

Execution version

Queen Elizabeth II Medical Centre Car Parking Project

Project Number: BMW14583/10

Finance Side Deed

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

The Minister for Health incorporated as the board of the Sir Charles Gairdner Hospital under s7 of the *Hospitals and Health Services Act 1927* (WA) in its capacity as delegate of the Queen Elizabeth II Medical Centre Trust (**Delegate**)

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

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

ANZ Fiduciary Services Pty Ltd (ACN 100 709 493) (**Security Trustee**)

Australia and New Zealand Banking Group Limited (ACN 005 357 522) (**Facility Agent**)

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Date**Parties**

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

The Minister for Health incorporated as the board of the Sir Charles Gairdner Hospital under s7 of the *Hospitals and Health Services Act 1927* (WA) in its capacity as delegate of the Queen Elizabeth II Medical Centre Trust (**Delegate**)

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

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

ANZ Fiduciary Services Pty Ltd (ACN 100 709 493) (**Security Trustee**)

Australia and New Zealand Banking Group Limited (ACN 005 357 522) (**Facility Agent**)

Background

- A. The background to the Project is set out in the Project Agreement.
 - B. In accordance with the Financing Documents, financial accommodation is to be provided for the purpose of enabling Project Co to perform and comply with its obligations in accordance with the Project Agreement.
 - C. It is a condition of the financial accommodation that Project Co and Finance Co grant to the Security Trustee, Security Interests over their rights, title and interests in the Project.
 - D. This document recognises the Security Interests held by the State and the Security Trustee in connection with the Project.
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1. Definitions and interpretation**1.1 General**

- (a) Except as otherwise expressly stated in this document, expressions used in this document have the meaning given to them in the Project Agreement.
- (b) The use of the word "remedy" or any form of that word in connection with a Finance Default means that the Finance Default must be cured or its effects overcome.

1.2 Definitions

In this document:

AML/CTF Laws means the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Cth) and any other anti-money laundering or counter terrorism financing laws or regulations including without limitation, any laws or regulations imposing 'know your customer' or other identification checks or procedures, that apply to a Finance Party, in any jurisdiction, in connection with the Financing Documents.

Beneficiaries means the beneficiaries identified from time to time in accordance with the Security Trust Deed.

Charged Property has the meaning given to it in the State Deed of Charge.

Debt Payment Conditions means those conditions for the repayment of Actual Debt stated in Clause 7.2.

Enforcing Party means any agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed in accordance with any Security.

Equity Interest means the securities issued by, or other ownership interests in, Project Co.

Finance Default means:

- (a) an event described as an “Event of Default” in the Financing Documents; or
- (b) any event which entitles a Finance Party to cease to make available or accelerate repayment of financial accommodation in connection with Project Co’s or Finance Co’s Financial Indebtedness (other than voluntary cancellation of financial accommodation by Project Co or Finance Co which the directors of, as relevant, Project Co or Finance Co determine is surplus to the requirements of Project Co or Finance Co to deliver the Project in full compliance with the State Project Documents).

Finance Party means the Security Trustee, the Facility Agent, each Financier and each other future beneficiary of the trust established in accordance with the Security Trust Deed.

Financiers’ Cure Program means the cure program developed in accordance with Clause 4.3 as amended from time to time in accordance with this document.

Financiers’ Securities means:

- (a) the “Security” in favour of the Security Trustee as defined in the Common Terms Deed; and
- (b) any other Security Interest which is at any time collateral to any of the Financing Documents.

Fit and Proper Person means, in connection with a person, that if that person acquired Control of Project Co the State would not be entitled to withhold its consent to such change because in the State’s reasonable opinion one or more of the criteria in Clause 31.6(f) (Change in Control) of the Project Agreement are not satisfied.

PA Default Event means an Event of Default or Immediate Termination Event in accordance with the Project Agreement and a Project Co Default or Termination Event in accordance with the At-Grade Car Parks Management Agreement.

Parking Equipment means all equipment and machinery required to undertake the collection of Parking Charges, including card readers, boom gates, ticket machines and associated works required to install and commission these elements as well as any Parking Charge specific signage.

Project Account means the “Project Accounts” as defined in the Common Terms Deed and any other account of Project Co or Finance Co with a Finance Party or the Account Bank (but excluding the Distributions Account as defined in the Common Terms Deed).

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

Project Co’s Rights means Project Co’s and Finance Co’s rights in accordance with the Project Documents.

Relevant State Party means:

- (a) in relation to a PA Default Event which is an Event of Default or Immediate Termination Event in accordance with the Project Agreement, the State;
- (b) in relation to a PA Default Event which is a Project Co Default or Termination Event in accordance with the At-Grade Car Parks Management Agreement, the Delegate; and
- (c) in relation to a PA Default Event which is both:
 - (i) an Event of Default or Immediate Termination Event in accordance with the Project Agreement; and
 - (ii) a Project Co Default or Termination Event in accordance with the At-Grade Car Parks Management Agreement,
 both the State and the Delegate.

Secured Beneficiaries has the meaning given to that term in the State Deed of Charge.

Securities means:

- (a) the State Deed of Charge; and
- (b) the Financiers' Securities,

and "**Security**" means each or any one of them (as applicable).

Security Interest means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, 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.

State Priority Moneys means any amounts owed to the State in accordance with Clause 28.3 (Payments) of the Project Agreement, the Delegate in accordance with Clause 13.3 (Payments) of the At-Grade Car Parks Management Agreement, the Secured Beneficiaries, and pursuant to Clause 5.4 (Indemnity) of the Builder Side Deed, Clause 5.4 (Indemnity) of the FM Side Deed and Clause 5.4 (Indemnity) of the Operator Side Deed.

Subordination Conditions means prior to the date of Stage 2B Completion, the conditions contained in Clause 3.3 **Error! Reference source not found.** and, on or after the date of Stage 2B Completion, the conditions contained in Clause 3.3 **Error! Reference source not found.**

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; and
- (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.

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 or the Delegate may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State or the Delegate thinks fit, unless this document provides otherwise.

1.7 Capacity of Security Trustee

- (a) The Security Trustee enters into this document in its capacity as trustee of the Security Trust (as defined in the Common Terms Deed).
- (b) The parties acknowledge that the Security Trustee holds the benefit of this document for the benefit of the Finance Parties and:
 - (i) is bound to act on the instructions of the Finance Parties pursuant to the terms of the Security Trust Deed; and
 - (ii) in the absence of such instructions from the Finance Parties or where a force majeure event exists, the Security Trustee is not bound to act.
- (c) The Security Trustee's obligations, duties and responsibilities are limited to those expressly set out in the Security Trust Deed and this document.
- (d) The Security Trustee acknowledges that it is entitled to be indemnified for its actions under this deed:
 - (i) out of the assets of the Security Trust; and/or
 - (ii) by the Finance Parties,

except where the Security Trustee has been guilty of fraud, wilful misconduct or gross negligence.
- (e) Subject to paragraph (f), the parties acknowledge and agree that:

- (i) the Security Trustee's liability under this document is limited to the extent that it is actually indemnified out of the assets of the Security Trust or by the Finance Parties in the manner set out in paragraph (d); and
 - (ii) the parties will not have any recourse to the Security Trustee beyond that for which the Security Trustee is indemnified as contemplated by paragraph (d).
- (f) The limitation of liability set out in paragraph (e) will not apply where the Security Trustee has been guilty of fraud, wilful misconduct or gross negligence.
- (g) Notwithstanding any other provisions of this document to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation, including without limitation any AML/CTF Law, the *Charter of the United Nations Act 1948* (Cth), the Charter of the United Nations (Dealing and Assets) Regulations 2008 (Cth), the Banking (Foreign Exchange) Regulations 1959 (Cth) and any other applicable sanctions or legislation.

1.8 Duties limited

The Security Trustee's obligations, duties and responsibilities are limited to those expressly set out in the Common Terms Deed, the Security Trust Deed and this document.

1.9 Replacement of Security Trustee

- (a) If the Security Trustee is replaced as trustee in accordance with the Security Trust Deed, then the Security Trustee may assign, novate or otherwise transfer its rights and obligations in accordance with this document to the replacement trustee.
- (b) Each party agrees to enter into a novation document with any replacement security trustee that is appointed in accordance with the Security Trust Deed (in a form reasonably acceptable to the Security Trustee and the replacement security trustee).

