to secure the compliance by each Chargor with its obligations to the State in accordance with this document and any proprietary interests of the State in accordance with this document; and
 - (ii) for valuable consideration (receipt of which is acknowledged) which includes the entry into of this document by the State at the Chargors' request.

12. Costs, expenses and indemnities

12.1 Reimbursement of costs and expenses

The Chargors must on demand pay the State's costs and expenses relating to:

- (a) the exercise or attempted exercise or the preservation of any rights of the State in accordance with this document; and

- (b) any taxes and registration or other fees (including fines and penalties relating to the taxes and fees) which are payable in relation to this document or any transaction contemplated by it.

12.2 Stamp duty

Stamp duty (including any fine or penalty except where it arises from default by the other parties) on or relating to this document must be paid by the Chargors.

12.3 Legal costs

Each party shall bear their own legal and other costs and expenses relating directly or indirectly to the preparation of this document.

12.4 Indemnities

The Chargors indemnify the State on demand against any Liability caused or contributed to by:

- (a) any failure by a Chargor to comply with any obligation in accordance with this document; or
- (b) the exercise or attempted exercise of any right by the State in accordance with any this document.

12.5 Registration

The Chargors must register this document in the manner and within such time limits as may be prescribed by Law to ensure the full efficacy of this document as a security to the State in all relevant jurisdictions.

13. GST

- (a) **(Construction):** In this Clause 13:
 - (i) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law and GST includes any payment made under or in accordance with the *State Entities (Payments) Act 1999* (WA);
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (b) **(Payment of GST):**
 - (i) If GST is payable on any supply made by a party (**Supplier**) under or in connection with this document, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
 - (ii) The recipient will pay the amount referred to in Clause 13(b)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this document.
- (c) **(Tax invoices):**

- (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under Clause 13(b).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 13 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (d) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this document, the amount payable by the recipient in accordance with this Clause 13 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (e) **(Reimbursements):** Where a party is required in accordance with this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (f) **(Nominated Entity):** the State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST at the date of this document. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause on behalf of the State.

14. Notices

14.1 Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this document (in this Clause 14.1, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out below (or as otherwise notified by that party to each other party from time to time).

State Representative: Bruce Costella

Address: Strategic Projects, Department of Treasury and Finance, Governor Stirling Tower, 197 St Georges Terrace, Perth, WA, 6000

Email: bruce.costella@osp.wa.gov.au

Telephone: 08 9222 9162

Project Co Representative: Nik Kemp

Address: Level 4, Podium Building, 120 Collins Street, Melbourne, Vic, 3000

Email: nik.kemp@capellacapital.com.au

Telephone: 03 9667 5602

Finance Co: Nik Kemp

Address: Level 4, Podium Building, 120 Collins Street, Melbourne, Vic, 3000

Email: nik.kemp@capellacapital.com.au

Telephone: 03 9667 5602

- (c) **(Date of receipt):** Subject to paragraph (d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email):** With respect to Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 14 Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) Each Chargor must ensure that, in connection with any communications in accordance with or in connection with this document:
 - (i) its firewall and/or mail server (as applicable):
 - 1) allows messages of up to 14 MB to be received;

- 2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - 3) automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

15. General

15.1 Certificate

- (a) A certificate by the State relating to this document is, in the absence of manifest error, conclusive evidence against a Chargor of the matters certified.
- (b) The State is not obliged to give the reasons for its determination or opinion in relation to any matter in accordance with this document.

15.2 Powers cumulative

Each Power is cumulative and in addition to each other Power available to the State or the Receiver.

15.3 Time of essence

Time is of the essence in connection with the Chargors' obligations in accordance with this document.

15.4 Relationship of the parties

- (a) No implied duty of good faith is implied on the State in connection with its relationship with the Chargors.
- (b) Neither the Project Documents nor the relationship created by them, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) Except as expressly permitted or contemplated by this document, no party may act as or represent itself to be the servant or agent of the State.

15.5 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this document expressly provides otherwise, nothing in this document gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the Project Documents to which the State is a party.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this document to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Governmental Agency, or to influence, over-ride or direct any Governmental Agency in the proper exercise and performance of its legal duties and functions.

- (c) **(No fettering)**: Nothing contained in this document or contemplated by this document has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim)**: Subject to paragraph (d), the Chargors will not be entitled to make any Claim against the State for any Liability relating to any exercise or failure of the State to exercise its statutory functions or powers.
- (e) **(Liability for breach)**: Paragraphs (a) to (d) do not limit any Liability which the State would have had to any party in accordance with any Project Document to which the State is a party as a result of a breach by the State of a term of any Project Document to which the State is a party but for paragraphs (a) to (d).

15.6 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties and supersede any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this document.

15.7 Counterparts

This document may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

15.8 Governing law

This document is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

15.9 No waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or this document by the State will not in any way preclude, or operate as a waiver of, any exercise or enforcement of that or any other right, power or remedy provided by Law or this document.
- (b) No waiver by the State of a breach of any term of this document will operate as a waiver of another breach of that term or of a breach of any other term of this document.

