



Sustainable Farming Agreement:

**Deed of Covenant
for the Conservation of Land**

[Owner]
Trust for Nature (Victoria)

Property Address: As per Title

Note: Owners are obliged under this Covenant to promptly notify the Trust of any change in ownership or another encumbrance relating to the Land or any lease or other interest in Land which the Owners grant to any other person.

Note: This Covenant was agreed as part of planning permit number XXXX

Note: This Covenant was agreed as part of the XXXX incentive program.

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Commented [CR1]: This document intentionally includes tracked changes to highlight where the farm covenant departs from the standard conservation covenant; and comments to explain rationale or highlight issues.

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Parties

insert full Name/s of Owners as per Title(Owner) of Address as per Title

Trust for Nature (Victoria) [ABN 60 292 993 543] (Trust) of Level 5, 379 Collins Street, Melbourne

Recitals

- A The Owner is the registered proprietor of the land described in Schedule 1 and desires to enter into a covenant with the Trust under section 3A of the Act and which runs with the Land empowering the Trust to enforce the covenant against the Owner.
- B The Trust and the Owner have agreed to enter into this Covenant, being satisfied that the Land possesses the appropriate characteristics and acknowledging that the Parties' aims and purposes are the conservation of the Land in accordance with the Covenant Objectives.
- C Covenant Objectives are the conservation of the Land for public scientific and public educational purposes including, as relevant to the Land its:
- (a) native plants and wildlife;
 - (b) natural interest or beauty;
 - (c) ecological significance;
 - (d) historical interest;
- D The Trust and the Owner recognise that the intent of this Covenant is to forever conserve and improve the natural character and wildlife habitat on the land, while allowing Sustainable Land Management practices to continue on Primary Production land.
- DE The Trust and the Owner recognise that the intent of this Covenant is where appropriate to contribute to the National Reserve System, under the Protected Area criteria established by the International Union for Conservation of Nature (IUCN 2008).

1 Definitions

In this Covenant the following definitions apply:

Act means the *Victorian Conservation Trust Act 1972* (Vic).

Conservation Tier means that part of the land designated as Conservation Tier within Schedule 1 for the purpose of conserving areas which are ecologically significant or areas of importance to the conservation of wildlife or native plants

Covenant means this document or any schedule or annexure to it.

Covenant Management Plan means the plan mutually agreed to and signed by the Owner and the Trust for the management of the Land, as amended from time to time and which forms part of this Covenant once signed.

Covenant Objectives means the aims and purposes of this Covenant as outlined in Recital C.

Domestic Area means the area as delineated on Schedule 1 which is part of the Covenant and used as a Dwelling and garden to the Dwelling. *Or* an area, which is a part of the Covenant and used as a Dwelling and a garden to the Dwelling the size and location of which are to be approved in writing by the Trust.

Dwelling means any habitable structure, including but not limited to a house, permanent caravan, dependent persons unit or holiday accommodation.

Exploration means exploration for minerals and includes:

- (1) conducting geological, geophysical and geochemical surveys; and
- (2) drilling; and
- (3) taking samples for the purposes of chemical or other analysis; and
- (4) extracting minerals from the Land, other than for the purpose of producing them commercially; and
- (5) in relation to an exploration licence, anything else (except mining) that is specified in the licence.

Historic Place Tier means that part of the land designated as Historic Place Tier within Schedule 1 for the purpose of protecting an area of historical interest.

~~**Home Occupation** means an occupation carried on in a Dwelling, or within the Domestic Area, by a resident of the Dwelling.~~

Historic Place Tier means that part of the land designated as Historic Place Tier within Schedule 1 for the purpose of protecting an area of historical interest.

Land means the land shown hatched on the plan attached at Schedule 1 being whole of the land more particularly described in Certificate of Title Volume insert number Folio insert number *or* the land shown hatched on the plan attached at Schedule 1 being part of the land more particularly described in Certificate of Title Volume insert number Folio insert number, which has the purpose of conserving areas which are ecologically significant or areas of importance to the conservation of wildlife or native plants.

Letter of Approval means a letter signed by the Trust providing approval for the Owner to undertake specific activities on the Land otherwise prohibited under this Covenant.

Licence means an exploration licence, mining licence, a prospecting licence or a retention licence as set out in the *Minerals Resources (Sustainable Development) Act 1990*.

