

BETWEEN

VICTOR MANUEL MARQUES DOS SANTOS

“the Lender”

AND

VICTOR MANUEL MARQUES DOS SANTOS and
EDALINA DA CONCEICAO DOS SANTOS
as Trustee for the EDVIC DOS SANTOS SUPERANNUATION FUND

“the Borrower”

AND

VICTOR MANUEL MARQUES DOS SANTOS
as Trustee for the DOS SANTOS HOLDING TRUST

“the Security Trustee”

LOAN AGREEMENT
LIMITED RECOURSE



MERTHYR

LAW

Level 2

247 Adelaide Street
Brisbane QLD 4000

Telephone: (07) 3252 5044

Facsimile: (07) 3252 1075

Email: mail@merthyrlaw.com.au

LOAN AGREEMENT

THIS LOAN AGREEMENT is dated on the date set out in the Schedule.

PARTIES:

1. The Lender in the Schedule ("**the Lender**");
2. The Borrower in the Schedule ("**the Borrower**"); and
3. The Security Trustee in the Schedule ("**the Security Trustee**").

INTRODUCTION:

- A. The Lender has agreed, at the request of the Borrower, to make an advance to the Borrower, in the amount shown in the Schedule ("**the Loan Facility**").
- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan Facility.
- C. The Lender agrees that the Loan will be limited in recourse to the Asset and is provided in accordance with the requirements of Section 67A of the *Superannuation Industry (Supervision) Act 1993* ("**the Act**").

OPERATIVE PARTS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

- 1.1.1 "**Act**" means the *Superannuation Industry (Supervision) Act 1993*.
- 1.1.2 "**Advance**" means the advanced noted in the Schedule.
- 1.1.3 "**Asset**" means the asset described in the Schedule.
- 1.1.4 "**Claim**" means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, chosen action, claim for compensation or reimbursement or a liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- 1.1.5 "**Event of Default**" means any of the events, omissions or occurrences specified in Clause 7.2.
- 1.1.6 "**Fund**" means the Superannuation Fund described in the Schedule.

- 1.1.7 **"ITAA"** means the *Income Tax Assessment Acts*.
- 1.1.8 **"Interest Rate"** means the rate specified in the Schedule.
- 1.1.9 **"Loan"** means, at any time, the Advance and monies owing under this Agreement.
- 1.1.10 **"Obligation"** includes any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.
- 1.1.11 **"Related Body Corporate"** means any body corporate which is related to the Borrower within the meaning given to the term "related body corporate" in the *Corporations Act*.
- 1.1.12 **"Repayment Date"** means the date shown in the Schedule.
- 1.1.13 **"Right"** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, entitlement, discretion or course of action.
- 1.1.14 **"Secured Loan"** means a loan where security is given to secure the Advance.
- 1.1.15 **"Security"** means the security listed in the Schedule and any mortgage, pledge, lien, hypothecation, security interest or other encumbrance or charge now or in the future given by the Borrower or any Guarantor in favour of the Lender to secure the obligations of the Borrower under this Agreement and includes any guarantee executed by any Guarantor.
- 1.1.16 **"Special Conditions"** means the special conditions, if any, set out in the Schedule.
- 1.1.17 **"SIS Bare Trust"** means the bare trust between the Security Trustee as bare trustee and the Borrower as beneficiary set out in the Schedule.
- 1.1.18 **"Year"** means as the case requires:
- 1.1.18.1 The period from the date of this Agreement to the next 30 June;
 - 1.1.18.2 Each year thereafter commencing on 1 July and ending on 30 June;
 - 1.1.18.3 The period from the 1 July immediately preceding the date of termination of the Agreement to the Repayment Date.

1.2 Interpretation

- 1.2.1 A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in Section 9 of the *Corporations Act*) and the circumstances and events giving rise to or contributing to such condition or matters.
- 1.2.2 A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory

instrument issued under, that legislation or legislative provision.

2. **PROVISION OF ADVANCE**

The Lender will provide the Advance to the Borrower by way of cash advance. The Borrower acknowledges that the Advance will be on the terms and subject to the conditions set out in this Agreement.

3. **SECURITY**

The Security Trustee shall, when required by the Lender, execute and deliver to the Lender such documents evidencing the Security (if any) as required by the Lender.

4. **PAYMENT OF INTEREST**

4.1 **Rate of Interest**

Interest shall accrue on the Advance at the Interest Rate and will be calculated each month on the maximum daily balance of the Loan.

