

Form 26

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

NEW ZEALAND CHERRY CORP (LEYSER) LIMITED PARTNERSHIP

Covenantee

NEW ZEALAND CHERRY CORP (LEYSER) LIMITED PARTNERSHIP

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A

Continue in additional Annexure Schedule, if required

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Restrictive use covenant			

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

[Memorandum number , registered under section 209 of the Land Transfer Act 2017].

[Annexure Schedule 1].

Annexure Schedule 1

1. Definitions and interpretation

1.1 **Definitions:** In this Instrument unless the context otherwise requires:

Associated Persons has the meaning in the Income Tax Act 2007;

Benefited Land means the land described in Schedule A as the benefited land which has the benefit of the covenants set out in this Instrument;

Bond means a construction bond of \$5,000.00 (including GST) to be paid in accordance with clause 9;

Burdened Land means the land described in Schedule A as the burdened land which is subject to the covenants set out in this Instrument;

Covantee means the registered owner of the Benefited Land from time to time;

Covenantor means the registered owner of the Burdened Land from time to time;

Design Guidelines means the design guidelines document issued by the Developer from time to time relating to the Development;

Developer means New Zealand Cherry Corp (Leyser) Limited Partnership and any successor party or organisation nominated by it or by any successor party or organisation to deal with all matters involving the Developer under any of these covenants, including applications required for approvals;

Development means the Developer's development known as Shannon Farm, of which the Burdened Land forms part, including any open spaces, and associated infrastructure and including any variation to the Development made by the Developer in its sole discretion at any time;

District Plan means the Relevant Authority's district plan or other relevant planning instrument applicable to the Burdened Land from time to time;

External Boundaries means boundaries of the Burdened Land which are shared with privately owned land outside the Development;

Instrument means the front page of this instrument together with all Annexure Schedules attached to it;

Landscape Features means visible structural or landscape design or enhancement features or utilities to be provided on any Lot, including signage, fencing, shelterbelts, berm planting and grass verges, and **Landscape Feature** means any one of them;

Lodge any Submission means (without limitation) personally or through any agent or servant (including by being a member of any group or society, whether incorporated or not), directly or indirectly lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing or appeal arising in respect of any Planning Proposal whether as a party or otherwise;

Lots means the individual allotments comprising the Burdened Land and **Lot** means any one of them;

Planning Proposal includes (without limitation) any application for resource or building consent, plan change or variation of any nature to the District Plan and any other application for a regulatory authority or permission including building consent;

Related Party means, in relation to a party:

- (a) any company which is related to that party within the meaning of section 2(3) of the Companies Act 1993, but read as if it applies to a body corporate in any jurisdiction;
- (b) any body corporate which is related to that party within the meaning of section 78D(4) of the Limited Partnerships Act 2008;
- (c) in respect of a limited partnership, a limited partner or general partner of the limited partnership and any body corporate which is related to a limited partner or general partner pursuant to (a) or (b) above; or
- (d) any body corporate which is related to a body corporate to which that party is related, pursuant to (a), (b) or (c) above;

Relevant Authorities means the government, local, regional, statutory or non-statutory authorities and bodies having jurisdiction over the Burdened Land and/or the Development and **Relevant Authority** means any one of them;

Working Day has the meaning given to that term in the Property Law Act 2007.

1.2 **Interpretation:** For the avoidance of doubt:

- (a) words importing the singular number include the plural and vice versa;
- (b) a covenant to do something is also a covenant to permit or cause for that thing to be done and a covenant not to do something is also a covenant not to permit or cause for that thing to be done; and
- (c) this Instrument binds and benefits the parties, and their heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Burdened Land.

1.3 **Heights:** All specific heights referred to in this Instrument and the Design Guidelines will be measured from the ground level of a Lot as at the date of issue of the record of title for the Lot.

