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Document, Interest, Instrument: 10991928.16

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Instrument No. 10991928.16
Status Registered
Date & Time Lodged 17 Apr 2018 10:08
Lodged By Tagimacruz, Emeryn Gardones
Instrument Type Encumbrance



Affected Computer Registers 799410
Land District South Auckland

Annexure Schedule: Contains 14 Pages.

Encumbrancer Certifications

I certify that I have the authority to act for the Encumbrancer and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Helen Maree Nathan as Encumbrancer Representative on 13/04/2018 10:21 AM

Encumbrancee Certifications

I certify that I have the authority to act for the Encumbrancee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Claire Angharad Gibson as Encumbrancee Representative on 27/03/2018 09:37 AM

***** End of Report *****

Encumbrance Instrument
(Section 101 Land Transfer Act 1952)

2015/6249
APPROVED
Registrar General of Land

Page 1 of 14 pages

Affected instrument identifier and type	All/part	Area/Description of part of stratum (if applicable)
799410	ALL	

Encumbrancer

Todd Duncan Holdings Limited

Encumbrancee

Bay of Plenty Regional Council

Estate or interest to be encumbered

Insert e.g. Fee simple; Leasehold in Lease no. etc.

Fee Simple

Encumbrance Memorandum Number

(if applicable)

N/A

Nature of Security

State whether sum of money, annuity or rent charge and amount

Rent Charge of \$30,000.00 per annum subject to adjustment in covenants and conditions herein

Encumbrance

Delete words in [] as appropriate

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above certificate(s) of title or computer register(s) with the above sum of money, annuity, or rent charge, to be raised and paid in accordance with the terms set out in the [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the [Annexure Schedule(s)] for the better securing to the Encumbrancee the payment(s) secured by this encumbrance, and compliance by the Encumbrancer with the terms of this Encumbrance.

Terms

1. Length of term – 999 Years
2. Payment date(s) – Annually on 1 January in each year
3. Rate(s) of interest – N/A
4. Event(s) in which the sum, annuity, or rent charge becomes payable – Upon the breach of any of the covenants or conditions as set out below
5. Event(s) in which the sum, annuity, or rent charge ceases to be payable – Upon the Encumbrance giving written notice to the Encumbrancer that the Encumbrance is no longer required
6. No breach – If after 1 April in any year the Encumbrancer has not received notice from the Encumbrancee of any breach of the covenants or conditions set out as below having occurred in the previous year ended 31 December, then the Encumbrancer may request

confirmation in writing from the Encumbrancee that no breach has occurred and that no rent charge is payable for that year.

Covenants and conditions

1. The Encumbrancer will at all times observe and perform all of the terms and conditions of the attached Deed on the part of the landowner (the term "Landowner" being as defined in the Deed) to be observed or performed PROVIDED that the terms and conditions of the Deed shall be enforceable only against the persons who are owners or occupiers of the Land at or any time after the date of Breach of any of the covenants or conditions of the Deed ("Breach") or, if the Breach is remedied, between the date of the Breach until the date of remedy of that Breach and not otherwise against the Encumbrancer and its successors in title.
2. The Rent Charge shall increase annually by the movement in the Consumer Price Index (all groups) published by the Department of Statistics (or other future index of similar nature that is recognised by practice in New Zealand from time to time as the standard index used for measuring inflationary effects) for the preceding year on 1 January in each year with the first such increase to be 1 January 2018.
3. If any part of this Encumbrance Instrument or any portion of the Rent Charge is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of the Encumbrance Instrument or portion of the Rent Charge as the case may be.

Modification of statutory provisions

1. Section 203 of the Property Law Act 2007 applies (except as modified by the covenants and conditions above) but otherwise and without prejudice to the Encumbrancee's rights of action at common law as a rent charge or Encumbrance:
 - (a) The Encumbrancee shall be entitled to none of the powers and remedies given to the Encumbrancee by the Land Transfer Act 1952 and the Property Law Act 2007; and
 - (b) No covenants on behalf of the Encumbrancer and their successors in the title are implied into this instrument other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.

