

Loan Security Deed

BPC Custody Pty Limited

ACN 006 600 746

and

Bell Potter Capital Limited

ACN 085 797 735

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THIS DEED is made on 1 August 2012

BETWEEN:

- (1) **BPC Custody Pty Limited** ACN 006 600 746 (the "**Grantor**"); and
- (2) **Bell Potter Capital Limited** ACN 085 797 735 (the "**Secured Party**").

RECITALS

- (A) The Grantor has undertaken in the Security Trust Deed to hold on separate trusts property contributed by, or acquired for, the Borrowers in connection with each Loan.
- (B) As security for the repayment of each Loan, the Grantor has agreed to grant a security interest (as defined in the PPSA) over the Loan Asset for that Loan in favour of the Secured Party.
- (C) The Secured Party may only enforce the security interest granted in clause 2.1 against a Borrower's Loan Assets if that Borrower is In Default, and may only apply any proceeds from enforcing the security interests against a Loan Asset in reduction of the Amount Owing under the Loan that was borrowed to fund that Loan Asset (with any surplus to be applied in accordance with clause 7(b)).

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

"Amount Owing" means, for a Loan at any time, the principal amount then outstanding under that Loan, including any amount that the Lender has added to the Amount Owing under the Loan in accordance with the Super Lending Documents, plus any accrued but unpaid interest and any other amount owing under the Super Lending Documents in relation to that Loan.

"Application Form" means, for a Borrower, the form that the Borrower completes to ask the Secured Party, as lender, to enter into the Super Lending Documents.

"ASX Settlement" means the ASX Settlement Pty Ltd ABN 49 008 504 532.

"ASX Settlement Rules" means the ASX Settlement Operating Rules and any other operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

"ASX" means the ASX Limited ACN 008 624 691.

"Borrower" has the meaning given in the Security Trust Deed.

"Business Day" means a day on which banks are open for general banking business in Melbourne and trading is conducted on the Australian Securities Exchange.

"Certificated Security" means a Marketable Security, title to which is evidenced by a certificate.

"CHESS Security" means a Marketable Security that is registered:

- (a) in a sub-register maintained by ASX Settlement under the Clearing House Electronic Sub-register System; or
- (b) in a sub-register maintained by its issuer under the Clearing House Electronic Sub-register System.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Facility" means, for a Borrower, the loan facility provided under that Borrower's Super Lending Documents.

"In Default" in relation to a Borrower, has the meaning given in that Borrower's Loan Facility Agreement.

"Loan" means for a Borrower, a loan made under that Borrower's Loan Facility Agreement.

"Loan Asset" has the same meaning as in the Security Trust Deed.

"Loan Facility Agreement" means, for a Borrower, the Loan Facility Agreement under and in accordance with which the Lender may make Loans to the Borrower.

"Margin Call Notice" means a notice given by the Secured Party under clause 5.2 of a Loan Facility Agreement.

"Marketable Security" means:

- (a) shares, or interests in a managed investment scheme, that are quoted on the ASX or on a foreign exchange;
- (b) unquoted shares, or unquoted interests in a managed investment scheme;
- (c) rights or options in or in respect of shares, or in or in respect of interests in a managed investment scheme;
- (d) debentures, bonds, bills of exchange, certificates of deposit and promissory notes;
- (e) applications for shares, for interests in a managed investment scheme or for other rights the subject of a disclosure document or product disclosure statement under the Corporations Act; and
- (f) anything else the Secured Party nominates as a Marketable Security for the purposes of this definition.

"PPSA" means the *Personal Property Securities 2009* (Cth).

"Property Law Act" means the *Property Law Act 1958* (Vic), or the equivalent legislation in any other State or Territory of Australia.

"Security Trust Deed" means the security trust deed dated [●] and executed by the Grantor.

