

**BETWEEN**

VICTOR MANUEL MARQUES DOS SANTOS  
"the Security Trustee"

**AND**

VICTOR MANUEL MARQUES DOS SANTOS and EDALINA DA CONCEICAO DOS  
SANTOS  
as Trustees for the DOS SANTOS SUPERANNUATION FUND  
"the RSF Trustee"

**DOS SANTOS HOLDING TRUST  
SIS BARE TRUST DEED**



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# SIS BARE TRUST DEED

**THIS DEED** is made on the day mentioned in Part 1 of the Schedule.

## **BETWEEN**

The person described as the Security Trustee in Part 2 of the Schedule  
("the Security Trustee")

## **AND**

The person described as the RSF Trustee in Part 3 of the Schedule  
("the RSF Trustee")

## **INTRODUCTION**

- A. This introduction relies upon the definitions in Clause 1.
- B. The RSF Trustee, as Trustee for the Fund described in Part 4 of the Schedule, a Regulated Superannuation Fund, wishes to invest in the Asset, pursuant to the Contract, which is yet to be executed.
- C. The Security Trustee is to execute the Contract and hold the Asset as bare trustee for the RSF Trustee on the terms of this Deed.
- D. The RSF Trustee will be entitled to call for the transfer of the Asset from the Security Trustee to the RSF Trustee at any time.
- E. The Security Trustee will hold the Asset as bare trustee for the RSF Trustee.
- F. This Deed is constituted upon execution of the Contract.
- G. The Trust established pursuant to this Deed shall be known by the name specified in Part 5 of the Schedule.
- H. It is intended that the RSF Trustee's investment fits within the exemption to the borrowing prohibition contained in Section 67A of the SIS Act and will be exempt from being an investment in an in-house asset pursuant to Sections 71(8) and 71(9) of the SIS Act.

## **1. THE PARTIES DECLARE THAT:**

### **1.1 DEFINITIONS**

In this Deed and in the Schedules to it the following expressions have the following respective meanings:

1.1.1 "**Act**" means the SIS Act;

1.1.2 "**Applicable Law**" means the law of that country, state, territory or place which is specified in the Schedule provided that if such specifications may not lawfully be made or will not be given effect to by any Court before which this Deed shall come in question the applicable law shall be the law which such Court determines.

- 1.1.3 “**Asset**” means the asset to be acquired under the Contract, more particularly described in Part 7 of the Schedule.
- 1.1.4 “**Beneficiary**” means the RSF Trustee as Trustee for the Fund.
- 1.1.5 “**Contract**” means the contract to purchase the Asset, which, at the date of this Deed, is yet to be signed.
- 1.1.6 “**Deed**” means this Deed and the Schedule.
- 1.1.7 “**Discretion**” means a right or power to act in accordance with one’s own judgement.
- 1.1.8 “**External Loan**” means any loan or loans whereby the RSF Trustee has borrowed money to acquire the Asset and includes any refinance, variation or renewal of same.
- 1.1.9 “**Fund**” means the Regulated Superannuation Fund described in Part 4 of the Schedule.
- 1.1.10 “**Fund’s Investment Strategy**” means the investment strategy required to be maintained by the RSF Trustee under Sub-Section 52(2)(f) of the SIS Act.
- 1.1.11 “**GST**” means the goods and services tax payable pursuant to the *GST Legislation*.
- 1.1.12 “**GST Legislation**” means *A New Tax System (Goods and Services Tax) Act 1999* and related Acts introduced by the Federal Government.
- 1.1.13 “**Initial Outlay**” means the money contributed by the RSF Trustee, including the amount of the External Loan used to purchase the Asset.
- 1.1.14 “**person**” includes natural persons and bodies corporate whether or not the same act in the capacity of trustee of any trust or settlement.
- 1.1.15 “**Regulated Super Fund**” means a superannuation fund which fits the definition of Section 19 of the SIS Act.
- 1.1.16 “**Related Party**” has the same meaning given to it in Section 10 of the SIS Act.
- 1.1.17 “**Relevant Requirements**” means the Act and any other laws or legislation, or the requirements of the responsible authority or any other competent authority which must be satisfied so that:
- 1.1.17.1 the Fund obtains concessional tax treatment;
  - 1.1.17.2 the Fund remains a regulated Superannuation Fund; and
  - 1.1.17.3 no penalty is imposed on the RSF Trustee or directors of the RSF Trustee.
- 1.1.18 “**Replacement Asset**” means an Asset replacing the Asset.
- 1.1.19 “**RSF Trustee**” means the party named in Part 3 of the Schedule, which is Trustee of the Fund.

