

Execution version

# Queen Elizabeth II Medical Centre Car Parking Project

Project Number: BMW14583/10

## Sub-Sublease

The State of Western Australia

**(State)**

Capella Parking Pty Ltd (ACN 151 427 119) in its capacity as trustee of the Capella Parking Unit Trust

**(Project Co)**

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## Sub-Sublease dated

### Parties

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

**Capella Parking Pty Ltd (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**)

### Background

- A The Land is Crown land reserved for the purpose of establishing and maintaining thereon a medical centre as defined in the Act.
- B The functions of the Trust in accordance with the Act are to undertake the development, control and management of the Land.
- C The Trust has set aside the whole of the Queen Elizabeth II Medical Centre Reserve for all purposes incidental to the medical centre consistent with control and management of the Reserve by the board of the Sir Charles Gairdner Hospital, and has delegated some of its powers in respect of the reserve to the Board pursuant to the Instrument of Setting Aside and Delegation of 24 October 1986, published in the Western Australia Government Gazette.
- D The Board leases the Premises from the Trust in accordance with the Headlease and the State subleases the Premises from the Board in accordance with the Sublease.
- E The background to the Project is set out in the Project Agreement.
- F As part of the development and implementation of the Project, the State has agreed to grant, and Project Co has agreed to accept, a sub-sublease of the Premises on the terms and conditions in this Sub-Sublease.
- G The Minister has approved the grant of this Sub-Sublease under section 18(7) of the *Land Administration Act 1997* (WA).

### Operative provisions

#### 1. Definitions and interpretation

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##### 1.1 General

Except as otherwise expressly provided in this Sub-Sublease, expressions used in this Sub-Sublease have the meanings given to them in the Project Agreement.

##### 1.2 Definitions

In this Sub-Sublease:

**Act** means the *Queen Elizabeth II Medical Centre Act 1966* (WA).

**Additional Payment Date** means each date occurring after Financial Close on which the State is required to pay any Prepayment Variation Payment to, or as directed by, Project Co.

**Commencement Date** means the date of this Sub-Sublease.

**Expiry Date** means [**Note: date to be inserted on execution of this document in accordance with the Model Outputs Schedule in the Project Agreement**].

**First Rent Payment Date** means the date that is 2 Business Days after Project Co first receives a certificate of Stage 2B Completion in accordance with Clause 13.5 of the Project Agreement.

**Headlease** means the lease of the Premises made between the Trust as landlord and the Board as tenant.

**Land** means Lot 9075 on Deposited Plan 213389 being the whole of the land contained in Crown Land Title volume 3138 folio 601 and Lot 8699 on Deposited Plan 175877 being the whole of the land contained in Crown Land Title volume 3138 folio 300.

**Minister** means the Minister for the time being responsible for administering the *Land Administration Act 1997* (WA).

**Payment Date** means:

- (a) the First Rent Payment Date; and
- (b) each Additional Payment Date.

**Premises** means:

- (a) after Stage 1A Completion and until Stage 1B Completion, that part of the Land cross hatched on the plan in Schedule A and identified as the 'Stage 1A Land' and all fixed improvements from time to time on that part of the Land;
- (b) after Stage 1B Completion and until Stage 2A Completion, that part of the Land cross hatched on the plan in Schedule A and identified as the 'Stage 1 Land' and all fixed improvements from time to time on that part of the Land;
- (c) after Stage 2A Completion and until Stage 2B Completion, that part of the Land cross hatched on the plan in Schedule A and identified as the 'Stage 2A Land' and all fixed improvements from time to time on that part of the Land; and
- (d) after Stage 2B Completion, that part of the Land cross hatched on the plan in Schedule A and identified as 'Stage 2 Land' and all fixed improvements from time to time on that part of the Land.

**Prepayment Variation Payment** means any payments from the State to Project Co in respect of:

- (a) an adjustment to the Construction Payment being made or determined under the Project Agreement; and
- (b) any Modification or Change Compensation Event.

**Project Agreement** means the document titled "Queen Elizabeth II Medical Centre Car Parking Project – Project Agreement" between the Minister for Finance for and on behalf of the Crown in right of the State of Western Australia and Project Co.

**Rent** means the annual amount payable by Project Co on each Rent Payment Date in accordance with Schedule B, as may be varied pursuant to a Side Letter pursuant to Clause 5.9.

**Rent Payment Date** means each date specified in Schedule B.

**Side Letter** means each letter described in Clause 5.9.

**Sublease** means the document of that name entered into between the Minister for Health incorporated as the board of the Sir Charles Gairdner Hospital under s7 of the *Hospital and Health Services Act 1927* (WA) in its own capacity and the State.