Mining means extracting minerals from the Land for the purpose of producing them commercially and includes processing and treating ore.

Minister means the Minister of the Crown administering the Act.

Modified Use Tier means that part of the land designated as Modified Use Tier within Schedule 1 for the purpose of protecting ecologically transformed land which is being managed sustainably either for conservation or non-conservation purposes and that helps improve the conservation values of adjacent protected land by providing a buffer, connectivity, retained habitat features or revegetation.

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.

Natural Interest Tier means that part of the land designated as Natural Interest Tier within Schedule 1 for the purpose of protecting an area of natural interest or beauty.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Land or any part of it, including any Mortgagee-in-possession and all future registered proprietors of the Land.

Parties means the parties to this Covenant.

Permitted Defendable Space and Fire Protection Works means vegetation permitted to be removed under the applicable planning scheme (as amended from time to time), whether under a planning permit or exemption in the planning scheme, for bushfire protection purposes including for the creation of defendable space from an existing or new building or other fire protection works.

Register means the register of land kept under the *Transfer of Land Act 1958* (Vic).

Registrar of Titles means the person responsible for managing the Register.

Primary Production can include (a) cultivation for the purpose of selling the produce of cultivation (whether in a natural, processed or converted state); or (b) the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; or (c) the keeping of bees for the purpose of selling their honey; or (d) commercial fishing, including the preparation for commercial fishing or the storage or preservation of fish or fishing gear; or (e) the cultivation or propagation for sale of plants seedlings mushrooms or orchids.

Regenerative Farming involves a system of farming principles and practices that restores landscape function and improves climate resilience by increasing biodiversity, enriching soils, improving watersheds and enhancing ecosystem services.

Subdivision means the subdivision as defined with the *Subdivision Act 1988* (Vic) (or its successor) or any consolidation of land or boundary realignment.

Sustainable Land Management involves using the land within its capability to ensure the productivity and economic potential of the land is maintained, whilst its ecological function,

Commented [CR2]: This definition mirrors the definition of Primary Production in the *Land Tax Act 2005* (Vic) (s 64).

Commented [CR3]: Note: Be careful that this isn't taken as a permitted activity without Letter of Approval

Commented [CR4]: This definition draws on the principles contained in the UN-endorsed definition outlined by the Food and Agriculture Organisation: SLM can be defined according to five key principles: (1) maintain or enhance production / services; (2) reduce level of production risk, including to the environment; (3) protect the potential or natural resources and prevent degradation of soil and water quality; (4) be economically viable; and (5) socially acceptable.

such as the ability of the soils to retain water or the landscape to support biodiversity, is not diminished.

Sustainable Use Tier means that part of the land designated as Sustainable Use Tier within Schedule 1 for the purpose of protecting natural ecosystems and allow sustainable resource use where conservation and resource use can be mutually beneficial. This is a no-plough tier.

Trust means Trust for Nature (Victoria) as established under section 2 of the Act.

2 Interpretation

In the interpretation of this Covenant, the following provisions apply unless the context otherwise requires:

- 2.1 Headings are inserted for convenience only and do not affect the interpretation of this Covenant.
- 2.2 A reference in this Covenant to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 2.3 A reference in this Covenant to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- 2.4 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Covenant.
- 2.5 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 2.6 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 2.7 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 2.8 A reference to the word 'include' or 'including' is to be interpreted without limitation.
- 2.9 Any schedules and attachments form part of this Covenant.

Operative provisions

3 Deed of Covenant

- 3.1 The Trust and the Owner agree without limiting or restricting their respective powers to enter into this Covenant and, insofar as it can be so treated, this Covenant is made pursuant to section 3A of the Act.

4 Registration

- 4.1 The Owner consents to the Trust making application to the Registrar of Titles to make a recording of this Covenant in the Register on the Certificate of Title of the Land in accordance with section 3A(10) of the Act and do all things necessary to enable the Trust to do so including signing any further agreement, acknowledgement or document or procuring the consent to this Covenant of any Mortgagee or caveator to enable the recording to be made in the Register under that section.

5 Effect of Agreement

- 5.1 This Covenant shall be deemed to come into force and effect from the date of execution of this Covenant and the benefit and burden of this Covenant shall be annexed to the Land.
- 5.2 The obligations of the Owner under this Covenant will take effect as separate and severable covenants which shall be annexed to and run at law and equity with the Land to bind the Owner and each successor, assignee or transferee of the Owner, the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Land.

