

**MOORESLEGAL**

# **STRABANE UNIT TRUST**

STRABANE AVENUE PTY LTD (ACN 142 429 507)  
**Trustee**

BROADGULLY PTY LTD (ACN 142 429 865) as  
trustee for the BROADGULLY CUSTODIAN TRUST

LYTTON PTY LTD (ACN 142 429 833) as trustee for  
the LYTTON CUSTODIAN TRUST

## **Initial Unit Holders**

**MOORES LEGAL**  
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THIS DEED OF TRUST is made on 15/3

2010.

## PARTIES

1 **STRABANE AVENUE PTY LTD** (ACN 142 429 507)  
whose registered office is situated at 1st Floor, 60-64 Railway Road, Blackburn, Victoria 3130  
("Trustee")

2 **BROADGULLY PTY LTD** (ACN 142 429 865) whose registered office is located at 1st Floor, 60-64 Railway Road, Blackburn, Victoria 3130, as trustee for the BROADGULLY CUSTODIAN TRUST holding five hundred (500) Ordinary units, each with a value of one dollar (\$1.00);

**LYTTON PTY LTD** (ACN 142 429 833) whose registered office is located at Level 1, 1454 Logan Road, Mount Gravatt, Queensland 4122, as trustee for the LYTTON CUSTODIAN TRUST holding five hundred (500) Ordinary units, each with a value of one dollar (\$1.00).

(collectively referred to as "the initial unit holders")

## 1. ESTABLISHMENT OF THE TRUST

### 1.1 Name of the Trust

The name of this Trust is the **STRABANE UNIT TRUST**.

### 1.2 The Fund

Each initial unit holders has acquired units on the terms set out in their respective unit certificates, and the trustee anticipate's other persons may also acquire units. The money received by the trustee in payment for units forms the fund. The fund is also made up of the following:

- (a) All other moneys and property of any description paid or transferred to and accepted by the trustee as additions to the fund by way of subscription for units;
- (b) The net income;
- (c) All accretions to the fund; and
- (d) The investments and property of the trust which represent all or part of the types of property referred to in the preceding subclauses;

other than that part of the net income or capital in the allocated funds (if any).

### 1.3 Declaration of Fixed Trust

The trustee agrees to hold the funds on fixed trust, and to manage them in accordance with the terms of this deed for the unit holders.

#### 1.4 Applicable Law

This deed is governed by the laws of Queensland. No action may be brought in relation to this deed except in the courts of Queensland, and the parties submit to the jurisdiction of the courts of Queensland.

#### 1.5 Duration of Trust

The trust lasts for eighty (80) years from the date of this deed or if a later date is permitted by law, until the later date so permitted.

#### 1.6 Special Clauses Applying to this Deed

- (a) The terms of this deed shall be subject to the terms of any agreement entered into between the trustee and all of the unit holders of the trust from time to time.
- (b) All other provisions in this deed will be subject to any provisions that may be set out in this clause either now, or later.

## 2. BENEFICIAL INTERESTS IN THE TRUST

### 2.1 Classes of Units

- (a) The trustee has issued units to the initial unit holders in order to establish the trust (“**the initial units**”), and such initial units carry the entitlements corresponding with their name as outlined in the next paragraph;
- (b) In addition to the initial units, the trustee has the power to issue units of the following classes, that, subject to the other terms of this deed will have the following entitlements:
  - (i) **ORDINARY UNITS** - that give the holder an entitlement to the net income and capital of the fund, and to vote in relation to the administration of the trust, fixed in proportion to the number of units held;
  - (ii) **INCOME ONLY UNITS** – that give the holder an entitlement to the net income of the fund, fixed in proportion to the number of units held, but give no entitlement to capital or to vote;
  - (iii) **CAPITAL ONLY UNITS** – that give the holder an entitlement to capital of the fund fixed in proportion to the number of units held, but give no entitlement to net income or to vote;
  - (iv) **NON VOTING UNITS** – that give the holder an entitlement to the net income and capital of the fund fixed in proportion to the number of units held, but give no entitlement to vote;
  - (v) **NON CAPITAL UNITS** – that give the holder an entitlement to the net income of the fund and to vote in relation to the administration of the trust fixed in proportion to the number of units held, but give no entitlement to capital;

- (vi) **NON INCOME UNITS** – that give the holder an entitlement to the capital of the fund and to vote in relation to the administration of the trust fixed in proportion to the number of units held, but give no entitlement to net income;
  - (vii) **PREFERENCE UNITS** – that give the holder an entitlement to net income or capital of the fund which is preferential and that is limited to that specified in the Unit Certificate, but give no entitlement to vote;
  - (viii) **VOTING ONLY UNITS** – that give the holder an entitlement to vote in relation to the administration of trust, but give no entitlement to net income or capital of the fund.
- (c) The trustee may also create and issue further classes of units, including but not limited to redeemable units, and the terms of which must be set out in the unit certificate, in accordance with the terms of this deed.

## 2.2 Value of Units

For all purposes, the value of a unit equals the value as calculated in accordance with clause 4.6.

## 2.3 Unit Holders to be Bound

The unit holders may change from time to time. All the unit holders agree to be bound by this deed and any amendment to it.

## 2.4 Unit Holders' Fixed Beneficial Interest in the Fund

Subject to the terms of this deed, the unit holders are absolutely entitled to the whole of the net income and capital of the fund in proportion to and in accordance with the terms of their unit holdings, and such interests are vested and indefeasible. However, unless expressly stated, no unit confers any interest in any particular part of fund to a unit holder.

# 3. DISTRIBUTION OF INCOME AND CAPITAL

## 3.1 Definition of Net Income

The net income of the fund or any allocated fund shall mean income as determined by generally accepted accounting standards.

## 3.2 Option to Accumulate Net Income

- (a) Subject to the succeeding subclause, the trustee may accumulate and set aside from the net income of the fund any amount that the trustee thinks fit and hold such amounts as accumulated net income for the vested and indefeasible benefit of the unit holders holding units giving them entitlements to the net income of the fund in proportion to the number and in accordance with the terms of those units; and
- (b) The trustee must not accumulate the net income to the detriment of a unit holder holding units that give them an entitlement to net income, but not to the capital of the fund.