1.10 Security Trustee acts as nominee

Each party agrees that the Security Trustee holds the benefit of this document for the benefit of the Beneficiaries and:

- (a) is bound to act on the instructions of the Beneficiaries in accordance with the terms of the Security Trust Deed; and
- (b) in the absence of such instructions from the Beneficiaries the Security Trustee is not bound to act.

1.11 State acts as nominee

Each party agrees that the State holds the benefit of this document for itself and also for the benefit of the Secured Beneficiaries.

1.11A Capacity of Facility Agent

- (a) The Facility Agent enters into this document in its capacity as agent of each Financier from time to time and as such the Financiers from time to time (including any new or substitute Financiers after the date of this document) are parties to this document. Each such Financier from time to time has a several entitlement to each such right, and a several liability in respect of each such

obligation, to the extent relevant, in the proportion which its Exposure (as defined in the Security Trust Deed) bears to the aggregate Exposures (as defined in the Security Trust Deed) of all Financiers at that time. As against any other party to this document, the rights, remedies, and discretions of the Financiers under this document may be exercised by the Facility Agent.

- (b) Except in the case of wilful misconduct or gross negligence on the part of the Facility Agent, any liability incurred by the Facility Agent pursuant to this document in its capacity as agent of the Financiers will be limited, and the Facility Agent will not be obliged to satisfy the liability except to the extent to which it is entitled to be indemnified by the Financiers.
- (c) The Facility Agent also enters into this document in its capacity as Account Bank for the purposes of the Common Terms Deed for the purposes of Clause 2.2A and (to the extent it refers to the Facility Agent acting in that capacity) Clause 5.3.

1.12 Order of precedence

To the extent of any inconsistency, ambiguity or discrepancy between this document and any other State Project Document, this document prevails.

1.13 Project Documents

The Security Trustee and Facility Agent each agrees that it has received a copy of the Project Documents.

1.14 Financing Documents

Project Co and Finance Co each represents and agrees that:

- (a) before the date of this document, it has fully disclosed to the State and the Delegate the terms of the Financing Documents; and
- (b) those Financing Documents (together with the Equity Documents) are, on the date of this document, the only documents governing or creating Project Co's and Finance Co's Financial Indebtedness.

1.15 Assumptions

Each other party to this document may assume that each of the Security Trustee and the Facility Agent has been duly appointed, that its appointment has not been terminated or suspended (or the terms of its appointment materially amended) and that it is authorised to give any instruction, notice, consent or direction which it purports to give in accordance with this document.

1.16 Continuance of rights

- (a) This document does not affect the obligations, rights, powers or remedies of a party in accordance with a Project Document, except to the extent expressly provided in this document.
- (b) The failure by a party (other than Project Co) to comply with the provisions of this document does not affect the Liability of Project Co in accordance with any other Project Document, and the failure by a party (other than Finance Co) to comply with the provisions of this document does not affect the Liability of Finance Co in accordance with any other Project Document.

1.17 Representations and warranties

Each party represents and warrants to each other party that:

- (a) it has power to enter into this document and perform its obligations in accordance with or as contemplated by this document and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this document constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors rights generally and subject to the availability of equitable remedies; and
- (c) the execution by it of, the performance by it of its obligations in accordance with, and the compliance by it with the provisions of this document does not and will not contravene any Law to which it is subject.

1.18 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 1.18).

2. Consent to Securities

2.1 Consent by the State and Delegate

- (a) The State and the Delegate consent to the Financiers' Securities.
- (b) The State agrees that the Security Interests created in accordance with the Financiers' Securities are "Permitted Security Interests" for the purpose of the State Deed of Charge.

2.2 Consent by Security Trustee

- (a) The Security Trustee consents to the State Deed of Charge.
- (b) Each of the Security Trustee and Facility Agent agrees that the State Deed of Charge is a "Permitted Security Interest" for the purposes of the Financing Documents.

2.2A Acknowledgement of Account Bank

The Facility Agent, in its capacity as Account Bank for the purposes of the Common Terms Deed, acknowledges the charge over the Insurance Proceeds Account in accordance with the State Deed of Charge.

2.3 Nature of consents

Neither the State, the Delegate, the Security Trustee nor the Facility Agent by the consents given in Clauses 2.1 and 2.2, respectively have:

- (a) approved the terms of any document;
- (b) agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or
- (c) consented to any document granting or creating any interest in any right, title or property other than as set out in this document.

3. Order of priorities

3.1 Priority of handover obligations

Subject to Clause 8.2(b), each of Project Co, Finance Co, the Security Trustee and Facility Agent agrees that the State's rights in accordance with Clause 19 (Handover) of the Project Agreement and the Delegate's rights in accordance with Clause 10 (Handover) of the At-Grade Car Parks Management Agreement have priority over any rights granted to the Security Trustee.

3.2 Priority of Securities

The parties agree that the order of priority of the Financiers' Securities and the State Deed of Charge is:

- (a) **(State Priority Moneys)**: firstly, the State Deed of Charge for any State Priority Moneys due and payable at that time;
- (b) **(Actual Debt)**: secondly, the Financiers' Securities for the aggregate of:
 - (i) Actual Debt; and
 - (ii) amounts other than Actual Debt due from Project Co or Finance Co because of a breach of a Financing Document at that time;
- (c) **(State Deed of Charge)**: thirdly, the State Deed of Charge for any amounts secured by them at that time, other than the State Priority Moneys paid in accordance with paragraph (a); and
- (d) **(Financiers' Securities)**: fourthly, the Financiers' Securities for any amount secured by them at that time other than those to which paragraph (b) applies,

notwithstanding:

- (e) **(other terms)**: anything contained in the Financiers' Securities or the State Deed of Charge;
- (f) **(dates of execution)**: the date or order of execution or registration of any of the Securities;
- (g) **(order or moneys)**: the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured in accordance with the respective Securities;
- (h) **(payment or repayment)**: the payment or repayment in whole or in part from time to time of the money secured by the Financiers' Securities or the State Deed of Charge;
- (i) **(fluctuations in secured amounts)**: any fluctuation in the amount secured by the Financiers' Securities or the State Deed of Charge from time to time;
- (j) **(acts and omissions)**: the respective dates on which anything is done or omitted to be done in accordance with or in connection with the Financiers' Securities or the State Deed of Charge;
- (k) **(payment dues)**: the moneys secured by the Financiers' Securities or the State Deed of Charge being contingently payable or not due for payment; or
- (l) **(contrary law)**: any rule of law or equity to the contrary.

3.3 Licence Fee

[Not disclosed]

3.4 Application of payments

Any moneys received by the State, the Security Trustee, the Facility Agent or an Enforcing Party on enforcement of the Securities will be applied in the following order of priority:

- (a) firstly, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee, the Facility Agent or any Enforcing Party appointed in accordance with the Securities incurred in the enforcement of Securities;
- (b) secondly, towards the remuneration of an Enforcing Party;
- (c) thirdly, to the State and the Security Trustee in accordance with the priorities set out in Clause 3.2; and
- (d) fourthly, any surplus amount is to be paid to an account in the name of Project Co with any bank nominated by Project Co. That surplus will not carry interest while held by the State, the Security Trustee, the Facility Agent or an Enforcing Party.

3.5 Contingent liabilities

If the Securities secure contingent Liabilities to the State or the Security Trustee then, until the State or the Security Trustee is satisfied that the contingent Liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of their respective Security an amount consistent with the order and amount of priority established in accordance with Clause 3.2 which they reasonably estimate to be the amount of the contingent Liability.

3.6 Enforcement by the State

- (a) **(No enforcement without consent):** For so long as there is Actual Debt secured by the Financing Documents, the State must not take any action in or towards exercising any right, power or remedy in accordance the State Deed of Charge without the Security Trustee's consent, which consent must not be unreasonably withheld, including by:
 - (i) causing crystallisation of a floating charge in connection with the assets of Project Co or Finance Co except where crystallisation occurs automatically in accordance with the State Deed of Charge or to the extent those assets are also subject to a fixed charge in accordance with any of the Financiers' Securities;
 - (ii) execution, sale, or taking possession of property which is subject to the State Deed of Charge; or
 - (iii) the appointment of a receiver or a receiver and manager to the property (or any part of it) which is subject to the State Deed of Charge,

and must not petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of Project Co or Finance Co without first obtaining the consent of the Security Trustee, or until termination of the Project Agreement in accordance with this document.