NUTRIENT MANAGEMENT DEED

between

BAY OF PLENTY REGIONAL COUNCIL

and

TODD DUNCAN HOLDINGS LIMITED

Ellice Tanner Hart.
LAWYERS

DEED dated

PARTIES

- (1) **BAY OF PLENTY REGIONAL COUNCIL** ("BOPRC")
- (2) **TODD DUNCAN HOLDINGS LIMITED** ("Landowner")

BACKGROUND

- A. BOPRC is the regional council for the Bay of Plenty region.
- B. The Landowner is be the registered proprietor of an estate in fee simple in one or more of the Lots described in Schedule 1 ("Land").
- C. The Land is situated within BOPRC's region.
- D. The Landowner has agreed to permanently maintain the level of discharge of nitrogen and phosphorus leaching from the Land within the Residual Nutrient Discharge Allowance for the Land.
- E. BOPRC and the Landowner have entered into this Deed to record their respective obligations in respect of the ongoing use of the land.

OPERATIVE PROVISIONS:

BOPRC and the Landowner agree as set out in this Deed.

1. Definitions and Construction

- 1.1 In this Deed the following terms have the following meanings unless the context requires otherwise:

"Alternative Land Use"	means the use of the Land for uses other than Dairy Farming in a manner that complies with, achieves and maintains the Residual Nutrient Discharge Allowance", and a Nutrient Management Plans approved by BOPRC in accordance with clause 3.1.
"Benchmarking Entity"	means BOPRC or any other entity specifically authorised by BOPRC to undertake Nitrogen and Phosphorus monitoring, benchmarking, measurement and other like activities in relation to BOPRC's region including the Land under this Deed.
"Encumbrances"	means the Encumbrance Instruments registered against the computer freehold registers for the Land to which a copy of this deed is attached.
"Dairy Farming"	meaning any farming activity that involves animals or stock of any nature occupying the Land for the purposes of the production of milk.

“Land”	means any one or more of the Lots described in Schedule 1 registered in the name of the Landowner as proprietor and previously being part of the land in CFR 259236 (South Auckland Registry).
“Nutrient Management Plans”	means the Nutrient Management Plan or Nutrient Management Plans for the Land that are issued, updated and replaced from time to time for the purposes of recording the Landowner’s use and management of the Land as approved by BOPRC (or its successors and assigns).
“Residual Nutrient Discharge Allowance”	means for each of the Lots described in Schedule 1 the relevant volume of kilograms of nitrogen per annum and the relevant volume of kilograms of phosphorus per annum which has been determined by the Benchmarking Entity and is specified in Schedule 1 which is the maximum volume of nitrogen and phosphorus permitted to leach from each lot comprised in the Land.
“Working Day”	means a calendar day other than Saturday, Sunday, or a public holiday within the district that the Land is located or any day falling within the period from 24 December to 12 January (both inclusive).

1.2 In the construction of this Deed, unless the context requires otherwise:

- (i) Clauses and Schedules: a reference to a clause or a Schedule is to a clause or Schedule of this Deed, and a reference in a Schedule to a clause is a reference to a clause in that Schedule;
- (ii) Currency: a reference to any monetary amount is to New Zealand currency;
- (iii) Headings: headings appear as a matter of convenience and do not affect the construction of this Deed;
- (iv) Negative Obligations: a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (v) No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this Deed;
- (vi) Related Terms: where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (vii) Schedules: the Schedules form part of this Deed;
- (viii) Singular and Plural: the singular includes the plural and vice versa; and

- (ix) Statutes and Regulations: a reference to a statute or any regulations is a reference to that statute or those regulations as amended, or to any statute or regulations substituted for that statute or those regulations.

2. TERM

- 2.1 The term of this Deed will commence on the date that the Encumbrance Instruments are registered against the titles to the Land ("Operative Date") and remain in force for 999 years.