### **3.3 Distribution of All Net income Not Specifically Accumulated**

- (a) At any time prior for the end of an accounting period, the trustee must transfer to an income distribution account the net income of the fund, less any amount accumulated by the trustee in accordance with the terms of this deed, until it is distributed to the unit holders;
- (b) As soon as practicable, subject to any restrictions in clause 1 of the deed, the trustee must distribute the amount in the income distribution account to the unit holders who hold units giving them an entitlement to receive net income in proportion to the number and in accordance with the terms of those units by the close of business on the day the trustee decides to make the distribution.

### **3.4 Meaning of "Distribution" of Net income**

- (a) For the purposes of this clause, and subject to the provisions of this clause, the trustee's power to distribute net income includes a power to determine, with respect to all or any part or parts of the net income, or of any category of the net income of the fund, to pay, apply or allocate all or any part of the net income, including net income arising or derived from an identified asset or source to or for the benefit of the relevant unit holder;
- (b) Any amount (including any category) allocated to any of the unit holders will not form part of the fund but will be held by the trustee as a separate fund (called an "allocated fund") on trust for that unit holder absolutely, and until the amount is paid to or applied for the benefit of the unit holder, the trustee will have the power to accumulate the net income of the allocated fund and deal with it as an accretion to the allocated fund, and to invest the allocated fund in any of the investments which the trustee is empowered by this deed to make;
- (c) The trustee may only exercise the powers under this clause in a manner consistent with the fixed entitlements to net income conferred pursuant to the terms of the relevant classes of units held by unit holders.

### **3.5 Capital Reserve Account**

Prior to the vesting day, the trustee may establish a capital reserve account in respect of the fund if a simple majority pass a resolution agreeing to it before the end of the financial year.

### **3.6 Distributing Capital Prior to the Vesting Day**

Prior to the vesting day if the trustee establishes a capital reserve account in respect of the fund in accordance with the preceding clause, the trustee may distribute any amounts, including any category of capital in the capital reserve account to the unit holders who hold units giving them an entitlement to receive capital, in proportion to the number and in accordance with the terms of their units at the close of business on the day the trustee decides to make the distribution.



### **3.7 Distributing Capital Upon the Vesting Day**

Upon the vesting day, the trustee must follow the procedures set out in clause 7, and subject to that clause, distribute the capital in the fund to the unit holders who hold units giving them an entitlement to receive capital, in proportion to the number and in accordance with the terms of their units at the close of business on the day the trustee decides to make the distribution.

### **3.8 Meaning of "Distribution" of Capital**

- (a) For the purposes of this clause, and subject to the provisions of this clause, the trustee's power to distribute capital includes a power to determine, with respect to all or any part or parts of the capital, or of any category of the capital of the fund, to pay, apply or allocate all or any part of the net income, including capital arising or derived from an identified asset or source to or for the benefit of the relevant unit holder;
- (b) Any amount (including any category) allocated to any of the unit holders will not form part of the fund but will be held by the trustee as a separate fund (called an "allocated fund") on trust for that unit holder absolutely, and until the amount is paid to or applied for the benefit of the unit holder, the trustee will have the power to accumulate the net income of the allocated fund and deal with it as an accretion to the allocated fund, and to invest the allocated fund in any of the investments which the trustee is empowered by this deed to make;
- (c) The trustee may only exercise the powers under this clause in a manner consistent with the fixed entitlements to capital conferred pursuant to the terms of the relevant classes of units held by unit holders.

### **3.9 Trustee to Give Distribution Statement**

When all or any part of the fund is distributed to unit holders the trustee must give a statement to the unit holders receiving a distribution showing the amount of distribution to each unit holder and the balance of the fund (if any) remaining undistributed.

## **4. THE TRUSTEE**

### **4.1 Special Restrictions Upon the Trustee**

The trustee's powers and duties as set out in this deed are subject to any special restrictions that may be set out in clause 1.

### **4.2 Fixed Entitlements of Unit Holders**

The trustee's powers granted pursuant to this clause will always be exercised in a manner that ensures a unit holder's fixed vested and indefeasible entitlements are maintained.

#### 4.3 General Powers

- (a) The trustee has the maximum possible powers and discretions to administer the fund, including but not limited to the power to invest and change investments freely as if the trustee were beneficially entitled to those investments. In the exercise of these powers, the trustee will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories or anywhere in the world;
- (b) In addition to the general powers and discretions of the trustee expressed in the preceding subclause, the trustee has the specific powers set out in the remainder of this clause and in other clauses of this deed.

#### 4.4 Trustee's Specific Powers

The trustee has the following specific powers in relation to the fund, in addition to those in other clauses:

- (a) To exercise any of the trustee's powers and discretions even if the trustee has a conflict of interest. This applies even if the trustee is a company and any director or shareholder of the trustee has any interest in the exercise of the trustee's powers of discretion or may benefit in any way from their exercise;
- (b) To commence acquire and carry on any business or investment activity anywhere in the world which the trustee may decide can be conveniently carried on or which is desirable in the interest of the fund or the unit holders and in doing so the trustee shall have all of the powers vested in a Company by virtue of the Corporations Act;
- (c) To execute and prosecute legal proceedings of any kind and in any Court to enforce any contract or other arrangement entered into or to recover damages for breach of any such contract or other arrangement;
- (d) To make or purchase any such investment for a sum greater than the amount of the fund for the time being and to pay for any such investments wholly or in part from any future moneys which may come into its hands, including dividends, profits, interest or other net income paid or payable in respect of any such investments;
- (e) To raise or concur in raising with or without security any money for any purpose in relation to the execution of the trusts or powers conferred on the trustee by mortgaging or charging with or without a power of sale all or any part of the fund and no lender shall be concerned to inquire into the necessity for any such borrowing or as to the purpose for which it is required or as to the application of money borrowed;
- (f) To employ or otherwise contract with any person (including the trustee or a unit holder) in connection with any business referred to in the above subclauses carried on by the trustee or anything required to be done pursuant to the provisions of this deed including the power to receive and pay money, decide the

remuneration to be allowed and paid and to decide the amount of all charges and expenses;