2. General covenants

2.1 The Covenantor covenants and agrees:

- (a) to observe and perform all the covenants set out in this Instrument at all times;
- (b) that such covenants shall run with and bind the Burdened Land for the benefit of the Covenantee;
- (c) to do all things necessary to ensure that any invitees of the Covenantor on the Burdened Land and any mortgagees, lessees or occupiers of the Burdened Land comply with the provisions of this Instrument; and
- (d) to pay the Covenantee's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Covenantee's rights, remedies and powers under this Instrument.

3. Building covenants

3.1 **Timing:** The Covenantor covenants and agrees that:

- (a) construction of a dwelling on each Lot will commence within three (3) years of the date of registration of the first transfer of the Lot following registration of this Instrument;
- (b) once commenced, construction of a dwelling on the Burdened Land will be completed and a code compliance certificate issued within 12 months from commencement;
- (c) construction of any driveway will be completed within six (6) months of issue of a code compliance certificate for the dwelling; and
- (d) all landscaping works will be completed within the next planting season (1 April to 30 September) which commences following completion of the dwelling.

3.2 **Design Guidelines:** The Covenantor covenants and agrees that all structures on the Burdened Land will comply with the Design Guidelines applicable at the time of application for building consent for such structures or, where building consent is not required, at the time of construction.

3.3 **During construction:** The Covenantor covenants and agrees that, during any periods of construction, the Burdened Land will be kept clean, tidy and fenced and will not be allowed to become a nuisance or annoyance to neighbouring occupiers.

3.4 **Level of land:** The Covenantor covenants and agrees that, other than as required by any condition of any consent notice or resource or building consent affecting the Burdened Land, it will not alter the original contour and levels of the Burdened Land without prior approval from the Developer.

3.5 **Building materials:** The Covenantor covenants and agrees that, on the build platform of each Lot (as shown on the approved plans attached at Annexure Schedule 2):

- (a) no second hand, relocatable, kitset or pre-built buildings of any kind will be installed unless agreed in writing by the Developer;
- (b) all buildings and structures must be constructed on-site from new or high quality materials unless previously agreed in writing by the Developer;
- (c) no building or structure will be left with an unfinished, unpainted or unstained exterior provided that this restriction does not apply where natural timber cladding, stone or concrete is used; and
- (d) all cladding and roofing materials used will otherwise comply with the Design Guidelines.

3.6 **Fencing:** The Covenantor covenants and agrees that:

- (a) all Lots must be fenced in accordance with the Design Guidelines prior to any dwelling on the Burdened Land being occupied; and
- (b) unless a Lot is already fenced in accordance with clause 3.6(a), all building sites must be fenced with appropriate temporary construction fencing prior to any building construction works commencing.

3.7 **Driveways, garages and parking:** The Covenantor covenants and agrees that:

- (a) parking is prohibited on any access lane or right of way;
- (b) no unregistered, non-licensed or expired license or inoperable vehicles of any kind may be parked on the Burdened Land other than inside a garage;
- (c) no recreational or commercial vehicle, boats or trailers may be regularly located on the street or any shared accessways.

3.8 **Storage tanks:** The Covenantor covenants and agrees that any storage tanks installed on the Burdened Land will be integrated into the overall design of the dwelling and the Lot and, in accordance with the Design Guidelines, either screened or buried so that they are not visible from outside the boundaries of the Lot.

3.9 **Occupation:** The Covenantor covenants and agrees that the Burdened Land will not be occupied unless all driveways and paths are completed in permanent materials, and all structures requiring a building consent have obtained a code compliance certificate. The Covenantor will provide a copy of this certificate to the Developer on request.

3.10 **On-sale:**

- (a) The Covenantor shall not on-sell or otherwise dispose of its interest in any Lot until either:
 - (i) a dwelling has been constructed on the Lot, a code compliance certificate has been issued for such dwelling and any ancillary works including construction of a driveway and all landscaping have been completed in accordance with this Instrument; or
 - (ii) the Covenantor has entered into an unconditional agreement with an on-sale purchaser which includes the construction of a dwelling on the Lot as part of a house and land package.