- (b) **(Priority of enforcement action):** Subject to paragraph (c):
- (i) any enforcement action in accordance with the Financiers' Securities by the Security Trustee or an Enforcing Party appointed by a Finance Party will take precedence over any enforcement action by the State or an Enforcing Party appointed in accordance with the State Deed of Charge; and
 - (ii) if an Enforcing Party is appointed in connection with any property in accordance with the Financiers' Securities, the Enforcing Party may upon notice to the State, assume possession and control of that property from any Enforcing Party in possession and control of that property in accordance with any State Deed of Charge and the State Deed of Charge will not preclude or restrict the free dealing with the property by such an Enforcing Party, notwithstanding the security created by or any provision of any State Deed of Charge to the contrary.
- (c) **(State's superior rights in accordance with Project Documents):** Paragraphs (a) and (b) do not:
- (i) prevent the State from exercising its rights at any time in accordance with the State Deed of Charge to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations in accordance with Clauses 19 (Handover) and 28 (Step-in by the State) of the Project Agreement;
 - (ii) affect the State's right to set off in accordance with Clause 39.2 (Set-off) of the Project Agreement;
 - (iii) prevent the State from enforcing the State Deed of Charge upon the appointment of an administrator to Project Co or Finance Co by any person in accordance with Part 5.3A of the *Corporations Act 2001* (Cth) before or during the decision period (as defined in section 9 of the *Corporations Act 2001* (Cth)) provided that the Security Trustee is enforcing its Claim over all or substantially all of Project Co's or Finance Co's (as applicable) property (except to the extent that the State is entitled to exercise its rights in accordance with this paragraph (c), the State agrees that it will instruct an Enforcing Party to comply with paragraph (b)); or
 - (iv) limit the rights of the State in connection with any third party.
- (d) **(Security Trustee appointed Enforcing Party to co-operate):** Without limiting paragraph (c), if the State appoints an Enforcing Party in the circumstances referred to in paragraph (c)(i), then the Security Trustee must procure that any Enforcing Party appointed by the Security Trustee will promptly and fully cooperate with the Enforcing Party appointed by the State to the extent that the State reasonably requires and not do anything to prevent or hinder the Enforcing Party appointed by the State.
- (e) **(Status of State Deed of Charge):** Notwithstanding anything contained in the State Deed of Charge, until payment of all moneys secured by the Financiers' Securities, unless the Security Trustee otherwise consents in writing, which consent must not be unreasonably withheld:
- (i) subject to paragraph (ii), the State Deed of Charge will operate as a floating charge, and will not restrict the performance by Project Co or Finance Co of its obligations under the Project Documents;

- (ii) the State Deed of Charge will operate as a fixed charge over an asset (which is expressed to be subject to a fixed charge under the State Deed of Charge) only to the extent that such asset is also subject to a fixed charge under any of the Financiers' Securities; and
- (iii) without limiting paragraph (ii), a floating charge over an asset will not crystallise under the State Deed of Charge (and if crystallised, will reconvert to a floating charge) except to the extent that the asset is also subject to a floating charge that is and remains crystallised, or to a fixed charge, under any of the Financiers' Securities.

3.7 Receipts

If a party receives any payment in cash or in kind or recovers any amount (including by way of set off or combination of accounts) (**Receipt**) which is:

- (a) not a payment required in accordance with any Project Document (provided that a payment required to be made following enforcement of the Securities is not considered to be a required payment for the purposes of this Clause); or
- (b) such a required payment but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Security is enforced, then that party must immediately pay the amount of the Receipt to the other party for distribution in accordance with Clauses 3.2 and 3.4.

3.8 Registration and notice

The State and the Security Trustee must co-operate with a view to reflecting the priority of the Securities stated in this document in any register or with any filing or registration authority and in giving notice to insurers and debtors liable for obligations covered by the Securities.

3.9 Priority for all moneys

Subject to Clause 3.6(c), the order and amount of priority established in accordance with this Clause 3 operates in connection with all amounts received or realised by way of set off by the State, the Security Trustee or the Facility Agent on a realisation of the Securities.

3.10 Marshalling of securities

Neither the State nor the Security Trustee is obliged to marshal in favour of the other. If any of the Securities becomes enforceable, each of the State and the Security Trustee may determine the extent (if any) to which it will have recourse to the Securities.

4. PA Default Events

4.1 Notice of PA Default Events

The Relevant State Party must give the Security Trustee a copy of any notice given by the Relevant State Party to Project Co in connection with a PA Default Event at or about the same time as the notice is given to Project Co.

4.2 Information to Security Trustee

If the PA Default Event is capable of cure in accordance with the Project Agreement or the At-Grade Car Parks Management Agreement:

- (a) Project Co must keep the Security Trustee informed of all measures taken or intended to be taken by Project Co to remedy the PA Default Event; and
- (b) the Relevant State Party must, upon notice from the Security Trustee, provide to the Security Trustee copies of all material correspondence and documents issued by the Relevant State Party to Project Co in connection with the PA Default Event.

4.3 Security Trustee's right to remedy

- (a) The Security Trustee may, upon notice to the Relevant State Party, take steps to remedy or procure the remedy of a PA Default Event and to develop a remedy program in connection with the PA Default Event in accordance with this Clause 4.3 (**Financiers' Cure Program**).
- (b) The right to develop a Financiers' Cure Program is in addition to Project Co's right to remedy a PA Default Event in accordance with the Project Agreement or the At-Grade Car Parks Management Agreement (to the extent that the PA Default Event is capable of cure). The remedy of a PA Default Event effected by the Security Trustee or an Enforcing Party will (as between Project Co and the Relevant State Party) be effective as a remedy of the relevant PA Default Event by Project Co.
- (c) If the Security Trustee gives a notice to the Relevant State Party in accordance with paragraph (a), the Relevant State Party and the Security Trustee must meet as soon as reasonably practicable to agree:
 - (i) the steps to be undertaken by the Security Trustee or an Enforcing Party to remedy the PA Default Event; and
 - (ii) a date by which the PA Default Event must be remedied (which date must be consistent with the Security Trustee or an Enforcing Party diligently pursuing the Financiers' Cure Program).
- (d) If the Security Trustee and the Relevant State Party fail to agree on a Financiers' Cure Program, then any party may refer the matter for resolution in accordance with Clause 13. The program agreed or determined in accordance with Clause 13 will be the Financiers' Cure Program.
- (e) If a PA Default Event occurs the Relevant State Party must, to the extent reasonably requested by the Security Trustee or an Enforcing Party:
 - (i) provide reasonable assistance to allow the Security Trustee and any Enforcing Party appointed under the Financiers' Securities (including their agents, consultants and contractors) all necessary access to the Operating Area, Construction Area or the At-Grade Car Parks Land (as defined in the At-Grade Car Parks Management Agreement), subject to:
 - A. the Security Trustee or the Enforcing Party providing notice to the State of its intention to access the Operating Area, Construction Area or the At-Grade Car Parks Land (as defined in the At-Grade Car Parks Management Agreement); and
 - B. the provisions of the Project Documents; and
 - (ii) promptly provide the Security Trustee or an Enforcing Party with all material information in its possession relevant to the PA Default Event.

- (f) If one or more further PA Default Events occur after the Security Trustee gives a notice to the Relevant State Party in accordance with paragraph (a), the Security Trustee must take immediate steps to develop a Financiers' Cure Program in accordance with this Clause 4.3 for those PA Default Events.
- (g) Without limiting any rights the Security Trustee can exercise in accordance with this Clause 4.3 or Clause 5.1, but subject to the acknowledgements in Clause 8.1, the Security Trustee agrees that neither it nor any Enforcing Party will in any way interfere with the performance of the D&C Subcontract, the FM Subcontract or the Operator Subcontract without obtaining the State's prior consent, unless such action is permitted by the terms of the D&C Subcontract, the FM Subcontract or the Operator Subcontract (as applicable) or in accordance with the terms of the Builder Consent Deed, the FM Consent Deed or the Operator Consent Deed.