- (g) To create or arrange or participate in any scheme of or fund for superannuation retirement benefits or pensions for the benefit of any person employed by virtue of the above subclauses and to make contributions to any scheme or fund for the benefit of such employees;
- (h) To give any guarantee or indemnity for the payment of money or the performance of any contractual obligation or undertaking and become surety or security for any persons, trustees, companies or entities, and without exception either alone or in association or jointly and severally or jointly or severally with any persons, trustees, companies or entities and for the purpose of securing the payment of any money or the performance of any contractual obligation or undertaking for which the trustee has become or may become liable under and by virtue of any guarantee indemnity or other contract pursuant to this clause, to mortgage or provide a lien or fixed or floating charge or to otherwise charge the whole or any part of the fund (in the present or the future) and the rights of the Mortgagee or Chargee shall take priority in all respects over the rights of the unitholders and all other persons whatsoever and no Lender shall be concerned to inquire into the necessity for any such borrowing or as to the purpose for which it is required or as to the application of money borrowed;
- (i) To advance and lend moneys to and to borrow raise moneys from and to secure by mortgage bill of sale lien or charge fixed or floating legal or equitable or otherwise howsoever the payment or repayment of any money or advances to themselves or to any persons (including themselves) and whether severally or jointly and severally with any person and upon such terms with or without security or interest as the trustee shall deem fit and trustee is hereby expressly empowered to join with any other person in executing any mortgage or other document for the purpose of securing the payment of money to or the assumption of any liability (whether actual or contingent) to pay money to any other person and if the trustee is a corporation to give and to execute a registrable floating charge over the assets of the corporation and the assets of the fund held by it as trustee and to give and execute any other charge or security registrable under any Act for the time being in force and the trustee may borrow or raise moneys to be used in deriving income or gain in augmentation of the fund notwithstanding that the fund may already be wholly invested or applied or that the moneys to be borrowed or raised may exceed the sum or value of the fund and no Lender shall be concerned to inquire into the necessity for any such borrowing or as to the purpose for which it is required or as to the application of money borrowed notwithstanding that the asset secured or purchased may not be income producing or of a wasting or speculative nature;
- (j) To hold use manage purchase construct demolish maintain repair renovate reconstruct develop decorate improve turn to account subdivide sell transfer convey surrender let lease exchange take and grant options or rights in alienate mortgage charge pledge

reconvey release surrender or discharge or otherwise however deal with any real or personal property held by the trustee pursuant to this Deed;

- (k) To appropriate without obtaining any of the consents required by law any part or parts of the trust fund either in the actual condition or state of investment thereof PROVIDED THAT such appropriation shall not affect or diminish the vested and indefeasible entitlement of any unitholder. Every appropriation made by the trustee shall bind all persons interested whether in the share to which the appropriation is made or in any other shares or otherwise interested in the trust fund;
- (l) To delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the trustee and to execute any Powers of Attorney or other instruments necessary to effect such a delegation;
- (m) To permit any asset of the fund to be held or registered in the name of any nominee of the trustee and to deposit securities to the deeds and other documents belonging or related to the fund with any bank or solicitor;
- (n) In the event of any probate succession estate or other duties fees or taxes becoming payable in any part of the world in respect of the fund or any part thereof on the death of any unit holder or any other person at the trustee's discretion absolutely to pay all or any part of such duties fees and taxes out of the fund notwithstanding that such duties fees or taxes or some part thereof are not or may not be recoverable from the trustee or from the fund by legal process in the place where the same become payable;
- (o) To open and operate accounts with any bank anywhere in the world, to draw, make, accept, endorse, discount, execute, issue, present, sign (whether as Drawer, Acceptor or Endorser) or otherwise deal with any promissory notes, bills of exchange, bills of lading, cheque or other negotiable or transferable instruments;
- (p) To give effectual receipts and discharges for any monies received by or on behalf of the trustee or otherwise relating to any of the acts, matters and things provided for in this deed;
- (q) Notwithstanding any power contained in the deed, the trustee shall have power and authority to enter into and perform:
  - (i) any transaction involving, or in connection with, an exchange of streams of payment between counterparties whether directly or indirectly;
  - (ii) any transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date;
  - (iii) any transaction for managing, lessening, hedging or protecting against movements in currency exchange,

interest or discount rates or against costs of borrowing, lending or obtaining financial accommodation;

and without limiting the generality of the foregoing, the power conferred on the trustee as aforesaid shall include power for any purpose to enter into and perform any interest rate swap or exchange transaction, currency swap or exchange transaction, rate cap, rate floor, rate collar, option contract relating to swaps, futures contract, currency option and forward rate agreement or any interest and or currency protection transaction or any combination of such transactions, contracts or agreements or any other transactions, financial arrangements or contracts of a kind or class similar to the transactions herein referred to;

- (r) To do all such other things as may be incidental to the exercise of the powers and authorities conferred on the trustee by this deed and to exercise any of the above powers both jointly with any other person and in conjunction with any other powers, authorities or discretions; and
- (s) To carry out all and any of the foregoing powers by and through an agent and to appoint and authorise an agent to carry out all or any of these powers.

#### **4.5 Trustee's General Duties**

The trustee's general duties are to hold the funds and to manage the investments and any business carried on under the trust, and to run the funds properly and efficiently. The trustee also has a range of specific duties, which are set out in this clause. However, in fulfilling its duties (whether general or specific), the trustee will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories or anywhere in the world.

