

**MOORESLEGAL**

# Deed of Trust

*Lytton Pty Ltd*

*(ACN 142 429 833)*

**The Custodian Trustee**

*David Robert Hyslop and*

*Bronwynne Jennifer Hyslop*

**The Superannuation Fund Trustee**

**MOORES LEGAL**  
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REF: AJS/ES/10/0827

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**THIS DEED** is made the date outlined in Part 1 of the Schedule.

## **PARTIES**

- 1 **THE PARTY NAMED IN PART 2 OF THE SCHEDULE TO THIS DEED**  
(the "Custodian Trustee")
- 2 **THE PARTY NAMED IN PART 3 OF THE SCHEDULE TO THIS DEED**  
(the "Superannuation Fund Trustee")

## **RECITALS**

- A. The Superannuation Fund Trustee is a trustee validly appointed as trustee of the Superannuation Fund, which is a complying self managed superannuation fund governed by the Superannuation Fund Deed.
- B. The Superannuation Fund Trustee wishes to acquire the whole of the beneficial interest in the Property, with the Custodian Trustee to act as nominee in respect of the acquisition, to hold the Property absolutely for the Superannuation Fund Trustee.
- C. The terms of this deed will govern the trust relationship between the Custodian Trustee and the Superannuation Fund Trustee.
- D. The name of the trust is outlined in Part 4 of the Schedule.

## **OPERATIVE PROVISIONS:**

### **1. ACQUISITION OF PROPERTY**

The Custodian Trustee **HEREBY DECLARES** that it shall acquire legal title to the Property and shall hold the beneficial interest in the Property absolutely for the Superannuation Fund Trustee.

### **2. ABSOLUTE ENTITLEMENT OF SUPERANNUATION FUND**

#### **2.1 Vested and Indefeasible Interest**

The Custodian Trustee and the Superannuation Fund Trustee hereby declare that, upon acquisition of the Property by the Custodian Trustee, the Superannuation Fund Trustee has an interest in the whole of the Property as against the Custodian Trustee, which is vested in possession and indefeasible, including an entitlement to all of the income and capital of the Property.

## **2.2 No Other Beneficiary**

The Custodian Trustee and the Superannuation Fund Trustee hereby acknowledge that no other party has any beneficial interest in the Property as against the Custodian Trustee.

## **2.3 Right to Transfer**

At the direction of the Superannuation Fund Trustee, the Custodian Trustee shall either:

- (a) Transfer the Property to the Superannuation Fund Trustee; or
- (b) Transfer the Property at the direction of the Superannuation Fund Trustee.

## **3. PERPETUITY PERIOD**

### **3.1 Determination of End Date**

The trust shall end on the earlier of:

- (a) A transfer at the direction of the Superannuation Fund Trustee pursuant to the immediately preceding clause; and
- (b) The End Date.

### **3.2 Distribution at End Date**

At the End Date, the Custodian Trustee shall transfer the Property as directed by the Superannuation Fund Trustee, or failing any direction by the Superannuation Fund, to the Superannuation Fund Trustee.

## **4. THE TRUSTEE**

### **4.1 Substitute Trustee**

Upon a Custodian Trustee (being a sole trustee) named in Part 3 of the Schedule, or any other trustee resigning office as trustee or otherwise ceasing to be a trustee, the Superannuation Fund Trustee shall appoint a new trustee.

### **4.2 Removal and Appointment of Trustee**

The Superannuation Fund Trustee may at any time by writing remove from office any trustee other than a trustee appointed by the Court and may at any time in writing appoint a new or additional trustee.

### **4.3 Resignation of Trustee**

Any trustee (not being the only trustee) may resign his office by notice in writing given to the other trustees and such resignation shall take effect upon such notice being given.

#### **4.4 Vacation of Office**

The office of a trustee shall be ipso facto determined and vacated if such trustee being an individual shall be found to be a lunatic or of unsound mind or if he shall become subject to the Bankruptcy laws or if such trustee being a company shall enter into liquidation whether compulsory or voluntarily (not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction).

