

OPERATIVE PART :

1 owner's covenants

The Owner HEREBY COVENANTS AND AGREES with the Trust that:

1.1 Registration of Restricted Covenant

Contemporaneously with the execution of this deed, the Owner will execute a restrictive covenant in the form set out in Annexure 2 hereto and take such steps as the Trust shall reasonably request to facilitate registration of the restrictive covenant on the Certificate of Title to the Land. The Owner acknowledges that it has the intention that the restrictive covenant shall continue to bind the Land in perpetuity.

1.2 Entry

The Owner acknowledges that the Trust may enter onto the Land for the purpose of inspecting the Sanctuary and the Farm Land for purposes consistent with this agreement upon the giving of reasonable notice to the Owner of its desire to do so.

1.3 Commitment to Prepare & Implement Management Plan

The Owner shall in consultation and with the assistance of the Trust where required, prepare or have prepared a management plan ("the Plan") and will continue to update and amend the Plan for the purpose of ensuring the ongoing conservation of the Sanctuary and the Farm Land. The Owner shall implement that Plan.

1.4 Notification of Trust of certain Proposals

Where the Owner receives notice of any application for a proposal involving exploration or mining extraction or production of gas, petroleum, minerals or other substances or establish any transmission lines or other services or works in any part of the Land that includes or is adjacent to the Sanctuary, the Owner shall notify the Trust of any such proposal and refrain from giving any consent unless otherwise approved by the Trust

1.5 No Disposal

The Owner FURTHER AGREES with the Trust that it shall not sell transfer or otherwise dispose of or encumber the part of the Land or interest therein or any rights of the Owner therein without the prior written consent of the Trust which consent will not be withheld if

(a) in any contract of sale the purchaser is provide with a copy of this Deed including the text of the restrictive covenant finally registered on the Title and the Owner promptly notifies the Trust of the identity of any proposed new owner or lessee of the Land; and

(b) the person to whom any such right or interest in the Land is to be granted has first executed a Deed of Covenant whereby that person covenants to observe and perform such

of the covenants, conditions and stipulations contained in this agreement as the Trust shall require as if that person had been a party to this Deed.

1.6 Charge and Caveat

The Owner HEREBY CHARGES the part of the Land comprising the Sanctuary and the Farm Land hereto in favour of the Trust with the performance of its obligations pursuant to the Deed and authorises the Trust to lodge an absolute caveat at the Department of Land Administration against the Certificate of Title to the Land for the purpose of securing such obligations.

2 trust covenants

The Trust HEREBY COVENANTS AND AGREES with the Owner that:

2.1 Provision of Assistance

Following registration of the restrictive covenant on the Certificate of Title to the Land, it shall provide assistance to the Owner in the form and manner set out in Item 3 of the Schedule.

2.2 Publicity and Promotion

The Trust shall, in its Conservation Covenant programme, acknowledge the role of the Owner in promoting the conservation of areas of natural and cultural landscape heritage significance.

3 non-compliance with covenants

3.1 If the Owner fails to comply with the terms of this Covenant, the parties agree that the Trust shall be entitled to serve a written notice on the Owner specifying the extent of the default and stipulating the works to be done to reinstate the Land if the Land has been damaged and is otherwise capable of rectification, or otherwise specifying what needs to be done to rectify the non-compliance.

3.2 Dispute Resolution

3.2.1 Subject to compliance with the following subclauses, a party to this agreement may not commence Court proceedings or arbitration relating to any dispute arising from this agreement. Where a party to this agreement fails to comply with sub-clauses 3.3.2 to 3.3.4, the other party to this agreement in dispute need not comply with this clause before referring the dispute to arbitration or commencing Court proceedings relating to that dispute.

3.2.2 Notice of Dispute and Designation of Representatives

Any party to this agreement claiming that a dispute has arisen under this agreement shall give written notice to the other party in dispute nominating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The other party who has received the notice

shall promptly in turn advise the other party in writing nominating as its representative in negotiations relating to the dispute a person with similar authority.

3.2.3 Resolution of Dispute by Representatives

The nominated persons shall, within fourteen (14) days of the last designation required by clause 3.2.2, following whatever investigations each deems appropriate, seek to resolve the dispute.

3.2.4 Mediation

If the dispute is not resolved within the following fourteen (14) days (or within such further period as the representatives may agree is appropriate) the parties shall within a further fourteen (14) days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation or independent expert determination and on:

- (a) the procedure and timetable for any exchange of documents and other information relating to the dispute;
- (b) procedure rules and a timetable for the conduct of the selected mode of proceeding; and
- (c) a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute, and in the event that no agreement can be reached in that regard, the person shall be a person nominated by the Executive Director of the WA Museum.