4.4 Information

- (a) **(Obligations of Security Trustee):** From the date that the Security Trustee is notified of the PA Default Event, the Security Trustee must, when reasonably requested to do so, update the Relevant State Party of the actions taken by the Security Trustee or an Enforcing Party in implementing the Financiers' Cure Program and the progress of the remedy of the PA Default Event in accordance with the Financiers' Cure Program.
- (b) **(When extensions to be given):** If the Security Trustee or an Enforcing Party:
 - (i) reasonably considers that the date specified for the remedy of a PA Default Event in accordance with the Financiers' Cure Program is no longer appropriate; and
 - (ii) is and has been diligently pursuing the remedy of the PA Default Event by complying with the Financiers' Cure Program,
 then, subject to paragraph (g), the date specified in the Financiers' Cure Program for the remedy of the PA Default Event will be extended by such period as the Relevant State Party determines is reasonably required to enable the Security Trustee or an Enforcing Party to remedy the PA Default Event.
- (c) **(Negotiation):** If the Security Trustee reasonably considers that the extension determined by the Relevant State Party in accordance with paragraph (b) is not sufficient:
 - (i) the Security Trustee may notify the Relevant State Party that it does not agree with the extension and the senior representatives of the Relevant State Party and the Security Trustee or their nominees (**Representatives**) must meet and use reasonable endeavours to resolve the dispute within 10 Business Days of receipt by the Relevant State Party of the notice from the Security Trustee; and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and be binding on the parties.
- (d) **(Dispute resolution):** If a dispute referred to in paragraph (c) remains unresolved after the expiration of the period for negotiation, the Security Trustee:
 - (i) may (provided that the Security Trustee or an Enforcing Party has been diligently pursuing the Financiers' Cure Program) refer the matter for resolution in accordance with Clause 13; and

- (ii) whilst the matter is being determined, must continue to diligently pursue or procure that an Enforcing Party continues to procure the Financiers' Cure Program,

and, subject to paragraph (g), the Relevant State Party must not terminate the Project Agreement or the At-Grade Car Parks Management Agreement (as applicable) until such dispute is resolved.

- (e) **(Suspension of Financiers' Cure Program):** If the Security Trustee or an Enforcing Party takes any action in accordance with a Financiers' Security, on and from the date on which the State exercises its rights in accordance with Clause 28 (Step-in by the State) of the Project Agreement or the Delegate exercises its rights in accordance with Clause 13 (Step-in) of the At-Grade Car Parks Management Agreement, the obligation on the Security Trustee or an Enforcing Party to comply with a Financiers' Cure Program will be suspended to the extent that the exercise by the Relevant State Party or the Delegate of its step-in rights prevents the Financiers' Cure Program from being performed.
- (f) **(Diligent pursuit):** For the purposes of this document, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the Financiers Cure Program, regard must be had to the time necessary to enforce the D&C Subcontract, the FM Subcontract or the Operator Subcontract or to engage a substitute Builder, FM Subcontractor or Operator, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a Builder, Operator or a FM Subcontractor (as applicable).
- (g) **(Maximum remedy period):** The maximum period of time which the Security Trustee or an Enforcing Party (or both) may be given to remedy a specific PA Default Event will be 18 months.

4.5 Restrictions on termination

The Relevant State Party must not terminate the Project Agreement or the At-Grade Car Parks Management Agreement (as applicable) unless the Relevant State Party has given the Security Trustee a copy of the notice in connection with the PA Default Event accordance with Clause 4.1 and:

- (a) the Security Trustee:
 - (i) has not responded to the notice within 15 Business Days of receipt; or
 - (ii) has notified the Relevant State Party that it does not intend to remedy the PA Default Event; or
- (b) the Security Trustee notifies the Relevant State Party of its intention to develop a Financiers' Cure Program within 15 Business Days of receipt of the State's notice in connection with the PA Default Event in accordance with Clause 4.1 and:
 - (i) subject to Clause 4.4(c) and Clause 4.4(d), the PA Default Event has not been remedied by the earlier of:
 - A. the date stated in the Financiers' Cure Program for the remedy of the PA Default Event (as may be varied from time to time in accordance with Clause 4.4); and
 - B. the date which is 18 Months from the date that the Security Trustee notifies the Relevant State Party that it

intends to develop a Financiers' Cure Program in accordance with Clause 4.3(a); or

- (ii) the Security Trustee or an Enforcing Party is not diligently pursuing or has not diligently pursued the remedy of the PA Default Event (or the overcoming of its effects), including implementing the Financiers' Cure Program (if one has been agreed or determined),

provided however, that the Relevant State Party may not terminate the Project Agreement or the At-Grade Car Parks Management Agreement (as applicable) due to a failure to which paragraph (b)(ii) applies, unless it has given the Security Trustee notice of the failure and such failure has not been remedied within 20 Business Days of receipt of such notice by the Security Trustee.

5. Enforcement by Security Trustee

5.1 Enforcement

Without limiting the actions which the Security Trustee may be entitled to take in connection with a PA Default Event (whether in accordance with the Financing Documents or otherwise), the Security Trustee and any Enforcing Party appointed in accordance with the Financiers' Securities may:

- (a) exercise or perform some or all of Project Co's Rights;
- (b) engage another person to exercise Project Co's Rights; and
- (c) assign, novate, transfer or otherwise dispose of Project Co's Rights in whole or in part,

subject to the terms of the Financing Documents, this document and the rights and duties of the Security Trustee and an Enforcing Party in accordance with the Financiers' Securities and at Law.

5.2 No Liability

- (a) Subject to paragraph (b) and without limiting the Liability of Project Co and Finance Co (which each continues to be responsible for the performance of its obligations in accordance with the Project Documents), the Finance Parties and any Enforcing Party will not be liable for any obligation or Liability of Project Co or Finance Co in accordance with the Project Documents by reason only of the Financiers' Securities or the exercise of any of their rights, powers or remedies in accordance with the Financiers' Securities.
- (b) All money paid by the Finance Parties or an Enforcing Party and all acts, matters or things done or effected by them which would satisfy the obligations of Project Co or Finance Co (as applicable) in accordance with the Project Documents will be effective, as between the State, the Delegate and Project Co or between the State, the Delegate and Finance Co (as applicable), to fully satisfy and discharge the obligations of Project Co or Finance Co (as applicable), in connection with which such payment has been made or act, matter or thing has been done.

5.3 Restriction on set off

- (a) Without limiting the operation of Clause 3, each of the Security Trustee and the Facility Agent agrees on its own behalf (and in the case of the Facility Agent, including in its capacity as Account Bank for the purposes of the Common Terms Deed) and must procure on behalf of each Finance Party that it and none of them will exercise:

- (i) any right of set-off or combination of accounts in connection with the Project Accounts; or
 - (ii) any other right in connection with any of those accounts, the effect or exercise of which would be to apply money standing to the credit of the account in a way inconsistent with Clause 24 (Insurance) of the Project Agreement and Clause 7.
- (b) The rights set out in paragraphs (a)(i) and (a)(ii) may be exercised (other than by the Facility Agent in its capacity as Account Bank for the purposes of the Common Terms Deed):
 - (i) if the Project Agreement or the At-Grade Car Parks Management Agreement have been terminated or the State or the Delegate has given a termination notice and is immediately entitled to terminate the Project Agreement or the At-Grade Car Parks Management Agreement in accordance with the Project Agreement, the At-Grade Car Parks Management Agreement and this document; or
 - (ii) to reduce Actual Debt if an administrator has been appointed to Project Co provided that:
 - A. any amount so applied is paid to:
 - 1) the State;
 - 2) any Enforcing Party appointed by the State; or
 - 3) any Enforcing Party appointed by the Security Trustee,
 as specified by the State;
 - B. any amount so applied is applied for the Project purposes for which the amount was originally intended in accordance with Clause 8 (Insurance Proceeds Account) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed; and
 - C. any surplus funds not applied in accordance with this paragraph (b) are repaid by the relevant party to the Security Trustee promptly after:
 - 1) the Project Agreement or the At-Grade Car Parks Management Agreement has been terminated; or
 - 2) the State or the Delegate has given a termination notice and is immediately entitled to terminate the Project Agreement or the At-Grade Car Parks Management Agreement in accordance with the Project Agreement, the At-Grade Car Parks Management Agreement and this document.

5.4 Security Trustee not to hinder

The Security Trustee must not knowingly exercise (and must procure that any Enforcing Party appointed in accordance with the Financiers' Securities will not knowingly exercise) any rights in a manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights or the Delegate of the Delegate's rights in

accordance with (as appropriate) Clauses 19 (Handover), 28 (Step-in by the State) or 39.2 (Set-off) of the Project Agreement, Clauses 10 (Handover), 13 (Step-in) or 21.2 (Set-off) of the At-Grade Car Parks Management Agreement, the State Deed of Charge, the Builder Side Deed, the FM Side Deed, the Operator Side Deed, this document or any other side document entered into by the State or the Delegate in connection with the Project.

5.5 Third party account bank

Project Co must ensure that a Project Account is not held with a party (**Account Bank**) other than the Security Trustee or a Finance Party unless Project Co first procures that the Account Bank undertakes to the State and the Delegate to be bound by Clause 5.3 in the same terms as the Security Trustee.