4. Development covenants

4.1 The Covenantor covenants and agrees that:

- (a) the Burdened Land will not be further subdivided (as that term is defined in the Resource Management Act 1991); and
- (b) there shall be no more than one residential unit (as defined in the District Plan) per Lot except where the Developer otherwise consents in writing (in its sole discretion).

4.2 Clause 4.1(a) will not apply to any Lots owned by the Developer (or any Related Party of the Developer and any nominee of the Developer).

5. Maintenance covenants

5.1 **Buildings and Landscape Features:** The Covenantor must maintain all buildings and Landscape Features on the Burdened Land and any berm or verge which fronts onto the Burdened Land and is not a Lot and not allow them to deteriorate to a point where the standard of presentation is either:

- (a) less than that represented in the developed residential area of the Development; or

- (b) inadequate, taking into account fair wear and tear and the original condition at the time that the relevant Lot was occupied as a residence and the condition of the neighbouring properties.

5.2 **Landscape Features:** The Covenantor must not alter or remove any Landscape Features installed by the Developer on the Lot or any berm or verge which fronts onto the Burdened Land and is not a Lot.

5.3 **Landscaping:** The Covenantor covenants and agrees that:

- (a) it will not plant, grow or permit to grow on the Burdened Land, any plant species which are not included in the approved schedule listed in the Design Guidelines;
- (b) the location and construction of any swimming pool (including fencing and screening) on any Lot must be approved by the Developer prior to the commencement of any construction works;
- (c) all grassed areas will be regularly cut and not permitted to exceed 120mm in height;
- (d) all landscaping and Landscape Features will comply with the Design Guidelines.

5.4 **Nuisance plants:** If any tree, shrub or other vegetation on any Lot is substantially shading or materially affecting the outlook or view from any neighbouring Lot or is creating a significant nuisance and the Covenantor neglects or refuses to remedy the nuisance within 30 days of receiving written notice from the owner or occupier of the affected neighbouring Lot, then the parties will be bound to resolve the same in accordance with clause 13.

6. Use covenants

6.1 **Occupation of land:** The Covenantor covenants and agrees as follows:

- (a) The Burdened Land shall not be occupied or used as a temporary residence either by the erection of temporary structures or placing of a caravan or other vehicle used for human habitation;
- (b) The Covenantor will ensure that any external air conditioning units are properly screened and noise proofed to ensure they do not cause nuisance or annoyance to neighbouring occupiers;
- (c) With the exception of:
 - (i) compulsory statutory signage, real estate signage pending sale and builder's signage during construction; and
 - (ii) permanent Development signage installed by the Developer,no advertisement, sign or hoarding may be displayed on any Lot. All permitted signage (including construction and location) must comply with the requirements of all Relevant Authorities and first be approved in writing by the Developer;
- (d) The Burdened Land must not be used for any primary purpose other than for residential occupation;
- (e) No Lot shall be sold, leased, transferred, assigned or otherwise disposed of to any Relevant Authority for the purposes of public or social housing without the prior approval of the Developer;

- (f) All rubbish will be disposed of only in appropriate receptacles and rubbish bins will only be placed outside the boundary of the Burdened Land or any designated collection point area within 24 hours of the approved day of collection and will be brought back within the boundary of the Burdened Land within 24 hours of collection.

6.2 Animals: The Covenantor covenants and agrees that:

- (a) no dog or other pet will be kept in or about the Burdened Land which is likely to cause a nuisance or annoyance to other neighbouring occupiers or detract from the Burdened Land;
- (b) no pigeons, poultry or livestock or any animal other than domestic pets will be kept on any Lot within Rural Lifestyle Areas 1 to 6 (as defined in the District Plan), without the prior written approval of the Developer;

6.3 Compliance with law: The Covenantor covenants and agrees that:

- (a) it will comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the Burdened Land by the Covenantor and any occupier of the Burdened Land and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the Burdened Land; and
- (b) the Covenantor will not permit any goods or things of an offensive, noxious, illegal or dangerous nature to be brought upon or stored on the Burdened Land (provided that licensed gun owners may keep legal guns in secure gun lockers or safes in accordance with all applicable regulations).

