

Bell Potter Super Lending Security Trust Deed

BPC Custody Pty Limited
ACN 006 600 746

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THIS DEED is made on is made on 1 August 2012

BETWEEN:

- (1) **BPC Custody Pty Limited** ACN 006 600 746 ("**Security Trustee**"); and
- (2) Each "**Borrower**" from time to time.

RECITALS

The Security Trustee agrees to act on the terms set out in this document as security trustee for each Borrower.

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 has completed to ask the Lender to make a Super Lending Facility available.

"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's Representative" means:

- (a) each person listed as an authorised representative in the Application Form, unless the Borrower tells the Security Trustee that the person is no longer an authorised representative; and
- (b) any other person the Borrower tells the Security Trustee is an authorised representative.

"Bell Potter website" means that section of the Bell Potter website (currently www.bellpotter.com.au) from which the Borrower can access details about Super Lending.

"Borrower" means a person to whom the Lender makes a Super Lending Facility available.

"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.

"Controlling Participant" means a Controlling Participant as defined in the ASX Settlement Rules.

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

"Lender" means Bell Potter Capital Limited ACN 085 797 735.

"Loan" means, for a Borrower, a loan made or to be made by the Lender to that Borrower under that Borrower's Loan Facility Agreement.

"Loan Asset" means, for a Loan:

- (a) any Marketable Security that the Security Trustee purchases wholly or partly using that Loan; and
- (b) any New Rights in respect of the Marketable Securities described in paragraph (a).

"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.

"Loan Security" means, for a Loan, a security interest granted by the Security Trustee in favour of the Lender over the Loan Asset that secures payment of the Amount Owing under that Loan.

"Loan Security Deed" means the document of that title under which the Security Trustee grants the Loan Security.

"Loan Trust" has meaning given to that term in clause 2.1.

"Marketable Security" means:

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

"New Rights" means any present or future right in respect any marketable security that results from:

- (a) any substitution, conversion, redemption, forfeiture, cancellation, reclassification, consolidation or subdivision of that marketable security; or
- (b) a reduction of capital, liquidation or scheme of arrangement.

"Super Lending Document" means, for a Borrower:

- (a) this document;
- (b) the Application Form;
- (a) the Loan Facility Agreement;
- (c) the Loan Security Deed;
- (d) each other document or agreement contemplated by or required in connection with any of the above or the transactions which they contemplate; and
- (e) each document or agreement that amends, supplements, novates, restates or replaces any of them.

"Super Lending Facility" means, for a Borrower, the Bell Potter Super Lending facility made available by the Lender to the Borrower.

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 the 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 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 the 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**

Any legislation that adversely affects any of the Borrower's obligations, or exercise of a right or remedy by the Security Trustee or the Lender, 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.

2. **DECLARATION OF TRUST**

2.1 **Holding of property on trust**

- (a) The Security Trustee declares that it will hold the Loan Asset for each Loan on a separate trust (each a "**Loan Trust**") for the relevant Borrower on the terms of this document.
- (b) Each Loan Trust terminates on the date on which the Lender confirms that the Amount Owning under the relevant Loan has been irrevocably repaid in full (unless the Lender agrees otherwise).
- (c) The perpetuity period for each Loan Trust is 80 years from the date of this document.

2.2 **Borrowers bound by this document**

Each Borrower, and each person claiming under or through a Borrower, is bound by the terms of this document.

3. **THE SECURITY TRUSTEE'S POWERS**

- (a) The Security Trustee has the following powers as trustee under this document, in relation to each Loan Trust:

- (i) to complete and execute all documents needed to register Loan Assets in the name of the Security Trustee (including, without limiting this, to enter into a sponsorship agreement to appoint a Controlling Participant for any Loan Asset that is a CHES Security);
- (ii) to grant the Loan Security over the Loan Asset, or to acquire a Loan Asset on the basis that it will become subject to the Loan Security;
- (iii) to hold Certificated Securities and other documents in the Security Trustee's name;
- (iv) to acquire the Loan Asset;
- (v) to sell the Loan Asset;
- (vi) to grant options over the Loan Asset;
- (vii) to settle buy or sell orders in connection with the Loan Asset;
- (viii) to pay dividends and other amounts received by it in respect of the Loan Asset as directed by the Lender (including in reduction of the Amount Owing under the relevant Loan);
- (ix) to exercise New Rights, and participate in corporate actions affecting the Loan Asset (other than a buy back);
- (x) to exercise voting rights or any other power, right or remedy relating to the Loan Asset;
- (xi) to engage barristers, solicitors, accountants or other advisers as it considers necessary or desirable to assist it to perform its obligations and exercise its powers under this document in relation to that Loan Trust; and
- (xii) without limiting any of the powers described above, to hold and deal in the Loan Asset and to do all things necessary or desirable to give effect to this document and the trust arrangements set out in this document in relation to that Loan Trust, the Loan Security Deed in relation to that Loan Trust and any secured party's rights in relation to the Loan Asset,

in each case in whatever way the Security Trustee considers in good faith is appropriate.

