

## **CONSTRUCTION BOND**

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**THIS AGREEMENT** is made on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### **PARTIES:**

1. **The Developer** ("Developer"): New Zealand Cherry Corp (Leyser) Ltd Partnership trading as Shannon Farm
2. **The Lot Owner** ("Owner"):
3. **House Builder** ("Builder"):

### **BACKGROUND:**

- A. The Owner is seeking to build a dwelling ("Building") on Lot number \_\_\_\_\_ ("Lot") in the Development in accordance with plans and specifications requiring approval from the Developer pursuant to the Land Covenants ("Building Approval").
- B. The Owner has or will appoint the Builder to commence, construct and complete the Building ("Building Work") on the Lot in accordance with the Building Approval, approved plans and specifications, Land Covenants, Building Covenants and Design Guidelines.
- C. Following Building Approval being given, (if given), and either:
  - a. the Owner becoming the registered owner of the Lot; or
  - b. the Developer allowing the Owner and Builder access to the Lot for the purpose of undertaking the Building Work,

the Owner and the Builder agree to carry out all Building Work on the Lot fully in accordance with the Building Approval, the Building Covenants, the Land Covenants, the Design Guidelines and the District Plan Rules, to maintain a consistent high quality in the standard of the Building Work and to fully co-operate and liaise with the Developer and others in carrying out the Building Work in a reasonable and responsible manner.

- D. The parties have agreed to execute this Agreement to secure completion of the Building Works in accordance with the Building Approval, the Land Covenants, the Building Covenants and the Design Guidelines and to ensure that the Owner and Builder do not cause any damage to the Development or cause the Developer to incur any costs as a result of any actions of the Owner, the Builder and/or any of their contractors or subcontractors.

### **AGREEMENT:**

1. The Owner and Builder will complete the Building Work in accordance with the Building Approval, the approved plans and specifications, the Land Covenants, Building Covenants and Design Guidelines.
2. The Owner and Builder will ensure that, prior to commencing any Building Work, either:
  - a. the Lot shall be fully fenced as required by the Design Guidelines and Land Covenants; or
  - b. the building site shall be appropriately fenced with temporary construction fencing, and a single construction access point shall be established (unless otherwise agreed by the Developer).
3. The Owner or Builder shall prior to receiving Building Approval pay a bond of Five Thousand Dollars (\$5,000.00) ("Bond") to:
  - a. secure the Owner's and Builder's compliance with the Building Approval, Land Covenants, Building Covenants and Design Guidelines; and

- b. ensure that the Owner and Builder do not cause any damage to the Development or cause the Developer to incur any costs as a result of any actions of the Owner, the Builder and/or any of their contractors or subcontractors,

(together the "Bond Conditions"). The Bond is payable to the Developer

Direct Bank a/c: **02-0673-0146258-001** Bank Reference: Name ..... and Lot No.....

- 4. If at any time prior to the Bond being repaid to the Owner or forfeited, the Developer becomes aware of any breach of the Bond Conditions, the Developer:
  - a. will notify the Owner and Builder in writing of such non-compliance; and
  - b. if the Owner and Builder do not remedy the non-compliance within 10 working days of service of the Developer's notice under clause 4.a, 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 Owner and Builder as a liquidated debt on demand. The Owner and Builder unreservedly give the Developer the right to enter onto the Lot to complete the work described above.
- 5. If any damage is caused to any part of the Development which fronts onto the Lot and is either owned by the Developer or vested in a Relevant Authority, such damage will, in the absence of proof to the contrary, be deemed to have been caused by the Owner and will constitute a breach of the Bond Conditions for the purposes of clause 4, without the Developer having to make any further enquiries.
- 6. Refund of Construction Bond: The Owner should advise the Developer when they consider the Building Works are complete and the Bond is due for refund. The Developer will complete an inspection as soon as possible and, if in agreement, refund the Bond promptly in accordance with the following. The Bond (or the balance of the Bond) will be returned to the bank account from which it was paid on confirmation from the Developer that no amounts are owing and on completion of the following:
  - a. Receipt by the Developer of a written request for the return of the Bond from the Owner.
  - b. Completion of construction of the Building and all associated fencing and landscaping in accordance with:
    - i. the Design Guidelines, the Land Covenants and the Building Covenants; and
    - ii. any requirements of any Relevant Authority; and
    - iii. the Building Approval and all plans and specifications approved by the Developer pursuant to the Land Covenants.
  - c. The Lot is in a tidy condition.
  - d. Any remedial or reinstatement works associated with the construction (e.g. kerbs) have been completed.
  - e. All covenants and conditions have been complied with throughout the construction process.

Where the above requirements have not been met, the Developer may, without prejudice to any of its other rights, recover the cost for repairs, correspondence and administration from the Bond prior to releasing it to the Owner.
- 7. The Owner and Builder will pay the Developer's costs (including legal costs on a solicitor/client basis) incurred in the enforcement or attempted enforcement of this Agreement.
- 8. If any dispute arises between the parties concerning this Agreement, the following process will be followed:
  - a. The parties shall enter into negotiations in good faith to resolve their dispute.

- b. 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.
  - c. 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.
  - d. Such arbitration will be determined in accordance with the Arbitration Act 1996, as amended from time to time, or any enactment passed in replacement.
9. The Owner may only request (in writing) the repayment of the Bond within three years from the date of payment of the Bond. If the Owner fails to request the repayment of the Bond within the required timeframe, the Bond will be forfeited and this Agreement will expire.
  10. The Developer is not obliged to hold the Bond in a separate account nor to account to the Owner or Builder for any interest earned on the Bond.
  11. The liability of the Owner and the Builder under this Agreement is not released, varied or affected in any way by any delay, extension of time or other indulgence granted to the Owner or Builder or suffered or permitted by the Developer or by any delay, failure or neglect of the Developer to enforce this Agreement or any obligation of the Owner or Builder.
  12. The liability of the Owner and the Builder under this Agreement is joint and several.
  13. In this Agreement, terms defined in the agreement for sale and purchase of the Lot between the Developer and the Owner, the Land Covenants and the Building Covenants have the same meaning in this Agreement.

**SIGNED** by the Owner

**SIGNED** for & on behalf of the  
Developer

**SIGNED** by the Builder

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