7. Non-opposition covenant

7.1 The Covenantor covenants with the Developer (including any Related Party of the Developer and any nominee of the Developer) that it will not:

- (a) Lodge any Submission to any Planning Proposal lodged by, or with the written approval of, the Developer or its nominee and further, if called upon to do so by the Developer, will provide affected person's approval under the Resource Management Act 1991 in respect of any such Planning Proposal (**APA**);
- (b) oppose, object to, frustrate or take any action, or encourage or cause others to oppose, object to, frustrate or take any action, that might in any way prevent or hinder the vendor from progressing and completing the Development and/or obtaining or effecting any Planning Proposal needed to generally give effect to the Development;
- (c) make or lodge, be party to or finance or contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the undertaking, progress or completion of the Development;
- (d) (and shall ensure that its Associated Persons do not) directly or indirectly bring any proceedings for damages, negligence, nuisance, trespass, interference or any other matter arising from the Development.

7.2 This clause applies (without limitation) to any Planning Proposal involving the Development, and the benefit of this covenant also applies to any adjoining or neighbouring property that the Developer (or any Related Party of the Developer and any nominee of the Developer) may own or subsequently purchase to progress any part of the Development.

- 7.3 This clause applies to occupiers and/or tenants of the Burdened Land to the extent that the Covenantor will, in any lease or occupancy agreement in respect of the Burdened Land, include terms requiring compliance with this clause and will do all things reasonably possible to enforce compliance by the tenants and/or occupiers of the Burdened Land with the terms of their lease provided that the Covenantor shall not be obliged to terminate any lease solely because of breach of the tenants and/or occupiers of the terms of their lease as they relate to this clause.
- 7.4 The Covenantor irrevocably nominates, constitutes and appoints the Developer or any nominee of the Developer to be the true and lawful attorney of the Covenantor for the purposes of executing all documents and plans and performing all acts, matters and things as may be necessary to comply with this clause, including (without limitation) to sign any APA.
- 7.5 Production of this power of attorney to any Relevant Authority (or any other concerned party) from time to time shall without further requirement or reference to the Covenantor evidence an irrevocable and unconditional authorisation and instruction to the Developer or its nominee to sign any APA on behalf of the Covenantor.
- 7.6 The Covenantor shall also, if called upon to do so, enter into and execute a deed of appointment of power of attorney in favour of the Developer or any nominee of the Developer on the terms and for the purposes set out in clause 7.4.
- 7.7 For avoidance of doubt, the provisions of this clause 7 will apply to any Planning Proposals supported by the Developer including for developments of the Developer or any Related Party of the Developer.

8. Approvals

- 8.1 Prior to submitting building plans and building consent applications to any consenting authority for any necessary approvals and prior to commencing the construction of any structure or any associated works on a Lot, the Covenantor will obtain written approval of such plans from the Developer in accordance with the Design Guidelines. The Developer will use its best endeavours to respond to each application within 10 working days.
- 8.2 The Covenantor will provide all details required by clause 8.1 in the format required by the Design Guidelines.
- 8.3 The Covenantor will pay to the Developer a non-refundable application fee, of an amount to be set by the Developer acting reasonably from time to time, when it applies to the Developer for approval under clause 8.1 and the Developer shall not be obliged to review the Covenantor's application until such payment is received.
- 8.4 The Developer may charge the Covenantor further application fees if the review and approval of the Covenantor's building plans is not straightforward and requires additional attendances from the Developer (including requesting clarifications and information and the submission of further or amended plans) outside of the Developer's control.
- 8.5 If the Covenantor commences any construction works on a Lot prior to obtaining approval from the Developer pursuant to clause 8.1 and paying the Bond pursuant to clause 9.1, the Developer may charge the Covenantor a further administration fee of an amount to be set by the Developer acting reasonably from time to time.
- 8.6 The Covenantor will comply with this Instrument and the Design Guidelines in respect of all building and construction works undertaken on the Burdened Land and will ensure that all builders, sub-contractors, workmen and suppliers also fully comply.
- 8.7 The Developer may delegate the approval process to a nominated and suitably qualified party.