4.2 **Payment of Interest**

Interest shall be paid monthly in arrears.

5. **OTHER PAYMENTS**

5.1 **Costs and Expenses**

The Borrower must, on demand by the Lender, pay to, or as directed by, the Lender, and indemnify the Lender against, all costs, losses, charges, expenses, liabilities, damages, fees and disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Lender of or incidental to:

- 5.1.1 the negotiation, preparation, execution and (if applicable), stamping and registration of this Agreement and the Security and of all other deeds, agreements, licences, documents and other instruments to be negotiated, prepared, executed and (if applicable), stamped and registered under or for the purposes of this Agreement or the Security;
- 5.1.2 any breach of, or default under, this Agreement or the Security by the Borrower or any Guarantor;
- 5.1.3 the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lender under or by virtue of this Agreement or the Security; and
- 5.1.4 all taxes (excluding any income tax payable by the Lender), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any Federal, State or Municipal, statutory or other authority or otherwise (including any related bank charges, financial institutions duties and debits taxes) directly or indirectly upon this Agreement or the Security or any receipt or payment under this Agreement or the Security.

6. REPAYMENT

The Borrower must repay and finally discharge the Loan on or before the Repayment Date. The Borrower must also pay any interest accrued and payable on the Loan and not then paid, and all other amounts payable under this Agreement and unpaid, to the Lender on or before the Repayment Date. The Borrower may repay the whole or parts of the Loan at earlier times.

7. DEFAULT AND TERMINATION

7.1 Consequences of Default

If any of the events described in Clause 7.2 occurs, the Loan, together with all interest accrued on the Loan and not then paid and all other amounts payable under this Agreement and unpaid shall, at the option of the Lender, become due and payable, notwithstanding any delay in exercising, or previous waiver of the right to exercise, that option by the Lender. In addition, if the Lender exercises that option, the Security will become immediately enforceable.

7.2 Events of Default

Each of the following events is an Event of Default:

7.2.1 **Payment Default:** If the Borrower fails to repay the Loan on the Repayment Date or fails to pay any instalment of interest when due or fails to pay any other money payable under this Agreement on the due date for payment of that money and such failure continues for more than fourteen (14) Business Days; or

7.2.2 **Other Default:** If the Borrower fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Borrower to be performed or observed (other than a failure of the type contemplated by Clause 7.2 and (if capable of remedy) such default continues for more than thirty (30) Business Days (or such longer period as the Lender in its absolute discretion permits) after notice from the Lender requiring the Borrower to remedy the default, unless the non-performance or non-observance has been waived or excused by the Lender in writing; or

7.2.3 **Winding Up:** If an application for the winding up or bankruptcy of the Borrower or any Related Body Corporate or any Guarantor is presented and the Borrower or Related Body Corporate or Guarantor (as the case requires) cannot within fourteen (14) Business Days reasonably satisfy the Lender that the application is frivolous or vexatious; or an order is made for the winding up or bankruptcy, or any resolution is passed for the winding up, of the Borrower or any Related Body Corporate or any Guarantor, except that it will not be an Event of Default where the winding up of the Borrower or the Related Body Corporate or the Guarantor (as the case requires) is for the purpose of reconstruction or amalgamation and has the Lender's prior written consent (which consent will not be unreasonably withheld); or

7.2.4 **Receiver, etc:** If a receiver or receiver and manager or provisional liquidator of the assets or undertaking or any part of the assets or undertaking of the Borrower or any Related Body Corporate or any

Guarantor is appointed; or

- 7.2.5 **Execution:** If any execution or other process of any court or authority is issued against, or levied upon, the assets of the Borrower or any Related Body Corporate or any Guarantor for an amount exceeding \$20,000.00 and is not discharged or a stay of execution is not obtained within twenty-one (21) Business Days or, a stay of execution having been so obtained, the execution or process is not discharged within ten (10) weeks after the issue or levy of the execution or process (as the case requires); or
- 7.2.6 **Insolvency Schemes:** If without the Lender's prior written consent the Borrower or any Related Body Corporate or any Guarantor enters into any arrangement, reconstruction or composition with its creditors or any of them; or
- 7.2.7 **Administrator or Inspector:** If the Borrower, any Related Body Corporate, or any Guarantor or any other person appoints an administrator to the Borrower or any Related Body Corporate or any Guarantor or takes steps to do so or if an inspector is appointed to investigate the affairs of the Borrower or any Related Body Corporate or any Guarantor.