6 Owner Covenants

The Owner covenants at all times to observe and perform the following obligations and duties in relation to the Land:

General

- 6.1 To use and manage the Land in a manner, which in the reasonable opinion of the Trust, is consistent with the Covenant Objectives.
- 6.2 Not to do any act or thing upon the Land, which in the reasonable opinion of the Trust, is prejudicial to its conservation or the Covenant Objectives.

Development and works

- 6.3 In particular, on and with respect to the Land, the Owner must not permit, cause or allow to occur unless approved in accordance with clause 9;
- 6.3.1 the Subdivision of the Land;
- 6.3.2 the construction or placement of any structure or Dwelling on the Land save for:

Dwellings and other structures

- (a) within the Domestic Area the following is permitted;
- (i) ~~X~~ non-habitable structures;
 - (ii) one Dwelling;
 - (iii) any of the usual outbuildings associated with a Dwelling;
- (b) outside the Domestic Area the following is permitted;
- (i) non-habitable structures; and
 - (ii) optional one Dwelling.

Commented [CR5]: Landholder and TFN negotiate which of these can be included in the conservation tier

Commented [CR6]: Similarly this section would be tailored according to landholder preferences, dealt with on a case-by-case basis. Need to specify which tier

- ~~(c) within the Domestic Area;~~
- ~~(i) non-habitable structures;~~
 - ~~(ii) one Dwelling;~~
 - ~~(iii) any of the usual outbuildings associated with a Dwelling;~~
- ~~(d) outside the Domestic Area;~~
- ~~non-habitable structures; and~~
- ~~optional one Dwelling.~~

The location, type and size of any non-habitable structure outside the Domestic Area or a Dwelling anywhere on the Land must be approved in writing by the Trust prior to construction and remain subject to the approval of the responsible authority.

In the event of the destruction or removal of a Dwelling or structure approved under this clause, any replacement Dwelling or structure may be constructed without approval from the Trust, provided it is located on the same site and is designed to have a similar footprint and size as the original.

OR

6.3.3 the construction or placement of any structure or Dwelling on the Land save for non-habitable structures, the location, type and size of which must be approved in writing by the Trust prior to construction and remain subject to the approval of the responsible authority.

In the event of the destruction or removal of a structure approved under this clause, any replacement structure may be constructed without approval from the Trust, provided it is located on the same site, will be used for the same purpose and is designed to have a similar footprint and size as the original.

6.3.4 the erection of any further transmission lines or other services or works (unless required by law) save for those required for a Dwelling approved under sub-clause 6.3.2;

~~6.3.5 the construction of any dams other than XXX existing at the date of this Covenant and XXX further dams to be located within the Domestic Area Conservation Tier Modified Use Tier Sustainable Use Tier Natural Interest Tier Historic Place Tier OR the Land; and;~~

~~6.3.6 erect or display any notice, hoarding or advertising matter save for identification signs and interpretive signs.~~

6.3.5 Any activity that has not been included in the Management Plan that has the potential to undermine the Covenant Objectives must be approved in writing by the Trust prior to commencement in accordance with clause 9.

Use and management

6.4 On and with respect to the **Conservation Tier**, the Owner must not permit, cause or allow to occur, unless otherwise approved by the Trust in accordance with clause 9;

Commented [CR7]: This is the highest level of protection, for areas set aside for biodiversity

6.4.1 the removal or destruction of any local indigenous trees, plants or grasses, dead or alive, or the planting of any flora other than local indigenous flora save for in relation to the Domestic Area where;

(i) the Owner must not introduce any environmental weeds as specified from time to time by the Department of Environment, Land, Water and Planning (or its successor); and

(ii) the Owner may undertake any Permitted Defendable Space and Fire Protection Works;

6.4.2 any act or omission which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;

6.4.3 (unless required by law) any deterioration in the natural state or in the flow, supply, quantity or quality of any body of water save for the construction and maintenance of any dams permitted under sub-clause 6.3.5;

6.4.4 **livestock to enter** save for livestock entering for the purpose of grazing consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;

Commented [CR8]: The conservation tier explicitly excludes livestock, except as agreed within in the Management Plan and via a Letter of Approval

