

## Disclosure of beginning to have substantial holding

*Section 276, Financial Markets Conduct Act 2013*

To NZX  
and  
To Cannasouth Ltd

Date this disclosure made: 21 June 2023

Date on which substantial holding began: 31 May 2023

### **Substantial product holder(s) giving disclosure**

Full name(s): Mark James Scapens

### **Summary of substantial holding**

Class of quoted voting products: Ordinary Shares

Summary for Mark James Scapens

For this disclosure,—

- (a) total number held in class: 23,887,591
- (b) total in class: 320,533,594
- (c) total percentage held in class: 7.45%

### **Details of relevant interests**

Details for Mark James Scapens

1/. Nature of relevant interest(s): Mark James Scapens as a trustee of the Mark & Sharon Scapens (No 2) Trust has the power to exercise a right to vote attached to ? of the shares in Cannasouth Limited

For that relevant interest,—

- (a) number held in class: 23,099,376
- (b) percentage held in class: 7.21%
- (c) current registered holder(s): N/A
- (d) registered holder(s) once transfers are registered: Mark & Sharon Scapens (No.2) Trust

Pursuant to Regulation 139 a copy of the Deed of Trust for the Mark & Sharon Scapens (No2) Trust is attached

2/. Nature of relevant interest(s): Mark James Scapens as registered holder

For that relevant interest, -

- (a) number held in class: 788,215
- (b) percentage held in class: .025%
- (c) current registered holder(s): N/A
- (d) registered holder once transfers registered: Mark James Scapens

No relevant agreement document needs to be attached under Regulation 139

**Details of transactions and events giving rise to substantial holding**

Details of the transactions or other events requiring disclosure: Issue of:

1/. 23,099,376 shares in Cannasouth Limited to Mark & Sharon Scapens (No 2) Trust

2/. 788,215 shares in Cannasouth Limited to Mark James Scapens

On June 1 2023 being the total issued:

1/. In consideration of the sale of all their shares in Egalis Group New Zealand Limited

(23,099,376 and 788,215 respectively) pursuant to a Sale and Purchase Agreement between Cannasouth Limited and the shareholders of Egalis Group New Zealand Limited; and

2/. Pursuit to a capital raise carried out by Cannasouth Limited (pursuit to which 23,099,376 and 788,215 shares were respectively issued to each of the above shareholders).

**Additional information**

Address(es) of substantial product holder(s) 31 The Mall Mount Maunganui 3116

Contact details: email: [mark@innoscape.co.nz](mailto:mark@innoscape.co.nz) phone: 021 991 881

**\* Disclosure has effect for purposes of directors' and senior managers' disclosure**

Mark James Scapens is also a non-executive director of Cannasouth Limited. This disclosure also constitutes disclosure for the purposes of the directors' and senior managers' disclosure obligations.

**Certification**

I, Mark James Scapens, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line.

Mark Scapens

Non- Executive Director – Cannasouth Limited

DATED 12 March

2004

**DEED OF SETTLEMENT CONSTITUTING  
THE MARK & SHARON SCAPENS (NO.2)  
TRUST**



**COONEY LEES MORGAN**  
BARRISTERS SOLICITORS NOTARY PUBLIC

# THE MARK & SHARON SCAPENS (NO.2) TRUST

## INDEX

### CLAUSE SUBJECT MATTER

1.	DEFINITIONS.....	1
2.	NAME OF TRUST.....	3
3.	ACKNOWLEDGEMENT OF TRUST.....	3
4.	TRUSTS OF INCOME.....	3
5.	ACCUMULATION IN SIX MONTHS WITHOUT PAYMENT OR APPLICATION OF INCOME.....	4
6.	ADVANCE OF CAPITAL .....	4
7.	RESETTLEMENT OF TRUST .....	5
8.	PAYMENT OR ADVANCES TO GUARDIANS OF MINORS .....	5
9.	FINAL BENEFICIARIES ACCOUNT OF ADVANCES OF CAPITAL .....	6
10.	POWERS TO PARTITION TRUST FUND.....	6
11.	TRUSTS ON VESTING DAY .....	6
12.	NATURE and EXTENT OF TRUSTEES' POWERS and DISCRETIONS.....	7
13.	POWER TO APPOINT NEW TRUSTEES.....	7
14.	EXTENT OF POWERS TO APPOINT NEW OR ADDITIONAL TRUSTEES and REMOVE TRUSTEES .....	8
15.	DEALING BY INTERESTED TRUSTEES.....	8
16.	TRUSTEES' RIGHTS TO REMUNERATION FROM COMPANIES .....	9
17.	TRUSTEES' RIGHTS TO REMUNERATION AS PROFESSIONALS.....	9
18.	INVESTMENTS NOTWITHSTANDING LIABILITIES .....	9
19.	TRUSTEES' INDEMNITY EXCEPT FOR FRAUD.....	9
20.	TRUSTEES' GENERAL POWERS .....	10
21.	NO LIABILITY OF TRUSTEES FOR FAILURE TO DIVERSIFY .....	10
22.	TRUSTEES' POWERS EXTENDED .....	11
22.1	SECURITIES.....	11
22.2	SELLING TRUST PROPERTY.....	11
22.3	RETAINING TRUST PROPERTY .....	11
22.4	LIFE POLICIES.....	11
22.5	BUILDING.....	12
22.6	JOINT VENTURES .....	12
22.7	BORROWING .....	12

