

TLC

THE LAND CONSERVANCY

OF BRITISH COLUMBIA

COVENANT MODEL EXPLAINED

NOVEMBER 4, 1999

IMPORTANT NOTICE:

The attached document is for **internal use only** by TLC staff, volunteers and members. It is not intended to provide or to replace legal or accounting advice. The comments provided in this document represent the views of TLC staff involved in covenant negotiations and may or may not be correct. TLC makes absolutely no assurances about the information contained herein and strongly advises anyone not acting for TLC to seek independent Legal and Accounting advice.

LAND TITLE ACT
FORM C

Province of
British Columbia

GENERAL INSTRUMENT - PART I (This area for Land Title Office Use)

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Name

Address

City, Postal Code, Telephone

Signature

2. Parcel Identifier(s) and Legal Description(s) of Land:

008-803-901,	DL 3060, LILLOOET DISTRICT,
013-268-112,	DL 641, LILLOOET DISTRICT,
013-199-081,	S1/2 OF SW ¼, DL 2996, LILLOOET DISTRICT,
008-804-036,	LOT 7, DL 3063, PLAN 1367, LILLOOET DISTRICT,
008-804-044,	LOT 8, DL 3063, PLAN 1367, LILLOOET DISTRICT,
008-803-862,	DL 308, LILLOOET DISTRICT,
008-803-790,	DL 631, LILLOOET DISTRICT,
008-803-731,	DL 632, LILLOOET DISTRICT,
008-803-803,	DL 1231, LILLOOET DISTRICT,
008-803-749,	DL 1232, LILLOOET DISTRICT,

3. Nature of Interest:*

DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Instrument	Transferee
Rent Charge	Section 11, page 12	Transferee
Section 218 Statutory Right of Way	Section 9, page 10	Transferee

(Index of attached documents – TLC usually registers all three of these documents to provide the protection and governance necessary)

4. Terms: Part 2 of this instrument consists of (select one only)

- | | | |
|-----|-----------------------------|---------------------------------------|
| (a) | Filed Standard Charge Terms | D.F. No. |
| (b) | Express Charge Terms | X Annexed as Part 2 |
| (c) | Release | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

[A conservation covenant is always submitted as type \(b\) – the entire document must be attached \(annexed as Part 2\)](#)

5. Transferor(s):* **This is the landowner at the time that the covenant is registered**

Name

Address

6. Transferee(s): (Including occupation(s), postal address(es) and postal code(s))*

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, a society registered in British Columbia (Registration No S-36826), with its registered office at 5793 Old West Saanich Road, Victoria, B.C. V9E 2H2

[This is the Land Trust who holds the covenant](#)

7. Additional or Modified Terms:*

N/A

LAND TITLE ACT
FORM C

(Section 219.81)

Province of
British Columbia

GENERAL INSTRUMENT - PART I

8. Execution(s): ******This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s):*	EXECUTION DATE			Party(ies) Signature(s)
	Y	M	D	
				<u>Landowner (covenant donor)</u> Name
	xx	xx	xx	_____ Signature
<u>Witness</u> (as to both signatures)			99	_____ Signature (if more than one landowner) Land trust holding covenant TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA by its authorized signatories
	100			_____ William Charles. Turner
_____ (as to both signatures)				_____ Name Co-holder of covenant ¹ by its authorized signatories
	xx	xx	xx	_____ by its authorized signatories
_____ (as to both signatures)				_____

* OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c. 116 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space is insufficient, continue executions on additional pages in Form D

¹ The Land Conservancy usually works with a second local land trust to co-hold and co-enforce the conservation covenant. This strengthens the agreement by having two organizations oversee the actions of one another, as well as the land.