#### **4.5 Alternative Trustee**

A trustee being a natural person may appoint in writing any person to be an alternate trustee in his place but so that any such appointment shall have effect only during such period as such trustee shall be absent from the place where the trust fund is being administered and any such trustee may by writing under his hand revoke or alter any such appointment.

#### **4.6 Several Trustees to Act Jointly**

If at any time there is more than one trustee of this deed they shall act jointly and they may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the trustee to one or more of themselves or to any other person or persons and may execute any powers of attorney or other instrument necessary to effectuate such purpose.

#### **4.7 Professional Trustees**

Any trustee who is a solicitor or accountant or other person carrying on a business or profession or occupation or any firm of which he may be a member shall be entitled to make all such usual and proper charges for both his professional and other services in the administration of the trusts hereof and for his time and trouble as he would have been entitled to make if not a trustee and so employed.

#### **4.8 Trustee's Responsibility**

No trustee shall be responsible for:

- (a) Any loss or damage occasioned by the exercise of any power hereby or by law conferred on the trustee or by failure to exercise any such power; or
- (b) Any breach of duty or trust whatsoever unless it shall be proved to have been committed made or omitted in personal conscious bad faith by the trustee charged to be so liable.

All persons claiming any beneficial interest in over or upon the property subject to this deed shall be deemed to take with notice of and subject to the protection hereby conferred on the trustee.

#### **4.9 Indemnity**

The trustee shall be entitled to be indemnified out of the assets for the time being comprising the trust fund or any allocated fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers

hereof or by virtue of being the trustee hereof but shall have no recourse against any of the beneficiaries to meet such indemnity.

#### **4.10 Receipts**

A sole trustee hereof for the time being is hereby authorised notwithstanding that it is the sole trustee to receive capital and other moneys and to give valid and effectual receipts therefore for all purposes and for the purposes of any statutory enactment including the receipts of moneys which may or may be deemed to be capital moneys arising under this deed.

#### **4.11 Records and Accounts**

The trustee shall keep complete and accurate records of all receipts and expenditures on account of the trust fund. Promptly after the close of each accounting period the trustee shall prepare a written accounting report (prepared in accordance with accounting procedures accepted as normal at the time of such preparation) for such period consisting of a balance sheet a statement of income and expenditure and a copy thereof shall upon request be furnished to the Superannuation Fund Trustee.

#### **4.12 Determinations of Trustee**

Any determination by the trustee in exercise of any power discretion or authority conferred on the trustee by this deed may be made in writing signed by all the trustees or by a resolution duly passed at a meeting of the trustees or in the case of a sole corporate trustee in the manner set out in subclause 4.14. In the event of disagreement between the trustees as to any matter affecting the trust deed or as to the exercise or omission or abstention from exercising any of the trustees' powers and discretions hereunder:

- (a) The matter for decision shall be referred to a vote of all the trustees (either at a meeting of the trustees or by post);
- (b) In the event of there being a majority for or against the proposal the trustees shall give effect to the wishes of such majority as though it were a decision by all the trustees;
- (c) In the event of deadlock the matter shall if any trustee so requires be referred to decision by arbitration pursuant to any Arbitration Law currently in force under the proper law of this deed and the trustees shall give effect to the award of the arbitrator under such arbitration as though it were a decision by all the trustees.

#### **4.13 Corporate Trustee**

Every trustee which is a corporation or company may exercise or concur in exercising any discretion or power (including any power of nomination) hereby conferred on the trustee by a resolution of such corporation or company or by a resolution of its Board of Directors or governing body or by its properly delegated representative as set out in subclause 4.14 and any person dealing with the trustees may rely upon a copy of any minutes or other written record recording such resolutions.

#### **4.14 Representative of Corporate Trustee**

Every trustee not being a sole trustee which is a corporation or company may appoint a representative for the purpose of attending a meeting of the trustees.