"Super Lending Document" means, for a Borrower:

- (a) its Application Form;
- (b) its Loan Facility Agreement;
- (c) the Security Trust Deed;

- (d) this document;
- (e) each other document or agreement contemplated by or required in connection with any of the above or the transactions which they contemplate; and
- (f) each document or agreement that amends, supplements, novates, restates or replaces any of them.

"Uncertificated Security" means:

- (a) a CHES Security; or
- (b) a Marketable Security that is registered in any other electronic register that the Secured Party approves.

1.2 **If there is more than one borrower**

If a Borrower is made up of more than one person:

- (a) the Borrower's obligations in relation to its Loan Facility Agreement and this document and the Amount Owing under each of its Loans apply to each of those persons individually and to any two or more of them together;
- (b) if any one or more of those persons exercise a right under their Loan Facility Agreement or this document, the rest of them will be bound as well;
- (c) if the Lender or the Security Trustee deals with any of those persons, it will be taken to have dealt with all of them; and
- (d) in all other respects, a reference to the Borrower in its Loan Facility Agreement and this document is a reference to those persons individually.

1.3 **Other references in this document**

In this document:

- (a) a reference to any legislation is a reference to:
 - (i) that legislation and to regulations and other rules made under it; and
 - (ii) any legislation, regulation or other rule which replaces any of them;
- (b) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a word indicating the singular also indicates the plural and vice versa, and a word indicating any gender also indicates each other gender;
- (d) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) a reference to anything (including a right, obligation or concept) includes each part of it;
- (f) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;

- (g) a person includes an individual, a corporation, a partnership, an association or a government agency; and
- (h) a reference to "\$" is to Australian dollars.

Headings are for convenience only and do not affect the meaning of this document.

1.4 **Effect of legislation**

Under this document, any legislation that adversely affects any of the Grantor's obligations, or exercise of a right or remedy by the Secured Party, is excluded to the full extent permitted by law.

1.5 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.6 **Limitation of Grantor's liability**

The Grantor enters into this document only in its capacity as security trustee under the Security Trust Deed and, despite any other provision of this document, the Grantor is not liable to pay the Secured Party an amount that would otherwise be payable by it under, or as a result of a breach of, this document except to the extent that:

- (a) the Grantor obtains final reimbursement under the Security Trust Deed or at law for the amount, or could do so by taking appropriate action; or
- (b) a provision in this document expressly provides otherwise.

2. **SECURITY**

2.1 **Security clause**

The Grantor grants to the Secured Party a security interest (as defined in the PPSA) over the Loan Asset for each Loan to secure the punctual payment of the Amount Owing under that Loan.

2.2 **Releasing the security**

- (a) The security interest granted in clause 2.1 is a continuing security for the Amount Owing under the relevant Loan. It continues until the Secured Party releases it under this clause. It will not be satisfied or discharged by any other action.
- (b) The Secured Party agrees to release the Loan Asset for a Loan from the security interest granted in clause 2.1 if the Amount Owing under that Loan is irrevocably paid in full.
- (c) If the Secured Party releases all or any part of a Loan Asset from the security interest granted in clause 2.1 because the Secured Party received an amount on account of the Amount Owing under the relevant Loan and the Secured Party subsequently pays that amount to another person under any law relating to insolvency, then the Secured Party may exercise all the Secured Party's rights

under this document as if the Secured Party had never received the amount and the release will be treated as having no effect.

3. **DEFAULT**

3.1 **What the Secured Party may do if the Borrower is In Default**

- (a) Subject to clause 4, if a Borrower is In Default the Secured Party may enforce the security interest granted in clause 2.1 over the Loan Asset for any Loan made to that Borrower by:
 - (i) exercising the Secured Party's rights to sell the Loan Asset under clause 3.2;
 - (ii) exercising any other right in relation to the Loan Asset that a holder, secured party, mortgagee, chargee or owner of property similar to the Loan Asset may exercise; or
 - (iii) dealing with the Loan Asset in the same way as the Grantor or the Borrower (or both) could do if the Loan Asset was not subject to the security interest created by this document.
- (b) The Secured Party may take possession of the Loan Asset in order to do this, and do anything else that the Secured Party thinks is necessary or desirable to do these things.