3.3 If the Owner has not taken steps to demonstrate a commitment to rectification to the reasonable satisfaction of the Trust within ninety (90) days of service of such notice on the Owner or following the agreement of the Owner to a particular course of action under the provisions of clause 3.2, the Owner authorises the Trust to enter onto the Sanctuary through access provided on the Land by its contractors or agents to undertake any necessary work to rectify or prevent further damage to the Sanctuary or any improvements designed to enhance or protect the Sanctuary. The Owner acknowledges that cost of such work shall be payable by the Owner to the Trust as a debt.

4 duration of covenant

It is the intention of the parties that the obligations in this agreement shall continue in perpetuity.

5 interpretation

"Farm Land" includes the pasture, wood plantations and the orchard areas in the locations indicated on the sketch attached hereto.

"the Sanctuary" is the area of natural vegetation located in the northern part of the Land which has been fenced. It is the area shown hatched on the sketch annexed hereto.

Unless expressed to the contrary:

(a) words importing:

(i) the singular include the plural and vice versa;

(ii) any gender include the other gender;

(b) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(c) a reference to:

(i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;

(ii) a person includes its legal personal representatives, successors or assigns;

(iii) a statute, ordinance, code, regulation, award or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(iv) a right includes a benefit, remedy, discretion, authority or power;

(v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;

(vi) provisions or terms of this deed or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;

(vii) time is to be local time in Perth, Western Australia;

(viii) "\$" or "dollars" is a reference to the lawful currency of Australia;

(ix) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;

(x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;

(xi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

Headings

Headings do not affect the interpretation of this deed.

Schedule

The Schedule and Annexures form part of this deed

SCHEDULE

Item 1: the land

Sussex Location 673 and portion of each Sussex Locations 354 and 886 being the whole of the land comprised in Certificate of Title Volume 1233 Folio 301

Item 2: the sanctuary

Those parts of the Land as are shown hatched the sketch in Annexure 2.

the farm Land

Those parts of the Land as are shown cross-hatched the sketch in Annexure 2.

Item 3: the assistance to be provided by the trust

Advice and assistance in the preparation of the Management Plan for the Sanctuary and the Farmland to the extent that management issues on the Farmland relate to the proper management of the Sanctuary.

Ongoing advice for the management of the Sanctuary.

ANNEXURES

Annexure 1: Restrictive Covenant

Annexure 2: Sketch setting out location of the Sanctuary and the Farm Land
(survey quality)

EXECUTED BY the Parties as a Deed:

The Common seal of the MARGARET)

RIVER CONSERVATION FARMING)

CLUB INC was hereunto affixed by a)

resolution of its executive committee in the)

presence of:)

Chairperson

Secretary

The Common seal of the NATIONAL)

TRUST OF AUSTRALIA (WA) was)

hereunto affixed by a resolution of)

Council in the presence of:)

President

Secretary

annexure 1

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT is made the day of 1999

B E T W E E N :

MARGARET RIVER CONSERVATION)

FARMING CLUB INCORPORATED)

of "Glenbourne" Old Ellenbrook Road)

Margaret River in the State)
of Western Australia (" the Registered)
Proprietor"))

A N D

NATIONAL TRUST OF AUSTRALIA)
(WA) of Old Observatory, 4 Havelock)
Street West Perth in the said State ("the)
Trust"))

RECITALS :

A. The Registered Proprietor is registered as the proprietor in fee simple in land being Sussex Location 673 and portion of each Sussex Locations 354 and 886 being the whole of the land comprised in Certificate of Title Volume 1233 Folio 301 ("the Land").

B. The Registered Proprietor and the Trust have entered into an agreement dated 1999 ("the Agreement") which recognises parts of the Land as having the natural and cultural landscape heritage qualities worthy of recognition by the trust and assistance in conservation. The areas respectively identified ("the Sanctuary" and "the Farm Land") are described in Item 2 of the Schedule.).

C. As part of the Agreement, the Registered Proprietor has agreed with the Trust that it will enter into a restrictive covenant over the Land pursuant to the terms of Section 21A of the National Trust of Australia (W.A.) Act 1964.