TERMS OF INSTRUMENT - PART 2

**Section 219 Conservation Covenant and
Section 218 Statutory Right of Way**

The Agreement is dated for reference [Month xx, xxxx](#) is

AMONG:

[Landowner Name](#)
[Address](#)

AND:

[TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, a society registered in British Columbia \(Registration No. S-36826\), with its registered office at 5793 Old West Saanich Road, Victoria, B.C. V8X 3X3](#)

AND:

[Co-holder of covenant \(land trust\)](#)
[Registration number](#)
[Address](#)

WHEREAS:

- A. The Owner is the registered owner of the Land;
- B. The Land contains significant amenities, including flora, fauna and natural features, of great importance to the Owner, to the Covenant Holders, and to the public;
- C. A statutory right of way pursuant to s. 218 of the Land Title Act in favor of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holders;
- D. The [Covenant holder #1 Land Trust](#) has been designated by the Minister of Environment, Lands and Parks as a person authorized to accept covenants under s 219 and as a person authorized to accept statutory rights of way pursuant to s. 218 of the *Land Title Act*; and
- E. The [Covenant holder #2 Land Trust](#) has been designated by the Minister of Environment, Lands and Parks as a person authorized to accept covenants under s 219 and as a person authorized to accept statutory rights of way pursuant to s. 218 of the *Land Title Act*; and

In consideration of the payment of two dollars (\$2.00²) now paid by each of the Covenant Holders to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the parties agree as follows, in accordance with sections 218 and 219 of the *Land Title Act* (British Columbia):

1. Definitions and Interpretation

1.1 In this Agreement:

- (a) "Amenity" includes any natural, scientific, environmental, wildlife, plant life, agricultural or cultural value relating to the Land;
- (b) "Business Day" means, a day on which the Land Title Office in Victoria BC is open;
- (c) "Covenant Holder" means, unless the context otherwise requires, TLC The Land Conservancy of British Columbia, a society registered in British Columbia (Registration No.S-) and includes its permitted successors and assignees as provided in section 13;
- (d) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where 1999 equals 100;
- (e) "Full-Time Residence" means, residential building designed to be occupied at all seasons of the year as a primary residence for its occupants;
- (f) "Land" means the parcels of land legally described as:
from General Instrument Form C Part 1.2 (all lands covered by covenant)
- (g) "Long Term Management Plan" means a plan adopted by the Owner which directs the management of the Land for a period of not less than 25 years and which is reviewed and revised at least once every 5 years;
- (h) "Notice of Enforcement" means a notice of enforcement given under section 10;
- (i) "Owner" means landowner name(s) and, includes a Successor of the Owner;
- (j) "Rent Charge" means the rent charge granted by the Owner under section 11;³
- (k) "Rent Charge Amount" means the amount set out in section 11, the payment of which is secured by the Rent Charge;⁴

² Under common-law there needs to be an exchange of money for a promise to be considered binding. \$2 has been established as a nominal fee for exchange.

³ "Rent Charge" is the legalese for the amount determined as a fine used in the event of a violation of the covenant.

⁴ The charge determined is calculated in the future using the CPI (part d)

- (l) "Report" means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this agreement;
- (m) "Southern Land" means those parcels of the Land legally described as: PID 008-803-901, DL 3060, LILLOOET DISTRICT, PID 013-268-112, DL 641, LILLOOET DISTRICT, PID 013-199-081, S1/2 OF SW ¼, DL 2996, LILLOOET DISTRICT, PID 008-803-960, LOT 1, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-803-978, LOT 2, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-803-986, LOT 3, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-803-994, LOT 4, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-804-001, LOT 5, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-804-010, LOT 6, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-804-036, LOT 7, DL 3063, PLAN 1367, LILLOOET DISTRICT, PID 008-804-044, LOT 8, DL 3063, PLAN 1367, LILLOOET DISTRICT⁵;
- (n) "Northern Land" means those parcels of the Land legally described as: PID 008-803-790, DL 631, LILLOOET DISTRICT, PID 008-803-731, DL 632, LILLOOET DISTRICT, PID 008-803-803, DL 1231, LILLOOET DISTRICT, PID 008-803-749, DL 1232, LILLOOET DISTRICT, PID 008-803-862, DL 308, LILLOOET DISTRICT;
- (o) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part thereof by any means, including a beneficial owner;
- (p) "The Land Conservancy" means TLC The Land Conservancy of British Columbia, a society registered in British Columbia (Registration No.S-36826) and includes its permitted successors and assignees; and
- (q) "Whole Farm Plan" means a plan for the management of the farm or ranching operation created by discussion and agreement between the Owner, the farm operator and other consultants⁶.