22.8	<b>GUARANTEES.....</b>	<b>13</b>
22.9	<b>DEALING WITH BENEFICIARIES .....</b>	<b>13</b>
22.10	<b>LOANS TO BENEFICIARIES.....</b>	<b>13</b>
22.11	<b>FINANCIAL DEALINGS.....</b>	<b>14</b>
22.12	<b>PAYMENT OF GIFT and ESTATE DUTIES.....</b>	<b>14</b>
22.13	<b>SUBDIVISIONS.....</b>	<b>15</b>
22.14	<b>RECOUPMENT OF LOSSES.....</b>	<b>15</b>
22.15	<b>TRUSTEES' AGENTS .....</b>	<b>15</b>
22.16	<b>RETIREMENT VILLAGE.....</b>	<b>15</b>
22.17	<b>OCCUPATION BY BENEFICIARY.....</b>	<b>16</b>
23.	<b>BANKRUPTCY OR ASSIGNMENT BY BENEFICIARY .....</b>	<b>16</b>
24.	<b>TRUSTEES' UNANIMOUS DECISIONS.....</b>	<b>16</b>
25.	<b>TRUSTEES' MINUTE BOOK .....</b>	<b>16</b>
26.	<b>REVOCATION OF TRUST POWERS.....</b>	<b>16</b>
27.	<b>CARRYING ON BUSINESS.....</b>	<b>17</b>
28.	<b>CAPITAL DIVIDENDS .....</b>	<b>19</b>
29.	<b>APPORTIONMENT BETWEEN CAPITAL and INCOME .....</b>	<b>19</b>
30.	<b>RESTRICTIONS ON FARM LAND OWNERSHIP .....</b>	<b>19</b>
31.	<b>AMENDMENT OF TRUSTS .....</b>	<b>20</b>
32.	<b>POWER TO ADD/DELETE BENEFICIARIES.....</b>	<b>21</b>

## THE MARK & SHARON SCAPENS (NO.2) TRUST

**THIS DEED** is made the 12<sup>th</sup> day of March 2004

**BETWEEN:** **MARK JAMES SCAPENS** of Tauranga, Company Director and **SHARON KATHLEEN SCAPENS** of Tauranga, Company Director (hereinafter called "the Settlers") of the one part

**A N D:** **MARK JAMES SCAPENS** of Tauranga, Company Director, **SHARON KATHLEEN SCAPENS** of Tauranga, Company Director and **CLM TRUSTEES LIMITED** of Tauranga a duly incorporated company (hereinafter called "the Trustees") of the other part

### RECITALS

### WHEREAS

- A. The Settlers are desirous of making provision for the benefit of the persons or objects hereinafter described and accordingly of creating such trusts as shall hereinafter appear.
- B. The Settlers have caused to be paid into the joint names of the Trustees the sum of **ONE HUNDRED DOLLARS** (\$100.00) **TO BE HELD** by the Trustees upon the trusts and with the powers hereinafter contained and it is contemplated that further money investments and property may from time to time be paid to or transferred into or vested in the joint names or control of the Trustees.
- C. The Trustees have consented to become the Trustees hereof upon the trusts and with and subject to the powers and provisions hereinafter expressed.

**NOW IN CONSIDERATION** of the premises **THIS DEED WITNESSETH** as follows:

### 1. DEFINITIONS

**1.1** In this Deed the following terms where the context admits shall have the following meaning:

- (a) "The Trustees" shall include the Trustees or Trustee for the time being hereof whether original additional or substituted.



- (b) "The Trust Fund" shall mean the said sum of **ONE HUNDRED DOLLARS** (\$100.00) and the property and investments from time to time representing the same and any property hereafter transferred by the Settlers to the Trustees and directed to be held on like trusts and any further property whether real or personal of what nature and kind soever which may hereafter be otherwise acquired by the Trustees from any source whatever and whether by way of gift bequest devise purchase exchange or otherwise howsoever for the purposes of the said trusts and the monies and investments from time to time representing such property and the income therefrom.
- (c) "The Vesting Day" shall mean:
- (i) The day upon which shall expire the period of eighty (80) years from the date of execution of these presents being within the perpetuity period permitted to be specified herein by virtue of the provisions of Section 6 of the Perpetuities Act 1964 and the perpetuity period applicable to these presents hereby specified accordingly.
  - (ii) Such date being earlier than the day specified above as the Trustees may in their absolute and uncontrolled discretion by deed appoint in respect either of the whole or any specified part of the Trust Fund and any day so appointed shall for all purposes be and become the Vesting Day in respect of the Trust Fund or specified part thereof as the case may be.
- (d) "The Trust Period" shall mean the period from the date of execution hereof until the Vesting Day.
- (e) "The income year" means the year ending on the 31st of March or such other date as the Trustees may from time to time determine having regard to the annual balance date of any business operations carried on by the Trustees pursuant to the powers contained herein.
- (f) "The Final Beneficiaries" shall mean **SAMMY-ROSE SCAPENS, PHILLIP JAMES KING** and **JOLIAN WAYNE KING**.
- (g) "The Discretionary Beneficiaries" shall mean:



- (i) The Final Beneficiaries; and
- (ii) The Trustees for the time being of the Scapens Family Trust (created by Deed of Trust dated 29<sup>th</sup> April 1997); and
- (iii) The said **MARK JAMES SCAPENS**; and
- (iv) The said **SHARON KATHLEEN SCAPENS**.