- 1.1.20 "**Security Interest**" means any interest of a mortgagee secured over the Asset.
  - 1.1.21 "**Security Trustee**" means the party named in Part 2 of the Schedule.
  - 1.1.22 "**SIS Act**" means the *Superannuation Industry (Supervision) Act 1993* as amended.
  - 1.1.23 "**Sole Purpose Test**" means the requirement contained in Section 62 of the SIS Act.
  - 1.1.24 "**Supply**" and other terms used in Clause 17 which have meanings under the *GST Legislation* have the meanings proposed and implemented pursuant to the *GST Legislation*.
  - 1.1.25 "**Trust**" means:
    - 1.1.25.1 the Asset;
    - 1.1.25.2 any income from the Asset.
  - 1.1.26 "**Trust Name**" means the name this Trust is to be referred to as recorded in Part 5 of the Schedule.
  - 1.1.27 "**year**" means each period of twelve (12) months ending on the 30 June. The period from the date of execution of this Deed until the next succeeding 30 June and the period from the first day of July immediately prior to the termination of the Trust and ending on that termination date shall for the purposes of this Deed each be deemed to be a year.
- 1.2 In this Deed except where otherwise required or unless the Security Trustee in any year otherwise determines:
- 1.2.1 reference to the Income of the Trust derived by the Security Trustee shall include not only income of the kind to which that expression ordinarily applies but also to profits and gains of a capital nature and which are derived or realised by the Trustee in respect of the Trust and which are profits or gains of the kind to which Part IIIA of the *Income Tax Assessment Act 1936* and shall extend to provisions in the *Income Tax Assessment Act 1997* that amend, modify, re-enact or replace provisions in the former Act;
  - 1.2.2 reference to losses and outgoings shall include loss or outgoings of a capital nature of the kind referred to in Part IIIA of the *Income Tax Assessment Act 1936* and shall extend to provisions in the *Income Tax Assessment Act 1997* that amend, modify, re-enact or replace provisions in the former Act;
  - 1.2.3 references to any statutory enactment shall mean and be construed as references to the said enactment as amended, modified or re-enacted from time to time;
  - 1.2.4 the singular shall include the plural and vice versa;
  - 1.2.5 words importing persons include corporations;

- 1.2.6 a reference to a person includes that person's personal representative, successors in title, trustees and assigns;
- 1.2.7 words importing the masculine, feminine or neuter gender shall be read as importing such gender as the case may require;
- 1.2.8 the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.

## **2. DECLARATION OF TRUST**

- 2.1 The Security Trustee will use the Initial Outlay to purchase the Asset as bare trustee for the sole benefit of the Beneficiary and subject to the Security Interest on the terms of this Deed and for the benefit and at the direction of the Beneficiary.
- 2.2 The Trust created by this Deed will arise upon execution of the Contract.
- 2.3 The Trust created by this Deed will be known by the Trust Name.

## **3. DECLARATIONS AND UNDERTAKINGS BY SECURITY TRUSTEE**

- 3.1 The Security Trustee declares and directs that no part of the Trust or the income shall ever revert to or be held for the Security Trustee or its estate, it being the intention of the Security Trustee that the Beneficiary shall be absolutely entitled to the corpus and income of the Trust.
- 3.2 The Security Trustee shall hold the Asset as bare trustee for the Beneficiary solely.
- 3.3 The Security Trustee declares and acknowledges that the Security Trustee has no beneficial interest in the Asset and holds the Asset subject to the Security Interest for the absolute benefit of the Beneficiary.
- 3.4 The Security Trustee must notify the RSF Trustee of all notices, assessments, claims or demands which the Security Trustee receives pertaining to the Asset and promptly pay, to the extent available from the Trust, all outgoings including rates, taxes and charges in relation to the Asset and External Loan.
- 3.5 The Security Trustee will not acquire property nor borrow nor allow any commitment or liability which is not provided for in this Deed.
- 3.6 No part of the Asset will ever revert to or be held in trust for any person other than the Beneficiary.
- 3.7 Notwithstanding the Relevant Requirements, the Security Trustee must transfer, deal with or otherwise dispose of the Asset as the Beneficiary may direct.