1.2 Where this Agreement says something is in the "sole discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party⁷.

1.3 This Agreement shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.4 This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, the Schedules to this Agreement and Part 1 of the *Land Title Act* Form C to which this Agreement is attached.

⁵ This is an example of one way to establish different zones within a larger property.

⁶ A whole Farm Plan might appear in a covenant covering agricultural land.

⁷ It is very important that the covenant holder(s) have as much authority as possible to make their decisions

1.5 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement.
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

2.Representations and Warranties⁸

2.1 The Owner warrants that the facts set out in Recital A are true as of the date of this agreement.

2.2 Turtle Island Earth Stewards warrants that the facts set out in Recital D are true as of the date of this Agreement.

2.3 The parties each agree that Recitals B and C are true as of the date of this Agreement.

3.Intent of Agreement⁹

⁸ In this section the parties confirm that the information contained in the 'recitals' is correct. This might be important many years from now as proof that the facts were as stated.

⁹ In this section it is important to correctly spell out what the intent of the agreement is. There are certain things that should always be included (these are underlined in this example for clarity) and others that are optional. If there is ever a question about what the original intent of the parties to the agreement was this is where the courts will look to find the answer.

- 3.1 The parties each agree that the general intent of this Agreement is:
- (a) to protect, preserve, conserve and maintain portions of the Land and the Amenities, in a natural state while maintaining viable a working agricultural use;
 - (b) to prevent any occupation or use of the Land that will significantly impair or interfere with the current state of the Land or the Amenities; and
 - (c) to use the Land and Amenities for the purposes of sustainable agriculture including hay and food production, environmental education and research;

and the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

3.2 This Agreement shall be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance, enhancement, and restoration of the natural state of the Land and the Amenities and sustainable agriculture for ecological and environmental reasons.

4. Baseline Documentation Report

4.1 The parties agree that the Land, the location of current agricultural uses, and the Amenities are described in the Report, a copy of which is on file with each of the parties at the addresses set out in section 14, an overview of which is attached as Schedule A to this Agreement.

4.2 The parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the parties each agree that the Report and Schedule A provide an accurate description of the Land and the Amenities at the date of this Agreement.

4.3 The parties each acknowledge that the flora and fauna on the Land will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna over time, without human intervention other than as expressly permitted by this Agreement¹⁰.

5. Restrictions on Land Use¹¹

5.1 Except as expressly permitted in this Agreement, the Owner shall not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish,

¹⁰ The Baseline protects everyone by documenting what considerations exist on the land at the time of the agreement. For enforcement it is important to be able to document what has been changed, damaged, or lost. From the owners perspective it is important to document what is already modified or changed from the natural state to prove that such change or damage did not happen after the covenant has been registered.

¹¹ This area contains the restrictions placed on the land. In some cases these restrictions are placed in a Schedule attached at the end of the agreement. Either way is okay. If there are more than just a few restrictions it is usually best to place them in a schedule.

negatively affect, or alter the Land or the Amenities from the condition described in the Report.

5.2 Without restricting the generality of section 5.1, the Owner shall not, except with the prior written approval of the Covenant Holder, in the sole discretion of the Covenant Holder, use or permit the use of the Land for any of the following activities:

- (a) alter or interfere with the hydrology of the Land, including diversion of natural drainage and flow of water in or around the Land which may impact the Land;
- (b) have the land removed from the Agricultural Land Reserve;¹²
- (c) allow any Full-time Residence to be constructed or placed upon the Northern Land;¹³
- (d) allow more than three (3) Full-time Residences to be constructed or placed upon the Southern Land;
- (e) sell any part of the Land to any person or persons unless all of the Land is being sold to the same person or persons;
- (f) sell the Land unless the Owner is being dissolved and then only to another society having similar purposes;
- (g) after all financial encumbrances have been removed from the Land, place any new mortgage upon the Land;
- (h) lease or otherwise transfer control of the Land unless the lease refers to this covenant and contains a provision which permits the Owner to terminate the lease in the event that the tenant violates the lease;
- (i) subdivide the Land by any means; and
- (j) place signs larger than 32 square feet on the Land.¹⁴