### **5. POWERS OF TRUSTEE**

#### **5.1 Specific Powers**

The trustee shall have the following specific powers authorities and discretions, subject always to the exercise of such powers ensuring that the Superannuation Fund Trustee is compliant with the provisions of the Superannuation Industry (Supervision) Act and Regulations (as amended from time to time) :

- (a) To acquire the legal title to the Property; and
- (b) To deal with the Property in accordance with any direction from the Superannuation Fund Trustee, including but not limited to leasing and otherwise managing and protecting the Property, operating a bank account and giving valid and effectual receipts for any moneys received in respect of the Property; and
- (c) Pay income derived from the Property at the direction of the Superannuation Fund Trustee only; and
- (d) Pay income or capital to another party in satisfaction of the obligations of the Superannuation Fund Trustee, with the prior agreement of the Superannuation Fund Trustee.

### **6. MISCELLANEOUS**

#### **6.1 Alteration of Deed**

Save as provided in this subclause the terms of this deed shall not be capable of being revoked added to or varied. The trustee with the consent in writing of the Superannuation Fund Trustee, may at any time and from time to time by deed amend the provisions whether of this deed (including this subclause) or of any deed executed pursuant to this subclause by altering any of such provisions or by adding fresh provisions thereto or by deleting provision therefrom PROVIDED THAT:

- (a) any law against perpetuities is not thereby infringed; and
- (b) such amendment may not affect the absolute entitlement of the Superannuation Fund Trustee; and
- (c) such amendment may not result in the Superannuation Fund Trustee not complying with the provisions of the Superannuation Industry (Supervision) Act and Regulations (as amended from time to time).

#### **6.2 Proper Law**

This deed shall be construed in accordance with and governed by the law of the State or Territory specified in Part 8 of the Schedule.

## 7. INTERPRETATION

### 7.1 Definitions

In this deed unless the context otherwise requires the following expressions shall have the following meanings:

- (a) **"bank"** shall include but not be limited to any bank, building society, credit union, credit co-operative or any other financial institution that holds money for persons or advances or lends money with or without interest.
- (b) **"this deed"** means the provisions of this deed as for the time being revoked added to and altered pursuant to the provisions hereinafter contained.
- (c) **"the End Date"** means the earlier of the date specified in Part 7 of the Schedule or the maximum period permitted at law or such other date as may from time to time be determined to be or otherwise become the End Date pursuant to the provisions hereinafter contained.
- (d) **"the Property"** means the property defined in Part 5 of the Schedule, and any such replacement asset or property that may be acquired by the Custodian Trustee in accordance with this deed.
- (e) **"the trustee"** means the Custodian Trustee or such other trustee or trustees for the time being of this deed whether original, additional or substituted.

### 7.2 Interpretation

In this deed:

- (a) The singular includes the plural and vice versa, each gender includes the other genders and references to persons include corporations and other legal persons;
- (b) References to any statute shall include any statutory amendment or re-enactment thereof or statutory provisions substituted therefore;
- (c) Headings are inserted for ease of reference and do not form part of this deed and shall not affect the construction of the deed;
- (d) If by reason of the inclusion of any word, description or provision in this deed, all or any part of this deed would be invalid, then this deed is to be construed as if the word, description or provision was not included in this deed.



**SIGN  
HERE**

**EXECUTED AS A DEED:**

**EXECUTED** by **LYTTON PTY LTD** )  
(**ACN 142 429 833**) in accordance with )  
section 127 of the *Corporations Act* )  
2001: )

B Hyslop  
Director signature

BRONWYNNE JENNIFER HYSLOP.  
Print full name

D Hyslop  
Director / Secretary signature

DAVID HYSLOP  
Print full name

**SIGNED, SEALED AND DELIVERED** )  
by **DAVID ROBERT HYSLOP** in the )  
presence of: )

JmBS  
Witness

D Hyslop

Jody Maree Hyslop  
Witness full name

**SIGNED, SEALED AND DELIVERED** )  
by **BRONWYNNE JENNIFER HYSLOP** )  
in the presence of: )

JmBS  
Witness

B Hyslop

Jody Maree Hyslop.  
Witness full name

**SCHEDULE**

**PART 1:**

Date of this Deed - *31st March 2010*

**PART 2:**

The Custodian Trustee -

Lytton Pty Ltd (ACN 142 429 833) of 1st Floor, 60-64 Railway Road, Blackburn, Victoria 3130.