3. LANDOWNER'S COMMITMENTS

- 3.1 The Landowner will from the Operative Date and for the remainder of the term of this Deed at its own cost and subject to clause 3.2 herein:
 - (a) undertake and maintain the Land Use on the Land in accordance with any applicable resource consent(s) and the Nutrient Management Plans;
 - (b) use the Land in such a manner so that the Residual Nutrient Discharge Allowance is not exceeded;
 - (c) Not undertake any activity, nor permit or allow any other party to undertake any activity on the Land which will result in the Residual Nutrient Discharge Allowance being exceeded or the breach of any future nutrient related resource consent.
 - (d) Not undertake Dairy Farming on the Land;
 - (e) Refrain from using, storing, constructing, erecting, placing and installing any items of dairy equipment, plant and infrastructure on the Land;
 - (f) Not construct or permit to be constructed any gate to the Land which could be used for Dairy Farming purposes without the prior written consent of BOPRC;
 - (g) Not undertake any commercial cropping or horticultural activities on the Land provided that it shall be permissible to undertake vegetable patches and orchards for personal use and hay/silage in order to manage grass on the Land (to this end the Landowner acknowledges that the Residual Nutrient Discharge Allowance will result in stocking rates which necessitate the management of grass by means other than stock);
 - (h) To the extent it is within the Landowner's control, co-operate (when called upon to do so) in ensuring that all resource consents, regional plans and other regulatory and legislative restrictions applicable to the Land are maintained in a manner consistent with the preservation of the Residual Nutrient Discharge Allowance;
 - (i) not, either directly or indirectly, object to that part of any application or consent required for the purpose of or in connection with the operation of this Deed or fund, facilitate, assist or promote any other person, entity or group to take any action that would be in breach of this Deed if done by the Landowner;
 - (j) Refrain from selling nitrogen or phosphorus or being involved in any capacity in any nitrogen or phosphorus trading or like activity that relates to the Land without the consent in writing of BOPRC. If BOPRC provides such written consent as contemplated by this sub-clause it may impose any such conditions and requirements as it deems fit

in its absolute discretion in order to ensure that its objectives are not compromised in any respect whatsoever.

- 3.2 This deed shall remain operative for the entire term provided that the terms and conditions of this deed shall only be enforceable:
- (a) against the Landowner while it is the registered proprietor of the part of the Land to which the breach relates at or any time after the date of breach of this deed; and
 - (b) against future registered proprietors of the Land pursuant to the provisions of the respective Encumbrances.
- 3.3 If, subsequent to the execution of this Deed, there is any change to the Regional Plan, any applicable consents or otherwise which would allow the Landowner to use the Land in such a manner which would result in the Residual Nutrient Discharge Allowance being exceeded, (and irrespective of whether such change is recognised by the Benchmarking Entity, legislation or other entity or mechanism recognised in New Zealand), then there shall be no claim for compensation payable by either party to the other under this Deed, and the Landowner shall remain bound to use the Land in such a manner which ensures that the Residual Nutrient Discharge Allowance is not exceeded, unless otherwise permitted in writing by BOPRC.
- 3.4 BOPRC at its sole discretion shall determine the measurement and benchmarking model for the determination of the Residual Nutrient Discharge Allowance under this Deed, including the version number of the model. The initial model to be used shall be OVERSEER version 6.2.3 and BOPRC may retain such records of the version that was used to determine the Residual Nutrient Discharge Allowance under this Deed and reference files that it considers necessary for the purposes of measuring and benchmarking nitrogen under this Deed.
- 3.5 Subsequent to the execution of this Deed BOPRC or the Benchmarking Entity may change the measurement and benchmarking model (or its version) that is used to determine the Residual Nutrient Discharge Allowance. BOPRC shall have freedom to prescribe the process for determining the Residual Nutrient Discharge Allowance, which may include the use of reference files, and adjusting the "sector" to reflect the agreed land use on the property. If this results in a change in the Residual Nutrient Discharge Allowance ("Technical NDA Change") then:
- (a) The Technical NDA Change shall be established by BOPRC determining a replacement Residual Nutrient Discharge Allowance that is consistent with and corresponds to the land use permitted by the then existing Residual Nutrient Discharge Allowance. The replacement Residual Nutrient Discharge Allowance shall provide an allocation of sufficient Residual Nutrient Discharge Allowance to enable the land use authorised by the then existing Residual Nutrient Discharge Allowance to continue. If, during any period when reference files are utilised by BOPRC, there is a consistency in percentages of reference files as between the then existing Residual Nutrient Discharge Allowance and replacement Residual Nutrient Discharge Allowance then the replacement Residual Nutrient Discharge Allowance shall be deemed to comply with the requirements of this sub-clause. If, in the process of BOPRC determining the replacement Residual Nutrient Discharge Allowance, any excess nutrient discharge allowance is identified that is not needed to enable the land use authorised by the then existing nutrient discharge allowance to continue then that excess nutrient discharge allowance shall be permanently abandoned and retired to BOPRC;
 - (b) the provisions of this Deed shall continue to apply; and