- 6.4.5 the introduction of any non-indigenous fauna, or any cat, dog or other domestic animals save for activities consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;
- 6.4.6 the removal, introduction or disturbance of any soil, rocks, or other minerals (which includes soil cultivation and earth-moving activities) save for revegetation activities and save for the construction and maintenance of any dams permitted under sub-clause 6.3.5;
- 6.4.7 ~~the operation of any trade, industry or business save for Home Occupations.;~~
- 6.4.8 the recreational use of trail bikes or any vehicles;
- 6.4.9 the accumulation of rubbish or storage of any materials other than materials being used or intended to be used by the Owner on the Land;
- 6.4.10 the removal of any timber including fallen timber save for the removal of fallen timber for the Owner's non-commercial use consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;
- 6.4.11 the establishment or spread of pest animals and pest plants which shall be controlled and, as far as possible, eliminated in accordance with section 20 of the *Catchment and Land Protection Act 1994* (Vic) (or its successor);
- 6.4.12 the establishment or spread of high threat pest animals and plants identified by the Trust, which shall be controlled and, as far as possible, eliminated;
- 6.4.13 the application of fertilizer or other harmful inputs such as pesticides save for within the Domestic Area; and
- 6.4.14 any other activities not consistent with the Covenant Objectives;
- 6.5 On and with respect to **the Sustainable Use Tier** the Owner commits to managing the land consistently with the principles of Sustainable Land Management or other holistic land management approaches. The Owner must not permit, cause or allow to occur, unless otherwise approved by the Trust in accordance with clause 9;
- 6.5.1 the removal or destruction of any local indigenous trees, plants or grasses, dead or alive, or the planting of any flora other than local indigenous flora save for in relation to the Domestic Area where
- (i) the Owner must not introduce any environmental weeds as specified from time to time by the Department of Environment, Land, Water and Planning (or its successor); and
- (ii) the Owner may undertake any Permitted Defendable Space and Fire Protection Works;
- 6.5.2 any act or omission which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;
- 6.5.3 (unless required by law) any deterioration in the natural state or in the flow, supply, quantity or quality of any body of water save for the construction and maintenance of any dams permitted under sub-clause 6.3.5;

Commented [CR9]: This does not include non-indigenous horticulture / cropping

Commented [CR10]: Note this refers to recreational use not activities necessary for management / primary production activities

Commented [JD11]: Generally yes, but to note that for Moonlight Creek in particular, we wouldn't permit any removal because there is such a small amount of remnant vegetation and habitat including fallen timber/coarse woody debris/ logs (most is reveg).

Commented [CR12]: Check with Doug and Paul

Commented [CR13]: Examples include but are not limited to intensive animal farming, creating impervious surfaces, hunting, storage or use of hazardous materials, or running commercial feedlots

Commented [CR14]: This is a no-plough tier. Contains fewer obligations than the conservation tier.

- 6.5.4 ~~livestock to enter save for livestock entering for the purpose of grazing consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;~~
- 6.5.5 ~~subject to clause 6.4.5 OR~~ save for livestock, the introduction of any non-indigenous fauna, or any cat, dog or other domestic animals save for XX dogs OR XX working dogs to assist with management of livestock; or except where approved under clause 9 and consistent with the Covenant Management Plan;
- 6.5.6 the removal, introduction or disturbance of any soil, rocks, or other minerals (which includes ~~soil cultivation and earth-moving activities~~) save for revegetation activities consistent with Covenant Objectives and in accordance with the Covenant Management Plan; and save for the construction and maintenance of any dams permitted under sub-clause 6.3.5;
- 6.5.7 ~~the operation of any trade, industry or business save for Home Occupations;~~
- 6.5.8 the recreational use of trail bikes or any vehicles;
- 6.5.9 the accumulation of rubbish or storage of any materials other than materials being used or intended to be used by the Owner on the Land;
- 6.5.10 the removal of any timber including fallen timber save for the removal of fallen timber for the Owner's non-commercial use consistent with the Covenant Management Plan OR save for the removal of timber in accordance with Primary Production activities consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;
- 6.5.11 the establishment or spread of pest animals and pest plants which shall be controlled and, as far as possible, eliminated in accordance with section 20 of the *Catchment and Land Protection Act 1994* (Vic) (or its successor);
- 6.5.12 the establishment or spread of high threat pest animals and plants identified by the Trust, which shall be controlled and, as far as possible, eliminated;
- 6.5.13 ~~the application of fertilizer save for within the Domestic Area;~~
- 6.5.14 the application of harmful or high intensity inputs such as fertilizers or pesticides, save for in the context of Primary Production activities consistent with the Covenant Objectives and pursuant to the Covenant Management Plan; and
- 6.5.15 any other activities not consistent with the Covenant Objectives;

