

APPROVED

R W Muir
Registrar General of Land

Form of registrable memorandum
Section 155A, Land Transfer Act 1952



Memorandum

Number

2014/4321

Barc

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Class of instrument in which provisions are intended to be included

Encumbrance

Person executing memorandum

BERRY & CO

The following provisions are intended for inclusion in instruments of the above class:

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SCHEDULE A

THE ENCUMBRANCER AND ENCUMBRANCEE COVENANT AND AGREE AS FOLLOWS:

1. DEFINITIONS

In this Agreement, unless the context requires otherwise:

"Agreement" means this Encumbrance Instrument and the agreements as to supply and payment for irrigation Water that it contains; and **"Agreements"** means other agreements of a similar nature that the Company may have with Irrigators from time to time;

"Business Day" means any day of the week other than Saturday, Sunday and statutory holidays on which banks in Oamaru are open for general banking business;

"Charges" and **"Water Charges"** means the amounts payable by the Irrigator to the Company under this agreement which comprise the Irrigator's share of the amounts fixed annually by the Directors of the Company for each ensuing year to provide for the financial and operational viability of the Company or incurred by the Company in actual supply of water provided to the Irrigator and comprising:

"Annual Financing Charges" payable to provide for the Company's debt servicing requirements, necessary capital works, and other annual expenditure needed to ensure continued development and operation of the Company's Irrigation Scheme and its infrastructure, payable monthly in each year and;

"Monthly Operating Charges" payable to provide for the Irrigation Scheme operational costs including (and without limitation) costs for Company administration and scheme management operations, electricity local supply and network costs, planned replacements, repairs and maintenance, insurance, planning and consenting costs, payable monthly in each year and;

"Supply Charges" calculated on the Company's direct and indirect costs of providing for supply of the volume of water to be provided to the Irrigator by the Company for each charging period, as ascertained in accordance with clauses 12 and 15.

"Charging Period" means the period of one calendar month;

"Connection Point" means each point where the Scheme Infrastructure connects to the Irrigator's Works;

"Default Rate" shall be four per cent above the Company's total cost of borrowing (including interest, bank charges, interest rate swaps and other like charges) calculated on the last business day of each calendar month and compounded from the last date in each month;

"Encumbrance Instrument" means the Encumbrance Instrument approved by Registrar-General of Land and Agreement shall have the same meaning as applicable;

"Encumbrancee" means North Otago Irrigation Company Limited including its successors and permitted assigns and **"Company"** shall have the same meaning as required;

"Encumbrancer" means the owner of the land to which this Encumbrance Instrument applies being a shareholder in the Company which entitles the Encumbrancer to access irrigation Water from the Company on the basis set out in this Agreement and includes their successors and permitted assigns and **"Irrigator"** shall have the same meaning as required;

"Excess Water" means any Water in respect of the Irrigator's annual Water Quota which an Irrigator has not taken or does not intend to take;

"Force Majeure" means any event or circumstance which is beyond the reasonable control of either party and which could not have been prevented by a party complying with Good Industry Practice, and which causes the failure of a party to perform an obligation under this Agreement, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator providing or utilising substantially the same type of services as the relevant party provides under this Agreement, including compliance with all appropriate standards of any professional organisation of which that party may be a member;

"Scheme Infrastructure" means (without limitation) the Water distribution works assets, pumping stations, electrical works, electronic systems, telemetry, pipes, valves fittings and other infrastructure to be owned by or constructed and installed by the Company to convey Water from the Waitaki River to each Connection Point, and includes any facilities in replacement or substitution thereof;

"Irrigation Scheme" means the irrigation scheme established and operated by the Company drawing Water from Bortons Pond and distributing this Water to the Scheme Area;

"Irrigation Season" means the period beginning on 1 September in any given year and concluding on 31 May in the following year or such other period as the Company may from time to time reasonably determine;

"Irrigator" means the Encumbrancer;

"Irrigators" means other shareholders in the Company who are entitled to access irrigation Water from the Company on the basis of agreements on terms similar to this Agreement;