8. APPLICATION OF MONEY

- 8.1 All money received by the Lender under or by virtue of Clause 6 will be applied:
 - 8.1.1 firstly, in payment of all costs, charges and expenses properly incurred in, or incidental to, the exercise or performance, or attempted exercise or performance, of any of the powers or authorities conferred on the Lender by this Agreement or the Security or otherwise arising in relation to this Agreement or the Security;
 - 8.1.2 secondly, in or towards payment of such other properly incurred costs, charges and expenses in relation to the enforcement of this Agreement or the Security as the Lender thinks fit to pay;
 - 8.1.3 thirdly, in or towards payment to the Lender of interest on the Loan, including Default Interest;
 - 8.1.4 fourthly, in or towards repayment to the Lender of the Loan; and
 - 8.1.5 fifthly, in or towards payment to, or at the direction of, the Lender of any other amount or amounts payable by the Borrower under this Agreement or the Security.
- 8.2 The surplus, if any, will not carry interest and will be paid to the Borrower.

9. PROTECTION OF LENDER

9.1 No Requirement for Notice or for Enforcement of Security

It is not incumbent on the Lender:

- 9.1.1 to give any notice of its rights under this Agreement or the Security to any Guarantor, debtor or member of the Borrower or Guarantor or to any other person; or

9.1.2 to enforce the Security or to take any steps or proceedings to enforce the Security, unless the Lender thinks fit. The Lender is not liable for any omission to give any notice or for any delay in enforcing the Security.

9.2 Lender not Liable for Losses

The Lender is not answerable for any involuntary losses or irregularities which may occur in, or by, the exercise or non-exercise of any of the powers, rights or remedies conferred on the Lender by this Agreement or the Security.

9.3 Discretion or Consent

In any case where, under or pursuant to this Agreement, the doing or execution of any act, matter or thing by the Borrower is dependent upon the consent or approval of the Lender, such consent or approval may be given conditionally or unconditionally or may be withheld by the Lender in its absolute uncontrolled discretion, unless this Agreement expressly provides otherwise.

9.4 Borrower's Risk

Whenever the Borrower is obliged or required under this Agreement to do or effect any act, matter or thing, then the doing of such act, matter or thing will, unless this Agreement expressly provides otherwise, be at the sole risk and expense of the Borrower.

9.5 Illegality and Impossibility

If after the date of this Agreement:

9.5.1 any order of any court of competent jurisdiction; or

9.5.2 any change in, or extension of, or application of, any applicable law or regulation, whether or not having the force of law; or

9.5.3 the official interpretation of any applicable law or regulation by any governmental or other authority, monetary or banking agency or central bank charged with the administration of that law or regulation,

9.5.4 makes it unlawful, or impossible (in the Lender's opinion) for the Lender to give effect to or maintain its obligations under this Agreement, the Lender will, by notice to the Borrower, declare that the Lender's obligation to provide the Advance or to maintain the Loan (as the case requires) is terminated. If the Advance has been provided the Borrower must then, within the lesser of fourteen (14) Business Days of receiving that notice and the period of any maximum grace period allowed by any relevant law or regulation for compliance by the Lender with its obligations, repay the Loan, together with all interest accrued and payable on the Loan and not then paid and all other amounts payable under this Agreement and unpaid, without premium or penalty. The Advance will not be available for redrawing either in whole or in part.

10. SPECIAL CONDITIONS

The Special Conditions shall form part of this Agreement.

11. CHARGE ON SECURITY

The Security Trustee, as the legal owner of the Asset, charges the Asset as security for repayment of the Loan.

12. LIMITED RECOURSE

12.1 The Lender acknowledges that the Borrower is a Regulated Superannuation Fund under the Act and that in accordance with Section 67A of the Act and regardless of any other provision in this Agreement the Rights of the Lender or any other person against the Borrower in the event of the default of the Borrower under this Agreement, or on the sum of the borrowing under this Agreement and charges relating to that borrowing are limited to Rights relating to the Asset;

12.2 The Lender may only have recourse against the Asset for the payment of:

12.2.1 any Obligation of or Claim against the Borrower under this Agreement; or

12.2.2 any debt, damage, judgment or decree against the Borrower arising out of this Agreement or any Security; or

12.2.3 any money that may otherwise become due and payable by the Borrower to the Lender.

12.3 Subject to Clause 13, Clause 12.1 does not affect any of the Lender's Rights or the amount of any Claim of the Lender:

12.3.1 against any person other than the Borrower; and/or

12.3.2 whether those Rights or Claims arise under this Agreement or under any security or otherwise.