**1.2** Side headings and the index are for convenience only and do not form part of the context of this Deed.

## **2. NAME OF TRUST**

As a matter of administrative convenience the Trust Fund established by this Deed shall be known as the **MARK & SHARON SCAPENS (NO.2) TRUST** but the Trustees shall have full power and authority to amend or change such name in such manner as they shall think fit.

## **3. ACKNOWLEDGEMENT OF TRUST**

The Settlers **HEREBY DIRECT** and the Trustees **HEREBY ACKNOWLEDGE** that the Trustees shall stand possessed of the Trust Fund upon the trusts and with the powers hereinafter set forth.

## **4. TRUSTS OF INCOME**

During the Trust Period the Trustees with respect to all or any part or parts of the net income of the Trust Fund (after payment of all expenses and other charges to be met from income) may determine:

- 4.1** To pay or apply the same to for or towards the personal support maintenance comfort education advancement in life or otherwise howsoever for the benefit of such of the Discretionary Beneficiaries as may from time to time be living or in existence during the said period or such one or more of them to the exclusion of the others or other of them at such time in such manner and if more than one in such shares and proportions as the Trustees in their absolute and uncontrolled discretion shall think proper;
- 4.2** To apply the whole or such part thereof as the Trustees may think fit of the Trust fund in and towards the payment of any liabilities incurred by the

Trustees under these presents (including the premium or premiums payable on any policy or policies of assurance forming part of the Trust Fund) or in and towards the repayment of any monies owing as unpaid purchase money or on mortgage of any of the assets of the Trust Fund or owing otherwise howsoever or in the payment of interest or other charges properly payable in respect of such liabilities premiums unpaid purchase monies mortgages or monies owing otherwise howsoever and any income applied in the payment of liabilities in the nature of capital shall be deemed to be an accretion to the capital of the Trust Fund and follow the destination thereof unless the Trustees otherwise resolve during or within six months after each period or year ending on the balance date in which such income is expended.

**4.3** To apply the whole or any part of the net annual income of the Trust Fund in or towards such general purposes charitable by the law of New Zealand as the Trustees may in their absolute and uncontrolled discretion determine and may so apply the same in or towards any one or more specific purpose within those general purposes and further may so apply the same by payment transfer or assignment to another trust (whether established by them or not) for such general purposes or such specific purposes or any of them.

**4.4** To make or retain out of or charge against income in any income year any payments reserves or other provisions of a capital nature for any of the purposes mentioned herein or incidental to the exercise of any of the powers authorities or discretions conferred upon the Trustees by this Deed.

## **5. ACCUMULATION IN SIX MONTHS WITHOUT PAYMENT OR APPLICATION OF INCOME**

Any income of any income year not so paid applied or retained during or within six (6) months from the end of that income year shall be accumulated and any income so accumulated shall be added to and form part of the capital of the Trust Fund and shall be subject to the trusts and powers herein declared in respect of the Trust Fund.

## **6. ADVANCE OF CAPITAL**

During the Trust Period the Trustees may determine:

**6.1** At any time or times and from time to time to pay apply or transfer the whole or any part of the capital of the Trust Fund to or for the benefit of such of the Discretionary Beneficiaries as may then be living or such one or more of them to the exclusion of the others or other of them at such times and if more than one in such proportions and in such manner and subject to such terms and conditions as the Trustees shall think fit and without limiting the generality of the foregoing to so pay apply or transfer the same for the maintenance comfort education advancement in life or otherwise howsoever for the benefit of such beneficiary or beneficiaries.

**6.2** At any time or times and from time to time to pay apply or transfer the whole or any part of the capital of the Trust Fund in or towards such general purposes charitable by the law of New Zealand as the Trustees may in their absolute and uncontrolled discretion determine and to so pay apply or transfer the same in or towards any one or more specific purposes within those general purposes and further to so pay apply or transfer the same by payment transfer or assignment to another trust (whether established by them or not) for such general purposes or such specific purposes or any of them.

## **7. RESETTLEMENT OF TRUST**

The powers of the Trustees in relation to income and capital contained in clauses 4, 5 and 6 hereof shall without in any way limiting or restricting such powers include the power for the Trustees in their absolute and uncontrolled discretion at any time or times during the Trust Period by deed to settle **UPON TRUST** in any manner which in the opinion of the Trustees is for the benefit of any person who shall for the time being be a Discretionary Beneficiary under the Trusts hereof the whole or any portion or portions of the capital or income of the Trust Fund **PROVIDED HOWEVER** that such resettlement shall not transgress the rule against perpetuities.

## **8. PAYMENT OR ADVANCES TO GUARDIANS OF MINORS**

In the exercise of any of their powers and discretions conferred in clauses 4 and 6 hereof but without in any way restricting such powers the Trustees may pay the whole or any part of the capital and income of the Trust Fund for the purposes aforesaid to the parent or guardian of any of the Discretionary Beneficiaries for the time being a minor without being bound to see to the application thereof.

## 9. FINAL BENEFICIARIES ACCOUNT OF ADVANCES OF CAPITAL

In the exercise of any of their powers and discretions conferred in clauses 6 and 7 hereof but without in any way restricting such powers the Trustees may upon the transfer or resettlement of any portion of the capital of the Trust Fund to or for a Final Beneficiary or at any time thereafter on or prior to the Vesting Day direct in writing that the sum transferred or resettled is to be taken into hotchpot in ascertaining the share of the Final Beneficiary on the Vesting Day and upon such direction that Final Beneficiary shall not share in the Trust Fund upon the Vesting Day without bringing the capital so transferred or resettled into hotchpot and accounting therefor.