6. Dispute Resolution¹⁵

6.1 If there is a disagreement regarding a breach of this Agreement which has occurred or is threatened, or if there is disagreement as to the meaning of this Agreement, the Owner or either of the Covenant Holders may give notice to the

¹² Covenants on land within the Agricultural Land Reserve must be approved by the Agricultural Land Commission. The ALC likes to see clauses like this one, also no subdivision and binding together of individual titles.

¹³ This illustrates how you can restrict a particular activity to a portion of the land.

¹⁴ To limit unsightly signs and billboards.

¹⁵ This agreement must stand the test of time. Despite of the best will of all the parties it is reasonable to expect that at some time in the next few hundred years there could be a disagreement. This section provides a method for dealing with such disagreements. The number of days for each step can be changed if the parties feel that a longer or shorter process is more appropriate.

other parties requiring a meeting of all parties within 10 Business Days of receipt of the notice.

6.2 The parties must attempt to resolve the disagreement, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.

6.3 If the parties are not able to resolve the disagreement within that time, the parties may appoint a mutually acceptable person to mediate the matter and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 Business Days after the mediator is appointed.

7.Owner's Reserved Rights¹⁶

7.1 Subject to sections 5.1 and 5.2, the Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Land in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.

7.2 Without limiting the generality of section 7.1 and subject to sections 5.1 and 5.2, the following rights are expressly reserved to the Owner:

- (a) to maintain, restore or replace existing buildings and other improvements on the Land as of the date of registration of this Agreement;
- (b) to build any improvements necessary for the operation of the agricultural activities on the Land;
- (c) to maintain and improve the hayfields in their present location on the Southern Lands;
- (d) to lease the ranching operation to a tenant;
- (e) to lease other assets or improvements to a tenant;
- (f) to build, maintain, replace, improve and to operate or lease educational or research facilities;
- (g) to farm the Land and to do all acts necessary to maintain and operate the Land as a working farm;
- (h) to maintain, replace or restore the existing waste disposal and water supply system;
- (i) to use the improvements or make the improvements available for any use which is consistent with the intent of this Agreement, where the net revenue generated is used primarily for costs related to the Land or other lands within the province of British Columbia consistent with

¹⁶ In this section we spell out the specific rights that the owner wants to retain. If there are a large number of rights then these may be placed in a schedule. In fact the owner retains any rights that are not given away under section 5 but listing them in this section will give more clarity. This section is particularly useful to provide a specific right such as the right to build a road or a building in an otherwise protected area.

the constitutional purposes of The Land Conservancy of British Columbia;

- (j) to allow public access to the Land;
- (k) to install, maintain, restore or replace signs for the purposes of public safety or informing the public regarding the Land and the Amenities;
- (l) to install, maintain, restore or replace a sign or other monument identifying donors and sponsors of the purchase of the Land;
- (m) to install, maintain, restore or replace equipment for the generation and storage of electrical power for use on the Land;
- (n) to install, maintain, restore or replace equipment for communication and monitoring purposes, provided that such equipment is directly related to the security, safety and well being of the improvements or of persons using the improvements, or for monitoring of environmental or other research purposes, not having a height of over 6 metres above natural ground level at its base; and

7.3 Subject to section 7.5, nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary to:

- (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
- (b) prevent potential injury or death to any individual.¹⁷

7.4 If the Owner or any other party intends to do anything described in section 7.3, the Owner shall give at least 30 days' prior written notice to the Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. Despite the rest of this Agreement, the Owner shall permit the Covenant Holder to enter upon and inspect the Land if any action is proposed under section 7.3. The Covenant Holder may comment on the proposed action and the Owner and any other party must take those comments into consideration before doing anything under that section.

8.Owner's Obligations As To Taxes and Other Matters¹⁸

8.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Agreement.