5.6 Replacement of Builder, Operator or FM Subcontractor

- (a) If the Security Trustee or Project Co propose to remedy a PA Default Event or a Finance Default by appointing a new contractor to replace either the Builder, the Operator or the FM Subcontractor, or by novating the D&C Subcontract, the FM Subcontract or the Operator Subcontract (and other relevant Project Documents) to a replacement contractor, then the party seeking the appointment or novation must first obtain the State's prior consent which consent must not be unreasonably withheld if the State is satisfied that the matters stated paragraph (b) are satisfied.
- (b) The State will give its consent if the State is reasonably satisfied that:
 - (i) **(details):** Project Co or the Security Trustee has provided the State with details of the proposed replacement contractor and the terms and conditions on which the proposed replacement contractor is to be engaged;
 - (ii) **(compliance with Project Agreement):** if the same appointment were made by Project Co, than the appointment and the replacement contractor would comply with the Project Agreement in all respects;
 - (iii) **(terms and conditions):** except as otherwise agreed by the State, the proposed terms and conditions of the replacement contractor's engagement are not materially less onerous on the contractor than those that apply to the current contractor and include a requirement to perform such obligations of the current contractor in accordance with the relevant Project Documents which remain unsatisfied;
 - (iv) **(costs and expenses):** a person other than the State bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - A. any enquiries which the State may make for the purposes of determining whether to consent to the replacement contractor;
 - B. the procurement of a replacement contractor; and
 - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in connection with such documentation.
- (c) To the extent that the appointment of a replacement contractor in accordance with this Clause 5 involves the novation of a Project Document:

- (i) each of the State and the Security Trustee will release those Securities as it is necessary to release to facilitate the novation; and
- (ii) each party to this document and each other party to the Project Documents consents to that novation,

but without prejudice to any accrued rights and Claims against the replaced contractor at the time of novation.

- (d) To the extent that the release of the Securities is necessary in accordance with paragraph (c), each party will use its reasonable endeavours to ensure that the Project Documents (as novated) become subject to a Security Interest in favour of the party who granted the release, on terms substantially similar to those of the released security.

5.7 Disposal of Project Co's interest

- (a) If an Enforcing Party proposes to remedy a PA Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of Project Co's or Finance Co's interest in, or obligations in accordance with the Project Documents in accordance with the Enforcing Party's rights or the Financiers' rights in accordance with the Financing Documents, the Security Trustee must first obtain the State's prior consent, which consent must not be unreasonably withheld if the State is satisfied the matters set out in paragraph (b) are satisfied.
- (b) The State must give its consent if:
 - (i) **(details):** the State has been provided with details of the proposed purchaser and the terms and conditions of the proposed disposal;
 - (ii) **(permitted disposal):**
 - A. in relation to the disposal of an Equity Interest:
 - 1) the proposed assignment, transfer or disposal is permitted in accordance with Clause 31.6 (Change in Control) of the Project Agreement;
 - 2) the State is not permitted to withhold consent to that assignment, transfer or disposal under Clause 31.6(f) (Change in Control) of the Project Agreement; or
 - 3) the State is reasonably satisfied that the Equity Interest is being assigned, transferred or disposed of to a person who:
 - a) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - b) has the necessary financial capacity and contractual and financing arrangements with third parties to perform, or procure that Project Co performs, Project Co's obligations under the State Project Documents; and

- B. in relation to the disposal by the Security Trustee or an Enforcing Party of any property to a person (other than the Security Trustee or its Enforcing Party), the State is reasonably satisfied that the property is being assigned, transferred or disposed of to a person who:
 - 1) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person);
 - 2) has assumed all of Project Co's obligations under the State Project Documents; and
 - 3) has the necessary financial and technical capacity to perform Project Co's obligations under the State Project Documents;
- (iii) **(no adverse effect)**: the proposed disposal would not result in there being any adverse effect on the rights of, or increase in the liabilities or obligations of, the State or the Delegate in accordance with the State Project Documents than if the Charged Property or the equity interests (as relevant) were not disposed of;
- (iv) **(terms and conditions)**: the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and
- (v) **(costs and expenses)**: a person other than the State or the Delegate bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - A. any enquiries which the State or the Delegate may make for the purposes of determining whether to consent to the disposal;
 - B. the procurement of a purchaser; and
 - C. the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

5.8 Appointment of Enforcing Party

- (a) Without limiting any other rights of the Security Trustee:
 - (i) if the Security Trustee appoints an Enforcing Party in accordance with the Financiers' Securities:
 - A. that appointment will not constitute a PA Default Event; and
 - B. in connection with the appointment of an Enforcing Party to Project Co or Finance Co, a PA Default Event will not be taken to subsist under paragraphs (c) (funding cancelled) or (f) (change in control) of the definition of Event of Default or under paragraph (b) (Insolvency Event) of the definition of Immediate Termination Event, but if and only for so long as the Enforcing Party has access to adequate financial resources to enable Project Co and Finance Co to fully comply with all of its obligations under the Project Documents as they arise; and

- (ii) any:
 - A. enforcement action taken by the Security Trustee or an Enforcing Party (appointed in accordance with the Financiers' Securities) in accordance with Clause 5.1;
 - B. replacement of a Builder, Operator or FM Subcontractor under Clause 5.6; or
 - C. disposal of Project Co's or Finance Co's interest in the Project Documents in accordance with Clause 5.7,

will not, by itself, provide the State or the Delegate with the right to terminate any State Project Document.

- (b) The Security Trustee must not appoint an Enforcing Party in accordance with the Financiers' Securities unless the:
 - (i) proposed Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - (ii) appointment is otherwise in accordance with this document.
- (c) The Security Trustee will not, and will ensure that an Enforcing Party does not, exercise or purport to exercise Project Co's Rights without first notifying the State and the Delegate (as applicable).
- (d) The Security Trustee must minimise, and must ensure that an Enforcing Party will minimise, any disruption that may result from it exercising Project Co's Rights.

5.9 Documentation

If the State consents to the replacement of the Builder, the Operator or the FM Subcontractor, or the disposal of Project Co's or Finance Co's interest in the Project Documents, in accordance with Clause 5.6 or 5.7 respectively, the State, the Enforcing Party and the replacement contractor or purchaser (as applicable) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.

6. Finance Default

6.1 Notice of Finance Default

Promptly after the Security Trustee or Facility Agent gives notice of a Finance Default to Project Co or Finance Co, the Security Trustee or Facility Agent (as applicable) must provide notice to the State and the Delegate of the Finance Default which includes:

- (a) reasonable details of the Finance Default; and
- (b) whether the Security Trustee or Facility Agent intends to exercise its enforcement rights in accordance with the Financing Documents, and if so, the proposed date for, and proposed method of, such exercise.

6.2 Notice of enforcement

The Security Trustee and the Facility Agent must not:

- (a) declare any moneys secured in accordance with the Financing Documents due and payable;

- (b) take any action to enforce the Financiers' Securities; or
- (c) recover any moneys secured in accordance with the Financiers' Securities,

unless, in the case of the appointment of an Enforcing Party, the Security Trustee has first provided to the State and the Delegate:

- (d) not less than 24 hours prior notice if the Security Trustee is of the reasonable opinion that any delay in the appointment of an Enforcing Party would materially and adversely affect the Financiers; or
- (e) not less than 10 Business Days prior notice in all other cases.

6.3 Information to the State

Upon the occurrence of a Finance Default:

- (a) each of the Security Trustee and Facility Agent must provide to the State and the Delegate copies of all correspondence and documents issued by it to a Consortium Entity in connection with the Finance Default;
- (b) if the Finance Default is capable of remedy, Project Co and Finance Co must keep the State and the Delegate informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (c) whether or not the Finance Default is capable of remedy, Project Co, Finance Co, the Security Trustee and the Facility Agent must keep the State and the Delegate informed of all measures taken or intended to be taken by, or in connection with the Finance Default (including details of any action taken by the Security Trustee to enforce the Financiers' Securities).

6.4 Payments by State

The parties acknowledge that the State or the Delegate are not liable for costs incurred by a party to this document in attempting to remedy a Finance Default or in exercising any rights in accordance with the Financing Documents.