- (c) the Landowner will not be required to change the land use in any fundamental or material manner as a result of a Technical NDA Change; and
- (d) the Residual Nutrient Discharge Allowance contemplated by this Deed shall be deemed to be varied to account for the Technical NDA Change if BOPRC advises the Landowner in writing; and
- (e) if either party requires formal variations to this Deed and the documents contemplated by it to record the Technical NDA Change then such variations shall be completed at the cost of the party requiring such variations; and
- (f) there shall be no claim for further compensation payable by either party to other under this Deed; and
- (g) if required by BOPRC the Landowner shall procure new varied land use consent(s) relative to the Residual Nutrient Discharge Allowance, and Nutrient Management Plans in order to give effect to the Technical NDA Change; and
- (h) subject to clause 3.5(e) the parties shall otherwise each bear their own costs in connection with all negotiations, advice and other matters contemplated by or associated with this clause 3.5.

3.6 The parties acknowledge that the original Nutrient Management Plans include obligations relating to fencing, stock-proofing, tree planting, crossings, retirement from grazing and other like matters which were previously specified in Land Improvement Agreements H866280 and H8897101. On this basis the parties agree that:

- (a) the area that is currently depicted as vegetation for each lot on the "Surveyed Vegetation and House Sites Plan" attached as Schedule 2 shall be protected, maintained and not removed by the Landowner for the term of this deed without BOPRC's consent which shall be at BOPRC's absolute discretion.
- (b) BOPRC retains its absolute discretion in relation to approving any updated or replacement Nutrient Management Plans; and
- (c) In the course of approving any updated or replaced Nutrient Management Plans BOPRC may have regard to both the nutrient related obligations in this Deed and the operational obligations that were previously recorded in the two Land Improvement Agreements.

4. **Measurement, Benchmarking and Nitrogen Breach**

4.1 The parties acknowledge and agree that the Benchmarking Entity will undertake nitrogen and phosphorus benchmarking and land use measurement activities on the Land for the purpose of determining all benchmarking, measurement and monitoring contemplated by this Deed and any resource consent(s) that limit the discharge of nitrogen and phosphorus from the Land.

4.2 The Landowner will allow the Benchmarking Entity and BOPRC and their respective officers, employees, agents and contractors access to, and entry onto, the Land at all reasonable times for the purpose of inspecting the Land, measuring, benchmarking the Landowner's use of the Land and ensuring that the Landowner's obligations under this Deed are being fulfilled. Any person(s) accessing the Land shall carry and, at the Landowner's request, show evidence of their identity, and shall not unreasonably disrupt the Landowner's use of the Land and shall comply with the Landowner's reasonable health and safety requirements.

- 4.3 The Landowner will provide on request, within five Working Days of such request, to both the Benchmarking Entity and BOPRC all documentation, reports, records and other information that is required by the Benchmarking Entity, BOPRC, or any applicable resource consents for the purpose of ascertaining whether the matters contemplated by this Deed are being performed by the Landowner ("Nutrient Information"). The Landowner unconditionally waives all rights to confidentiality in relation to the Nutrient Information and irrevocably authorises BOPRC and the Benchmarking Entity to share and disclose Nutrient Information to the other. BOPRC shall not disclose Nutrient Information to third parties unless required by law.
- 4.4 The Nutrient Information shall include, but is not limited to detailed records that verify whether the actual practices undertaken on the Land are consistent with the nitrogen and phosphorus discharge contemplated by this Deed and the Nutrient Management Plans. Examples of records that may be requested by the Benchmarking Entity and BOPRC include:
- (i) General land use records included:
 - (a) Uses of the Land including to scale maps identifying any changes;
 - (b) Types of crops grown;
 - (c) Planting and harvesting dates;
 - (d) Animals and stock (if any) located on the Land at any time; and
 - (e) Records related to phosphorus fertiliser use.
 - (ii) Confirming that no Dairy Farming has occurred on the Land.
- 4.5 If the Benchmarking Entity confirms in writing to BOPRC that the Landowner has breached the Nutrient Management Plan giving rise to an increase or likely increase in nitrogen and phosphorus leaching from the Land or exceeded the Residual Nutrient Discharge Allowance, then BOPRC may give notice to the Landowner that it has breached its obligations under this Deed ("Nutrient Breach Notice").
- 4.6 The Nutrient Breach Notice shall specify the Benchmarking Entity's determination as to the volume in kilograms of nitrogen and phosphorus per annum calculated to be leaching from the Land minus the Residual Nutrient Discharge Allowance ("Nutrient Excess").
- 4.7 For the avoidance of doubt the Landowner acknowledges that it will have knowledge of the breach or potential breach of its obligations under this Deed prior to receiving the Nutrient Breach Notice from BOPRC as it will at all times monitor its operations on the Land to ensure that it is undertaking all actions necessary to comply with the Nutrient Management Plans.
- 4.8 The Landowner will remedy the breach of its obligations under this Deed within 30 Working Days of receiving a Nutrient Breach Notice ("the Repatriation Date") by completing the matters as set out in clause 4.9.
- 4.9 On or prior to the Repatriation Date the Landowner will offset and eliminate the Nutrient Excess to the absolute satisfaction of BOPRC by:
- (i) Adjusting its management practices; or
 - (ii) Leasing, purchasing or otherwise acquiring rights to discharge nitrogen or phosphorus from the Land; and
 - (iii) Varying or renewing any applicable resource consent(s) and the Nutrient Management Plans.
- 4.10 The parties agree that:

- (i) The repatriation contemplated by clause 4.9 shall be completed for the period in which the occurrence of the Nutrient Excess occurred; and
 - (ii) Any acquisition of rights to discharge nitrogen or phosphorus from the Land contemplated by clause 4.9(ii) must be consistent with the nature of the rights allocated under the Residual Nutrient Discharge Allowance.
- 4.11 BOPRC shall confirm to the Landowner within 10 Working Days of the Repatriation Date whether it is satisfied that the Nutrient Excess has been offset. If BOPRC confirms to the Landowner that it is satisfied that the Nutrient Excess has been offset ("Repatriation Confirmation Notice") then the Landowner shall no longer be considered to be in breach of this Deed.
- 4.12 If BOPRC confirms to the Landowner that it is not satisfied that the Nutrient Excess has been offset then the Landowner shall be considered to be in breach of this Deed and without prejudice to BOPRC's other rights and remedies expressed or implied BOPRC may serve a notice requiring the payment of liquidated damages by the Landowner ("Nutrient Damages Notice") and the provisions of clause 4.13 shall apply.
- 4.13 If the Landowner receives from BOPRC a Nutrient Damages Notice it shall within 10 Working Days of receipt of the Nutrient Damages Notice, and then each anniversary thereafter until receipt from BOPRC of a Repatriation Confirmation Notice in relation to the given Nutrient Excess, pay to BOPRC liquidated damages in the sum equal to the Nutrient Excess multiplied by \$400.00 + GST (adjusted annually by the movement in the Consumer Price Index (All Groups) published by the Department of Statistics or other subsequent government agency for the preceding year on 1 January in each year with the first such adjustment to be 1 January 2018).
- 4.14 The parties acknowledge and agree that the amount specified in clause 4.13 is a good faith, pre-estimate of the cost of breach by the Landowner incurred by BOPRC with regard to inter alia the cost of nitrogen, phosphorus, monitoring, benchmarking and enforcement.
- 5. Dealing with Land**
- 5.1 Subject to clauses 5.2 and 5.3 nothing in this Deed prevents the Landowner from dealing with the Land or parts of it.
- 5.2 In the event the Landowner wishes to sell or subdivide any part of the Land the Landowner must obtain separate Nutrient Management Plans for each part of the Land to be transferred or subdivided and via those Nutrient Management Plans allocate individual Residual Nutrient Discharge Allowances for each separate part of the Land to the satisfaction of BOPRC subject to such terms and conditions relating to (but not limited to) resource consenting, as BOPRC reasonably requires. In that event the Residual Nutrient Discharge Allowance will, for each such separate part of the Land, upon the transfer of any part of the Land or upon the deposit of the plan of subdivision, be amended to be the Residual Nutrient Discharge Allowance set out in the Nutrient Management Plans for that separate part of the Land, provided that in all circumstances when setting replacement Residual Nutrient Discharge Allowances for each part of the Land the aggregate amount of nitrogen and phosphorus permitted to leach from the Land must not exceed the Residual Nutrient Discharge Allowance.
- 5.3 The terms and conditions of this Deed shall only be enforceable against the persons who are owners of the Land at or any time after the date of breach of any terms of this Deed ("Breach") or, if the Breach is remedied, between the date of the Breach until the date of the remedy of that Breach.
- 6. Dispute Resolution**
- 6.1 The parties acknowledge their desire that all questions or differences whatsoever which may arise between the parties concerning this Deed or its subject matter or arising out of or in

relation to it and whether as to interpretation or otherwise be resolved amicably by bona fide discussion between them.