#### **4.6 Valuation of the Funds**

- (a) The trustee must value the investments of the fund in each of the following circumstances:
  - (i) unless a simple majority resolve otherwise, at the end of each period of 10 years after the date of establishment of the trust;
  - (ii) when a simple majority ask the trustee in writing to do so; or
  - (iii) when a simple majority present at a meeting, including those present by proxy, resolve that the trustee should do so;
- (b) The valuation may be carried out by the Auditor of the trust or the accountant of the trust, or any other accountant who is a member of the Institute of Chartered Accountants, the Society of Certified Practising Accountants, the National Tax and Accountants Association or the National Institute of Accountants and who the trustee appoints with the consent of a simple majority of unitholders. If the unit holders do not approve an accountant, the

accountant must be appointed by the President of the Institute of Chartered Accountants in Australia in the State or Territory specified in clause 1 of the deed. The valuation must comply with the Act so as to ensure that the Fund remains a fixed trust and the unitholder's interests are vested and indefeasible.

- (c) The value of the units may then be calculated by reference to the value of the fund;
- (d) The cost of a valuation must be paid out of the fund.

#### **4.7 Accounting**

The trustee must arrange for proper books of account to be kept for all receipts and expenditure of the trust and for the details of all sales and purchases of the fund. This must be done in a way that will enable any business being carried out under the trust to be audited.

#### **4.8 Deposits and Payments**

The trustee must pay all money received by the trust into a separate bank account, and must pay all outgoings of the trust. The trustee must also set up necessary reserves for future and contingent liabilities.

#### **4.9 Insurance**

The trustee must adequately insure all properties in the fund, and their contents and must contribute to all applicable insurance and other schemes for the benefit of workers.

#### **4.10 Licences and Permits**

The trustee must apply for, renew, transfer, or assign any licence or permit required under any legislation governing any business in which the trustee is engaged. A licence or permit may be in the name of the trustee or any other person.

#### **4.11 Profit and Loss Accounts**

Unless the trust is about to be ended, as soon as practicable after 30 June (or any other accounting date set by the trustee) in each year ("the accounting date"), the trustee must prepare a profit and loss account showing a calculation of the income of the fund for the immediately preceding accounting period. The trustee must also prepare a balance sheet for that accounting period. If the trust is about to be ended, the relevant accounting day will be the day immediately preceding the day the trust is to end.

#### **4.12 Payment of Trustee**

The trustee is entitled to be paid a reasonable fee for each year of service. The fee must be set each year by resolution of a seventy five percent 75% majority. If no fee is set in a year the fee for the previous year is to be paid.

#### **4.13 Liability and Indemnity of the Trustee**

The trustee is not liable for any loss caused by the exercise of any power unless the loss is caused by the trustee's wilful dishonesty. If the trustee acts in good faith in exercising any power the trustee is entitled to be indemnified out of the trust for any liability which is incurred. The indemnity is limited to the assets of the trust.

#### **4.14 Removal and Appointment of Trustee**

- (a) The unit holders may remove the trustee by resolution and appoint a new one after giving notice to the trustee.
- (b) Subject to any restriction in clause 1 of the deed, any resolution to remove or to appoint a trustee under this clause must be passed by a seventy five percent (75%) majority.

#### **4.15 Deemed Removal of Trustee**

If the trustee goes into liquidation, or ceases to carry on business, or a receiver or administrator is appointed, the trustee is deemed to have retired and the unit holders must appoint a new one.

#### **4.16 Retirement of Trustee**

The trustee may retire after giving the unit holders three months written notice (or a lesser time if a simple majority agree), and in the case of the last surviving trustee, only upon appointment of a new trustee. The unit holders must appoint a new trustee in accordance with subclause 4.14(b), upon retirement of the last surviving trustee.

#### **4.17 Additional Trustee**

At any time, the unit holders may by resolution appoint an additional trustee after giving notice to the existing trustee. If there is more than one trustee, they must act jointly.

#### **4.18 Restrictions on Retirement, Removal and Additional Trustee if Trustee holds Liquor Licence**

If the trustee holds a licence under the Liquor Control Act 1987 or to any similar Act in the Commonwealth of Australia or in any of its States or Territories, the trustee may not retire or be removed, nor may an additional trustee be appointed, until the new trustee has been approved by the Liquor Commission or any similar authority in the Commonwealth of Australia or of any of its States or Territories. This subclause takes precedence over the other subclauses in this clause.

### **5. UNITS**

#### **5.1 Application for Units**

An application for units must be to the same effect as the form set out in Schedule 1 and must be sent to the trustee. The application must specify the class of and number of units applied for and any payment or other terms relating to the units applied for.

## **5.2 Certificate for Units**

- (a) The trustee must issue each unit holder with a certificate setting out the class of and number of units that the unit holder owns and any payment or other terms relating to the units;
- (b) If any certificate is worn out or defaced, the trustee may cancel it and issue a replacement. If any certificate is lost or destroyed, the unit holder may apply to the trustee for a duplicate. The unit holder must give the trustee a statutory declaration that the certificate has been lost or destroyed and has not been pledged, transferred, mortgaged or sold. The trustee must then issue a duplicate.

## **5.3 Units may not be offered to the Public**

No unit may be offered to the public. Any transaction resulting from an offer to the public is void.

## **5.4 Raising Additional Sums and Issuing New Units**

- (a) If a seventy five percent (75%) majority resolve, the trustee may raise additional sums by issuing more units;
- (b) Before more units are issued, the fund (less the additional sums) must be valued in accordance with subclause 4.6, and the value of each existing unit calculated. For the purposes of this clause, this value will be the unit price.
- (c) The number of the new units to be issued must equal the total sale price of the units to be issued divided by the unit price, and the number of units is to be adjusted to the nearest whole number.

## **5.5 Procedure for Offering Additional Units for Subscription**

If the trustee issues more units of any class pursuant to the preceding clause, the trustee must follow the following procedure:

- (a) The trustee must first offer the additional units to the unit holders in proportion to the number and in accordance with the classes of units then held by them;
- (b) The offer must be in writing and set out the number of units, the unit price, and the time within which the offer must be accepted, which cannot be less than 30 days. The offer must also say that the unit holders may accept less than the full number of units;
- (c) Units which are not accepted must be offered in the same manner to the unit holders who accepted the offer, in proportion to the number and in accordance with the classes of units then held by them, until the trustee is satisfied that no unit holder will accept further units. Subject to subclause 5.3, the trustee may then dispose of the balance at the unit price in whatever way the trustee thinks fit.
- (d) If a seventy five percent (75%) majority resolve that the trustee use a different procedure, the trustee must use that procedure provided that the valuation procedure outlined in this Deed must always



comply with the Act so as to ensure that the Fund remains a fixed trust and the unitholder's interests are vested and indefeasible.