## **4. DECLARATION BY RSF TRUSTEE**

- 4.1 The RSF Trustee:
  - 4.1.1 is an Australian resident for taxation purposes;

- 4.1.2 is not a trader in real estate and will not be treated for income tax purposes as either trading in the Asset or carrying on a business of investing in the Asset or holding the Asset as a revenue Asset;
- 4.1.3 is satisfied the Fund is a Regulated Superannuation Fund; and
- 4.1.4 warrants that this investment fits within the Fund's Investment Strategy and satisfies the Sole Purpose Test.

## 5. **MANAGEMENT OF ASSET**

- 5.1 The Security Trustee shall manage the Asset, subject to any lawful direction of the Beneficiary, including, if required by the Beneficiary:
  - 5.1.1 holding title to the Asset;
  - 5.1.2 exercising voting rights;
  - 5.1.3 paying all amounts due in respect of the Asset to the relevant authorities;
  - 5.1.4 applying all amounts due under the External Loan;
  - 5.1.5 commencing and defending litigation;
  - 5.1.6 to open and operate bank accounts in the name of the Security Trustee (or a nominee) with any bank or financial institution;
  - 5.1.7 maintaining and repairing the Asset;
  - 5.1.8 insuring the Asset;
  - 5.1.9 any other action thought reasonable to prudently manage and maintain the Asset; and
  - 5.1.10 to, at the direction of the Beneficiary, exercise all rights and privileges and perform all duties and do all such acts, matters and things which the Beneficiary could lawfully do.
- 5.2 The Security Trustee may not be remunerated for its management role in Clause 5.1 but may be reimbursed for necessarily incurred expenses.

## 6. **SALE AND LOAN**

- 6.1 If the RSF Trustee directs the Security Trustee to sell the Asset, then the Security Trustee must sell the Asset in accordance with the directions of the Beneficiary.
- 6.2 The Beneficiary is absolutely entitled to the proceeds of sale pursuant to Clause 6.1 (after costs of sale).

## 7. **RSF TRUSTEE DIRECTION**

Notwithstanding any other provision in this Deed or any of the Relevant Requirements, the RSF Trustee may call upon the Security Trustee to transfer legal ownership of the Asset to

the RSF Trustee whereupon the Security Trustee shall transfer legal ownership of the Asset to the RSF Trustee.

**8. RELATIONSHIP BETWEEN THE PARTIES**

The relationship between the parties does not constitute a partnership nor will any party have authority to act as agent or otherwise for, or assume any obligations of the other except as provided in this Deed.

**9. EXTERNAL LOAN**

The Security Trustee may subject the Asset to any encumbrance to secure the External Loan, including to give any guarantees or indemnities for payment of money or the performance of any contract, obligation or undertaking by any person, firm, company, corporation or association (including, without limitation, any indemnity relating to contracts, obligations or undertakings to which the Security Trustee or RSF Trustee is a party or in respect of which the Security Trustee or RSF Trustee has existing or contingent obligations or liabilities); and to mortgage or charge the whole or any part of the Trust to secure performance of any such guarantee or indemnity.

**10. VARIATION**

The Security Trustee may, with the consent of the RSF Trustee revoke, add to, release, delete or vary all or any of the power in this Deed. The provisions of this Deed shall not be amended for any purpose contrary to the Relevant Requirements or which effects the Beneficiary's entitlement to the Asset.

**11. POWERS AND DUTIES OF SECURITY TRUSTEE**

**11.1 Limitations**

The Security Trustee shall have no powers, duties, rights or discretions under this Trust except those set out in this Deed or any variation to this Deed.