- (b) The Security Trustee may exercise any of the powers in this clause 3 in its absolute and sole discretion.
- (c) Subject to the Trustee acting in good faith, the Trustee may exercise any power even if an associate may benefit from the exercise of that power.

4. ACTING ON INSTRUCTIONS FROM THE LENDER ONLY

- (a) The Security Trustee must only act on instructions of the Lender.
- (B) The Security Trustee is not permitted to act on instructions from the Borrower.

5. SECURITY TRUSTEE MAY USE AGENTS

The Security Trustee may:

- (a) use an agent, broker or any other person to perform its obligations under this document; and
- (b) delegate any of its powers and authorities to any person.

6. **SECURITY TRUSTEE'S UNDERTAKINGS**

The Security Trustee undertakes to:

- (a) **(act honestly)** act honestly and in good faith in the performance of its obligations and the exercise of its powers and discretions under this document, and to show the degree of care and diligence required of a trustee having regard to the extent of its obligations, powers and discretions under this document;
- (b) **(act continuously)** act continuously as trustee of each Loan Trust until the Loan Trust is terminated in accordance with this document or until it is replaced as trustee of the Loan Trust;
- (c) **(hold Loan Asset separate)** hold, and account for, each Loan Trust's Loan Asset separate from any other Loan Trust's Loan Asset or any other assets or property owned or administered by it; and
- (d) **(not dispose of Loan Asset)** not sell or otherwise dispose or part with possession of, or grant any security interest or other interest in, any Loan Asset held by it for a Borrower, except to the extent contemplated by the Borrower's Super Lending Documents.

7. **RECORDS**

Except as required by law, neither the Security Trustee nor any of its officers is bound to record or disclose in minutes or otherwise any matter relating to the exercise of any of the Security Trustee's discretions.

8. **SECURITY TRUSTEE'S FEES**

The Security Trustee is entitled to a fee for acting as trustee of each Loan Trust. The Security Trustee must notify the Borrowers of that fee from time to time by publishing that fee on the Bell Potter Website or by notifying the relevant Borrower as otherwise provided under this document.

9. **SECURITY TRUSTEE'S INDEMNITY**

9.1 **Limit on Security Trustee's Liability**

The Security Trustee is not liable to any Borrower for any loss suffered in connection with a trust established under this document, except to the extent (if any) that the loss resulted from the Security Trustee acting in bad faith, with gross negligence or wilfully in breach of trust.

9.2 **Indemnity**

- (a) The Security Trustee and its directors, officers, employees and agents are entitled to be indemnified out of a Loan Trust's assets for any liability incurred by the Security Trustee in properly exercising or performing any of its powers, duties, rights or obligations in relation to that Loan Trust. This indemnity includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Security Trustee.

- (b) This indemnity is in addition to any indemnity under the law. It continues to apply after the Security Trustee retires or is removed as Security Trustee.

9.3 **Other obligations and duties excluded**

All obligations and duties of the Security Trustee which are not set out in this document and which might otherwise be implied or imposed at law or in equity are expressly excluded to the extent the law allows.

10. **BORROWER'S ENTITLEMENTS**

- (a) Subject to paragraph (b) and the other provisions of this document:
 - (i) as between the Security Trustee and each Borrower, the Borrower is absolutely entitled to each Loan Asset held by the Security Trustee on trust for that Borrower; and
 - (ii) if the Lender confirms that the Amount Owing under a Loan has been irrevocably repaid in full, the Security Trustee must transfer to that Borrower (or to that Borrower's direction) the Loan Asset for that Loan.
- (b) The Security Trustee is not obliged to transfer the Loan Asset for a Loan to the Borrower until it has received confirmation from the Lender that the Amount Owing under that Loan has been irrevocably paid in full.
- (c) Each Borrower is presently entitled to all income of that Borrower's Loan Trusts.

11. **DISCLOSURE**

The Security Trustee may be required (including under applicable legislation) to provide information about a Borrower's interest in its Loan Assets. The Security Trustee may do this without needing to notify any Borrower or the Lender.