#### **5.6 Limit on Number of Units**

Subject to the consent of a seventy five percent (75%) majority, the trustee may decide when a sufficient number of units of any class have been issued. The trustee must then inform the unit holders holding units of that class. After that date, no further units of that class may be issued for the purpose of raising additional sums.

#### **5.7 Additional Units where Value of the Units Exceeds \$1.00**

If the value of the units is more than \$1.00, the trustee may create further units to reduce the value of each unit. These units shall be allocated to the existing unit holders without charge in proportion to the number and in accordance with the class of units held. The value of the units can be reduced to any amount, even less than \$1.00.

#### **5.8 Reclassifying Units**

If a seventy five percent (75%) majority resolve, and subject to:

- (a) Any restrictions in clause 1 of the deed; and
- (b) The trustee obtaining the consent of each unit holder holding units that are to be reclassified; and
- (c) Ensuring that any reclassification must comply with the Act so as to ensure that the Fund remains a fixed trust and the unitholder's interests are vested and indefeasible;

the trustee may re-classify any units that have already been issued.

#### **5.9 Transferring must be in the way set out in this Deed**

Units must be transferred in the way required by this deed. Any transfer that breaches the provisions of this deed is void.

#### **5.10 Consent of Unit holders Generally Required**

Subject to the succeeding subclause, a unit holder may only transfer units after giving written notice to the trustee ("transfer notice") and obtaining the written consent of a seventy five percent (75%) majority. Such approval shall not be unreasonably withheld.

#### **5.11 When Consent Not Required**

Notwithstanding the preceding clause:

- (a) A unit holder may transfer units without the written consent of the other unit holders:
  - (i) to the specified relation of the unit holder;

- (ii) to the trustee under any trust document made solely for the benefit of one or more of the specified relations of the unit holder;
  - (iii) to the trustee of any trust where the power to appoint the trustee is held by one or more of the specified relations;
- (b) An executor or administrator of a deceased unit holder may - without the consent of the other unit holders, transfer units to the specified relation of the unit holder who is entitled under the Will or on the intestacy; and
  - (c) The trustee may transfer units to the specified relation of the unit holder, or to a replacement trustee, without the consent of the other unit holders.

### **5.12 Trustee's Duties after Receiving Transfer Notice**

As soon as practicable after receiving a transfer notice:

- (a) The trustee must offer the units to the other unit holders in proportion to the number and in accordance with the classes of units held by them. Each offer must be made in writing and must set out:
  - (i) the number and price of the units, and
  - (ii) the time within which the offer must be accepted, which must not be less than 7 days or more than 28 days from the date of the offer.
- (b) The trustee must give notice of the result of the offer to all unit holders. The trustee's notice must set out each of the following:
  - (i) the names of the buying unit holders;
  - (ii) the number of units bought by each unit holder; and
  - (iii) the place and time for settlement, the time must not be more than 30 days after the date of the notice.
- (c) The unit holder selling units must transfer the units that have been bought as soon as practicable after payment has been made to the transferring unit holder. If a surplus of units remain unsold, subject to clause 5.3, the unit holder may dispose of the units as he, she or it thinks fit at a price not less than the unit price. The trustee has a discretion to stipulate a period of time within which the unit holder must transfer the units.

### **5.13 Form For, and Time Of, Transfer**

A unit holder may only transfer units by completing and signing a form to the effect of the form in Schedule 3, or any other form approved by the trustee. After completing the procedure set out in this clause, the form must be signed by the transferee. The Transferor is the holder of the units until payment has been made by the transferee. The form (which must be stamped if required, with such Stamp Duty to be paid by the transferee

unless the transferor and the transferee agree otherwise) and the relevant unit certificates must be delivered to and left with the trustee.

#### **5.14 Transfer Where Seller does not Complete**

If a unit holder selling units fails to transfer the units, the trustee may receive and hold the purchase money in trust for that unit holder and register the name of the buyer. The trustee must do that if he or she is asked to by the person buying the units.

#### **5.15 Unit holders Selling Units Back to the Trustee**

- (a) The trustee may buy back units if:
  - (i) A unit holder asks the trustee to buy back any of his, her or its units by giving the trustee a request in writing together with the relevant Certificates; and
  - (ii) If a consenting resolution is passed by a seventy five percent (75%) majority.
- (b) In buying back the units, the trustee must use the following procedure:
  - (i) The units must be valued in accordance with subclause 4.6; and
  - (ii) Before buying back the units, the trustee must offer the units to all unit holders in proportion to the number and in accordance with the classes of units held by them at the unit price. After the trustee has offered the units to all unit holders in accordance with this paragraph, unit holders who have already bought units may buy any remaining units.
  - (iii) If any units are left, the trustee must buy back those units at the unit price. As soon as practicable, the trustee must cancel the units referred to in this paragraph and make an entry in the register.

#### **5.16 Buying Back Units and Cancelling Them to Reduce the Value of the Fund**

- (a) If a seventy five percent (75%) majority resolves that the value of the fund is to be reduced, the trustee may buy back units of any type in accordance with the procedure outlined in this subclause.
- (b) The trustee must obtain a valuation of the fund from the auditor of the trust or the trust's accountant in accordance with subclause 4.6.
- (c) At least 7 days prior to buying back the units, the trustee must give notice to the unit holders of the fact that the units are to be bought and then cancelled. The notice must set out the price for each unit to be bought back and the way in which the trustee will pay for them.

- (d) The unit holder must deliver the relevant Unit Certificates to the trustee and the trustee must pay for the units at the price fixed in accordance with the terms of this clause in cash or in assets.
- (e) The trustee must cancel any units bought under this clause from the date the trustee bought them and may not re-issue them. The trustee must cancel the Certificate and, if necessary, issue a Certificate for the balance of the units.
- (f) The cost of a valuation must be paid out of the fund.