"Irrigator's Works" means the works to be constructed by the Irrigator that connect to the Scheme Infrastructure and enable the Irrigator to take Water from the Scheme Infrastructure;

"Management Plan" means the farm management plan from time to time, approved by the Company and required to be observed by the Irrigator in respect of the Irrigator's farm practices and management and use of Water;

"Metering Equipment" means the metering equipment including any telemetry to be installed by the Company at the Irrigator's Connection Point for the purposes of measuring and transmitting to the Company the total quantity of Water supplied to the Irrigator's Connection Point;

"Resource Consents" means the consents under the Resource Management Act 1991 held by the Company together with all renewals, replacements, variations or amendments to such consents and includes where required all conditions relating to those consents;

"Roster System" means the roster system to be operated by the Company for supply of Water to Irrigators as provided by clause 7;

"Scheme Area" means the areas of the Waitaki District to which the Company distributes or may in future distribute water through existing or planned water distribution networks as determined by the Directors;

"Share" means one ordinary share in the Company and **"Shares"** means all shares held by the Irrigator in the Company;

"Water" means water supplied under this Agreement for irrigation purposes and not stock, industrial or community water;

"Water Quota" means the quota of Water comprising 0.4 litres per second per hectare which the Company agrees to supply to the Irrigator in accordance with clause 6 of this Agreement;

"Wilful Default" means an intentional, deliberate or reckless act or omission:

- (a) that the Company knew was wrongful; and
- (b) that the Company knew would likely have material harmful consequences,

but does not include any innocent, accidental or negligent act, omission or mistake by the Company;

"Year" means each 12 month period commencing the 1st day of July.

THE PARTIES COVENANT AND DECLARE THAT WHERE THE CONTEXT ADMITS:

- 1.1 The expressions "the Company" and "Irrigator" include their successors personal representatives and assigns;
- 1.2 Canterbury Regional Council and Otago Regional Council includes any successor organisations;
- 1.3 Where more parties than one are covenanting the covenants herein expressed or implied bind the covenanting parties and any two or greater number of them jointly and each of them severally as well as their land charged by this encumbrance;
- 1.4 Words importing the masculine gender include the feminine gender and the neuter gender as the case may require;
- 1.5 The word "person" includes a corporation;
- 1.6 Words importing the singular or plural number include the plural or singular number respectively; and
- 1.7 References to legislative enactments include any substitutionary or successor legislation.

2. TERM OF ENCUMBRANCE

- 2.1 Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall commence on the date of the Agreement and terminate on the termination and wind up of the Irrigation Scheme and the payment of all moneys then outstanding to the Company under this Agreement by the Irrigator.

3. PRECONDITIONS TO SUPPLY OF WATER

- 3.1 The Irrigator must hold the required number of shares in the Company for the Water Quota involved and be compliant with the terms of this agreement to be entitled to supply of water from the Company at any time.

4. SUPPLY OF WATER

- 4.1 Subject always to the availability of Water, the Company will use all reasonable endeavours, but does not guarantee, to make Water available to

the Irrigator in terms of this Agreement during the Irrigation Season. Water will only be available to the Irrigator during such periods as the Company has Water available to it to supply the Irrigator and, though it will use all reasonable endeavours, the Company does not guarantee that Water will be supplied at the delivery rate referred to in Clause 6 below.

- 4.2 The maximum supply of Water to which the Irrigator is entitled under this Agreement without further authority from the Company is the Water Quota and such Water is to be supplied at such intervals as the Company may from time to time determine, and in accordance with the Roster System if operating.

5. IRRIGATION SEASON

- 5.1 The Irrigation Season shall be such periods as the Company may from time to time determine and unless otherwise determined shall be:

- (a) In respect of the Water Quota the period between 1st September in any year and the following 31st May in the subsequent year;
- (b) In respect of any Water made available by the Company in its sole and absolute discretion at the request of the Irrigator to any other users, such period or periods as the Company may determine from time to time.