## 10. POWERS TO PARTITION TRUST FUND

In the exercise of any of their powers and discretions conferred in clauses 6 and 7 hereof but without in any way restricting such powers the Trustees but without being obliged to give any notice to any person may appropriate and partition any portions of the Trust fund or any part thereof or any asset or assets including an undivided interest in any asset or assets in or towards the share whether absolute contingent or settled of any beneficiary or beneficiaries (whether sui juris or not) and to determine values for that purpose in such manner as the Trustees shall think fit and with power to transfer any undivided interest in any property to that person entitled thereto or to other trustees and so that any such property may thereafter be held by the Trustees as tenants in common with any other persons.

## 11. TRUSTS ON VESTING DAY

On the Vesting Day the Trustees shall stand possessed of such of the capital and income of the Trust Fund as may then remain **UPON TRUST** for such of the Final Beneficiaries as shall then be living and if more than one in equal shares as tenants in common absolutely **PROVIDED HOWEVER** that in case any of the Final Beneficiaries shall die before the Vesting Day leaving a child or children or remoter issue who shall be living on the Vesting Day such child or children or remoter issue shall stand in the place of such deceased Final Beneficiary and take per stirpes and equally between them if more than one the share of the Trust Fund which such deceased Final Beneficiary would have taken had he or she been living on the Vesting Day.

In respect of any portion of the Trust Fund not so vesting the Trustees shall stand possessed of such of the capital and income of the Trust Fund as may then remain for such person or persons, as tenants in common if more than one, who would have been entitled to the estate of **MARK JAMES SCAPENS** and the estate of **SHARON KATHLEEN SCAPENS** had each died intestate on the Vesting Day leaving no surviving spouse, for the purposes of this paragraph the Trust Fund being divided equally between the estates of **MARK JAMES SCAPENS** and **SHARON KATHLEEN SCAPENS**.

**12. NATURE and EXTENT OF TRUSTEES' POWERS and DISCRETIONS**

Subject always to any express provision to the contrary contained herein every discretion vested in the Trustees shall be absolute and uncontrolled and every power vested in them shall be exercisable at their absolute and uncontrolled discretion **PROVIDED HOWEVER** that no person who for the time being is both a Trustee of all or any of the trusts hereof and beneficiary hereunder may exercise the discretionary powers contained in clauses 4, 6, 7, 9 and 10 in his own favour and the remaining Trustee or Trustees only shall have power to exercise the said discretionary powers in favour of a Discretionary Beneficiary who shall for the time being be a Trustee hereunder.

**13. POWER TO APPOINT NEW TRUSTEES**

The statutory power of appointment of new Trustees hereof shall be vested in **MARK JAMES SCAPENS** and **SHARON KATHLEEN SCAPENS** (the "Appointors") jointly during their lifetime and thereafter shall be vested in the survivor of them and such person as the deceased Appointor may by Will nominate for the purpose and if there be no such nomination then in the personal representatives of the deceased Appointor. On the death of the surviving Appointor this power of appointment shall vest in such persons as each of the Appointors may have by Will nominated for the purpose or if there is no such nomination then in the personal representatives of the Appointors. If there shall be no personal representative of the Appointors able or willing to act then this power of appointment shall vest in the person or persons in whom the statutory power is vested by the Trustee Act 1956 or any statutory modification thereof for the time being in force.



#### **14. EXTENT OF POWERS TO APPOINT NEW OR ADDITIONAL TRUSTEES and REMOVE TRUSTEES**

The person or persons in whom the power of appointment of new trustees is vested shall have power:

- 14.1** To appoint at any time or times an additional trustee or trustees of all or any of the trusts whether or not occasion shall have arisen for appointment of a new trustee or trustees.
- 14.2** To appoint any person or persons at any time or times as advisory trustee or trustees of the trusts hereof.
- 14.3** To appoint himself herself or themselves or any of themselves to be a trustee of all or any of the trusts hereof.
- 14.4** To remove any existing Trustee provided that if such removal will result in the number of continuing Trustees being reduced below two natural persons or one corporate Trustee this power of removal shall be exercisable only in conjunction with the appointment of a new Trustee or Trustees so that there shall be at all times following the exercise of any power pursuant to this clause at least two Trustees who are natural persons or one corporate Trustee.

#### **15. DEALING BY INTERESTED TRUSTEES**

Any Trustee shall be entitled to act hereunder and to exercise all of the powers hereby conferred upon them or it notwithstanding that such Trustee is or may be or becomes associated (whether as director or otherwise in a private capacity or as trustee of any other trust) with any company to which the Trustees sell or lease any property forming part of the Trust Fund or in which the Trustees hold or propose to acquire shares or other investments as part of the Trust Fund or with which the Trustees otherwise deal as Trustees of these presents and notwithstanding that any Trustee may be Trustee of any other trust to or from which the Trustees propose to sell or purchase shares or other property or with which the Trustees otherwise deal as Trustees of these presents and notwithstanding that the interests or duty of such Trustee in any particular matter or matters may conflict with his duty to the Trust Fund or the beneficiaries therein and notwithstanding that such Trustee is selling or leasing any real or personal property forming part of the Trust Fund to itself or to



himself or purchasing any such property to form part of the Trust Fund from itself or himself or otherwise deals as Trustee of these presents with itself or with himself in a personal capacity.