9. Construction Bond

- 9.1 When the Covenantor applies to the Developer for approval of its building plans under clause 8.1, the Covenantor will pay to the Developer the Bond to:
- (a) secure the Covenantor's compliance with this Instrument; and
 - (b) ensure that the Covenantor does not cause any damage to the Development or cause the Developer to incur any costs as a result of any actions of the Covenantor and/or its contractors or subcontractors,
- (together the **Bond Conditions**).
- 9.2 The Covenantor may only request (in writing) the repayment of the Bond within three years from the date of payment of the Bond. If the Covenantor fails to request the repayment of the Bond within the required timeframe, the Bond will be forfeited.
- 9.3 If at any time prior to the Bond being repaid to the Covenantor or forfeited, the Developer becomes aware of any breach of the Bond Conditions by the Covenantor and/or its contractors or subcontractors, the Developer:
- (a) shall notify the Covenantor in writing of such non-compliance; and
 - (b) may, at its discretion, remedy the non-compliance, and may apply the Bond towards the costs of such remedy. To the extent that such costs exceed the amount of the Bond, these costs will be recoverable from the Covenantor as a liquidated debt on demand. The Covenantor unreservedly gives the Developer the right to enter onto the Burdened Land to complete the work described above.
- 9.4 Upon completing of the dwelling on the Burdened Land and receipt of a written request from the Covenantor the Bond (less any deductions made pursuant to clause 9.3) shall be returned to the Covenantor.
- 9.5 The Developer is not obliged to hold the Bond in a separate account nor to account to the Covenantor for any interest earned on the Bond.

10. Vesting

- 10.1 The Covenantor consents to the deposit of any survey plan by the Covenantor in respect of the Development which has the effect of vesting any land in any local authority, territorial authority or the Crown (**Land to Vest**), or where land is to be transferred for utilities or road (**Land for Utilities**). The Covenantor agrees that the covenants in this Instrument will cease to apply in respect of any Land to Vest or Land for Utilities upon the date of lodgement with Land Information New Zealand (or any such replacement entity) of the required documents to deposit the relevant survey plan.
- 10.2 The Covenantor agrees that this clause 10 will be deemed to be the consent of the Covenantor to the deposit of the relevant survey plan (including under section 224(b)(i) of the Resource Management Act 1991) and for the removal of the covenants in this Instrument from any Land for Utilities.
- 10.3 If it is determined by the Covenantor or Land Information New Zealand that additional written consent is required from the Covenantor to the deposit of any survey plan or for the removal of the covenants in this Instrument from any Land for Utilities, under clause 10.2, then:

- (a) at the request of the Covenantor, the Covenantee will, at its cost, immediately give such written consent to the Covenantor; and
- (b) in addition to clause 10.2 and 10.3(a), the Covenantee irrevocably appoints the Covenantor as its attorney to sign any consent necessary in the required form to deposit any survey plan or to remove the covenants in this Instrument from any Land for Utilities. No person dealing with the Covenantor as the attorney in this capacity need inquire if the Covenantor is validly exercising its powers as attorney under this clause.

11. Notice

- 11.1 Any notice required to be served on any party shall be in writing and in accordance with the Property Law Act 2007.

12. Liability

- 12.1 Without prejudicing the Covenantee's other rights, this Instrument binds the Covenantor's successors in title so that contemporaneously with the acquisition of any interest in the Burdened Land all such successors in title become bound to comply with this Instrument.
- 12.2 A Covenantor shall, on ceasing to be a registered owner of the Burdened Land, remain liable only in respect of any breach of the covenants in this Instrument arising or continuing before that Covenantor ceased to be a registered owner.
- 12.3 The Covenantor acknowledges that the Covenantee will not be liable to the Covenantor for:
- (a) any loss, damage, claim or expenses (including where such loss, damage, claim or expense arises from the approval or non-approval of an application under clause 8.1 or the Design Guidelines, any failure to meet the timeframes stated in the Design Guidelines or performing any function under or in relation to the Design Guidelines); or
 - (b) a failure to enforce the covenants set out in this Instrument.
- 12.4 The Covenantor will keep the Covenantee fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants.