Commented [CR15]: This includes ploughing and cropping

Commented [CR16]: Examples include but are not limited to intensive animal farming, creating impervious surfaces, hunting, storage or use of hazardous materials, or building or running commercial feedlots.

6.6 On and with respect to **the Modified Use Tier** the Owner commits to managing the land consistently with the principles of Sustainable Land Management or other holistic land management approaches and must not permit, cause or allow to occur, unless otherwise approved by the Trust in accordance with clause 9;

6.6.1 ~~save for livestock~~, the introduction of any non-indigenous fauna, or any cat, dog or other domestic animals save for XX dogs OR XX working dogs to assist with management of livestock; or except where approved under clause 9 and consistent with the Covenant Management Plan;

6.6.2 the removal, introduction or disturbance of any soil, rocks, or other minerals (which includes earth-moving activities) save for revegetation activities or soil cultivation consistent with Covenant Objectives and in accordance with the Covenant Management Plan; ~~and~~ save for the construction and maintenance of any dams permitted under sub-clause 6.3.5;

Commented [CR17]: *ie, cropping according to best practice principles (see Management Plan)*

6.6.3 the removal of any timber including fallen timber save for the removal of fallen timber for the Owner's non-commercial use consistent with the Covenant Objectives and pursuant to the Covenant Management Plan; OR save for the removal of timber in accordance with Primary Production activities consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;

6.6.4 the establishment or spread of pest animals and pest plants which shall be controlled and, as far as possible, eliminated in accordance with section 20 of the *Catchment and Land Protection Act 1994* (Vic) (or its successor);

6.6.5 the establishment or spread of high threat pest animals and plants identified by the Trust, which shall be controlled and, as far as possible, eliminated;

6.6.6 ~~the application of fertilizer save for within the Domestic Area;~~

6.6.7 the application of harmful or high intensity inputs such as fertilizers or pesticides, save for in the context of Primary Production activities consistent with the Covenant Objectives and pursuant to the Covenant Management Plan;

6.6.8 the intentional removal or loss of topsoil, including as a result of Primary Production activities; and

6.6.9 any other activities not consistent with the Covenant Objectives.

Commented [CR18]: *Examples include but are not limited to intensive animal farming, creating impervious surfaces, hunting, storage or use of hazardous materials, accumulating rubbish or building or running commercial feedlots.*

Mining and Exploration

6.7 In relation to any minerals exploration or extraction activity or production of gas, petroleum or other substance proposed on or with respect to the Land, the Owner must:

6.7.1 not apply for a Licence;

6.7.2 not permit any Mining or Exploration or production of gas, petroleum or other substance proposed on or with respect to the Land, unless required by law;

6.7.3 notify the Trust of any proposed Mining or Exploration or production of gas, petroleum or other substance proposed on or with respect to; and

6.7.4 not consent to any Mining or Exploration or production of gas, petroleum or other substance proposed on or with respect to unless approved by the Trust in writing.

7 Further Covenants

7.1 The Owner further covenants and agrees:

- 7.1.1 to make reasonable efforts to remove pests and weeds from the Land and to prevent their future invasion;
- 7.1.2 to make reasonable efforts, if necessary, to erect fences which allow free movement of indigenous fauna between adjacent grazing areas and the Land, and to maintain fences and gates in good stock proof order and condition;
- 7.1.3 to permit officers, agents or nominees of the Trust acting on behalf of the Trust provided prior notice of at least seven days has been given, to enter the Land in order to monitor and assess its condition, assess compliance with this deed or to prepare the Management Plan pursuant to clause 8.

Lease or Licence

7.2 The Owner further covenants and agrees upon resolving to lease or licence the Land or any portion of the Land to:

- 7.2.1 include within the lease or licence provided to any potential lessee or licensee of the Land a copy of this Covenant; and
- 7.2.2 in writing, procure the agreement of the tenant or licensee to perform and observe the duties and obligations as assumed by the Owner pursuant to this Covenant; and
- 7.2.3 promptly notify the Trust in writing of any lease or licence entered into for the Land or any portion of the Land.