- 6.2 If any difference or dispute referred to in clause 6.1 is not resolved either party may at any time invoke a mediation process as follows:
- (i) Either party may by written notice to the other party require that the dispute between the parties be referred to mediation. A mediation notice shall set out the nature of the dispute but need not detail the background or the parties' position in relation to same.
 - (ii) A mediation notice shall not derogate from the obligation of the parties to seek resolution of the dispute by consultation and negotiation.
- 6.3 The parties shall in good faith endeavour to agree upon and appoint a person as mediator to consult with the parties and to assist the parties to reach agreement in respect of the dispute no later than five Working Days from the date on which the mediation notice was given.
- 6.4 If a mediator is appointed he or she shall in consultation with the parties settle a timetable and the procedures to be adopted during the mediation. The decision of the mediator on any such timetabling and procedural matters shall be binding on the parties and in particular the mediator shall be entitled to call any meeting between the parties at such time and place as the mediator considers appropriate.
- 6.5 The parties shall attend all meetings called by the mediator and at such meetings shall conduct the negotiations in good faith and use their best endeavours to reach an agreed solution which is acceptable to both parties.
- 6.6 If any difference or dispute referred to in clause 6.1 is not resolved pursuant to the process contemplated by clauses 6.1 to 6.5 inclusive within 15 Working Days of the provision of the notice contemplated by clause 6.2, either party may initiate proceedings for the resolution of such in any New Zealand Court of competent jurisdiction.

7. Remedy

- 7.1 If the Landowner is in breach of this Deed, and such breach is capable of remedy, then without prejudice to BOPRC's other rights and remedies expressed or implied BOPRC may by BOPRC's employees and contractors with all necessary equipment and material at all reasonable times enter upon the Land to execute all such works necessary to remedy such breach, but only if:
- (i) BOPRC has served on the Landowner a notice of breach and of BOPRC's intention to carry out such works; and
 - (ii) At the expiry of a period specified in that notice that is reasonable in the circumstances (but not less than 20 Working Days), the breach has not been remedied.
- 7.2 In addition to the rights of BOPRC under clause 7.1, if any breach of this Deed occurs which is in the opinion of BOPRC capable of remedy then without prejudice to BOPRC's other rights and remedies expressed or implied the Landowner shall pay to BOPRC liquidated damages in the sum of \$300.00 (the sum of \$300.00 shall be adjusted annually by the movement in the Consumer Price Index (All Groups) published by the Department of Statistics or other subsequent governmental agency for the preceding year on 1 January in each year with the first such adjustment to be 1 January 2018) per day upon demand until such breach is remedied, only if:
- (i) BOPRC has served on the Landowner a notice of intention to demand liquidated damages; and
 - (ii) At the expiry of a period that is reasonable in the circumstances (but not less than 20 Working Days), the breach has not been remedied.