15.10 Variations and waivers

No variation, modification or waiver of any provision in this document, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

15.11 Amendments

This document may only be varied by a deed executed by or on behalf of each party.

15.12 Joint and several Liability

- (a) If Project Co or Finance Co consists of more than one person, then the rights and obligations of Project Co or Finance Co (as applicable) in accordance with this document are joint and several as between those persons.
- (b) An obligation or a liability assumed by, or a right conferred on, a Chargor binds or benefits the Chargors jointly and severally.

15.13 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this document.

15.14 Clauses to survive termination

- (a) All provisions of this document which expressly or by implication from their nature are intended to survive termination, completion or expiration of this document will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's rights to set-off and to recover money;
 - (ii) any indemnity given in accordance with this document; or
 - (iii) any right or obligation arising on termination of this document.
- (b) Nothing in this Clause 15.14 prevents any other provision of this document, as a matter of interpretation, also surviving the termination of this document.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this document. All rights and obligations in accordance with this document survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this document.

15.15 Costs and expenses

Except as otherwise provided in this document each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this document; and
- (b) perform its obligations in accordance with this document at its own cost.

15.16 Further assurance

Each Chargor must promptly execute all documents and do all things that the State from time to time reasonably requires to:

- (a) effect, perfect or complete the provisions this document or any transaction contemplated by it;

- (b) establish the priority of or reserve or create any Security Interest contemplated by or purported to be reserved or created by this document;
- (c) stamp and register this document in any relevant jurisdiction and by any person that the State thinks fit; and
- (d) create any type of Security Interest over any part of the Charged Property on the same terms and conditions (with necessary modifications) as this document and any additional terms and conditions reasonably required by the State having regard to the nature of that part of the Charged Property and the type of additional Security Interest being created.

15.17 Personal Properties Securities Act

Each Chargor agrees to do anything the State reasonably requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, to give the priority ranking contemplated by this document or otherwise give full effect and to ensure enforceability, in accordance with the *Personal Property Securities Act 2009* (Cth) and related regulations, to this document and the Security Interest created by this document, including registering one or more financing statements in relation to the Security Interest created by this document on any register established pursuant to the *Personal Property Securities Act 2009* (Cth).

15.18 Trustee limitation of liability

- (a) Project Co enters into this document and each other Project Document to which it is expressed to be a party only in its capacity as trustee of the Capella Parking Unit Trust and in no other capacity.
- (b) A liability arising under or in connection with this document and each other Project Document to which it is expressed to be a party (whether that liability arises under a specific provision of this document or any other Project Document which is expressed to be a party, for breach of contract or otherwise) can be enforced against Project Co only to the extent to which it can be satisfied out of the property of the Capella Parking Unit Trust out of which Project Co is entitled to be indemnified for the liability.
- (c) The limitation of Project Co's liability under this clause 15.18 applies despite any other provision of this document or any other Project Document to which it is expressed to be a party (other than clause 15.19(b)) and extends to all liabilities and obligations of Project Co in relation to any representation, warranty, conduct, omission, agreement or transaction relating to this document or any other Project Document which is expressed to be a party.

15.19 No action against Project Co personally

- (a) The State may not:
 - (i) sue Project Co personally;
 - (ii) seek the appointment of a liquidator, administrator, receiver or similar person to Project Co; or
 - (iii) provide in any liquidation, administration or arrangement of or affecting Project Co.
- (b) The provisions of clause 15.19(a) will not apply to any obligation or liability of the Project Co to the extent it is not satisfied because there is a reduction in the extent or an extinguishment of the Project Co's indemnification out of the assets

of the Capella Parking Unit Trust as a result of Project Co's fraud, wilful default, gross negligence or breach of trust.

15.20 Confidentiality

The State and each Chargor agree that none of them will disclose information of the kind mentioned in section 275(1) of the PPS Act to an interested person.

15.21 PPS Act

The Chargors irrevocably and unconditionally waive their right to receive any notice from the State in the connection with the registration of a Security Interest. The State is not required to give any notice under the PPS Act to either Chargor or any other person unless it is obliged to do so by the PPS Act and that obligation cannot be excluded.

Executed as a deed.

Signed for and on behalf of the State of
Western Australia by the Honourable
Charles Christian Porter MLA; Treasurer
of the State of Western Australia in the
presence of:

The Honourable Charles Christian
Porter MLA

Witness sign

Witness Print Full Name

Witness Print Address

Witness Print Occupation

Signed by)
Capella Parking Pty Ltd (ACN 151 427)
119) in its capacity as trustee of the)
Capella Parking Unit Trust by the party's
attorney pursuant to power of attorney
dated 10 June 2011 who states that no
notice of revocation of the power of attorney
has been received in the presence of:

Signature of Witness

Signature of Attorney

Name of Witness (print)

Name of Attorney (print)

Signed by)
Capella Parking Finance Co Pty Ltd)
(ACN 147 432 648) by the party's attorney)
pursuant to power of attorney dated 10
June 2011 who states that no notice of
revocation of the power of attorney has
been received in the presence of:

Signature of Witness

Signature of Attorney

Name of Witness (print)

Name of Attorney (print)