13. Dispute resolution

- 13.1 If any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.
- 13.2 If the dispute is not resolved within 20 Working Days of the date on which the parties began their negotiations, then the parties shall submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties agree, that person appointed may act as an expert and not an arbitrator.
- 13.3 If an arbitrator cannot be agreed upon within a further 10 Working Days, then an independent arbitrator will be appointed by the AMINZ Appointments Panel.
- 13.4 Such arbitration will be determined in accordance with the Arbitration Act 1996, as amended from time to time, or any enactment passed in replacement.

14. Default provisions

- 14.1 If there should be any breach or non-observance of any of these covenants and without prejudice to any other liability which the Covenantor may have to any person having the benefit of this Instrument, the Covenantor will upon written demand being made by the Covenantee:
- (a) pay to the Developer as liquidated damages the sum of \$1,000.00 per day for every day that such breach or non-observance continues after the tenth Working Day following the date upon which written demand has been made;
 - (b) remove or cause to be removed from the Burdened Land any building, fence or other structure placed or erected on the Burdened Land in breach or non-observance of the above covenants;
 - (c) replace any building materials used in breach or non-observance of the above covenants;
 - (d) undertake any works on the Burdened Land required to remedy the breach or non-observance of the above covenants; and
 - (e) cease any activities being undertaken on the Burdened Land in breach or non-observance of the above covenants.
- 14.2 The Covenantor must meet all costs incurred by the Covenantee in relation to the preparation and service of any demand under clause 14.1.
- 14.3 If the Covenantor does not remedy the breach within 10 Working Days of service of the Covenantee's written demand under clause 14.1, the Covenantee will have the right (but no obligation) to do whatever may be reasonably required to remedy the Covenantor's breach (including entering the Burdened Land) and the costs incurred by the Covenantee in remedying the breach will be recoverable from the Covenantor as a liquidated debt.
- 14.4 Any demand made by the Covenantee will be deemed to have been served to the Covenantor if sent to the postal address of the Burdened Land owned by the Covenantor or, where the Burdened Land is a vacant section, the demand will be deemed to have been properly served if sent to the email address of the lawyer or law firm that signed and certified the transfer of the Burdened Land to the Covenantor.
- 14.5 The Covenantor will at all times indemnify the Covenantee from all proceedings, costs, claims and demands in respect of breaches by the Covenantor of any of the stipulations, restrictions and covenants in this Instrument.
- 14.6 If the Covenantor fails to make any payment to the Covenantee on the due date for payment as required by this Instrument the Covenantor will pay interest on the full amount owing to the Covenantee at a rate of 15% per annum calculated on a daily basis until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights or remedies of the Covenantee.

15. Presumption of liability

- 15.1 If any damage is caused to any part of the Development which fronts onto the Burdened Land and is not a Lot, such damage will, in the absence of proof to the contrary, be deemed to have been caused by the Covenantor and will constitute:
- (a) a breach of the Bond Conditions for the purposes of clause 9.3; and

- (b) a breach of these covenants for the purposes of clause 14,
without the Developer having to make any further enquiries.

16. Enforcement by the Developer

- 16.1 The Developer may enforce these covenants in the same manner as the Covenantee and may exercise the rights of the Covenantee under clause 14 as if the Developer was the Covenantee.
- 16.2 The Developer may take steps to ensure the observance of the covenants in this Instrument but shall not have any legal responsibility or liability for any lack of enforcement or enforceability or application or waiver of any of these covenants or any consents or approvals given by the Developer under these covenants.
- 16.3 The Covenantee will keep the Developer fully indemnified from any claim, liability, loss or action arising against it or its agents in respect of these covenants having regard to their intent to provide for the interests of the Covenantee and its individual obligations of observance and rights of enforcement of the covenants.

Annexure Schedule 2