7. Insurance proceeds

7.1 Deposit of insurance proceeds

- (a) All insurance proceeds received by the Security Trustee, the Facility Agent or any Enforcing Party appointed by the Security Trustee, which (were they to have been received by Project Co) would have been required to have been deposited into the Insurance Proceeds Account, must be deposited into the Insurance Proceeds Account.
- (b) Subject to Clause 7.2, the insurance proceeds deposited into the Insurance Proceeds Account must be applied in accordance with Clause 24.10 (Insurance Proceeds Account) of the Project Agreement.
- (c) Project Co is permitted, and the Security Trustee, in its capacity as Security Trustee, will use reasonable endeavours to assist Project Co to take any action contemplated by Clause 24.10 (Insurance Proceeds Account) of the Project Agreement.
- (d) Project Co, the Security Trustee and the Facility Agent must not make any payments from the Insurance Proceeds Account except as permitted in accordance with this document.

7.2 Application of insurance proceeds

- (a) If, as a result of an event or series of related events, Project Co or the Security Trustee receives insurance proceeds which are required to be deposited into the Insurance Proceeds Account in accordance with Clause 24.10 (Insurance Proceeds Account) of the Project Agreement in excess of \$5 million (indexed by CPI from the date of this document) in connection with loss of, or damage to, the Works or the Parking Equipment (the **Damaged Assets**), then the Security Trustee may require some or all of those insurance proceeds to be applied towards the repayment of the Actual Debt if:
- (i) there is not, or will not be, within 6 Months after the occurrence of the event or series of related events which gave rise to such insurance proceeds (or such longer period as the Security Trustee may agree), sufficient funds available from the insurance proceeds and other sources to repair or reinstate the Damaged Assets in accordance with Clause 24.10 (Insurance Proceeds Account) of the Project Agreement within a reasonable time;
 - (ii) Project Co and Finance Co will not be able to meet their obligations to repay Actual Debt in accordance with the terms of the Financing Documents (or on revised terms acceptable to the Financiers) (without regard to any acceleration of the obligation to repay); and
 - (iii) it is not economically viable to repair or replace the Damaged Assets having regard to the circumstances then existing,
- (the **Debt Payment Conditions**).
- (b) The balance (if any) of any insurance proceeds must be paid by Project Co into the Insurance Proceeds Account.

7.3 Determination of Debt Payment Conditions

In assessing whether the Debt Payment Conditions apply:

- (a) regard must be had to any redress afforded or likely to be afforded in accordance with Clause 23 (Risk and Liability) of the Project Agreement in connection with the Damaged Assets; and
- (b) it must be assumed that Project Co receives the insurance proceeds it would have received if Project Co had fully complied with the State Project Documents.

7.4 Notice of significant insurance event

Within 120 Business Days of the occurrence of an event or circumstance which gives rise to Damaged Assets, the Security Trustee may give notice to the State:

- (a) advising that it wishes to apply insurance proceeds to the repayment of Actual Debt;
- (b) advising the total amount of the insurance proceeds that it wishes to apply to the repayment of Actual Debt; and
- (c) including sufficient detail to enable the State to determine whether each of the Debt Payment Conditions are satisfied.

7.5 Further information

Following delivery of a notice in accordance with Clause 7.4, if reasonably requested by the State the Security Trustee must provide further evidence of the satisfaction of each of the Debt Payment Conditions within 10 Business Days of the request from the State.

7.6 State confirmation

Within 30 Business Days of receipt of the Security Trustee's notice in accordance with Clause 7.4 or, if applicable, the provision of the additional information requested in accordance with Clause 7.5, the State must (acting reasonably) advise the Security Trustee:

- (a) that it agrees that the Debt Payment Conditions have been satisfied; or
- (b) that it does not agree that the Debt Payment Conditions have been satisfied together with reasons for the State's decision.

7.7 Repayment of Actual Debt

Notwithstanding Clause 24.10 (Insurance Proceeds Account) of the Project Agreement, if the State gives the Security Trustee a notice in accordance with Clause 7.6(a), then the Security Trustee may apply the amount of the insurance proceeds as set out in the Security Trustee's notice given in accordance with Clause 7.4 to the payment or repayment of Actual Debt. The balance, if any, will be retained in the Insurance Proceeds Account and be applied in accordance with Clause 24.10 (Insurance Proceeds Account) of the Project Agreement.

7.8 Project Co's obligations not affected

Nothing in this Clause 7 will affect the obligations of Project Co in accordance with Clause 23.3 (Reinstatement) of the Project Agreement.

8. Recognition of rights

8.1 Recognition of State's rights

- (a) The Security Trustee and the Facility Agent each acknowledges the rights of the State and the Delegate in accordance with:
 - (i) Clause 28 (Step-in by the State) of the Project Agreement and Clause 13 (Step-in) of the At-Grade Car Parks Management Agreement; and
 - (ii) Clause 5.2 (Step-in by the State) of the Builder Side Deed, Clause 5.2 (Step-in by the State) of the FM Side Deed and Clause 5.2 of the Operator Side Deed,including to require an assignment of the D&C Subcontract, the FM Subcontract or the Operator Subcontract if it becomes entitled to terminate the Project Agreement.
- (b) The Security Trustee and the Facility Agent will each use reasonable endeavours to ensure that its rights in accordance with the Financing Documents are exercised in a way which facilitates the effective exercise by the State and the Delegate of the rights referred to in paragraph (a). If, and to the extent that the exercise of any such rights involves the assignment of the D&C Subcontract, the FM Subcontract or the Operator Subcontract by Project Co, the Security Trustee will release the D&C Subcontract, FM Subcontract or

Operator Subcontract (as applicable) from the Financiers' Securities to facilitate the assignment. Nothing in this Clause 8.1, the Builder Side Deed, the Operator Side Deed or the FM Side Deed requires the Security Trustee or the Facility Agent to release or forgo any rights or Claims against Project Co.

- (c) The State and the Delegate (if applicable) must not exercise their rights in accordance with Clause 5.2 (Step-in by the State) of the Builder Side Deed, Clause 5.2 (Step-in by the State) of the FM Side Deed and Clause 5.2 of the Operator Side Deed unless:
 - (i) a circumstance which entitles the State to appoint an Enforcing Party in accordance with the State Deed of Charge subsists;
 - (ii) the State or the Delegate is entitled to exercise its rights in accordance with Clause 28 (Step-in by State) of the Project Agreement or Clause 13 (Step-in) of the At-Grade Car Parks Management Agreement; or
 - (iii) in the case of Clause 4.3 (State Option to Cure) of the Builder Side Deed, Clause 4.3 (State Option to Cure) of the FM Side Deed and Clause 4.3 of the Operator Side Deed, a State Cure Notice has been given under Clause 4.2 (Right to terminate) of that side deed.

8.2 Release of Security

- (a) Subject to paragraph (b), to the extent that Project Co or Finance Co is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to the State or its nominee in accordance with the State Project Documents and that property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any Finance Party (including any Security Interest in accordance with the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in connection with that property and will do all things including registering documents as the State may reasonably require as may be necessary or desirable to give effect to that release.
- (b) Nothing in paragraph (a) or Clause 5.4 requires the Security Trustee to release a Security Interest over the right of Project Co to be paid an amount in accordance with Clause 29.5 (Payments on termination) of the Project Agreement.

8.3 Recognition of Security Trustee rights

The State and the Delegate acknowledge that in accordance with the Financing Documents Project Co is not entitled to:

- (a) amend, vary, terminate, rescind, repudiate or accept any termination, rescission or repudiation of the Project Documents or agree to any of the above;
- (b) grant any waiver or release in connection with the Project Documents; or
- (c) enter into any document or agreement which has the effect of varying or supplementing the Project Documents,

except in accordance with the Financing Documents and any purported action of the type described in this Clause 8.3 will be ineffective.