6. QUOTA AND ELECTION

- 6.1 The Water Quota from the Company to the Irrigator is on a tied basis for the Irrigation Season for delivery at a rate not exceeding 0.4 litres per second for each Share owned by the Irrigator and registered and/or allotted in the capital of the Company.
- 6.2 The Water Quota for each Irrigator shall be in accordance with the shareholding in the Company allotted or held upon application by the Irrigator to the Company and is to be supplied and used in accordance with all current Canterbury Regional Council or Otago Regional Council Resource Consent requirements or conditions applying from time to time including compliance with all relevant rules in the Councils' Regional Plans.

7. ROSTER SYSTEM

- 7.1 If rostering is required due to availability or method of supply then Water shall be made available to the Irrigator and to all other Irrigators having Agreements with the Company in such manner and on such roster system as the Company may from time to time determine. Provided that other Irrigators having Agreements with the Company are not deprived of Water then the Company will make Water available at varying intervals with varying periods of flow during the Irrigation Season to meet as far as practicable the requirements of the Irrigator at each particular stage of the Irrigation Season. The Company shall be in no way liable to the Irrigator if the Company is unable to make Water available to the Irrigator at any time or times during the Irrigation Season.

8. **PRIORITIES**

- 8.1 Priorities for supply of Water (if in issue) as between Irrigators, shall be as the Company may from time to time fairly and reasonably determine having regard to need and demand.

9. **EXCESS WATER**

- 9.1 In the event that the Company during any Irrigation Season should have Water available to it sufficient to provide any Irrigator or Irrigators with Excess Water then the Irrigator may apply to the Company for such Excess Water. Provided that the Company is not depriving any other Irrigator of that Irrigator's Water Quota or to the extent that any Water Quota has not been or will not be utilised by any Irrigator, the Company may agree to supply the Irrigator or any other Irrigator or party with an amount of Excess Water. The allocation of such Excess Water shall be entirely at the discretion of the Company and no Irrigator shall not have any right to demand a supply of any Excess Water and no Irrigator shall have rights against the Company should it refuse to supply Excess Water nor shall the Company be liable to any Irrigator in any way for failing or refusing to supply such Excess Water. Excess Water shall be paid for at such rate and in such manner as the Company shall determine.

10. **IRRIGATORS WORKS AND METHODS**

- 10.1 The Irrigator shall be responsible for installing and maintaining all of the Irrigator's Works as may be required by the Irrigator to take Water beyond the Connection Point.
- 10.2 The Irrigator shall only use Water supplied with spray or trickle application systems, or other systems, equipment and methods as approved in advance by the Company and in accordance with the Resource Consents, and at rates of application as required by the Company that do not exceed field capacity.
- 10.3 The Irrigator shall design and operate the Irrigator's Works in such a manner that little or no surface run-off shall occur and as per Good Industry Practice design standards. The Company reserves the right to require the Irrigator to provide certification of industry best practice design and to audit, test and to require the Irrigator to modify the Irrigator Works should excessive run-off occur.
- 10.4 The Irrigator shall design and operate the Irrigator's Works in such a manner that little or no surge pressures are transmitted into the Scheme Infrastructure. The Company reserves the right to require the Irrigator to modify the Irrigator Works and method of operation should excessive surge pressures occur.
- 10.5 The Irrigator and the Company shall ensure that all irrigation is carried out in accordance with any Management Plan and any related environmental management requirements from time to time required by the Company which address management policies for irrigation, effluent, fertilizer, riparian margins and soil management.

- 10.6 It is acknowledged that the Company will set such plans or requirements after consultation with Te Runanga O Moeraki (or its successor organisation(s)) and other community groups or interests as considered necessary or desirable by the Company from time to time.

11. PURPOSE

- 11.1 The Irrigator shall ensure that all Water taken pursuant to the Agreement is used only for farming purposes and acknowledges that the Water may be turbid and is not potable. The Water is to be taken for the purposes of and in accordance with the terms of this Agreement and any Management Plan or management requirements which the Company may implement. The Irrigator shall be solely liable for and shall keep the Company safe, harmless and indemnified from and against any action, claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of the use of the Water.