Sale

7.3 The Owner further covenants and agrees upon entering into any contract to sell the Land or any portion of the Land to:

- 7.3.1 include within the contract provided to any potential purchaser of the Land a copy of this Covenant; and
- 7.3.2 promptly notify the Trust in writing that the Owner has entered into a contract to sell the Land or any portion of the Land.

Other Interest

7.4 The Owner further covenants and agrees before granting or entering into any other contract or disposing of or creating any other interest in the Land or any portion of the Land to:

- 7.4.1 include within the contract or provide to the person being granted an interest in the Land or any portion of the Land, a copy of this Covenant; and
- 7.4.2 in writing, procure the agreement of the person being granted an interest in the Land to perform and observe the duties and obligations as assumed by the Owner pursuant to this Covenant; and
- 7.4.3 promptly notify the Trust in writing that the Owner has granted an interest in the Land or any portion of the Land.

Mortgagee consent

- 7.5 Without limiting clause 4, the Owner further covenants and agrees that the Owner must obtain Mortgagee consent to the registration of this Covenant on the Certificate of Title to the Land and procure that the Mortgagee signs such documents and does such things as is otherwise necessary to give effect to that consent. The Owner indemnifies the Trust for any costs, loss, damage or expense arising from or in connection with any failure by the Owner to comply with this clause 7.5.

8 Covenant Management Plan

- 8.1 The Covenant Management Plan must be prepared as soon as practicable after the execution of this Covenant by the Trust and the Owner.
- 8.2 The Covenant Management Plan may be varied or amended by mutual consent in writing of both Parties, unless otherwise agreed.
- 8.3 The Parties agree that if there is any inconsistency between the terms of this Covenant and the provisions of the Covenant Management Plan, then the terms of this Covenant shall prevail.
- 8.4 The Parties agree that once mutually agreed to and signed by both Parties, the Covenant Management Plan forms a part of this Covenant and is enforceable as if it were part of the Covenant.
- 8.5 If the Parties are unable to agree on the content and actions of the Covenant Management Plan then the dispute resolution process set out in clause 12 must be followed.
- 8.6 The Owner must do all things necessary to give effect to the terms of this Covenant and the Covenant Management Plan.
- 8.7 The Owner agrees to manage the Land pursuant to and in accordance with the terms of the Covenant Management Plan.

9 Letter of Approval

- 9.1 The Parties agree that the Trust may provide prior written consent for the Owner to undertake any action not permitted under clause 6 on the following basis;
- 9.1.1 the Owner must obtain the consent of the Trust prior to undertaking any actions or works;
- 9.1.2 the consent must be in the form of a Letter of Approval issued by the Trust;
- 9.1.3 the Trust may place conditions on the grant of consent which must be provided to the Owner in writing; and
- 9.1.4 the consent will not be unreasonably withheld, provided that the Trust is satisfied that the proposal will not prejudice the Covenant Objectives.

10 Acknowledgements by the Trust

- 10.1 The Trust acknowledges that compliance with clause 6 and the restrictions set out in this Covenant may be treated as waived to the extent necessary for:
- 10.1.1 responsible fire protection (including any Permitted Defendable Space and Fire Protection Works), weed and pest control;
 - 10.1.2 acts outside the control of the Owner, including but not limited to:
 - (i) War
 - (ii) Riot
 - (iii) Insurrection
 - (iv) Vandalism; and
 - (v) Natural Disaster.
 - 10.1.3 reasonable maintenance of fences, culverts, dams, bridges, watercourses, buildings, tracks, paths, roads and other services;
 - 10.1.4 any act required under any law, rule or regulation of any government or governmental agency, executive or administrative order or act of general or particular application; and
 - 10.1.5 the proper management of the Land as a protected environment for indigenous flora and fauna.