**Term** means the term commencing on the Commencement Date and ending, subject to Clause 8, on the Expiry Date.

**Total Rent** means, at any time, the net present value of the Rent payable by Project Co on each Rent Payment Date for the remainder of the Term as identified in the Model Outputs Schedule.

### 1.3 Interpretation

In this Sub-Sublease 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 Sub-Sublease.
- (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) **(Legislation)**: a reference to any legislation 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 or Sub-Sublease includes all Schedules and Attachments;
- (m) **(Clauses)**: a reference to:
  - (i) a Clause or Schedule is a reference to a Clause or Schedule of or to this Sub-Sublease;
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the Clause in which the reference appears; and

- (iii) a Section is a section of a Schedule;
- (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 Sub-Sublease 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 Sub-Sublease.

## **1.4 Provisions limiting or excluding Liability**

Any provision of this Sub-Sublease 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 Sub-Sublease 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 Sub-Sublease 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 considers fit, unless this Sub-Sublease states otherwise.

## **1.7 Continuance of rights**

- (a) This Sub-Sublease does not affect the Liabilities, rights, powers or remedies of a party in accordance with any other Project Document.
- (b) The failure by a party (other than Project Co) to comply with the provisions of this Sub-Sublease does not affect the Liability of Project Co in accordance with any other Project Document.

# **2. Delegation**

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## **2.1 Parties' representatives**

The parties may exercise their rights or perform their obligations in accordance with this Sub-Sublease through their representatives appointed in accordance with the Project Agreement.

## **2.2 Further delegations**

- (a) The State may at any time delegate the exercise of any of its power or authority 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 Project Co 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 delegate in accordance with its delegation in accordance with this Clause 2.2 will be deemed to be a direction of the State.

## **3. Sublease**

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### **3.1 Grant of sublease**

The State grants to Project Co as tenant a sub-sublease of the Premises for the Term on the terms and conditions set out in this Sub-Sublease.

### **3.2 Holding over**

If the State permits Project Co to continue to occupy the Premises beyond the expiration of the Term and for as long as the Headlease and the Sublease continue to apply, Project Co will occupy the Premises under a monthly licence at a monthly rental equal to one twelfth of the Rent and otherwise on the same terms and conditions, so far as applicable, as this Sub-Sublease. The licence created in accordance with this Clause 3.2 is determinable by either party on 20 Business Days notice to the other party ending on any day and will automatically terminate on the expiration of any holding over under the Headlease or the Sublease.

### **3.3 Project Co's acknowledgment**

Project Co acknowledges this Sub-Sublease and Project Co's rights in connection with the Premises are subject to:

- (a) all interests, rights, easements and reservations affecting the Premises;
- (b) any defects, whether latent or patent, in the Premises; and
- (c) the rights reserved by the State in accordance with the Project Agreement, including the step-in rights contained in Clause 28 (Step-in) of the Project Agreement.

### **3.4 Headlease and Sublease**

- (a) Project Co must:
  - (i) not do or omit to do anything that might result or results in the Board being in breach of the Headlease or the State being in breach of the Sublease; and
  - (ii) notify the State immediately of any communications served on Project Co by the Board or the Trust.
- (b) The State agrees to comply with all of its obligations under this Sub-Sublease.

### **3.5 Plan of Premises**

- (a) The plan of the Premises attached in Schedule A at the date of this Sublease is the initial Premises Plan and shows the Stage 1A New Car Park (**Initial Premises Plan**).

- (b) The Initial Premises Plan and each subsequent Premises plan until Stage 2B Completion will be replaced by deed of variation following the occurrence of Stage 1B Completion, Stage 2A Completion and Stage 2B Completion by a new plan prepared by a surveyor that shows the Stage 1B New Car Park, the Stage 2A New Car Park and the Stage 2B New Car Park (as applicable).
- (c) The parties agree to do all that is necessary to ensure that the Premises plan attached in Schedule A to this Sub-Sublease from time to time is replaced in accordance with paragraph (b) and that this Sub-Sublease accurately reflects the leased area for the relevant Stage.

## **4. Negation of representations and warranties**

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The State makes no representations (express or implied) and gives no warranties (express or implied) that the Premises or any other land is now or will remain suitable or adequate for all or any of the purposes contemplated in the Project Agreement and all warranties (if any) and representations (if any) as to the matters referred to in this Clause 4 implied by Law, are to the extent permitted by Law, expressly negated.