12. **SECURITY TRUSTEE TO NOTIFY BORROWER**

The Security Trustee may, but need not, notify a Borrower of matters that come to its attention concerning any relevant Loan Assets held by the Security Trustee.

13. **CHANGE OF SECURITY TRUSTEE**

13.1 **Retirement**

The Security Trustee may retire as trustee of the Loan Trusts by giving no less than one month's written notice to each Borrower.

13.2 **Replacement**

The Lender may replace the Security Trustee as trustee of the Loan Trusts at any time by giving written notice to the Security Trustee.

13.3 **Ceasing to be Security Trustee**

On ceasing to be Security Trustee, the Security Trustee must:

- (a) vest the assets of each Loan Trust in a new Security Trustee nominated by the Lender;
- (b) give to that new Security Trustee all documents and records relating to the assets of each Loan Trust; and

- (c) give other reasonable assistance to that new Security Trustee to facilitate the change of trustee.

13.4 **Release of former Security Trustee**

Subject to clause 13.3, when the Security Trustee retires or is removed the Security Trustee is released from all obligations and liabilities, both present and future, under this document and in relation to each Loan Trust.

13.5 **New Security Trustee**

The new Security Trustee has the powers and rights and is subject to the duties and obligations of the Security Trustee under this document and the law. The new Security Trustee must execute a deed under which it assumes these powers, rights, duties and obligations, and such other documents as are necessary or desirable to give full effect to its appointment and to its acquisition of each Loan Trust's assets.

14. **HOW TO GIVE A NOTICE**

14.1 **Notices to the Security Trustee**

If a Borrower or an Borrower's Authorised Representative wishes to give the Security Trustee a notice or other document or otherwise tell them something, it must be in writing and sent to the Security Trustee using the relevant details specified below or any other details that the Security Trustee may notify to that Borrower. It will not be effective for the purposes of this document if it is not done in this way (unless the Security Trustee accepts that a particular notice may be given in another way).

Security Trustee

Address: Level 29, 101 Collins Street
MELBOURNE VIC 3000

Fax number: 03 9256 8765

Email: lending@bellpotter.com.au

Attention: General Manager

14.2 **Notices to the Borrowers**

The Security Trustee may give a Borrower a notice or other document, or otherwise tell a Borrower something:

- (a) by delivering it to the Borrower, or an Borrower's Authorised Representative, personally;
- (b) by leaving it at, or by sending it by post or facsimile to, the address that the Borrower last gave to the Lender;
- (c) by telephone, using the telephone number that the Borrower last gave to the Lender;
- (d) by posting it on the Bell Potter website where it can be accessed by the Borrower or an Borrower's Authorised Representative; or
- (e) by emailing it to the address that the Borrower last gave to the Lender;
- (f) in any other way that the Borrower agrees or that is allowed by law.

14.3 **Time notice is given**

A notice, document or other communication will be taken to have been given and received:

- (a) if it is given personally – on the date it is received;
- (b) if it is sent by post – on the date when it would have been delivered in the ordinary course of post;
- (c) if it is sent by facsimile transmission – on the date on which the machine from which the transmission was sent produces a report indicating that the notice or other document was sent in its entirety to the correct facsimile number;
- (d) if it is made by telephone – when the person giving the notice reasonably believes that it has been communicated to the Borrower or an Borrower's Authorised Representative; or
- (e) if it is posted on the Bell Potter website – on the earlier of:
 - (i) the first date on which the Borrower or an Borrower's Authorised Representative accesses the Bell Potter website; and
 - (ii) five Business Days after the date on which the notice, document or other communication is posted on the Bell Potter website;
- (f) if it is sent by email – on the date the email message enters the addressee's information system,

even if the Borrower does not actually receive it. The Borrower must ensure that the Security Trustee is able to contact it, or its Borrower's Authorised Representative, at all times.

15. **AMENDMENTS**

The Security Trustee may supplement or amend the provisions of this document, and may agree with the Lender to amend the terms of the Loan Security Deed as it affects a Borrower's Loan Assets, by executing a supplemental deed if it has given each Borrower, at least 30 days beforehand:

- (a) a summary of the proposed change; and
- (b) an opportunity to read the detail of the change (for example, by posting a copy of the change on the Bell Potter website or, if a Borrower asks, by mailing a copy of the change to the relevant person).

Each Borrower is bound by any such change.

16. **STANDARD TERMS**

16.1 **Governing law**

This document is governed by the law in force in Victoria.

16.2 **Severability**

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.

16.3 **Statements in relation to Loan Assets**

A statement that the Security Trustee gives (to the Borrower or any other person) in relation to any assets of a Loan Trust is conclusive unless clearly wrong on its face.