#### **16. TRUSTEES' RIGHTS TO REMUNERATION FROM COMPANIES**

Any Trustee or Advisory Trustee hereof may act as director officer or employee of any company the shares or debentures of which form part of the Trust Fund or as director officer or employee of any subsidiary company of any such company and may retain for itself or himself any remuneration which it or he may receive as any such director officer or employee any rule of law or equity to the contrary notwithstanding and also notwithstanding that the votes or other rights attached to any such shares or debentures may have been instrumental either alone or in conjunction with other votes or rights in securing such appointment as director officer or employee.

#### **17. TRUSTEES' RIGHTS TO REMUNERATION AS PROFESSIONALS**

Any Trustee or Advisory Trustee for the time being hereof (other than the Settlers or any person who shall have settled any monies investments or property upon the Trustees as part of or as accretions to the Trust Fund or upon or by reference to the trusts of these presents) being a solicitor, accountant or other person engaged in any profession business or trade shall be entitled to be paid all usual professional business and trade charges for business transacted time expended and all acts done by him or any employee or partner of his in connection with the trusts hereof including acts which a Trustee not being in any profession business or trade could have done personally.

#### **18. INVESTMENTS NOTWITHSTANDING LIABILITIES**

The Trustees are expressly authorised to exercise the powers of investment herein conferred upon them notwithstanding that the Trust Fund may be subject to any liability or liabilities and the Trustees shall not be liable for any loss occurring on the realisation of such investments.

#### **19. TRUSTEES' INDEMNITY EXCEPT FOR FRAUD**

**19.1** No Trustee of these presents shall be liable for any loss not attributable to dishonesty or to the wilful commission by the Trustee of any act known to the

Trustee to be a breach of trust and in particular no Trustee shall be bound to take any proceedings against a co-trustee or former trustee of the Trust Fund for any breach or alleged breach of trust committed by such co-trustee or former trustee.

**19.2** Each Trustee or former Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any liability which that Trustee may incur in any way arising out of or in connection with that Trustee acting or purporting to act as a Trustee of the Trust, provided such liability is not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of Trust.

## **20. TRUSTEES' GENERAL POWERS**

The Trustees shall have full power and authority to sell lease invest mortgage deal with and generally manage and order the Trust Fund in all respects as if the Trustees were the absolute beneficial owners thereof and whether or not any such investment shall be of a nature authorised by law and the particular powers hereinafter conferred upon the Trustees shall be deemed to be in aid of this present power but shall not derogate from the foregoing generality thereof.

## **21. NO LIABILITY OF TRUSTEES FOR FAILURE TO DIVERSIFY**

Notwithstanding anything in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others meaning (in either case) because the investments of the Trust Fund are not diversified.

The duties imposed by Section 13B and 13C of the Trustee Amendment Act 1988 are hereby expressly negated. It shall not be necessary for the Trustees to take account of any of the matters in Section 13E of the Trustee Amendment Act 1988 in making any investment decisions.

## **22. TRUSTEES' POWERS EXTENDED**

The Trustees in addition to all powers vested in them by statute or at law and in their absolute and uncontrolled discretion may exercise the following powers and authorities or any of them whether in respect of the Trust Fund or during the infancy of any beneficiary in respect of any property held by the Trustees but allotted appropriated credited in account or otherwise held for such infant beneficiary, namely:

### **22.1 SECURITIES**

To expend any portions of the Trust Fund on the acquisition of real or personal property or securities of any nature whatever in New Zealand or elsewhere notwithstanding that the same are not securities authorised by law for the investment of trust monies with power in particular and by way of illustration and not of limitation to acquire either by purchase or subscription in shares debentures notes or other securities in limited liability companies which may not be fully paid up or be subject to a reserve liability and with power in particular if they think fit to expend the said parts in freehold or leasehold property (including a stratum estate in freehold or leasehold) or shares in any flat or office owning company or in any other property and notwithstanding that the Vendor of any property purchase pursuant hereto may be one of the Trustees.

### **22.2 SELLING TRUST PROPERTY**

To sell call in and convert into money the whole or any part or parts of the Trust Fund at such time or times in such manner and upon such terms as to payment of purchase price and otherwise as they think fit.

### **22.3 RETAINING TRUST PROPERTY**

To retain for so long as they think fit any real or personal property from time to time forming part of the Trust Fund, notwithstanding that such property may be of a wasting hazardous or speculative nature.

### **22.4 LIFE POLICIES**

Without prejudice to the generality of sub-clause 22.3 of this clause to purchase or otherwise acquire life insurance policies and to pay the premiums

thereon out of either income or capital as the Trustees think fit and with power to the Trustees to surrender any such policy or policies convert the same into fully paid up policies and to accept a new policy or policies in lieu of any policy and to agree with the insurer on any variation of the terms of any policy.

## **22.5 BUILDING**

To erect repair restore reconstruct and add to any buildings and erections and to do any act in connection with any property which the Trustees consider will increase the value thereof whether or not the Trustees would apart from these presents be empowered to do such act including but not by way of limitation the power to enter into leases or tenancy agreements for such terms as the Trustees think fit or party wall agreements or to grant easements or profits a prendre.