11 Default by the Owner

- 11.1 Where the Trust believes the Owner has breached or failed to comply with any term of this Covenant relating to the Land, the Trust may issue a notice in writing to the Owner ("Notice") that:
- 11.1.1 states the notice is a notice under this section;
 - 11.1.2 specifies the nature of the breach;
 - 11.1.3 requests rectification by a nominated date; and
 - 11.1.4 specifies the actions required to remedy the non-compliance with the terms of this Covenant
- 11.2 If after 30 days from the date of the Notice the Trust believes that there has been an inadequate response by the Owner to the Notice:
- 11.2.1 the Trust or its agents may enter the Land to undertake the necessary conservation work;
 - 11.2.2 the Owner must, immediately upon receipt of costs from the Trust, reimburse the Trust for the costs incurred; and
 - 11.2.3 the costs in clause 11.2.2 shall be capable of being recovered by the Trust in any court or competent jurisdiction as a civil debt recovered summarily.

11.3 Where the Owner disputes the Notice, the dispute resolution provisions in clause 12 apply.

12 Dispute resolution

Meeting to attempt to resolve disputes

12.1 If a dispute arises under this Covenant or concerning its subject matter, either Party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The nominated senior representatives of both Parties must meet within ten days of the notice and try to resolve the dispute in good faith.

Either Party may not unreasonably withdraw from attendance at the meeting.

Performance of obligations

12.2 Despite the existence of a dispute, each Party must continue to perform its obligations under this Covenant.

Mediation

12.3 If the Parties fail to resolve the dispute within 30 days of the meeting under clause 12.1, a mediator must be appointed by the Parties. If the Parties cannot agree on a mediator, the matter will be referred to a mediator chosen by the chairman of the Victorian Chapter of the Institute of Arbitrators and Mediators, Australia, or his or her nominee, for mediation.

12.4 Despite the provisions of clause 11 and clause 12 where the Trust determines that the circumstances require immediate action to prevent damage to the conservation of the Land in accordance with the Covenant Objectives, it may pursue any other remedies available to it at law and in equity.

12.5 The costs of the mediator and any associated costs, must be met equally between the Parties.

13 Miscellaneous

Entire agreement

13.1 This Covenant contains everything the Parties have agreed in relation to the subject matter it deals with. No Party can rely on an earlier written document or anything said or done by or on behalf of another Party before this Covenant was executed.

Governing law and jurisdiction

13.2 This Covenant is governed by the law of Victoria. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Severability

- 13.3 Each provision of this Covenant is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Covenant in the relevant jurisdiction, but the rest of this Covenant will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variations

- 13.4 Any variations to this Covenant must be done in accordance with the provisions of the Act.

Waivers

- 13.5 A waiver of any right, power or remedy under this Covenant must be in writing signed by the Party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 13.6 The fact that a Party fails to do, or delays in doing, something the party is entitled to do under this Covenant does not amount to a waiver.

Execution and date

Executed as a deed.

Date:

Where Owner is an individual(s):

Signed, sealed and delivered by

insert name of individual(s)

in the presence of:

.....
Signature of **Owner**

.....
Signature of witness

.....
Name of witness (print)

OR

Where Owner is a company:

Executed by [insert name of company and ACN]
*by being signed by its authorised person(s) in
accordance with section 127 of the Corporations
Act 2001(Cth);* if the seal is affixed, witnessed by
the following persons:

.....
Signature of director/authorised officer

.....
Signature of director/company
secretary/authorised officer

.....
Name of director/authorised officer (print)

.....
Name of director/company secretary/authorised
officer (print)

The common seal of **Trust for Nature (Victoria)**
was hereunto affixed by the authority of the
Trustees in the presence of:

.....
Signature of Trustee

.....
Signature of Chief Executive Officer

.....
Name of Trustee (print)

.....
Name of Chief Executive Officer (print)

It is hereby certified that the approval of the Minister under sub-section 3A(8) of the Act has been
obtained to this covenant (**ref. schedule TNV.....**).

.....
Chief Executive Officer
Trust for Nature (Victoria)

Schedule 1 - Land

Schedule 2 - Mortgagee's Consent

Optional Clause

insert name of Mortgagee as Mortgagee of registered mortgage No. mortgage number consents to the Owner entering into this Covenant and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Covenant.

Executed by [insert name of company and ACN]
by being signed by its authorised person in accordance with section 127 of the Corporations Act 2001; if the seal is affixed, witnessed by the following persons:

.....
Signature of director/authorised officer

.....
Signature of director/company secretary/authorised officer

.....
Name of director/authorised officer (print)

.....
Name of director/company secretary/authorised officer (print)