#### **5.17 Trustee's Power to Compulsorily Buy Back Units**

The trustee may compulsorily buy back the units of a unit holder if any of the following happens:

- (a) A receiver, manager, official manager or administrator is appointed in relation to the unit holder;
- (b) A provisional or official liquidator is appointed under the Corporations Act in relation to the unit holder;
- (c) The unit holder becomes bankrupt, or assigns his or her interest for the benefit of the creditors, becomes a publicly represented person within the meaning of the State Corporation Act 1987, or becomes an involuntary patient under the National Health Act 1986; or
- (d) Any unit holder which is a company permits shareholders who are also unit holders to dispose of their shareholding or permits any change in the shareholding which alters the effective control of the company without a unanimous resolution of the other unit holders (this power to compulsorily buy back shall not apply where the transfer of shares or effective control of the company is to a person referred to in subclause 5.11);
- (e) The unit holder dies and the units are not transferred under subclause 6.12.

#### **5.18 Procedure for Compulsory Repurchase**

- (a) To buy units back compulsorily, the trustee must do each of the following:
  - (i) obtain a consenting resolution by a seventy five percent (75%) majority
  - (ii) give notice to the unit holder or to his or her representative, and
  - (iii) pay the unit holder or representative the unit price for each unit calculated in accordance with subclause 4.6;
- (b) A buy-back is effective even if the certificates are not surrendered. After a buy-back the trustee must remove the name of the unit holder from the register.

## **6. UNIT HOLDERS**

### **6.1 Definition of Majorities**

A reference in this deed to a simple majority or a specified percentage majority agreeing or passing a resolution to that effect means that majority or specified percentage of units that unit holders hold which give an entitlement to vote.

### **6.2 Calling Meetings**

- (a) The trustee may call a meeting at any time or, if a simple majority request a meeting as soon as practicable after receiving such request.
- (b) The trustee must deliver a notice setting out the general nature of the business of any meeting to each unit holder entitled to attend the meeting at least 7 days prior to the meeting unless all of the unit holders who are entitled to vote waive this requirement.

### **6.3 Quorum**

The quorum for a meeting is not less than 2 unit holders holding between them sixty percent of the units which give an entitlement to vote (including proxies). If all the units are held by 1 unit holder, the quorum is that person, or his or her proxy.

### **6.4 Appointing the Chair**

- (a) At a meeting called by the trustee, the trustee may nominate a unit holder or proxy as Chair.
- (b) At a meeting called at the request of the unit holders, the meeting may nominate a unit holder or proxy as Chair.

### **6.5 Voting**

In a meeting:

- (a) A unit holder who is entitled to vote may vote either in person or by proxy.
- (b) Where the votes are equal, the Chair is not entitled to a second or casting vote in addition to the vote he or she has as a unit holder or proxy.
- (c) A unit holder under 18 may only vote by a parent or guardian. The trustee may require proof of the appointment, or relationship, before that person can vote.

### **6.6 Proxies**

Subject to the following, a unit holder may appoint a proxy:

- (a) The unit holder or any attorney must sign the document appointing a proxy. If it is signed by an attorney, a certified copy of the power of attorney must be attached.

- (b) The document appointing a proxy and (where relevant) the authority under which it is signed must be given to the trustee before the meeting. If that does not happen, the proxy is not entitled to vote.
- (c) A proxy need not be a unit holder.

### **6.7 Polls**

- (a) At any meeting a question may be decided by a show of hands. However, a poll must be taken in either of the following circumstances:
  - (i) when the question must be decided by a specified majority of the votes of the unit holders present and voting, including proxies; or
  - (ii) when a poll is demanded by a unit holder before, or immediately after, any question is put to a show of hands.
- (b) In a poll, every unit holder, including a proxy, has a vote for each unit held which entitles that unit holder to vote. Joint unit holders are entitled to only 1 vote for each unit held which entitles the joint unit holders to vote, the unit holder named first on the register is entitled to cast it.

### **6.8 Adjournments**

With the consent of the meeting, the Chair may adjourn it to a place and time he or she chooses. The Chair must adjourn a meeting where there is no longer a quorum.

### **6.9 Minutes**

The trustee must arrange for minutes to be kept of the proceedings of all meetings. The trustee must send copies of the minutes to all unit holders within 21 days after a meeting. Minutes signed by the Chair are conclusive evidence of the business carried out unless there is evidence to the contrary.

### **6.10 Questioning Trustee's Duties, Powers or Discretion**

Subject to this deed, a unit holder is not entitled to interfere with or question the trustee's exercise of any power or discretion.

### **6.11 Register of Unit holders**

- (a) The trustee must maintain an up-to-date register of unit holders. The register must contain the following information:
  - (i) names and current addresses of unit holders;
  - (ii) the number and class of their units;
  - (iii) the relevant certificate numbers or letters.

- (b) A unit holder must notify the trustee of any change to his or her address.
- (c) Subject to subclauses 6.12 and 6.13, no notice of any trust may be entered in the register.

#### **6.12 Death of a Unit holder**

- (a) In the event of the death of a unit holder:
  - (i) if the deceased unit holder was a joint unit holder, the survivor is the only person who has any title or interest in the units;
  - (ii) if the deceased unit holder was not a joint unit holder, the executor or administrator of a deceased unit holder is the only person who has any title to the units.
- (b) The trustee must register a person as a unit holder if that person proves to the satisfaction of the trustee that:
  - (i) he she or it is entitled to any units because they are the surviving joint unit holder;
  - (ii) that person is a legal personal representative of a deceased unit holder who was not a joint unitholder and makes a declaration to the effect of the form in Schedule 4, and gives the trustee the certificate for the units; or
  - (iii) that he she or it is otherwise entitled to any units because of the death of a unit holder.