## **22.6 JOINT VENTURES**

To join with any other person or persons in exercising any of the Trustees' expressed or implied powers under this Deed and to invest on contributory mortgages and to acquire and retain undivided interests less than the whole in any property or to hold such property as tenant in common either with any other person or persons or corporation or corporations or to permit such property to be held in the name of a nominee.

## **22.7 BORROWING**

To borrow money for the purpose of investing the same or for the purpose of exercising any of the Trustees' powers hereunder at such rate of interest and upon such other terms and conditions as the Trustees think fit and to give security for the repayment thereof over all or any part or parts of the Trust Fund whether or not the part or parts over which the security is given benefit by such borrowing and no person lending money to the Trustees shall be bound to enquire as to the purpose of any such loan or see to the application thereof.

## **22.8 GUARANTEES**

To give credit to and guarantee the payments of money and the performance of covenants obligations and engagements of or become surety for or financially assist any company estate trust or person whatsoever including any person expectantly or presumptively or contingently entitled to a share in the capital or in the income of the Trust fund either by or in default of appointment and generally to give all kinds of indemnities.

## **22.9 DEALING WITH BENEFICIARIES**

To do all such things as the Trustees think to be in the interest of the beneficiaries hereunder or any one or more of them including by way of illustration and not of limitation:

- (a) The sale to any beneficiary of any real or personal property forming part of the Trust Fund on such terms as the Trustees consider fair and reasonable.
- (b) The granting to any beneficiary of any favourable terms of purchase including the power to allow money to remain owing to the Trustees on second or subsequent mortgage or unsecured.
- (c) The giving of any guarantee either alone or jointly with any other person or company the giving of which the Trustees consider to be in the interests of the Trust Fund or of any one or more beneficiaries hereunder and in support of any such guarantee to give security over the Trust Fund or of any real or personal property comprised therein.

## **22.10 LOANS TO BENEFICIARIES**

To lend monies forming part of the Trust Fund to any person entitled as a Discretionary Beneficiary hereunder with or without security and with or without interest with liberty to allow any such loan to remain owing for such period but not later than the Vesting Day as the Trustees in their absolute and uncontrolled discretion think fit.

## 22.11 FINANCIAL DEALINGS

Without in any way limiting the nature and extent of the foregoing powers to expend commit pledge or otherwise deal with any portions of the Trust Fund on the acquisition of or investment in real or personal property including securities of whatsoever type or nature in New Zealand or elsewhere and whether such investment is hazardous speculative wasting risky in nature or of uncertain security including the power:

- (a) To enter into such dealings as leases of any type of property including equipment machinery or plant of any type or any other types of property leasing or rental arrangements
- (b) To purchase acquire invest in or otherwise deal in debt instruments or obligations including commercial bills
- (c) To take underwriting and sub-underwriting positions
- (d) To carry on generally the business of stock and sharebrokers merchant bankers and financiers.
- (e) To purchase invest in or otherwise acquire interests in aquatic horticultural general farming land subdivision or development films or any other type of investments project whether singly or through joint ventures partnerships special partnerships companies limited or unlimited or with no liability or otherwise howsoever.
- (f) To buy sell bail trade in and deal in any live or dead stock or chattels and to make arrangements with agents or others for the transit of any live or dead produce or chattels either by air sea or land.

## 22.12 PAYMENT OF GIFT and ESTATE DUTIES

To apply any part or parts of the Trust Fund in or towards the payment of gift duty on gifts to the Trust Fund or in the payment of estate duty properly charged against the Trust Fund or in the payment of gift duty or estate duty or other like duties payable in respect of any other gift or any other estate or any other Trust Fund as a result of which or in which any one or more of the persons expectantly or presumptively or contingently entitled to a share in the



capital or the income of the Trust Fund hereby established are in any way interested or benefited.

### **22.13 SUBDIVISIONS**

To expend such sums as the Trustees shall deem expedient in subdividing or developing any land or any interest therein or any part or parts thereof to employ surveyors builders architects land agents or contractors to prepare plans make roads lay drains and do all such other acts deeds or things as may in the opinion of the Trustees be necessary or desirable to the proper carrying out of such subdivision or development.

### **22.14 RECOUPMENT OF LOSSES**

To recoup any losses incurred in carrying on any such business or venture out of the capital or out of the income (whether past or future) of the Trust Fund or out of both of such capital and income in such proportions and in such manner as the Trustees shall think fit.

### **22.15 TRUSTEES' AGENTS**

To appoint any person including any one of their number as manager or agent to act for and on behalf of the Trustees in all or any matters relating to the management and the control of the Trust Fund and any business or venture owned by the Trustees or in which the Trustees are concerned and any rule of law or equity to the contrary notwithstanding the Trustees shall not be answerable or responsible for any loss occasioned to the Trust Fund by any breaches of trust or defaults of any person so appointed.

### **22.16 RETIREMENT VILLAGE**

Notwithstanding any other provision of this Deed or the wasting nature of such investment or expenditure the Trustees shall have full power and authority to enter into a lease or licence to occupy, debenture or any other security or ownership arrangement whatsoever whereby a beneficiary would acquire the right to reside in or occupy a unit, apartment or any type of accommodation whatsoever in a retirement village or similar structure.

**22.17 OCCUPATION BY BENEFICIARY**

To permit any discretionary beneficiary to reside in any house, occupy any land, or have the custody and use of any chattels which may for the time being form part of the Trust Fund upon such conditions as to payment of rent, rates and other outgoings, or free of rent, rates and other outgoings and generally upon such terms and conditions as the Trustees shall think fit.