¹⁷ Provides a protection for everyone in that measures to deal with emergency situations are possible with reporting after the fact.

¹⁸ The owner remains the owner and is responsible for all of the costs of being an owner. This section protects the covenant holders from any present or future liability for costs such as property taxes or personal injury law suits. (There is a fear that in the event of an injury on covenanted land, the injured party might include everyone whose name appears on the title in a claim. While it is very unlikely that a court would find damages against the covenant holder, this section provides some protection).

8.2 The Owner shall indemnify the Covenant Holder, its directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the Amenities by the Owner.

8.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:

- (a) breaches of this Agreement which occur while the Owner is not the registered owner of any interest in the Land;¹⁹
- (b) injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner; or
- (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement.

8.4 Without limiting the generality of sections 8.1, 8.2 and 8.3, the Owner:

- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste, or any matter that impairs the environment ("Contaminant"); and
- (b) shall indemnify each Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holders, jointly or severally, in any way associated with anything described in section 8.4(a).

8.5 Where, as provided under section 8.3(b), the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.²⁰

¹⁹ The owner is only liable for things that occur while he or she is the owner. When a sale of the land has occurred it is necessary to determine who the owner was at the time of the damage. Prudent buyers might request that the covenant holders inspect the land prior to a purchase to confirm the condition.

²⁰ The covenant holders, not being the land owners, do not have the authority to prosecute trespassers or vandals. They do not have the power to seek restitution. The owner does have this ability. There have been

8.6 The Owner shall pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and shall pay any arrears, penalties and interest in respect thereof.

8.7 The Owner shall indemnify the Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or the Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or the Covenant Holder as a result of the amendment or termination of this Agreement.²¹

8.8 Any debts or other amounts due from the Owner to the Covenant Holder under this Agreement, if not paid within 30 days after notice, shall bear interest at the annual interest rate that is 1 percent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, British Columbia, for demand Canadian dollar commercial loans made to its most creditworthy commercial customers and designated from time to time by the Bank of Montreal as its prime rate.

8.9 For clarity, the indemnities granted by the Owner to the Covenant Holder under sections 8.2, 8.4 and 8.7 are indemnities granted as an integral part of the section 219 covenant created by this Agreement.

8.10 On or before December 31, 2004, the Owner will prepare a Long Term Management Plan for the Land which will be submitted to the Covenant Holder for approval. The Management Plan will include a Whole Farm Plan, and deal with issues of public access, visitor management, wildlife habitat enhancement and any other areas identified in the initial Management Plan which is dated for reference October 1st, 1999. The Covenant Holder will have 40 Business Days to comment on the Management Plan. The Owner will, acting reasonably, consider all comments received from the Covenant Holder and will incorporate those comments in the final version of the Long Term Management Plan. If the Owner wishes the Covenant Holder to, through the Long Term Management Plan, approve of any action which require written consent from the Covenant Holder then the Owner must obtain written approval from the Covenant Holder at its Sole Discretion. The Long Term Management Plan must be formally adopted by the Owner on or before April 30th 2005.²²

8.11 Once adopted, the Long Term Management Plan must be reviewed and revised at least every five years. The process for comment, and if necessary approval, by the Covenant Holder in 8.10 must be followed.

instances in the US where owners have turned a 'blind eye' to the trespasses and vandalism of others then refused to prosecute. This paragraph prevents that situation.

²¹ In some cases a charitable tax receipt will be issued for the donation of a covenant. If in the future the covenant holder releases the owner from its obligations there could be severe penalties against both the owner and the covenant holders.

²² Some covenants, like the example, use a management plan to direct the day-to-day management of the land. In this example 8.10 provides the control of the creation of the management plan. 8.11 provides a requirement for review and revision at regular intervals.