12. WATER ORDERING

- 12.1 Ordering of Water shall be undertaken in accordance with such procedures as the Company may establish and maintain from time to time.

13. FAILURE OF SUPPLY

- 13.1 If during any Irrigation Season the availability of Water to the Company for distribution to Irrigators fails ceases or is diminished in any way then the Company shall make Water available to the Irrigator only in so far as it is practicable for it to do so. In the event of the Company having to reduce supply then it shall be entitled to do so in such manner and in such shares and proportions as it (in its sole discretion) may determine. The Irrigator shall have no right of action against the Company nor any entitlement for damages or compensation of any nature whatsoever for a failure by the Company to supply such Water in terms of this Agreement or for any reduction by the Company in the quantity or quality of Water supplied to the Irrigator or in respect of the method of reduction of availability as determined by the Company or the fairness thereof.

14. NOTIFICATION OF DAMAGE OR DEFECTS

- 14.1 The Irrigator shall immediately notify the Company by phone, fax, email or in writing of any defect, fault, damage or other abnormality in the Scheme Infrastructure or any interruption to the supply of Water to the Irrigator or other Irrigators as soon as practicable after receiving such knowledge.

15. CONNECTION POINT AND MEASUREMENT

- 15.1 The Water shall be available at such Connection Point(s) as the Company may from time to time determine and provide and as measured by the Company's required measuring device which must be maintained by the Company. The Irrigator shall not alter or interfere with any such Metering Equipment or allow any person to do so. The Irrigator shall be responsible for any damage caused to the Metering Equipment (fair wear and tear excepted). The Irrigator

shall not take from a Connection Point more Water than the Irrigator's entitlement (including authorised Excess Water) pursuant to this Agreement and/or otherwise than in accordance with any Resource Consent.

- 15.2 The Irrigator shall record the flow by the Metering Equipment and forward copies of such records to the Company within two (2) Business Days of the end of each calendar month. .

16. INTERRUPTION TO SUPPLY OF WATER

- 16.1 The Company may interrupt or reduce the supply of Water at any time the Company reasonably considers it necessary to do so for planned and unplanned interruptions in accordance with this clause.

(a) Planned Interruptions

Situations where the Company determines the need for the interruption in accordance with Good Industry Practice to:

- (i) enable the Company to inspect, effect alterations, maintenance, repairs or additions to any part of the Scheme Infrastructure; or
- (ii) avoid the risk of danger to persons, damage to property or interference with the regularity or efficiency of the supply of Water; or
- (iii) preserve and protect the proper working of the Scheme Infrastructure.

Situations where interruption is necessary for essential electricity supply works, repairs or maintenance.

(b) Unplanned Interruptions

Situations where the Company does not know of the need for the interruption in advance, including without limitation:

- (i) faults in the Scheme Infrastructure caused by equipment failure, accident, storm or similar event; or
- (ii) emergencies; or
- (iii) an event of Force Majeure.

- 16.2 Where the Company interrupts delivery pursuant to clause 16.1(a) the Company shall give prior written notice to the Irrigator and the Company shall liaise with the Irrigator over the timing of the interruption to minimise inconvenience to the Irrigator. The parties agree that where reasonably practicable planned interruptions shall occur outside of the Irrigation Season.

- 16.3 Where the Company interrupts supply pursuant to clause 16.1(b), as soon as it is practicable the Company shall report to the Irrigator:

- (a) the area affected by the interruption;
- (b) the reasons for the interruption; and
- (c) the expected duration of the interruption.

- 16.4 In all situations of interruptions the Company shall use reasonable endeavours to minimise the period of interruption.

17. WATER CHARGES

17.1 The Company shall in each year prior to the commencement of the Irrigation Season determine Water Charges at such figures as the Company shall in its sole discretion determine, having regard to funding requirements for that year. Water Charges shall be charged to, invoiced and paid by the Irrigator in monthly instalments or at such other time or times as the Company and the Irrigator may agree.