OPERATIVE PART :

1 owner's covenants

The Registered Proprietor with the intention of binding so far as is possible all owners or other possessors of the Land to ensure compliance with the restrictions set out herein, HEREBY COVENANTS with the Trust pursuant to Section 21A of the National Trust of Australia (WA) Act 1964 that it shall not:

(i) without the consent of the Trust; or

(ii) otherwise than in accordance with a management plan to be prepared for the Sanctuary and approved by the Trust;

do any act of thing upon the Sanctuary which in the reasonable opinion of the Trust is prejudicial to the conservation of natural heritage values identified by the Trust and in particular:

1.1 Sanctuary

In respect of and on the Sanctuary:

- (a) Not place or permit any structure or dwelling to be built in or on the Sanctuary;
- (b) Not destroy or permit the destruction or removal of any local indigenous flora, nor plant any flora other than local indigenous flora;
- (c) Not destroy or permit any act which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;
- (d) Not destroy or permit (unless required by law) any act that would result in the deterioration in the natural state or in the flow, supply, quantity or quality of any body of water except to allow up to twenty percent (20%) of the supply to be taken to the Farm Land to support sustainable agriculture;
- (e) Not permit livestock to enter the Sanctuary;
- (f) Not introduce or to permit the introduction of any non-indigenous fauna, including (but not limited to) any cat, dog, or other domestic animal;
- (g) Not erect or to permit the erection or display of any notice, hoarding or advertising matter with the exception of any identification signs or other signs approved by the Trust for the purpose of assisting in the conservation and preservation of the natural heritage values of the Sanctuary;
- (h) Not permit or consent to (unless required by law) any exploration or mining extraction or production of gas, petroleum, minerals or other substances or establish any transmission lines or other services or works;
- (i) Not subdivide or to permit the subdivision of the Land;
- (j) Not permit or the operation of any trade, industry or business, the recreational use of trailbikes or four wheel drive vehicles (other than where unavoidably required for the proper management and protection of the Sanctuary), the unnecessary storage of rubbish or materials or any other activities not consistent with the conservation of the vegetation and fauna in the Sanctuary;
- (k) Not remove or permit the removal of any timber, including fallen timber except for domestic use on the Farm Land and non-commercial craft work by the Registered Proprietor;
- (l) Not permit regular access to the Sanctuary by the public at large except where the Registered Proprietor has invited friends and special interest groups;
- (m) Not use or permit the use of guns or other wildlife hunting weapons in the Sanctuary with the exception of equipment required for *bona fide* vermin control or humane slaughter of injured native animals;

1.2 Farm Land

And in respect of and on the Farm Land:

(n) Not permit any activity inconsistent with sustainable farming practice or likely to have a deleterious effect on the Sanctuary;

(o) Not permit or consent to (unless required by law) any exploration or mining extraction or production of gas, petroleum, minerals or other substances;

(p) Not use or permit the use of guns or other wildlife hunting weapons in the Farm Land with the exception of equipment required for *bona fide* vermin control or humane animal management.

2 trust covenants

The Trust HEREBY WAIVES the restrictions referred to in clause 1 to the extent necessary for:

(a) reasonable fire protection and pest control to the extent that such matters are not dealt with or are inadequately dealt with in the Plan and must be addressed to satisfy statutory obligations; and

(b) maintenance of fences and watercourses to the extent that such matters are not dealt with or are inadequately dealt with in the Plan.

3 mutual covenants

It is HEREBY MUTUALLY AGREED by the Registered Proprietor and the Trust that the covenants and restrictions expressed herein shall run with and bind the Land and shall enure for the benefit of the Trust and the objects of the Trust's Conservation Covenanting programme.

4 variation of covenants

Where the obligations set out in this covenant become too onerous the Registered Proprietor may seek a variation from the same from the Trust and, provided that the natural heritage and cultural landscape heritage values identified by the Trust and the original Registered Proprietor are not significantly compromised, and appropriate variations can be made to the Plan to address such alteration, the Trust shall take all steps necessary to facilitate the implementation of such variation.

5 interpretation

Reference to the parties includes their personal representatives, successors and lawful assigns.

Where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several.

Headings have been inserted for guidance only and shall be deemed not to form part of the context.

The Schedule and Annexures (if any) form part of this Deed.

EXECUTED by the parties as a Deed.

The Common seal of the MARGARET)
RIVER CONSERVATION FARMING)
CLUB INC was hereunto affixed by a)
resolution of its executive committee in the)
presence of:)

Chairperson

Secretary

THE COMMON SEAL of the national)
trust of australia (w.a.) was)
hereunto affixed by authority of a resolution)
of the Council in the presence of:)

PRESIDENT

SECRETARY