9. Undertakings

9.1 Amendments to Financing Documents

- (a) **(No amendments without consent):** Subject to paragraph (c), each of the Security Trustee and the Facility Agent must not agree to or permit any variation, amendment, waiver or replacement (**Amendment**) of any Financing Document without the State's prior consent which consent must not be unreasonably withheld.
- (b) **(Amendment not effective):** Project Co, Finance Co, the Security Trustee and the Facility Agent agree as between themselves and for the benefit of the State, that no Amendment to a Financing Document will be effective as between the parties to that Financing Document unless that Amendment has been made in compliance with this Clause 9.1 (and that any agreement at any time between any of them which purports to limit the operation of paragraph (a) including any provision that a Financing Document prevails over this document, will be ineffective).
- (c) **(Permitted Amendment):** The prior consent of the State is not required for an Amendment that:
 - (i) **(replacement of Financier):** is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if:
 - A. the novatee, assignee or substitute is a Financier or has a long term foreign currency rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investor Services, Inc.; or
 - B. the Financier has fully funded its commitment in accordance with the Financing Documents;
 - (ii) **(consent):** the State has consented to as part of giving its consent to a Refinancing in accordance with Clause 22.1 (Consent to new financing arrangements) of the Project Agreement;
 - (iii) **(approved Modifications):** is an Amendment that solely gives effect to Project Co's obligation to proceed with a Modification in accordance Clause 17 (Modifications) of the Project Agreement;
 - (iv) **(Finance Default):** is:
 - A. a waiver by the Security Trustee or Facility Agent of; or
 - B. required to avoid,

a breach of a Financing Document or a Finance Default, or of a condition precedent to drawing under a Financing Document; or
 - C. the exercise of an express unilateral right of a Financier to make an amendment in accordance with a Financing Document;
 - (v) **(novation or assignment):** is a novation or assignment in accordance with Clause 10.1;
 - (vi) **(derivative transaction):** is an entry into any derivative transaction in accordance with the Financing Documents;

- (vii) **(Refinancing):** is a Refinancing for which the State's consent has already been obtained under the Project Agreement; or
- (viii) **(Amendment):** is any other Amendment provided that the Amendment is not related to any Refinancing (or a transaction or series of transactions which has or will have an effect which is the same or equivalent to a Refinancing) and does not or will not directly or indirectly:
 - A. increase the amount of the Actual Debt;
 - B. bring forward the time for payment or repayment of any amount of Actual Debt (other than as a result of a mandatory prepayment from cashflow otherwise available for distribution to equity);
 - C. increase the amount of interest (including margins), fees or other charges payable in connection with the Actual Debt;
 - D. adversely affect performance, or the capacity of Project Co or Finance Co to perform its obligations, in accordance with the State Project Documents;
 - E. adversely affect the ability of the State to enforce its rights in accordance with the Project Documents;
 - F. increase any Liability or potential Liability of the State or State Associates in connection with the Project including the amount or potential amount of any Termination Amount or any Liability of the State in respect of any Modification;
 - G. make it more likely that the State will be called upon to pay any Termination Amount or make any payment in respect of any Modification;
 - H. amend or cause an amendment to:
 - 1) the definitions of 'Cost to Complete Test' (and the definitions of the defined terms referred to in it), 'Licence Fees', 'Permitted Distribution' or 'State Management Agreement Payment Conditions' set out in Clause 1.2 (Definitions) of the Common Terms Deed;
 - 2) Clause 6.2(a) (Withdrawals) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;
 - 3) Clause 6.2(h) (Withdrawals) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;
 - 4) Clause 7.2(l) (Withdrawals cascade) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;
 - 5) Clause 12.3(a) and (b)(2) (Withdrawals) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;

- 6) Clause 14.2(b) (Withdrawals) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;
- 7) Clause 15.2(g) (Distribution Conditions) of Schedule 6 (Project Account Undertakings) of the Common Terms Deed;
- 8) Clause 5.5 (Distributions) of the Common Terms Deed;
- 9) any other provisions of a Financing Document which would have the affect of amending or varying the provisions identified in paragraph (viii)H1)-8) above or otherwise adversely impacting the arrangements for, or the likelihood of the payment of, the Licence Fee by Project Co in accordance with the At-Grade Car Parks Management Agreement; or

I. permit any:

- 1) voluntary prepayments to be made under Clause 3.2 (Voluntary prepayment) of the Common Terms Deed;
- 2) payments to the Distributions Account (as defined in the Common Terms Deed) for distribution to the Equity Investors (as defined in the Common Terms Deed); or
- 3) mandatory prepayments to be made under Clause 3.4(a)(5) (Cash share) of the Common Terms Deed,

at any time when any Licence Fee (or part thereof) is due and payable and unpaid by Project Co under Clause 4.2 (Licence Fee) of the At-Grades Car Parks Management Agreement.

(Permitted Amendment).

(d) **(Notice of Permitted Amendment):** Project Co, Finance Co, the Security Trustee and the Facility Agent must:

- (i) give notice to the State of any Permitted Amendment within 5 Business Days after that Permitted Amendment is made, including details of the reasons for the Permitted Amendment and copies of any documents relevant to the Permitted Amendment; and
- (ii) provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days of receipt of a request from the State.

(e) **(Notice of intended Amendment (other than a Permitted Amendment)):** Any notice given in accordance with this paragraph (e) must include:

- (i) full details of:
 - A. the terms of the Amendment and the reasons for the Amendment;

- B. the responses or anticipated response of any other party to the relevant documents regarding the Amendment;
- C. the response or anticipated response of any assignee of, or person holding a Security Interest in, the documents relevant to the Amendment; and
- D. the impact or potential impact of the Amendment on:
 - 1) delivery of the Project by Project Co;
 - 2) performance of Project Co's and Finance Co's obligations in accordance with the Project Documents;
 - 3) the financial structure or business of Project Co and Finance Co;
 - 4) the State's interests in the Project Documents;
 - 5) the manner (if any) in which the Amendment may have any of the effects referred to in paragraph (c); and
 - 6) Equity Return or Distributions; and
- (ii) copies of all contractual and security documentation relevant to the Amendment.
- (f) **(Consent):** The State must give notice to Project Co, Finance Co, the Security Trustee and Facility Agent within 10 Business Days (or such longer period as the State reasonably requests given the nature of the Amendment) of receiving the notice in accordance with paragraph (a), that:
 - (i) it consents to the Amendment;
 - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
 - (iii) it requires further information regarding the Amendment. If so, the other parties must provide the additional information sought by the State within a further period of 10 Business Days after which the State must respond in terms of paragraphs (f)(i) and (f)(ii) within 10 Business Days of receipt of the additional information.
- (g) **(Clarification):** Subject to paragraph (a), nothing in this Clause 9.1 or Clause 39.14 (Amendments to Project Documents) of the Project Agreement prevents or restricts any person exercising any rights they have in accordance with the Financing Documents.
- (h) **(Consequences of amending without consent):** If any Financing Document as originally executed and delivered by the parties thereto is varied or replaced without the State's prior consent (but only to the extent that State consent is required), then the State will only be liable in accordance with the Project Documents to the extent it would have been had there been no such variation or replacement to the Financing Document.

9.2 Amendments to Project Documents

- (a) While any Actual Debt is outstanding, the State and the Delegate undertake for the benefit of the Security Trustee and Facility Agent that it will not make any

material modification, variation or amendment to the terms of any State Project Document without the prior consent of the Security Trustee, which consent must not be unreasonably withheld or delayed.

- (b) The State or the Delegate is not required to obtain the consent of the Security Trustee in accordance with paragraph (a) in connection with any material modification, variation or amendment that has been determined (including by an expert, arbitrator or judge) in accordance with Clause 30 (Dispute resolution) of the Project Agreement or the equivalent dispute resolution provisions of another State Project Document.

10. Assignment

10.1 No assignment without consent

Subject to Clauses 10.2 and 10.3, no party may assign, novate or otherwise transfer any of its rights or obligations in accordance with this document without the prior written consent of each other party, which consent must not be unreasonably withheld. No party is entitled to withhold its consent to an assignment or transfer of this document by the Security Trustee or Facility Agent if:

- (a) it is related to all its rights, title and interest in this document and in the Financing Documents (in its capacity as Security Trustee or Facility Agent (as applicable));
- (b) it occurs consequent upon the implementation of provisions in a Financing Document providing for the replacement of the Security Trustee or Facility Agent (as applicable);
- (c) it relates to a replacement Security Trustee or Facility Agent (as applicable) which is a solvent and reputable financial institution or trustee corporation; and
- (d) the replacement Security Trustee or Facility Agent (as applicable) has executed an accession document in which it agrees to be bound by the provisions of this document.

10.2 Assignment by the State

Nothing will prevent the assignment, novation or transfer by the State to an assignee, novatee or transferee of the State's rights and obligations in accordance with the Project Agreement made in accordance with Clause 31.4 (Assignment by the State) of the Project Agreement, provided the proposed assignee, novatee or transferee agrees to execute a document in favour of the Security Trustee (in such form as the Security Trustee reasonably requires) in accordance with which the assignee, novatee or transferee agrees to be bound by this document as if it were the State.

10.3 Assignment by the Delegate

Nothing will prevent the assignment, novation or transfer by the Delegate to an assignee, novatee or transferee of the Delegate's rights and obligations in accordance with the At-Grade Car Parks Management Agreement made in accordance with Clause 16.2 (Assignment by the Delegate) of the At-Grade Car Parks Management Agreement, provided the proposed assignee, novatee or transferee agrees to execute a document in favour of the Security Trustee (in such form as the Security Trustee reasonably requires) in accordance with which the assignee, novatee or transferee agrees to be bound by this document as if it were the Delegate.