9. Statutory Right of Way For Monitoring and Enforcement²³

9.1 The Owner grants to each of the Covenant Holders a license, and a statutory right of way pursuant to s. 218 of the *Land Title Act*, permitting the Covenant Holder to do the following:

- (a) to enter upon and inspect the Land:
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before August 31 each year, but if the parties cannot agree on those days by August 31 in any year, the Covenant Holder is entitled to enter upon and inspect the Land in accordance with section 9.1(a)(ii); and
 - (ii) at all reasonable times upon prior notice by the Covenant Holder to the Owner of at least twenty-four (24) hours, unless, in the opinion of the Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the sole discretion of the Covenant Holder;
- (b) as part of inspection of the Land, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
- (c) to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the Covenant Holder's sole discretion and at the Covenant Holder's expense, the Land or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency other than as described in section 9.1(d), destroys, impairs, diminishes or negatively affects or alters the Land or the Amenities from the condition described in the Report;
- (d) in accordance with section 10.1, to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the Covenant Holder's sole discretion and at the Owner's expense, the Land or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner:
 - (i) destroys, impairs, diminishes, negatively affects or alters the Land or the Amenities from the condition described in the Report; or
 - (ii) contravenes any term of this Agreement;
- (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance,

²³ A Statutory Right of Way is a different right from that of a covenant. It provides the power to enter upon the land to monitor or inspect at regular intervals. In this example it also provides the right to enter on the land to do actual repairs or restoration to the land and in some cases to charge the owner for the cost of doing so. Without this power it would be very difficult, if not impossible, to ensure that the covenant was being obeyed over time.

enhancement, restoration or rehabilitation of all or any portion of the Land or the Amenities; and

- (f) to place survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings.

9.2 The Covenant Holder may bring equipment and personal property onto the Land when exercising its rights under this Agreement.²⁴

10. Enforcement Remedy of the Covenant Holder

10.1 If the Covenant Holder, in its sole discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach. The Owner has 60 days from receipt of the notice, or conclusion of the dispute resolution provision under section 6 if it is invoked, to remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach, including with respect to the time within which the breach shall be remedied. If the Owner does not remedy a breach described in section 10.1 within the time acceptable to the Covenant Holder under section 10.1, either Covenant Holder is entitled to enter the Land and remedy the breach or carry out the arrangements referred to in section 10.1 and the Owner shall reimburse that Covenant Holder for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice under section 10.1. Expenses incurred by the Covenant Holder under this section are a debt owed by the Owner to the Covenant Holder.

11. Rent Charge and Its Enforcement²⁵

11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual rent charge against the Land, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both under s. 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.

²⁴ This may seem silly, but we do want the monitors to be able to be clothed and to carry things like cameras, bear spray and possibly even their food. On large properties one might well need a vehicle to visit parts of the land.

²⁵ The Land Titles Act requires the use of the term "Rent Charge". This is really the penalty section and operates like a fine should the covenant be violated. The rent charge is only payable if the owner is in violation of the covenant and has failed to remedy the violation.

11.2 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$5,000.00 per year, subject to adjustment under section 11.3. For clarity, only one Rent Charge Amount is payable by the Owner for each violation.²⁶

11.3 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be an increase of 1%.²⁷

11.4 The Rent Charge Amount shall be increased by a sum equal to 110% of the market value at the date of any breach of this Agreement of any flora or fauna, soil, rock, gravel or minerals, which has been altered, damaged, destroyed, moved, harvested or removed.²⁸

11.5 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.

11.6 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach in accordance with section 10 of this Agreement.

11.7 The Covenant Holder may enforce the Rent Charge by any combination, or all, of:²⁹

- (a) an action against the Owner for the Rent Charge Amount;
- (b) distraint against the Land to the extent of the Rent Charge Amount;
- (c) an action for appointment of a receiver in respect of the Land; or
- (d) an order for sale of the Land to another Society having similar purposes.

12. Successor of the Owner

²⁶ The amount of the rent charge can be any reasonable amount to which the parties agree. It has a number of important considerations. It might be important 100 years from now to be able to show that all of the parties considered a violation a very serious matter as evidenced by a high rent charge. Even if the rent charge is nominal, say \$100.00, the existence of the rent charge section of the covenant provides the method of enforcement of the penalty and for recovery of the costs associated. The rent charge is intended to be a deterrent and is unlikely actually be used.