**PART 3:**

The Superannuation Fund Trustee -

David Robert Hyslop and Bronwynne Jennifer Hyslop both of 3 Cecile Street, Balmoral, Queensland 4171 as trustees of the Hyslop Investments Superannuation Fund.

**PART 4:**

Name of the Trust -

Hyslop Custodian Trust.

**PART 5:**

The Property:-

500 Ordinary Units in Strabane Unit Trust, as set out in certificate number *2*

**PART 6:**

The End Date:-

80 years from the date of this Deed.

**PART 7:**

Proper Law -

Queensland.

## DEED OF CLARIFICATION

**THIS DEED OF CLARIFICATION** is made on ... ..  
2011.

### **PARTIES:**

1. **SIMON JOHN SALISBURY** and **GWENDOLYN RUTH SALISBURY** as trustees of the S & R Salisbury Family Trust ("the Lender"); and
2. **DAVID ROBERY HYSLOP** and **BRONWYNNE JENNIFER HYSLOP** as trustees of the Hyslop Investments Superannuation Fund ("the Borrower"); and
3. **LYTTON PTY LTD (ACN 142 429 833)** as trustee of the Lytton Custodian Trust ("the Custodian Trustee").

### **RECITALS:**

- A. On 31 March 2010, a Limited Recourse Loan Agreement was entered into by the Lender, the Borrower and the Custodian Trustee by deed ("the Agreement") for the issue of units in the Strabane Unit Trust ("the Unit Trust").
- B. The Unit Trust was established by deed dated 15 March 2010 and the Custodian Trustee applied for five hundred (500) ordinary units as an initial unitholding. A further 1,717,489 units were applied for and issued to the Custodian Trustee, making a total issue of 1,717,989 units at \$1.00 each. The initial issue of units and the further issue of units are collectively referred to in this deed as "the Total Property".
- C. A loan amount of \$1,115,000 was provided by the Lender to the Borrower pursuant to the Agreement as a means of funding (in part) the acquisition of the Total Property by the Borrower and with legal title to be held by the Custodian Trustee. The balance of the acquisition of the units was funded by the Borrower itself.
- D. Item 4 of the Schedule to the Agreement refers to the Property as "500 Ordinary Units in Strabane Unit Trust, as set out in certificate number 2".
- E. The parties acknowledge that the reference to "the Property" in Item 4 of the Schedule to the Agreement should be a reference to "500 Ordinary Units in

Strabane Unit Trust, as set out in certificate number 2 and 1,717,489 Ordinary Units in Strabane Unit Trust, as set out in certificate number 4”.

- F. The parties wish to execute this deed of clarification to clarify the reference to the Property as referred to in Item 4 of the Schedule in the Agreement.

**PROVISIONS:**

1. The Lender, the Borrower and the Custodian Trustee confirm that the reference to “the Property” in Item 4 of the Schedule should be a reference to the following:

*“500 Ordinary Units in Strabane Unit Trust, as set out in certificate number 2 and 1,717,489 Ordinary Units in Strabane Unit Trust, as set out in certificate number 4”.*

2. The parties confirm the Agreement in all other respects.

**EXECUTED AS A DEED**

**SIGNED, SEALED AND  
DELIVERED** by **DAVID JOHN  
HYSLOP** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness full name

**SIGNED, SEALED AND  
DELIVERED** by **BRONWYNNE  
JENNIFER HYSLOP** in the  
presence of:

\_\_\_\_\_

Witness

Witness full name

**EXECUTED LYTTON PTY LTD**  
**(ACN 142 429 833)** in  
accordance with section 127 of  
the *Corporations Act 2001*:

Director signature

Director / Secretary signature

Print full name

Print full name

**SIGNED, SEALED AND**  
**DELIVERED** by **SIMON JOHN**  
**SALISBURY** in the presence of:

Witness

Witness full name

**SIGNED, SEALED AND**  
**DELIVERED** by **GWENDOLYN**  
**RUTH SALISBURY** in the  
presence of:

Witness

Witness full name

**DATED** \_\_\_\_\_ **2011**

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**DEED OF CLARIFICATION**

**HYSLOP INVESTMENTS  
SUPERANNUATION FUND**

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