## **5. Use of the Premises and Rent**

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### **5.1 Permitted use**

- (a) Project Co must only use the Premises for the construction, operation and maintenance of one or more car parking facilities and ancillary infrastructure and activities (including undertaking the Commercial Opportunities) as permitted by the Project Agreement, and consistent with the terms of the setting aside of the reserve and delegation by the Trust to the Board pursuant to the Instrument of Setting Aside and Delegation of 24 October 1986 (**Permitted Use**).
- (b) The State grants access to Project Co and acknowledges that Project Co may grant access to the Premises to the Builder, the Operator and the FM Subcontractor and each of their subcontractors (and any of their employees, servants, agents and contractors) for the Permitted Use.

### **5.2 Authorisations**

Project Co must obtain and comply with all Authorisations necessary in connection with the Premises, including those necessary for the use and occupation of the Premises.

### **5.3 Compliance with Laws**

Project Co must comply with all Laws from time to time applicable to the Premises or the use or occupation of the Premises.

### **5.4 Compliance with notices**

Except as expressly set out in the Project Agreement, Project Co must at its own cost and expense comply with all notices, orders and directions issued or given by an Authority which affect or relate to the Premises and the use or occupation of the Premises, regardless of whether the notice, order or direction is addressed to or requires compliance by any or all of Project Co, the State or the Trust.

### **5.5 Notices**

A party which receives a notice, order or direction from an Authority which affects or relates to the Premises or the use or occupation of the Premises must promptly give a copy of that notice, order or direction to the other party.

### **5.6 Caveats**

Project Co will not lodge any caveats in connection with the Premises or the Land.

**5.7**      ***[not disclosed]***

**5.8**      **Variation of Rent**

- (a)      If any Prepayment Variation Payment arises under the Project Agreement and the State has been provided with the relevant Side Letter by Project Co in accordance with Clause 40.4 (Side Letter) of the Project Agreement, Project Co will provide a written notice to the State that specifies the adjustment to the Rent, Total Rent and/or the Rent Payment Date, as relevant.
- (b)      The adjustment to the Rent and Total Rent (as relevant) must be at least equal to the relevant Prepayment Variation Payment agreed to be payable by the State under the Project Agreement at the relevant time.

**5.9**      **Side Letter**

Each time any Prepayment Variation Payment arises under the Project Agreement, Project Co will promptly prepare and issue to the State a side letter specifying, amongst other things, the adjustment to the Rent and Total Rent payable in respect of the rights granted to Project Co under this Sub-Sublease and the Rent Payment Date to apply from the date of that letter. The State will sign a copy of this letter to indicate its agreement with its contents, and will provide Project Co with a signed copy of that letter.

**6.**      **GST**

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- (a)      Notwithstanding any other provision of this Sub-Sublease, any amount payable for a supply made under this Sub-Sublease which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b)      If GST becomes payable on any Taxable Supply made by a party (**Supplier**) under or in connection with this Sub-Sublease:
  - (i)      any amount payable or consideration to be provided under any other provision of this Sub-Sublease for that Taxable Supply (**Agreed Amount**) is exclusive of GST;
  - (ii)      an additional amount will be payable by the recipient, equal to the amount of GST payable on that Taxable Supply as calculated by the Supplier in accordance with the GST Law, which will payable at the same time and in the same manner as for the Agreed Amount; and
  - (iii)      the Supplier will provide a Tax Invoice to the recipient in respect of that Taxable Supply, either at the time expressly set out in any other provision of this Sub-Sublease or no later than the time at which the Agreed Amount for that Taxable Supply is to be provided under this Sub-Sublease. The recipient is not obliged to pay any amount under this Clause 6(b) unless and until a Tax Invoice is received by the recipient in respect of the Taxable Supply.
- (c)      If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Sub-Sublease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the recipient under Clause 6(b)(ii) in respect of that supply, the Supplier will provide a refund or credit to, or will be entitled to receive the amount of this variation from the recipient (as appropriate). Where an adjustment event occurs in relation to a supply:
  - (i)      the Supplier will issue an adjustment note to the recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring; and

- (ii) no additional amount will be payable by the recipient unless and until an adjustment note is received by the recipient.
- (d) If the recipient is dissatisfied with any calculation to be made by the Supplier under this Clause 6 the recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and must take into account the terms of this Sub-Sublease, the matters required to be taken into account by the Supplier under this Clause 6 and any other matter considered by the expert to be relevant to the determination. The parties release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (e) Each party agrees to do all things, including providing Tax Invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this Sub-Sublease, or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Sub-Sublease.
- (f) For the purposes of this Sub-Sublease, a reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- (g) 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.
- (h) In this Clause 6 unless otherwise defined in or for the purposes of this Sub-Sublease, terms used in this Clause have the meanings given to them in the GST Law and GST includes any payment made under or in accordance with the *State Entities (Payments) Act 1999* (WA).

## **7. Access and quiet enjoyment**

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### **7.1 State's right of access**

Project Co agrees that the State may exercise its rights of access to the Premises in accordance with the Project Agreement.