#### **6.13 Registration as a Unit holder After Bankruptcy**

The trustee may register a person as a unit holder if one of the following conditions are met:

- (a) That person proves to the satisfaction of the trustee that he or she is entitled to any units because of the bankruptcy of a unit holder; or
- (b) That person is the trustee in bankruptcy of the bankrupt estate of the unit holder and makes a declaration to the effect of the form in Schedule 5.

#### **6.14 No Need to take Notice of Equities**

The trustee need not take notice of any trust or equity affecting any unit or certificate except where ordered to by a court.

#### **6.15 Receipts**

The receipt of a unit holder, or the executor or administrator of a deceased unit holder, for any money due or any property transferred to a unit holder is a good discharge to the trustee.

## **7. ENDING THE TRUST**

### **7.1 Unit holders can Tell the Trustee to End the Trust**

The trustee must end the trust if a seventy five percent (75%) majority are present at a meeting -including those present by proxy - and that majority resolves that the trustee is to do so.

### **7.2 Procedure When the Trust is to be Ended**

When the trust is to be ended, the trustee must do each of the following things:

- (a) Convert the investments of the fund into money;
- (b) Give each unit holder notice that the trust is to end and of the proposed distribution, and
- (c) Distribute the fund, less all costs, charges and expenses, in accordance with the procedure set out in clause 3 to the unit holders;

PROVIDED THAT:

- (d) The trustee may postpone converting the investments into money if the trustee believes that it is in the interest of the unit holders, the trustee will not be responsible for any loss attributable to a postponement;
- (e) The trustee may, with the consent of a seventy five percent (75%) majority, resolve not to convert the investments into money and satisfy the distributions under this clause with the investments of the fund in specie; and
- (f) The trustee may retain part of the fund to meet outgoings or liabilities, whether actual or contingent and once payment has been made of those outgoings or liabilities, any surplus funds must be distributed to the unit holders in accordance with paragraph 7.2(c) of this clause.

### **7.3 Trustee to Give Final Distribution Statement**

When the whole of the fund is distributed to unit holders under this clause, the trustee must give a statement to unit holders who have received a distribution in accordance with this clause.

## **8. MISCELLANEOUS**

### **8.1 Amending the Trust Document**

The trustee may amend this deed subject to the following:

- (a) A seventy five percent (75%) majority must pass a resolution agreeing to the amendment;
- (b) The amendment must be in writing and executed by the trustee; and



- (c) The amendment must not adversely affect any absolute entitlement of a unit holder.

## **8.2 Appoint Auditor**

- (a) The trustee may appoint an Auditor of the trust if a seventy five percent (75%) majority agree in writing that an auditor must be appointed. The auditor holds office:
  - (i) until he or she retires by written notice, or
  - (ii) until he or she is requested to retire by written notice of a resolution of the trustee with the consent of a seventy five percent (75%) majority.
- (b) If an Auditor retires under the preceding subclause, the trustee must immediately appoint another auditor unless a seventy five percent (75%) majority agree in writing or resolve that an Auditor need not be appointed.

## **8.3 Notices**

- (a) A notice that is given under this deed must be in writing. A notice is given if it is either delivered, sent by facsimile or by post in a prepaid envelope addressed:
  - (i) if to the unit holder, to his, her or its address in the register; or
  - (ii) if to the trustee, to the address last notified.
- (b) If the notice is sent by post, it is regarded as having been received on the second day after the posting.
- (c) Notices sent by facsimile after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next business day at the place where it is received.
- (d) It is sufficient to serve a notice or document on any one of the several joint unit holders.

## **8.4 Relationship of Trustee, Unit holders**

Nothing in this deed shall constitute or shall be deemed to constitute or give rise to:

- (a) The relationship of principal and agent between the trustee and the unit holders;
- (b) The relationship of partners as between:
  - (i) the trustee and the unit holders;
  - (ii) the unit holders inter se;
- (c) Any association between any or all of the unit holders.

## 8.5 Limitation of Liability of Unit holders

- (a) Notwithstanding any other provision of this deed or provision deemed to be included in this deed or any rule of law to the contrary, no unit holder shall be under any obligation personally to indemnify the trustee or any creditor of the trustee in the event that there is any deficiency of assets of the trust as compared with the liabilities of the trustee.
- (b) The only rights, if any, of indemnity of the trustee or of such creditor shall be limited to recourse to the assets of the trust.
- (c) A unit holder shall only be liable to the trustee acting as trustee of the trust to the extent to which the consideration (if any) payable by the unit holder to the trustee for the issue of units to the unit holder may be unpaid and outstanding.
- (d) The trustee expressly waives, releases, forfeits and abandons all rights and remedies which it otherwise might have at law or in equity to recover monies from a unit holder by reason of any rights of indemnity or subrogation notwithstanding that any such right may not be able to be satisfied or discharged in whole or in part out of the trust.

## 8.6 Interpretation

- (a) In this deed, unless the context requires otherwise, the following expressions will have the following meanings:
  - (i) "**accounting period**" means such period as the trustee may from time to time determine to be an accounting period and subject to any contrary determination by it means such period of twelve months ending on the 30th day of June in each year PROVIDED firstly that the period commencing on the date of this deed and ending on the 30th day of June next shall be an accounting period and secondly that the period commencing on the first day of July prior to the distribution date and ending on the distribution date shall be an accounting period.
  - (ii) "**allocated fund**" has the meaning set out in paragraph 3.4(b);
  - (iii) "**domestic partner**" includes a spouse, and also includes another person of a different or the same gender who, although not legally married to the beneficiary, lives or formerly lived with the beneficiary on a bona fide domestic basis as the spouse or partner of the beneficiary and a person does not cease to be a "domestic partner" by virtue of a change in his or her marital or social status.
  - (iv) "**excluded person**" any person determined under this deed to be an excluded person;
  - (v) "**majority**", "**simple majority**" and a reference to a specified percentage majority will have the meaning given in subclause 6.1;

- (vi) "net income" is defined in clause 3 of this deed;
- (vii) "specified relation" of a unit holder in this deed means a domestic partner, child, grandchild, brother, sister, niece, nephew or the domestic partner of a child, grandchild, brother, sister, niece or nephew of the unit holder;
- (viii) "the Act" means the Income Tax Assessment Act 1997 (as amended).
- (ix) "the 1936 Act" means the Income Tax Assessment Act 1936 (as amended).
- (x) "unit holder" means the holder of units;
- (xi) "vesting day" means the day on which the final distribution of the fund has been completed in accordance with clause 7 of this deed;

(b) The Schedules and any amendments to this deed shall be read as part of this deed.