13. PROTECTION OF REGULATED SUPERANNUATION FUND

Regardless of any other provision in this Agreement:

13.1 no person or company (including any Guarantor and/or the Lender) has any Rights in relation to or against any of the assets, undertakings or property of the Borrower other than the Borrower's interest (if any) in the Asset;

13.2 where a member of a Regulated Superannuation Fund becomes liable to the Lender, under any provision of this Agreement or otherwise, for the payment of the Loan or Interest or any other sum or for the performance of any other obligation, the Lender must not make any Claim against that member in respect of any right, title or interest which the Lender may have or exercise in relation to any of the assets, undertakings or property of the Borrower other than the Asset;

13.3 where the Borrower or any member of a Regulated Superannuation Fund becomes liable to a Guarantor (whether under a provision of this Agreement or otherwise) for the payment of the Advance or any other sum or for the performance of any other obligation, the Guarantor must not make any Claim against the Borrower or that member in respect of any right, title or interest which the Borrower or member may have or exercise in relation to any of the assets, undertakings or property of the Borrower other than the Asset.

14. TRUST PROVISION

- 14.1 The Borrower enters into this agreement in its capacity as Trustee for the Fund only and does not enter into this Agreement in its personal capacity.
- 14.2 The Lender agrees it has no Rights of recourse against the Borrower in its personal capacity or any Assets held by the Borrower personally and waives any such rights it may otherwise have had.

SCHEDULE

Date: _____ 2015

Lender: VICTOR MANUEL MARQUES DOS SANTOS
Lender's Address: 28 Ironbark Place, Bridgeman Downs in the State of Queensland

Borrower: VICTOR MANUEL MARQUES DOS SANTOS and EDALINA DA CONCEICAO DOS SANTOS as trustees for the EDVIC DOS SANTOS SUPERANNUATION FUND

Borrower's Address: 28 Ironbark Place, Bridgeman Downs in the State of Queensland

Security Trustee: VICTOR MANUEL MARQUES DOS SANTOS
Address of Security Trustee: 28 Ironbark Place, Bridgeman Downs in the State of Queensland

Advance: \$185,000.00

Interest Rate: The rate of interest being the benchmark interest rate for the purpose of Section 109N of ITAA or such other rate specified by law for the purposes of Section 109N(2) of ITAA.

Repayment Date: 25 years after date of Advance. Interest payable only for the first five years from the date of the Advance. Interest and principal payable in equal monthly instalments for the balance of 20 years.

Security (if any): A security interest on terms acceptable to the Lender over the Asset.

Asset: 250,000 Units (partly paid) in the Veda Trust, being a Unit Trust dated 26 August 2015 with Hydo Pty Ltd ACN 607 831 578 as Trustee.

SIS Bare Trust: DOS SANTOS HOLDING TRUST

The Fund: EDVIC DOS SANTOS SUPERANNUATION FUND

Special Conditions (if any):


1. The Loan funds may only be used towards acquisition of Units by the Security Trustee as trustee for the SIS Bare Trust in the Veda Unit Trust.
2. The Loan must be reduced to \$117,250.00 or less within 90 days of the Advance.

EXECUTED AS AN AGREEMENT:

SIGNED by the Lender VICTOR MANUEL)
MARQUES DOS SANTOS in the presence of:)



VICTOR MANUEL MARQUES DOS
SANTOS



Signature of Witness


DAWN MOLONEY

Name of Witness (Please Print)

SIGNED by the Borrower VICTOR MANUEL)
MARQUES DOS SANTOS as trustee for the)
EDVIC DOS SANTOS SUPERANNUATION
FUND in the presence of:



VICTOR MANUEL MARQUES DOS
SANTOS



Signature of Witness


DAWN MOLONEY

Name of Witness (Please Print)

SIGNED by the Borrower EDALINA DA)
CONCEICAO DOS SANTOS as trustee for the)
EDVIC DOS SANTOS SUPERANNUATION
FUND in the presence of:



EDALINA DA CONCEICAO DOS SANTOS



Signature of Witness


DAWN MOLONEY

Name of Witness (Please Print)

SIGNED by the **Security Trustee** VICTOR)
MANUEL MARQUES DOS SANTOS as)
trustee for the DOS SANTOS HOLDING
TRUST in the presence of:



VICTOR MANUEL MARQUES DOS
SANTOS



Signature of Witness

DAWN MOLONEY

Name of Witness (Please Print)