11.2 Notwithstanding any other provisions to the contrary set out in this Deed, the exercise of Discretion by the Security Trustee under the Deed requires the consent of the Beneficiary in all instances.

**12. SEVERANCE**

To the extent that the inclusion or appointment of any Beneficiary hereunder or by any subsequent act or writing is invalid for any reason that inclusion or appointment shall be severed from any other inclusion or appointment.

**13. BENEFICIARIES NOT LIABLE**

The Security Trustee shall not have any power or authority to enter into any contract, arrangement or transaction that shall bind, affect or render personally liable the Beneficiary under this Deed nor to in any way pledge the credit of any Beneficiary nor to call upon any Beneficiary for any payment.

14. **LIABILITY FOR SECURITY TRUSTEE**

The Security Trustee shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the Beneficiary but if acting in good faith shall be entitled to be indemnified out of the Trust in respect of all liabilities incurred relating to the execution of any powers, duties, authorities or discretions vested in the Security Trustee under the provisions of this deed and in respect of all actions, proceedings, costs, claims and demands relating to any matter or thing done or omitted to be done concerning the Trust, limited to such amount recoverable from a sale of the Asset.

15. **PROHIBITION**

The Security Trustee may not acquire any Assets under this Deed other than the Asset.

16. **TERMINATION OF TRUST**

This Trust will terminate when legal title to the Asset is transferred to the Beneficiary.

17. **GST**

Notwithstanding any other provision in this Deed, if the *GST Legislation* applies to any supply made or deemed to be made under or pursuant to this Deed ("**Affected Supply**"), then to the extent that any party to this Deed ("**Supplier**") is or become liable to pay GST in connection with the Affected Supply:

- 17.1 the Supplier may add an amount in respect of that GST to the agreed price of the Affected Supply;
- 17.2 any party paying consideration for the Affected Supply will pay the agreed price plus any amount charged in respect of GST (and any amount of GST payable with respect to such an increased amount); and
- 17.3 where required by the *GST Legislation*, the Supplier will issue a tax invoice which enables the person receiving the invoice, if permitted by the *GST Legislation*, to claim an input tax credit or refund of GST.



**SCHEDULE**

**PART 1:**

**DATE**

26/8

2015

**PART 2:**

**SECURITY TRUSTEE**

VICTOR MANUEL MARQUES DOS SANTOS

**PART 3:**

**RSF TRUSTEE**

VICTOR MANUEL MARQUES DOS SANTOS and EDALINA DA CONCEICAO DOS SANTOS

**PART 4:**

**FUND**

The DOS SANTOS SUPERANNUATION FUND as amended from time to time, originally constituted by Deed with an effective date of 26 August 2015.

**PART 5:**

**TRUST NAME**

DOS SANTOS HOLDING TRUST

**PART 6:**

**APPLICABLE LAW**

The State of Queensland.

**PART 7:**

**ASSET**

250,000 Units in the Veda Trust, being a Unit Trust to be established with Hydo Pty Ltd ACN 607 831 578 as Trustee, subject to the terms of issue.

**EXECUTED AS A DEED:**

**SIGNED SEALED AND DELIVERED** by VICTOR )  
MANUEL MARQUES DOS SANTOS in the )  
presence of:



\_\_\_\_\_  
VICTOR MANUEL MARQUES DOS SANTOS

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness (Please Print)

**SIGNED SEALED AND DELIVERED** by VICTOR )  
MANUEL MARQUES DOS SANTOS as Trustee )  
for the DOS SANTOS SUPERANNUATION )  
FUND in the presence of:



\_\_\_\_\_  
VICTOR MANUEL MARQUES DOS SANTOS

  
\_\_\_\_\_  
Signature of Witness


  
\_\_\_\_\_  
Name of Witness (Please Print)

**SIGNED SEALED AND DELIVERED** by )  
EDALINA DA CONCEICAO DOS SANTOS as )  
Trustee for the DOS SANTOS )  
SUPERANNUATION FUND in the presence of:



\_\_\_\_\_  
EDALINA DA CONCEICAO DOS SANTOS

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness (Please Print)