**23. BANKRUPTCY OR ASSIGNMENT BY BENEFICIARY**

If any person beneficially interested hereunder shall after the date hereof be or afterwards become bankrupt or shall assign or charge or attempt to assign or charge his or her respective interest in the Trust Fund or part thereof without the consent of the Trustees or if any other event shall happen whereby if any such interest belonged to him or her absolutely he or she would be deprived of the personal enjoyment thereof then such interests shall not be payable to him or her during such time as he or she would be deprived of the personal enjoyment but shall thenceforth be held by the Trustees during such period either continuous or discontinuous as they shall in their absolute discretion think fit upon trust to pay all or any part of such interests or apply the same for the maintenance and personal support or benefit of such person who shall have incurred such event and of his wife or her husband (if any) and of his or her child or children or remoter issue for the time being (if any) and whether minors or adults.

**24. TRUSTEES' UNANIMOUS DECISIONS**

Subject to any express provision in this deed to the contrary, the decisions and resolutions of the Trustees shall be unanimous.

**25. TRUSTEES' MINUTE BOOK**

The Trustees may keep a Minute Book or other record of the exercise of the powers authorities and discretions reposed in the Trustees and the decisions so recorded shall be deemed incorporated in this Deed and be deemed part thereof and shall be binding on all persons interested in the Trust Fund.

**26. REVOCATION OF TRUST POWERS**

Any power authority or discretion reposed in the Trustees may be irrevocably or conditionally surrendered by them by deed at any time.

**27. CARRYING ON BUSINESS**

- 27.1** To acquire commence or carry on any business of any description or any interest therein for any period the Trustees think fit and to employ and use any part of the trust fund for those purposes.
- 27.2** To enter into any partnership or other agreement or agreements in connection with the carrying on of such business or venture or the sharing of the profits to arise therefrom and on such terms and conditions in all respects as the Trustees may think fit.
- 27.3** To expand and develop such business or venture in such manner and to such extent as the Trustees in their absolute and uncontrolled discretion may think fit and to employ therein the whole or any part of the capital of the Trust Fund with power from time to time to reduce or increase the amount of capital so employed as the Trustees shall think fit.
- 27.4** To employ any person (including any co-owner or any person beneficially interested under or acting as a Trustee of these presents) as manager or as an employee in such business or venture at such remuneration and on such terms as the Trustees shall think fit.
- 27.5** To buy and sell take on bailment or otherwise acquire and deal in live and dead stock merchandise and chattels machinery and instruments and produce of every description.
- 27.6** To expend such sums out of the capital and of the income of the Trust Fund as the Trustees shall deem expedient in subdividing or developing any land or any interest therein or any part or parts thereof to employ surveyors builders architects land agents or contractors to prepare plans make roads lay drains and to do all such other acts deeds or things as may in the opinion of the Trustees be necessary or desirable to the proper carrying out of such subdivision or development.
- 27.7** To expend monies in erecting new buildings or in repairing renewing improving or adding to the buildings and other erections and improvements from time to time on any land on which any such business or venture may be carried on either out of the capital or the income of the Trust Fund as the Trustees shall think fit.



- 27.8** To raise or borrow monies for the purpose of carrying on any such business or venture either on fixed mortgage of all or any part of the assets comprised in the Trust Fund or on overdraft or current account whether secured or unsecured through any trading bank stock and station agency company merchant wholesaler or otherwise howsoever and may give liens or charges over the whole or any part of the Trust fund including wool crops stock merchandise and other produce the property of any such business or venture and no person or corporate body making any such advances or granting any accommodation to the Trustees shall be concerned to see or enquire into the propriety of any transaction entered into by the Trustees or the application of any monies advanced to the Trustees.
- 27.9** To recoup any losses incurred in carrying on any such business or venture out of the capital or income (whether past or future) of the Trust fund or out of both of such capital and income in such proportions and in such manner as the Trustees shall think fit.
- 27.10** To create reserve funds for depreciation on implements plant stock and machinery and on replacing buildings plant and implements or for any other purpose whatsoever which the Trustees may think desirable in the interest of the Trust Fund or of any such business or venture and in particular to charge depreciation on any buildings or chattels owned by the Trust Fund or in which the Trust Fund may be interested or concerned at such rates whether on fixed or diminishing values as they may from time to time determine in the course of the prudent management of such business or venture and whether more or less than the rates from time to time allowed by the Commissioner of Inland Revenue for income tax purposes.
- 27.11** To determine either arbitrarily or otherwise what sum out of the monies which shall come into the hands of the Trustees in the course of the carrying on of such business or venture shall be deemed to be income of the Trust Fund.
- 27.12** To take such steps as the Trustees may think necessary or desirable to obtain leases or licences or bailments of land or stock or chattels used or to be used in connection with any such business or venture or for the renewal thereof for such term or terms at such rent or rents and generally on such terms and conditions in all respects as the Trustees may think fit.

**27.13** Where applicable to sell lease or otherwise deal with or dispose of any such business or venture whether real or personal or any share or interest therein to any person or persons including any person beneficially interested in the trust premises at such price and on such terms and conditions in all respects as the Trustees may in their absolute discretion think fit and so in particular that the purchaser or purchasers may be given extended terms either with or without security for payment of the purchase monies or any part thereof.

