

Covenant instrument to note land covenant

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

Covenantor**STONELEIGH ORCHARD LIMITED****Covenantee****STONELEIGH OURCHARD LIMITED****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
Land Covenant		Lot 2 DP 617239 RT: 1257373	Lot 1 DP 617239 RT: 1257372

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 B].

ANNEXURE SCHEDULE B

BACKGROUND:

- A. The Covenantor intends that the Burdened Land be subject to the within covenants for the benefit of the Covenantor.
- B. The Covenantor intends that this Instrument shall be and remain registered against the Record of Title to the Burdened Land so that:
 - (i) Owners or occupiers for the time being of the Burdened Land shall be bound by the provisions of this Instrument; and
 - (ii) The Covenantor can enforce the observance of the provisions of this Instrument by the owners or occupiers for the time being of the Burdened Land.

DEFINITIONS:

In this Instrument, unless the context requires otherwise:

“Benefited Land” means those parcels of land so described in Schedule A of this Instrument;

“Burdened Land” means those parcels of land so described in Schedule A of this Instrument;

“Covenantor” shall include and bind:

- (a) The Covenantor for the time being under this Instrument;
- (b) Where applicable, all respective executors, administrators, successors, assigns and successors in title of the Covenantor, and if more than one jointly and severally;

“Covenantor” shall include and bind:

- (a) The Covenantor for the time being under this Instrument;
- (b) Where applicable, all respective executors, administrators, successors, assigns and successors in title of the Covenantor, and if more than one jointly and severally;

“Covenants” means the covenants contained in this Instrument;

“Instrument” means this Instrument and includes all the annexure schedules incorporated within this Instrument;

“Property” means the Burdened Land.

INTERPRETATION:

In this Instrument, unless the context indicates otherwise:

- (i) All monetary amounts are stated and are payable in New Zealand dollars;
- (ii) Singular words include the plural and vice versa and words importing one gender include the other gender;
- (iii) References to a “party” means a party to this Instrument and include the successors, executors, administrators and permitted assigns (as the case may be) of that party;
- (iv) References to a “person” include an individual, firm, company corporation or unincorporated body of persons, any public, local authority, any government and any agency of any government or of any such authority;

- (v) Headings appear as a matter of convenience and do not affect the construction of this Instrument;
- (vi) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted therefore;
- (vii) Any obligation on the Covenantor to do anything shall be deemed also to be an obligation to suffer, permit and or cause that thing to be done;
- (viii) Any obligations on the Covenantor not to do anything shall be deemed also to be an obligation not to suffer, permit and or cause that thing to be done;
- (ix) Any obligation by two or more persons binds those persons jointly and severally.

COVENANTS:

The Covenantor will:

1. Not trim the northern boundary hedge any lower than 2.5 metres in height.
2. Not use the property for any trading or commercial purpose.
3. Contribute equally to the costs and maintenance of the driveway and gate access control system with the Covenantee.
4. Not build more than one main dwelling and one minor dwelling on the property (with the exception of a separate garage or barn). The Covenantor will not exceed a building setback minimum of 5 metres from the boundary.
5. At all times keep the Burdended Land tidy and free of rubbish, the grass mown and keep road berms, drains, crossings and plantings in a tidy condition.

PROVIDED HOWEVER that the Covenantee may, at its sole discretion, approve in writing anything that would otherwise be in breach of the covenants referred to above upon application being made by the Covenantor to the Covenantee for such approval.

BREACH OF COVENANTS

The Covenantor and the Covenantee agree that if the Covenantor breaches or fails to observe part of or any of the covenants then, without prejudice to any liability which the Covenantor may have to the Covenantee, the Covenantor, upon written demand being made by the Covenantee, will, as the case may be:

- (a) Pay the Covenantee as liquidated damages the sum of \$150 per day for every day that such breach or non-observance continues after the expiry of a period of 30 days from the date upon which written demand was made;
- (b) Remove or cause to be removed from the Property any second-hand building or any caravan, hut, shed or tent being used as a dwelling or temporary dwelling in breach or non-observance of the covenants;
- (c) Remove or cause to be removed from the Property any accumulated rubbish or waste materials;
- (d) Cease and desist from breaching or not observing the covenants.

PROVIDED HOWEVER that the Covenantor and its successors in title will only be liable for breaches of the covenants which occur while it is registered as owner of the Burdened Land in respect of which the breach or non-observance occurs.

GENERAL:

Waiver

No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

Partial Invalidity

If any provision of this Instrument or its applicability to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Instrument and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

Notices

Any notice required to be served on any party under this Instrument shall be served in the manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served.

Governing Law

This Instrument shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.