3.2 **Selling the property**

- (a) If the Borrower is In Default the Secured Party, subject to clause 4, may sell the Loan Asset for any Loan made to that Borrower at any time and in any way that the Secured Party decides.
- (b) The Secured Party must only use the proceeds of sale of any Loan Asset for a Loan to reduce the Amount Owing under that Loan.
- (c) The Secured Party may also have the power to sell the Loan Asset under the Property Law Act, in addition to its right to sell the Loan Asset under this document. If permitted, the Grantor agrees that the period of notice for exercise of the power of sale referred to in the Property Law Act is one Business Day.

3.3 **The Secured Party may act in the Grantor's name**

The Secured Party may do the things described in this clause 3 in the Secured Party's name or in the Grantor's name.

3.4 **Contracting out of the PPSA**

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Secured Party of any security interest in the Loan Assets, the parties agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) **(enforcement methods)** sections 125 (*Obligation to dispose of or retain collateral*), 129(2) and (3) (*Disposal by purchase*), 134(2) (*Proposal of secured party to retain collateral*) and 137 (*Persons entitled to notice may object to proposal*);
- (b) **(notices)** 121(4) (*Enforcement of security interests in liquid assets – notice to higher priority parties and grantor*), 127 (*Seizure by higher priority parties – notice*), 130 (*Notice of disposal of collateral*), 132 (*Secured party to give statement*

of account), and 135 (*Notice of retention of collateral*) and 136(5) (*Retaining collateral free of interests*); and

- (c) (**rights to remedy**) sections 142 (*Entitled persons may redeem collateral*) and 143 (*Entitled persons may reinstate security agreement*).

4. **LIMITED RECOURSE OF THE SECURED PARTY**

- (a) Despite any other provision of this document, where the Secured Party is permitted to take any action, or may exercise any right or remedy, under this document in respect of Loan Assets as a result of a Borrower being In Default, the Secured Party may only exercise such right or remedy, or take such action, in respect of the Loan Asset for a Loan made to that Borrower.
- (b) The Secured Party may not take any action or exercise any rights or remedies in respect of any Loan Asset except as set out in paragraph (a).
- (c) Even where the Secured Party may take action or exercise a right or remedy in respect of a Loan Asset, it may only apply any proceeds that it receives as a result in reduction of the Amount Owning for the Loan related to that Loan Asset, with any surplus to be applied in accordance with clause 7(b).

5. **THE SECURED PROPERTY**

5.1 **Grantor's rights to the Secured Property**

- (a) The Grantor is the registered holder of the Secured Property, and holds the Loan Asset for each Loan on trust for the Borrower under that Loan, under and in accordance with the Security Trust Deed.
- (b) The Grantor has the power under the Security Trust Deed to grant the security interest in clause 2.1 over the Loan Assets.

5.2 **Restrictions on what the Grantor may do with the Secured Property**

- (a) The Grantor must not sell any Loan Asset unless the Secured Party agrees. If the Secured Party agrees that the Grantor may sell the Loan Asset for a Loan, the Grantor must pay the Secured Party the money the Grantor receives from the sale to reduce the Amount Owning under that Loan.
- (b) The Grantor must not grant a security interest over a Loan Asset to anybody else unless the Secured Party agrees.
- (c) The Grantor must not do or fail to do anything if this could affect either the value of a Loan Asset or the Secured Party's rights as a secured party.
- (d) The Grantor irrevocably directs the Secured Party to take any action that the Secured Party considers appropriate if the Grantor breaches an obligation in this clause 5.2 (or if the Secured Party believes that the Grantor is likely to breach an obligation in this clause 5.2), whether or not any Borrower is In Default.