### **7.2 Quiet enjoyment**

Other than as a result of the exercise by the State, an Authority or any other person, of any right of the State, the Authority or that other person which is expressly or impliedly conferred upon it:

- (a) by this Sub-Sublease;
- (b) in accordance with any other State Project Document; or
- (c) otherwise at Law,

Project Co will and may peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the State, Delegate or the Board or any other person or persons lawfully claiming by, from or in accordance with the State, Delegate or the Board.

## 8. Termination

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### 8.1 Termination of this Sub-Sublease

This Sub-Sublease will automatically terminate on the earlier to occur of:

- (a) the expiration of the Term;
- (b) the termination of the Headlease;
- (c) the termination of the Sublease; and
- (d) the termination of the Project Agreement,

but may not otherwise be terminated.

### 8.2 Consequences of termination

Upon termination of this Sub-Sublease, the rights and obligations of the parties in accordance with this Sub-Sublease will cease, except for:

- (a) any accrued rights or obligations in accordance with this Sub-Sublease; and
- (b) any rights or obligations which are expressed to continue after termination of this Sub-Sublease.

### 8.3 Waiver

If this Sub-Sublease is lawfully terminated in accordance with Clause 8.1, Project Co waives any right it might otherwise have to pursue a claim of restitution of any kind, including a Claim of unjust enrichment or quantum meruit.

## 9. Dispute resolution

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The State and Project Co agree that any dispute arising in connection with this Sub-Sublease must be referred for expert determination in accordance with Clause 30 (Dispute resolution) of the Project Agreement.

## 10. Notices

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- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Agreement (in this Clause 10, "**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:**

Name 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:**

Name 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 10. Any text in the body of the email or the subject line will not form part of the Notice; and
  - (ii) Project Co must ensure that, with respect to any communications in accordance with or in connection with this Agreement:
    - A. 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
    - B. 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.

## **11. General**

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### **11.1 Relationship of parties**

- (a) No implied duty of good faith is implied on the State in connection with its relationship with any of the parties.
- (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 Sub-Sublease, no party may act as or represent itself to be the servant or agent of the State.

### **11.2 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 Sub-Sublease.

### **11.3 Counterparts**

This Sub-Sublease 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.

### **11.4 Governing law**

This Sub-Sublease 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.

### **11.5 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 Sub-Sublease 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 Sub-Sublease.
- (b) No waiver by the State of a breach of any term of this Sub-Sublease will operate as a waiver of another breach of that term or of a breach of any other term of this Sub-Sublease.

### **11.6 Variations and waiver**

No variation, modification or waiver of any provision in this Sub-Sublease, 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.

### **11.7 Amendments**

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

### **11.8 Joint and several liability**

If Project Co consists of more than one person, then the rights and Liabilities of Project Co in accordance with this Sub-Sublease are joint and several as between those persons.

## **11.9 Clauses to survive termination**

- (a) All provisions of this Sub-Sublease which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Sub-Sublease 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; or
  - (ii) any right or Liability arising on termination of this Sub-Sublease.
- (b) Nothing in this Clause 11.9 prevents any other provision of this Sub-Sublease, as a matter of interpretation, also surviving the termination of this Sub-Sublease.
- (c) No right or Liability of any party will merge on completion of any transaction in accordance with this Sub-Sublease. All rights and Liabilities in accordance with this Sub-Sublease survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Sub-Sublease.

## **11.10 Costs and expenses**

Each party must:

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

## **11.11 Further acts and documents**

Each party must sign, execute, deliver and do all such acts and things as may be reasonably be required of it to carry out and give full effect to the Project Documents to which it is a party and the rights and obligations of the parties to them.

## **11.12 Registration**

Project Co agrees to do all that is necessary to enable the registration of this Sub-Sublease and any subsequent variation of this Sub-Sublease at Landgate.

## **11.13 Trustee limitation of liability**

- (a) Project Co enters into this Sub-Sublease 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 Sub-Sublease and each other Project Document to which it is expressed to be a party (whether that liability arises under a specific provision of this Sub-Sublease 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 11.13 applies despite any other provision of this Sub-Sublease or any other Project Document to which it is expressed to be a party (other than Clause 11.14(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 Sub-Sublease or any other Project Document which is expressed to be a party.

## **11.14 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 11.14(a) will not apply to any obligation or liability of 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.

**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:

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Signature of Witness

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Signature of Attorney

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Name of Witness (print)

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Name of Attorney (print)

## Schedule A - Premises

*[A plan of the Premises as prepared by a surveyor to be inserted in accordance with Clause 3.5 of this Sub-Sublease]*

## Schedule B – Rent

*[not disclosed]*