## **28. CAPITAL DIVIDENDS**

If any company in which the Trust Fund may be interested shall declare any dividend which in the opinion of the Trustees has been paid out of profits other than trading profits of the financial year in respect of which such dividend had been declared the Trustees shall determine how much of that dividend ought to be treated as capital and how much as income of the Trust Fund such determination to be made at the absolute and uncontrolled discretion of the Trustees after considering the nature of the profit used to pay the dividend and the account to which the dividend has been debited in the books of the company and the Trustees shall not be liable to any person pursuant to the payment of any monies in accordance with any such determination by the Trustees.

## **29. APPORTIONMENT BETWEEN CAPITAL and INCOME**

As between capital and income of the Trust Fund there shall be no apportionment of rents interest dividends or other periodical payments for the period current at the date of commencement of the trust or for any other period during which interest hereby created shall determine.

## **30. RESTRICTIONS ON FARM LAND OWNERSHIP**

For so long during the existence of the trusts hereby created as the Overseas Investment Act 1973 or any modification or act passed in substitution therefor or in addition thereto limits or restricts either absolutely or subject to prior consent or exemption the class of persons or corporations who may acquire an interest in any land in New Zealand then notwithstanding anything elsewhere herein contained the Trustees shall not appropriate transfer or otherwise vest any estate or interest in land in New Zealand for the time being subject to any such restriction to any beneficiary hereunder who by reason of place of residence nationality or other cause is not permitted to acquire any such estate or interest **PROVIDED THAT** if any prior

consent to or exemption enabling such vesting as required by law shall be obtained by any such beneficiary then the prohibition in this clause contained shall no longer apply **PROVIDED ALSO** that unless the Trustees otherwise determine by resolution in writing made before the Vesting Day the value of the land or interest therein vested in any one or more of the beneficiaries pursuant to this clause shall be brought into hotchpot at the fair market value thereof as determined by the Trustees by resolution in writing made before the Vesting Day and failing any determination of the fair market value thereof as determined by a single arbitrator agreed upon by the Trustees and in either case in accordance in all respects with the provisions contained in the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force **PROVIDED FURTHER** that if at the Vesting Day there is no beneficiary other than an overseas beneficiary in whom the Trust Fund can vest pursuant to this clause then the land shall be held by the Trustees upon an immediately binding trust for sale and the proceeds of sale shall be held **UPON TRUST** for the beneficiaries as provided in clause 11 hereof.

### **31. AMENDMENT OF TRUSTS**

**31.1** The Trustees may at any time and from time to time by Deed add to, vary, or revoke all or any of the Trusts in this Deed or any addition, variation or alteration to this Deed and may by the same or any other deed or deeds declare any new or other trusts or powers or discretions for the Trust Fund or any part or parts of the Trust Fund;

**31.2** Any addition or variation to, or revocation of any trusts, powers or other provisions, discretions, alterations or variations:

- (a) May relate to the management or control of the Trust Fund or the application or investment of the Trust Fund or to the Trustees' powers or discretions in this deed;
- (b) Cannot affect the beneficial entitlement to any amount set aside for any Discretionary Beneficiary prior to the date of the addition, variation or revocation;

**31.3** No power of amendment under this clause may be used to alter the Final or Discretionary Beneficiaries in this Deed;



**31.4** The powers of amendment in this clause 31 cannot be exercised in any manner having the effect of extending the Vesting Day of the Trust Fund beyond the Vesting Day in this Deed or so as to transgress the rule against perpetuities.

## **32. POWER TO ADD/DELETE BENEFICIARIES**

**32.1** The Trustees may in their absolute and uncontrolled discretion, subject only to obtaining the written consent of the person or persons who for the time being have the power to appoint the Trustees:

- (a) Appoint any person, persons, trust, charity or Body Corporate as additional beneficiaries whether final or discretionary.
- (b) Delete any beneficiary, whether final or discretionary from the Trust Deed.

**32.2** Any newly appointed or additional beneficiaries will enjoy all the rights and privileges available under the Trust Deed that the original beneficiaries enjoy including the ability to participate in distributions from capital or income accumulated by the Trustees prior to the addition of those beneficiaries as beneficiaries of the Trust.

**IN WITNESS WHEREOF** these presents have been executed the day and year first hereinbefore written

**SIGNED** by  
**MARK JAMES SCAPENS**  
 and **SHARON KATHLEEN SCAPENS**  
 as Settlers in the presence of:-



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

\_\_\_\_\_  
 (Full name of witness)

Paul James Tustin  
 Solicitor  
 Tauranga

\_\_\_\_\_  
 (Occupation)

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

**SIGNED by**  
**MARK JAMES SCAPENS**  
 as Trustee in the presence of:-

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

\_\_\_\_\_  
 (Full name of witness)

\_\_\_\_\_  
 (Occupation)

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

Paul James Tustin  
 Solicitor  
 Tauranga

**SIGNED by**  
**SHARON KATHLEEN SCAPENS**  
 as Trustee in the presence of:-

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

\_\_\_\_\_  
 (Full name of witness)

\_\_\_\_\_  
 (Occupation)

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

Paul James Tustin  
 Solicitor  
 Tauranga

**SIGNED by**  
**CLM TRUSTEES LIMITED**  
 as Trustee in the presence of:-

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

\_\_\_\_\_  
 (Full name of witness)

\_\_\_\_\_  
 (Occupation)

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

Paul James Tustin  
 Solicitor  
 Tauranga