17.2 Charges for Excess Water shall be on a cubic metre basis as the Company shall determine from time to time.

17.3 If the Irrigator does not make payment of Water Charges on due date then, (provided written demand has been made) the Company shall be entitled to charge the Irrigator interest on any amount outstanding from due date until payment in full at the Default Rate. Such sum may be recovered as a liquidated debt due by the Irrigator to the Company and is a secured payment under this encumbrance.

(a) The Irrigator acknowledges that the total Annual Financing Charges and the Monthly Operating Charges shall be payable by the Irrigator notwithstanding that:

(b) The Irrigator may not have consumed any Water during the relevant Charging Period; or

(c) The Company may have been unable to supply Water to the Irrigator for all or part of the relevant Charging Period (provided that such non-supply was not due to the Wilful Default of the Company).

17.4 All charges shall be on a plus GST basis.

18. ENCUMBRANCE INSTRUMENT

18.1 The Company will register this Agreement by Encumbrance Instrument against the Certificate(s) of Title of all the Irrigator's land which qualifies the Irrigator to hold Shares in the Company. This encumbrance shall comprise security to the Company for payment of any and all amounts owing to the Company by the Irrigator including, but not limited to, Water Charges and any amounts unpaid on the Irrigator's Shares.

18.2 The Company shall by virtue of this encumbrance and in respect of the Irrigator's land be entitled to all the powers and remedies given to an encumbrancee by the Land Transfer Act 1952 and the Property Law Act 1952 or any amendment or re-enactment thereof.

19. EASEMENTS

19.1 The Irrigator agrees to grant such registered easements over the Irrigator's land as the Company may require in relation to the Scheme Infrastructure and any extension or renewal and for any necessary lines or infrastructure for supply of electricity and computer media as needed for the Irrigation Scheme from time to time

20. ESSENTIAL ADJUSTMENTS TO OPERATING CHARGES AND SUPPLY CHARGES

20.1 Should the Company incur any unbudgeted changes in any component of the Monthly Operating Charges or Supply Charges the Company may vary such charges to effect an equitable pass through to the Irrigator of any increase or decrease in the prices charged to the Company (including without limitation charges relating to the supply of electricity to the Irrigation Scheme where increase or decrease in price may occur). For the avoidance of doubt any variations to the Operating Charges and/or the Supply Charges are without prejudice to the Company's ability ultimately to determine and fix Charges pursuant to this Agreement.

21. RIGHT OF ENTRY

21.1 The Company and its servants, agents, employees, contractors and workmen, shall have the right at any time from time to time without being deemed to commit a trespass and without payment of compensation for damages to enter upon the land of the Irrigator or any land connected or associated with the Irrigator for all or any of the following purposes:

- (a) To gauge or otherwise determine the quantity of Water used by the Irrigator.
- (b) To view the condition of pipes, works lines or other Scheme infrastructure and Metering Equipment at the Connection Points or on the Irrigator's land.
- (c) For any necessary purpose under clause 10 or otherwise as necessary for the purposes of this agreement.

21.2 The Irrigator shall ensure that access is kept available to any pipeline Water canal, water storage or delivery system or other structure or device used in the control and management of the Water conveyed in the Scheme Infrastructure and in respect of any future structures, works or developments on the Irrigator's land will ensure that such development does not impede, restrict, limit or otherwise in any way inhibit or impair access or adversely effect such facilities.

22. ACCESS TO SCHEME INFRASTRUCTURE

22.1 The Irrigator also agrees to provide the Company at all reasonable times with safe and unobstructed access to any part of the Scheme Infrastructure:

- (a) to install, replace, modify, repair or maintain equipment and associated fittings and any other pipes or equipment forming or to form part of the Scheme Infrastructure;
- (b) examine, read or test any Metering Equipment, whether measuring supply under this Agreement;
- (c) to protect or prevent danger or damage to persons or property;
- (d) to ascertain the cause of any interference to the supply of Water;
- (e) to disconnect or reconnect the supply of Water;
- (f) any other purpose reasonably connected to the supply of Water or Excess Water by the Company.