(c) In this deed:

- (i) A reference to "clause", "subclause", "paragraph" or "subparagraph" is intended to refer to and include provisions illustrated by the following:

**"1. Clause**

**1.1 Subclause**

(a) Paragraph

(i) Subparagraph"

**8.7 Schedules**

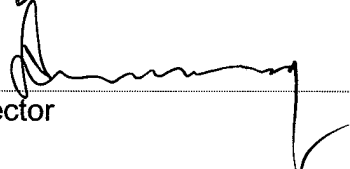
The schedules and execution clauses to this deed are set out on the following pages.

**EXECUTED AS A DEED:**

**EXECUTED by STRABANE AVENUE** )  
**PTY LTD (ACN 142 429 507) in** )  
**accordance with the Corporations Act:** )  
 )

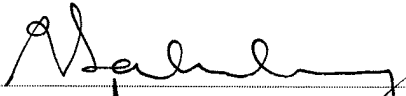
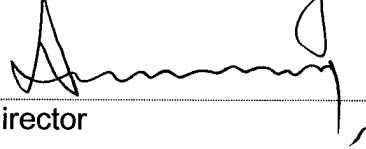
  
 \_\_\_\_\_  
 Director

DAVID HYSLOP  
 \_\_\_\_\_  
 Full name

  
 \_\_\_\_\_  
 Secretary/Director

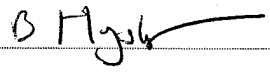

SIMON JOHN SALISBURY  
 \_\_\_\_\_  
 Full name

**EXECUTED by BROADGULLY PTY LTD** )  
**(ACN 142 429 865) as trustee for** )  
**the BROADGULLY CUSTODIAN** )  
**TRUST in accordance with the** )  
**Corporations Act:**

  
\_\_\_\_\_  
Director  
  
\_\_\_\_\_  
Secretary/Director

*Gwendolyn Ruth Salisbury*  
\_\_\_\_\_  
Full name  
*Simon John Salisbury*  
\_\_\_\_\_  
Full name

**EXECUTED by LYTTON PTY LTD** )  
**(ACN 142 429 833) as trustee for the** )  
**LYTTON CUSTODIAN TRUST in** )  
**accordance with the Corporations Act:** )

  
\_\_\_\_\_  
Director  
  
\_\_\_\_\_  
Secretary/Director

*Bronwynne Hyslop*  
\_\_\_\_\_  
Full name  
*David Hyslop*  
\_\_\_\_\_  
Full name

**SCHEDULE 1 - APPLICATION FOR UNITS**

**THE STRABANE UNIT TRUST**

To the trustee: **STRABANE AVENUE PTY LTD (ACN 142 429 507)**

Please issue me \_\_\_\_\_ (number) \_\_\_\_\_ ordinary (specify other type of unit) units for \$1.00 each/for \$1.00 each and partly paid to \_\_\_\_\_ cents in the dollar. A cheque for \$\_\_\_\_\_ is enclosed.

If I am accepted as a unitholder I agree to be bound by the provisions of the trust document.

I understand that the trustee does not have to accept my application. If it is accepted I will be issued with a certificate under clause 5.2. Once this happens I am bound by the whole document.

I am aware that clause 5.6 allows the trustee to decide when sufficient funds have been accepted and, if that happens my application will not be accepted. I have been strongly advised to read the whole document, especially the wide powers given to the trustee and the liabilities attaching to unitholders and the trustee.

Date: \_\_\_\_\_

Signed by the Applicant: \_\_\_\_\_

(name in full) \_\_\_\_\_

(Witness) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 2 - CERTIFICATE**

**THE STRABANE UNIT TRUST**

NUMBER: \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_ is entitled to hold  
\_\_\_\_\_ (number of units) \_\_\_\_\_ ordinary/(specify type of unit) units in the  
**STRABANE UNIT TRUST** subject to the conditions set out in the trust deed.

DATE: \_\_\_\_\_

Signed by the Trustee: \_\_\_\_\_

**SCHEDULE 3 - TRANSFER OF UNITS**

**THE STRABANE UNIT TRUST**

I, \_\_\_\_\_ (Transferor) transfer \_\_\_\_\_ (number of units) \_\_\_\_\_ ordinary/ (specify type of units) units in the trust to \_\_\_\_\_ (transferee).

The transferor agrees to be bound by the conditions of the fund and the trust deed.

Signed by the transferor \_\_\_\_\_

\_\_\_\_\_

(Witness)

Signed by the transferee \_\_\_\_\_

\_\_\_\_\_

(Witness)

**SCHEDULE 4 - DECLARATION**

**THE STRABANE UNIT TRUST**

To the trustee: **STRABANE AVENUE PTY LTD (ACN 142 429 507)**

\_\_\_\_\_ I/We being the Executor(s) of the Will Administrator(s) of  
the estate of \_\_\_\_\_ deceased, the holder of \_\_\_\_\_  
(number of units) \_\_\_\_\_ ordinary/(specify other type of units) units.

Request that you register the units.

Please also issue a Certificate in \_\_\_\_\_ name(s).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Name(s)

\_\_\_\_\_  
Address



**SCHEDULE 5 - DECLARATION**

**THE STRABANE UNIT TRUST**

To the trustee: **STRABANE AVENUE PTY LTD (ACN 142 429 507)**

\_\_\_\_\_ I/We being the trustee(s) in bankruptcy of the bankrupt estate of \_\_\_\_\_, the holder of \_\_\_\_\_ (number of units) \_\_\_\_\_ ordinary/(specify other type of units) units.

Request that you register the units.

Please also issue a Certificate in \_\_\_\_\_ name(s).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Name(s)

\_\_\_\_\_  
Address