11. Confidentiality

11.1 Confidentiality

- (a) **(Confidentiality obligations):** Subject to paragraphs (b) and (c), Project Co, Finance Co and the Finance Parties must keep confidential the State Project Documents, all Records and all Disclosed Information. Subject to paragraph (d) and (e), the State must keep confidential, and must ensure that the State Associates keep confidential, the State Project Documents, all Records and Disclosed Information.
- (b) **(Permitted disclosure):** Project Co, Finance Co and the Finance Parties are not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of any party; or
 - (ii) the disclosure of which is:
 - A. required by Law, including in accordance with the *Freedom of Information Act 1992* (WA);
 - B. required by a relevant stock exchange;
 - C. consented to by the State and the Delegate (if applicable);
 - D. made to a court in the course of proceedings to which the disclosing person is a party;
 - E. in connection with an assignment, novation or participation that is permitted in accordance with the Project Agreement; or
 - F. to any professional or other adviser consulted by it in relation to any of its rights or obligations under the Project Agreement.
- (c) **(Disclosure to Project Co's Associates):** Without limiting Project Co's obligations in accordance with paragraph (a), Project Co may disclose confidential information to Project Co's Associates to the extent necessary for the purpose of undertaking the Project provided that Project Co ensures that those Project Co's Associates comply with paragraph (a).
- (d) **(State and Delegate may disclose):** The State and the Delegate may at any time disclose the Disclosed Information, the contents of the Project Documents, any other Records and any other information in connection with the Project:
 - (i) to any State department or Minister;
 - (ii) to any State Associate;
 - (iii) to any agent, adviser, consultant, contractor and employee of the Delegate;
 - (iv) in accordance with all Laws;
 - (v) in the course of official duties by the Minister for Health of Western Australia, the Minister for Finance of Western Australia, the Premier of Western Australia, the Trust, the Treasurer of Western Australia, the Department of Health of Western Australia or the Department of Treasury and Finance of Western Australia;

- (vi) to satisfy the requirements of parliamentary accountability;
 - (vii) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties;
 - (viii) in accordance with policies of the Western Australian government;
 - (ix) in annual reports of the Western Australia Department of Health and the Department of Treasury and Finance; and
 - (x) in accordance with the *Freedom of Information Act 1992* (WA) or the *Parliamentary Commissioners Act 1971* (WA).
- (e) **(Government websites):** The contents of the State Project Documents any other document in connection with the Project which is authored or authorised by the State, the Delegate or a Governmental Agency may be published on any Western Australian government internet website other than the Financial Model or the terms of any Project Document designated and agreed by the parties as confidential as specified in Schedule 22 (Confidential Information) of the Project Agreement (except with the prior written consent of Project Co).

11.2 Public announcements

Project Co and Finance Co must not make any public disclosures, announcements or statements in connection with the Project without the State's prior consent (which will not be unreasonably withheld or delayed).

12. Termination

- (a) This document will terminate if:
 - (i) the parties agree in writing; or
 - (ii) the Project Agreement terminates.
- (b) The termination of this document does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Project Agreement.

13. Dispute Resolution

- (a) If a matter is referred for determination in accordance with this Clause 13:
 - (i) any dispute or difference of opinion arising between the parties in connection with that matter must be resolved in the same manner that disputes or differences of opinion referred for expert determination in accordance with the Project Agreement are resolved; and
 - (ii) accordingly, the provisions of Clause 30 (Dispute resolution) of the Project Agreement are incorporated into this document but as if:
 - A. the only persons party to the Project Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
 - B. the only matters for expert determination in accordance with those provisions are the matters referred for expert

determination in accordance with this document.

- (b) Each party may refer a dispute, despite any other provision, in accordance with this document to dispute resolution in accordance with this Clause 13.

14. GST

14.1 GST

- (a) **(Construction):** In this Clause 14.1:
- (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 *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 14.1(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 14.1(b).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 14.1 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 14.1 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.

15. Notices

15.1 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 15.1, "**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;
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address; or
 - (iii) sent by fax to the recipient's fax number.

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

Fax: 08 9222 9142

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

Fax: 03 9667 5667

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

Fax: 03 9667 5667

Delegate: Dr David Russell-Weisz, Chief Executive NMAHS

Address: Hospital Avenue, Nedlands, WA, 6009

Email: DJ.Russell-Weisz@health.wa.gov.au

Fax: 08 9346 1175

Security Trustee: ANZ Fiduciary Services Pty Ltd (attention Truc Lee, Manager Capella Parking Transaction)

Address: Level 18, 100 Queen Street, Melbourne, Vic 3000

Email: truc.le@anz.com

Telephone: 03 9227 3445

Fax: 03 8523 4543

Facility Agent: Truc Le, Manager Capella Parking Transaction

Address: Level 18, 100 Queen Street, Melbourne, Vic 3000

Email: truc.le@anz.com

Telephone: 03 9227 3445

Fax: 03 8523 4543

(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, the earlier of:
 - A. receipt by the sender of an automated message confirming delivery; and

- B. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered;
 - (iii) in the case of delivery by hand, on delivery; or
 - (iv) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.
- (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 15.1. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) Project Co, Finance Co, the Security Trustee and the Facility Agent must ensure that, with respect to any communications in accordance with or in connection with this document:
 - A. its firewall and/or mail server (as applicable) allows messages of up to 8 MB to be received; 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.

16. General

16.1 Interest

- (a) If a party fails to pay any amount payable by that party to the other party within the time required in accordance with this document, then it must pay interest on that amount in accordance with paragraph (b)
- (b) Interest is:
 - (i) payable from the due date until payment is made before and, as an additional and independent obligation, after any judgment or other thing into which the Liability to pay the money payable becomes merged;
 - (ii) calculated on daily balances at the Default Rate; and
 - (iii) capitalised Monthly.
- (c) The amount calculated in accordance with paragraph (b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

16.2 Relationship of the parties

- (a) No implied duty of good faith is implied on the State or the Delegate 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 document, no party may act as or represent itself to be the servant or agent of the State or the Delegate.

16.3 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 or the Delegate 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 or the Delegate 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 and the Delegate are 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 the Delegate or placing any fetter on the State's or the Delegate's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim):** Subject to paragraph (d), Project Co, Finance Co and the Finance Parties must not make any Claim against the State or the Delegate for any Liability in connection with any exercise or failure of the State or the Delegate to exercise its statutory functions or powers.
- (e) **(Liability for breach):** Paragraphs (a) to (d) do not limit any Liability which the State or the Delegate would have had to any party in accordance with any Project Document to which the State or the Delegate is a party as a result of a breach by the State or the Delegate of a term of any Project Document to which the State or the Delegate is a party but for paragraphs (a) to (d).

16.4 Reasonable endeavours

If there is any statement in this document that the State or the Delegate will use "reasonable endeavours" in connection with an outcome it means that:

- (a) the State and the Delegate will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities;
- (b) the State and the Delegate cannot guarantee the relevant outcome; and
- (c) the State and the Delegate, by undertaking to exercise reasonable endeavours, is not required to:
 - (i) interfere with or influence the exercise of any statutory power or discretion by any body, including a Governmental Agency; or

- (ii) act in any other way that the State or the Delegate regards as not in the public interest.

16.5 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 connection with the subject matter of this document.

16.6 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.

16.7 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.

16.8 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 or the Delegate 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 or the Delegate 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.

16.9 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.

16.10 Amendments

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

16.11 Joint and several Liability

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

16.12 Indemnities

- (a) Any 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.

16.13 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 or Delegate'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 16.13 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.

16.14 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.

16.15 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 16.15 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 16.16(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.

16.16 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 16.16(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.

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 the Minister for Health incorporated
as the board of the Sir Charles Gairdner
Hospital under s7 of the *Hospitals and Health
Services Act 1927* (WA) in its capacity as
delegate of the Queen Elizabeth II Medical
Centre Trust (Delegate) in the presence of:

The Honourable Dr Kim Desmond Hames
MLA, Deputy Premier, Minister for Health

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)

Signed by)
Australia and New Zealand Banking)
Group Limited (ACN 005 357 522) by the)
party's attorney pursuant to power of
attorney dated 11 January 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)
ANZ Fiduciary Services Pty Ltd (ACN 100)
709 493) by the party's attorney pursuant to)
power of attorney dated
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)