- 7.3 A notice required by clause 7.1 or 7.2 must adequately inform the recipient of all of the following matters:
- (i) The nature and extent of the breach complained about;
 - (ii) The thing that the Landowner must do or stop doing; and
 - (iii) the consequence that, if the breach is not remedied at the expiry of a period that is reasonable in the circumstances (but not less than 20 Working Days), BOPRC may seek to enforce its rights pursuant to clause 7.1 or 7.2 (as the case may be).
- 7.4 Any moneys expended by BOPRC in executing such works shall be payable by the Landowner to BOPRC upon demand together with interest thereon at the rate of 10% per annum from the date of expenditure to the date of payment.
- 7.5 The parties acknowledge and agree that the amount specified in clause 7.2 is a good faith, pre-estimate of the cost of breach by the Landowner incurred by BOPRC.
- 8. Notices**
- 8.1 Any notice provided under this Deed shall be in writing and must be served in the manner prescribed in Part 7 of the Property Law Act 2007.
- 9. Limitation of Liability and Indemnification**
- 9.1 Except as provided in this Deed, neither party will be liable in any circumstances for any indirect or consequential loss (including, but not limited to, loss of profits, loss of anticipated savings or any other economic loss of any kind).
- 9.2 The Landowner indemnifies BOPRC for any liabilities, loss, claim or proceeding arising out of a breach of this Deed by the Landowner.
- 9.3 The Landowner warrants that no other third party has any claim to the rights and obligations relating to the Residual Nutrient Discharge Allowance for the Land and accordingly indemnifies BOPRC for any liabilities, loss, claim or proceeding arising out of any such claim. The limitation of liability expressed in clause 9.1 above shall not apply to this clause.
- 9.4 The aggregate liability of BOPRC for an event or series of closely connected events, whether in contract, tort or otherwise, is limited to \$5,000.00 increased annually by the movement of the Consumer Price Index (All Groups) published by the Department of Statistics or other subsequent governmental agency for the preceding year 1 January in each year with the first such increase to be 1 January 2018.
- 9.5 The Landowner unconditionally acknowledges and agrees that the Benchmarking Entity shall not in any circumstances be liable to it for any loss whether direct, indirect or consequential or whether in tort, contract or otherwise (including, but not limited to, loss of profits, loss of anticipated savings or any other economic loss of any kind). The Landowner agrees and acknowledges that this clause is for the benefit of the Benchmarking Entity irrespective of whether it is a party to this Deed.
- 9.6 The parties agree that BOPRC when acting as the Benchmarking Entity is acting in its regulatory capacity rather than contractual capacity.
- 10. Further Assurances and Warranties**
- 10.1 Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this Deed according to its true intent.

10.2 The Landowner warrants that it will not sell, deal with or otherwise dispose of any Residual Nutrient Discharge Allowance for the Land in a manner which conflicts with the obligations contemplated pursuant to this Deed.

11. Assignment and Novation

11.1 The Landowner acknowledges that BOPRC may assign its rights and obligations under this Deed to another entity or entities which for the time being are charged with the obligation of managing nitrogen discharge from the Land, including, without limitation, one or more of Her Majesty the Queen acting through the Minister for the Environment, or a trust or Council Controlled Organisation settled or formed as the case may be in whole or in part by BOPRC ("Other Entity") provided that such Other Entity must remain liable to the Landowner to perform the obligations of BOPRC pursuant to this Deed. The Landowner further acknowledges that in the event of an assignment by BOPRC it may choose to retain and not assign its role as Benchmarking Entity.

11.2 The Landowner shall not assign or novate its rights and obligations under this Deed other than in accordance with the process contemplated by clauses 5.2 and 5.3 herein.

12. Amendment

12.1 No amendment to this Deed shall be effective unless it is in writing and signed by both parties.

13. Severability

13.1 If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed.

14. No Waiver

14.1 A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

14.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

15. Relationship

15.1 Nothing in this Deed shall evidence or be deemed to constitute a partnership or joint venture between the parties, nor will either party constitute an agent for the other party.

16. Counterparts

16.1 This Deed may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

17. Governing Law

17.1 This Deed shall be governed by and construed in accordance with New Zealand law.

17.2 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this Deed.

SCHEDULE 1: Land

SCHEDULE 1

Residual Nutrient Discharge Allowance for each Lot in the Subdivision:

Computer Freehold Register	Lot	Residual Nutrient Discharge Allowance: Nitrogen (calculated in kg per annum)	Residual Nutrient Discharge Allowance: Phosphorus(calculated in kg per annum)
STAGE 2	1	39.55	2
STAGE 2	2	34.57	2
STAGE 2	3	33.31	4
799405	4	26.99	3
799406	5	36.91	2
799407	6	24.68	3
799408	7	45.88	2
799409	8	38.57	2
799410	9	64.72	3
799411	10	43.62	2
799412	11	42.16	2
799413	12	24.72	2
799414	13	62.79	6
799415	14	48.80	2
799416	15	46.30	2
799417	16	28.38	4
STAGE 2	17	96.16	4
STAGE 2	18	52.69	3
799419	100 (being the aggregate of lots 1, 2, 3, 17 and 18)	256.28	15

Aggregate Residual Nutrient Discharge Allowance for Land:

Nitrogen: 790.76 kg per annum

Phosphorus: 50 kg per annum

The parties agree that the Nitrogen Management Plan for lot 100 shall be compliance with the Nitrogen Management Plans for lots 1, 2, 3, 17 and 18.