

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 (as to RTs [balance of 126180, OT7C/633, OT7C/632 and OT106/99])
RIPPON HOLDINGS LIMITED AND RIPPON INVESTMENTS LIMITED (as to RTs 182714, 182715, 182716, 182717)**

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
No complaints covenant			Lots 1 to 4 DP 344529 (182714 to 182717) Lot 1001 DP [TBC] ([Title reference for Horticulture Area]) Lots 701 to 706 DP [TBC] ([Titles to Rural Lifestyle Production Areas])

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:

Activities means Rural Productive Activities and Additional Activities and **Activity** means any one of them;

Additional Activities means:

- (a) the construction and provision of worker accommodation; and
- (b) the production of commodities from and the processing of any waste or by products resulting from Rural Productive Activities,

and **Additional Activity** means any one of them;

Associated Persons has the meaning given to it 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;

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 owners of the Benefited Land from time to time;

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

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

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

RMA means the Resource Management Act 1991;

Rural Productive Activities:

- (a) means any agricultural, pastoral, horticultural or forestry activities; and
- (b) includes initial processing, as an ancillary activity of commodities that result from the listed activities in (a);
- (c) includes any land and buildings used for the production of the commodities from (a) and used for the initial processing of the commodities in (b); but
- (d) does not include further processing of those commodities into a different product,

and **Rural Productive Activity** means any one of them; and

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;
- (c) this Instrument binds and benefits the parties, and the heirs, executors, successors and assigns in perpetuity and also any lessee or occupier of the Burdened Land; and
- (d) a reference to a statute, regulation or by-law includes all statutes, regulations, or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations or by-laws issued under that statute.

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. No complaints

3.1 From the date of registration of this Instrument, the Covenantor shall not (and shall ensure that its Associated Persons do not):

- (a) make or lodge;
- (b) be party to; or
- (c) finance or contribute to the cost of,

any application, proceeding or appeal (either pursuant to the RMA or otherwise) designed or intended to limit, prohibit or restrict any Activities being undertaken on the Benefited Land including without limitation any action to require the owner or occupier of the Benefited Land to modify the Activities.

3.2 From the date of registration of this Instrument, the Covenantor shall not (and shall ensure that its Associated Persons do not) either directly or indirectly bring any proceedings for damages, negligence, nuisance, trespass, interference or any other matter arising from the Activities.

3.3 Production of this Instrument to the Relevant Authority (or any other concerned party) from time to time shall, without further requirement or reference to the Covenantor, evidence the Covenantor's withdrawal of any action (or its support of any action) which breaches clause 3.1 or 3.2.

- 3.4 Clauses 3.1 to 3.3 also apply 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 Instrument 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 by the tenants and/or occupiers of the terms of their lease as they relate to this Instrument.

4. Vesting

- 4.1 The Covenantee consents to the deposit of any survey plan by the Covenantor 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 Covenantee 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.
- 4.2 The Covenantee agrees that this clause 4 will be deemed to be the consent of the Covenantee 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.
- 4.3 If it is determined by the Covenantor or Land Information New Zealand that additional written consent is required from the Covenantee to the deposit of any survey plan or for the removal of the covenants in this Instrument from any Land for Utilities, under clause 4.2, 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 4.2 and 4.3(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.

5. Notice

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

6. Liability

- 6.1 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.
- 6.2 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.

7. Dispute resolution

- 7.1 If any dispute arises between the parties concerning the covenants, then the parties shall enter into negotiations in good faith to resolve their dispute.

- 7.2 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.
- 7.3 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.
- 7.4 Such arbitration will be determined in accordance with the Arbitration Act 1996, as amended from time to time, or any enactment passed in replacement.

8. Default provisions

- 8.1 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, pay to the Covenantee as liquidated damages the sum of \$1,000.00 per day for every day that such breach or non-observance continues after the date upon which written demand has been made.
- 8.2 The Covenantor must meet all costs incurred by the Covenantee in relation to the preparation and service of any demand under clause 8.1.
- 8.3 If the Covenantor does not remedy the breach within seven Working Days of service of the Covenantee's written demand under clause 8.1, 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.