- 22.2 In exercising its rights of access the Company shall use all reasonable endeavours to ensure that:
- (a) where practicable the Irrigator is given reasonable notice of intention to, and the purpose for which right of access will be exercised;
 - (b) as little interference to the Irrigator's farming requirements as practicable occurs in carrying out such works; and
 - (c) Good Industry Practice is complied with.

23. BREACH OF AGREEMENT

23.1 In the event of the Irrigator committing any breach of the terms of this Agreement and such breach continues for 60 Business Days after written notice from the Company requiring such breach to be remedied, the Company may without payment of any damages or compensation to the Irrigator or any other person:

- (a) Reduce the supply of Water to the Irrigator either permanently or until such time as such breaches have been made good provided that the Irrigator shall nevertheless remain liable to continue paying the Water Charges in accordance with this Agreement.
- (b) Stop the supply of Water to the Irrigator either permanently or until such time as all breaches have been made good provided that the Irrigator shall nevertheless remain liable to continue paying the Water Charges in accordance with the Agreement.
- (c) Forfeit the Irrigator's Shares in the Company.

23.2 Liability of the Irrigator for Water Charges shall continue as provided by this agreement notwithstanding any of the above actions by the Company.

24. TERMINATION

24.1 The Company shall be entitled at any time immediately to terminate this Agreement if the Irrigator ceases to be a shareholder in the Company or ceases in the opinion of the directors of the Company to be associated or connected with Shares in the capital of the Company sufficient to warrant supply in terms of the Constitution of the Company but the Irrigator shall remain liable for payment of all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement and for payment of Water Charges until such liability is taken over by another Irrigator or Irrigators.

24.2 The Company shall be entitled at any time to immediately terminate this Agreement if the Irrigator takes Excess Water without prior agreement with the Company but the Irrigator shall remain liable for all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement.

24.3 The Company shall be entitled to immediately terminate this Agreement if the Irrigator interferes with the Metering Equipment without the consent of the Company or fails to take reasonable care of the Metering Equipment.

24.4 In the event the Irrigator has failed to pay a call due on any Share allotted to the Irrigator in the Company in accordance with any demand made for such

outstanding amount as shall be due on such Shares, such demand remaining unsatisfied for not less than 30 Business Days after being due and payable, the Company may immediately terminate this Agreement but the Irrigator shall remain liable for all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement and for payment of all Charges until such liability is taken over by another Irrigator or Irrigators.

- 24.5 In the event of the Company terminating this Agreement for any reason then the Company shall not be liable to the Irrigator for any costs, damages, claims or compensation of any kind or nature whatsoever nor shall the Irrigator have any right of action against the Company.

25. GENERAL EXEMPTION/EXCLUSION OF LIABILITY

- 25.1 Notwithstanding anything in this Agreement, the Company shall not be under any obligation to make Water available to the Irrigator nor to supply water at any particular pressure if it is unable to do so and in the event of the Company being unable to make such supply available to the Irrigator or refusing (as provided by this agreement) to make such supply available to the Irrigator then the Irrigator shall have no rights of action against the Company for any costs, damages or compensation of any nature or kind whatsoever.

26. ASSIGNMENT

- 26.1 The Irrigator shall not assign transfer mortgage or charge the Irrigator's interest in this Agreement without the prior written approval of the directors of the Company (which consent shall not be unreasonably withheld). No such consent will be granted where there is any actual or contingent breach of this Agreement payment or liability outstanding and due to be met by the Irrigator, until such breach or default is remedied and no such consent to transfer will be provided unless the transferee qualifies as a shareholder according to the requirements contained in the constitution of the Company and transfers the land subject to this encumbrance to the transferee or provides an equivalent registered encumbrance acceptable to the Company.

27. NON-WAIVER

- 27.1 The failure of either party to insist in any one or more instances upon a strict performance of any of the terms of this Agreement or the waiver by either party of any term or right hereunder or any default by the other party shall not be deemed or construed as a waiver by such party of any such term, right or default in the future.