5.3 **What the Grantor must do with certain types of Secured Property**

- (a) The Grantor must make sure that all CHESSE Securities, Uncertificated Securities and Certificated Securities that are Loan Assets are registered in the Grantor's name.
- (b) The Grantor must make sure that arrangements satisfactory to the Secured Party are put in place so that the Grantor cannot transfer or otherwise deal in any CHESSE

Securities or Uncertificated Securities without the Secured Party's consent, and must do anything else reasonably required by the Secured Party as secured party.

- (c) Without limiting paragraph (b), the Grantor must also make sure that arrangements satisfactory to the Secured Party are put in place so that the Secured Party has "control" of each Loan Asset for the purposes of the PPSA.
- (d) The Grantor authorises the Secured Party to initiate a conversion of Certificated Securities to Uncertificated Securities if that class of securities is or becomes eligible for registration.

6. NOTICES

6.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) sent by pre paid mail (by airmail, if the addressee is overseas) or delivered to that person's address;
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error; or
 - (iii) sent in electronic form (such as email).

6.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting;
- (c) if it is sent in electronic form, when the email message enters the addressee's information system.

6.3 Address for notices

A person's mail and email address and fax number are those set out below, or as the person notifies the sender:

Grantor

Address: Level 29, 101 Collins Street
MELBOURNE VIC 3000

Fax number: 03 9256 8765

Email: lending@bellpotter.com.au

Attention: General Manager

Secured Party

Address: Level 29, 101 Collins Street
MELBOURNE VIC 3000

Fax number: 03 9256 8765

Email: lending@bellpotter.com.au

Attention: General Manager

7. APPLICATION OF MONEY

- (a) Money that the Secured Party receives under or because of this document in relation to the Loan Asset for a Loan is to be applied, after satisfaction of any claim against that Loan Asset that the Secured Party is aware is a claim that ranks in priority to the security interest granted in clause 2.1, in the following order, subject to any applicable law to the contrary (for example, section 140 of the PPSA where relevant):
- (i) **(expenses)** first in payment of all expenses that the Secured Party incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Super Lending Document in respect of the Loan;
 - (ii) **(outgoings)** then in payment of any other outgoings in respect of the Loan Asset that the Secured Party thinks it appropriate to pay;
 - (iii) **(indemnities)** then in payment to the Secured Party of any amount necessary to give effect to any indemnity contained in this document in respect of the Loan Asset; and
 - (iv) **(Amount Owing)** then in payment to the Secured Party of the Amount Owing under the Loan.
- (b) Any surplus will belong to the Grantor (to be held on trust for the relevant Borrower pursuant to the Security Trust Deed) or other persons entitled to it. The Secured Party may pay the surplus to the credit of a bank account in the name of the Grantor, the relevant Borrower or other person entitled to it or into court and will then be under no further liability in relation to it. The surplus will not accrue interest unless the Secured Party agrees.

8. AMENDMENT AND ASSIGNMENT**8.1 Amendment**

This document can only be amended or replaced by another document executed by the parties.

8.2 **Assignment**

The Secured Party may assign, declare a trust over or otherwise deal with its rights under this document without the Secured Party's consent.

9. **GENERAL**

9.1 **Governing law**

- (a) This document is governed by the laws of Victoria.
- (b) Each party submits to the jurisdiction of the courts of that Victoria and of any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

9.2 **Giving effect to documents**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this document.

9.3 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

9.4 **Operation of this document**

- (a) Subject to paragraph (b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

9.5 **Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

9.6 **Consents**

Where this document contemplates that the Secured Party may agree or consent to something (however it is described), the Secured Party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

9.7 **Statements by the Secured Party**

A statement by a representative of the Secured Party on any matter relating to this document (including any amount owing by any Borrower) is conclusive unless clearly wrong on its face.

9.8 **No merger**

Nothing in this document merges with any other security interest, or any judgment or other right or remedy, that the Secured Party may hold at any time.

9.9 **Counterparts**

This document may be executed in counterparts