28. FORCE MAJEURE

- 28.1 If either party is unable to carry out any of its obligations under the agreement because of any event or circumstance of Force Majeure, the agreement shall remain in effect but except as otherwise provided, both parties' obligations, (other than obligations as to payment of Water charges), shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the non-performing party gives the other party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
 - (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - (c) no obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;
 - (d) the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 28.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under the Agreement, the parties agree to negotiate in good faith as to how this agreement may be mitigated or terminated having regard to the financial obligations then remaining or continuing that need to be met, utilising if necessary the Dispute Resolution procedures set out in clause 29.

29. DISPUTE RESOLUTION

29.1 Negotiation

The Irrigator and the Company shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.

29.2 Mediation

Every dispute or difference that is not resolved by discussion between the Irrigator and the Company may be referred by either party to mediation.

If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

29.3 Arbitration

The matter in dispute shall be referred to arbitration if:

- (a) the parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
- (b) mediation has taken place and no agreement has been reached.

The dispute or difference shall be referred to a sole arbitrator for resolution if the Irrigator and the Company agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days, an arbitrator will be appointed by the President for the time being of the New Zealand Law Society at the request of either or both of them.

Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.

The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

30. ELECTRICITY LINES AND MEDIA ACCESS

- 30.1 The parties acknowledge that it will be necessary to upgrade and to construct and maintain new electricity and media lines to enable the Company to establish, extend and operate the Irrigation Scheme. The Irrigator will not unreasonably withhold consent to such electricity and media lines and, where necessary, will grant the persons nominated by the Company reasonable access to the Irrigator's land for the purpose of building and operating such electricity and media lines and will grant any necessary easements.

31. AGREEMENT REVIEW

- 31.1 The parties agree that if necessary for compliance with any changes to legislation, to Resource Consents or their conditions, or otherwise operationally essential to the Company then to amend this Agreement to the extent required to achieve compliance
- 31.2 The parties agree to act as required in good faith to make any changes that may be essential or reasonably necessary and in event of any difference of opinion clause 29 shall apply to resolve such matter.

32. CONSUMER GUARANTEES ACT 1993

- 32.1 Water is being supplied to the irrigator for the purposes of a business and the Irrigator agrees, pursuant to section 43(2) of the Consumer Guarantees Act 1993 to exclude the application of that Act for the benefit of the Company.

33. SEVERABILITY

- 33.1 Should any part or portion of this Agreement be held invalid, the remainder of the Agreement shall continue in force and effect as if the invalid provision had been deleted provided however that the parties to the Agreement shall negotiate in good faith a valid and enforceable provision and replacement of the invalid provision to achieve as near as reasonably practicable the same effect as the deleted provision.

34. ENTIRE AGREEMENT

- 34.1 The agreement and the schedules embody the entire agreement between the parties in respect of the supply of Water and no representation or statement, whether written or oral, other than those expressly embodied in this Agreement shall be binding upon the Irrigator or the Company unless accepted by that party in writing.

35. **GOVERNING LAW**

35.1 This Agreement shall be governed and shall take effect in accordance with the laws of New Zealand and the parties hereto submit to the non-exclusive jurisdiction of the New Zealand Courts.

DATED this *11th* day of *November* 2014

SIGNED by:




GEORGE LATHAM BERRY
Oamaru
Solicitor

for or on behalf of Berry & Co

MEMORANDUM No. 2014/4321

Land Transfer Act 1952

ENCUMBRANCE

Particulars Entered in Register
Southland, Otago, Canterbury, Westland,
Marlborough, Nelson, Wellington, Hawkes
Bay, Gisborne, Taranaki, South Auckland and
North Auckland Land Registries.

For Registrar-General of Land"

Entered in Register
at Otago, Canterbury, Westland,
Marlborough, Nelson, Wellington, Hawkes
Bay, Gisborne, Taranaki, South Auckland and
North Auckland Land Registries

For Registrar-General of Land"

Registered pursuant to Section 155A
Land Transfer Act 1952



Registrar-General of Land
Land Registry
Abstract number/date

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