²⁷ This keeps the rent charge amount in line with inflation. This is very necessary when you consider that the covenant will be in use for hundreds of years and even \$5,000 may be a very small amount in 250 years.

²⁸ This paragraph is designed to prevent the owner from profiting from a violation of the covenant. Without this section an owner might decide to violate, pay the rent charge and make millions on the sale of the timber or other harvest.

²⁹ This is very powerful but very necessary.

12.1 This Agreement shall ensure to the benefit of and be binding upon the Owner and the Owner's Successor.³⁰

12.2 The Owner shall not lease or license the Land or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and unless the lease or license expressly entitles the Owner to terminate the lease or license and re-enter the land if the tenant or licensee breaches any of the provisions of this Agreement.

12.3 Failure by the Owner to comply with the provisions of this section shall not affect the enforceability of this Agreement against the Owner or any Successor.

13. Assignment of Agreement or Dissolution of the Covenant Holder

13.1 This Agreement shall be transferable by the Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to an entity or person qualified at the time of transfer to hold covenants under s. 219 of the *Land Title Act* and any applicable regulation under it. The Covenant Holder agrees that before it assigns its rights and obligations under this section, it shall consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 10 days after the Covenant Holder to the Owner under this section, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Owner agrees that the Covenant Holder is only required to consult the Owner and that the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.

13.2 In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder shall use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interests under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to the Nature Conservancy of Canada, to hold temporarily until another Covenant Holder can be found, or if the Nature Conservancy of Canada is not available, to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 13.1 does not apply to this section.

³⁰ Sale of the land does not have any effect on the power of the covenant.

14. Notice

14.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement shall be:

- (a) delivered in person; or
- (b) sent by pre-paid registered mail to the address of the parties at their respective addresses as set out in section 14.4.³¹

14.2 If notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the earlier of the date of such acknowledgment and the date that is 5 days after the notice is sent.

14.3 If notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fourth Business Day following the day on which the notice was sent.

14.4 The addresses of the parties' representatives for notice are as follows:

The Owner:

, provided that if the ownership of the Land has changed, to the registered owner in fee simple as indicated on title to the Land at the time of notice.

The Covenant Holder

TLC The Land Conservancy of British Columbia
5793 Old West Saanich Road
Victoria, B.C. V9E 2H2

14.5 Each party agrees to immediately give written notice to the others of any change in its address from that set out in section 14.4.

14.6 If a party refuses to sign an acknowledgment of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

15. Access

15.1 No right of access by the general public to any portion of the Land is conveyed or created by this Agreement.³²

16. Notice of Covenant

³¹ We do not allow for the use of fax or other 'electronic' means because it is difficult to know if such documents have actually been delivered. Notice is so important here that it is not worth the risk of using other than 100% reliable methods.

³² This paragraph deals with public access. In this example it does NOT provide for public access. Even though nothing about the covenant implies public access it is important for the sake of the owner that this be clearly stated. Alternate wording could require that an area be open to the public.

16.1 The Owner agrees to allow the Covenant Holder to publicize the existence of this Agreement in a tasteful manner.³³

16.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holder to erect a plaque or other signage on the Land, in a tasteful manner and at the Covenant Holders' expense, indicating that the Covenant Holder holds a covenant on the Land.³⁴

17.No Liability in Tort³⁵

17.1 The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this Agreement as a covenant under seal. Without limiting the generality of the foregoing, the parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties in respect of this Agreement and nothing in this Agreement creates any duty of care or other duty on any of the parties to anyone else. For clarity, the intent of this section is to, among other things, exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

18.Waiver³⁶

18.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by each of the Covenant Holders, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.

19.Joint and Several Obligations

19.1 Where there is more than one party comprising the Owner under this Agreement, the obligations of those parties as the Owner are joint and several.

20.Remedies not exhaustive

20.1 Exercise or enforcement by a party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right that party may have against the other parties in respect of or under this Agreement or its performance or breach.

21.Covenant runs with the Land³⁷

21.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the *Land Title Act* (British Columbia) and a statutory right of way granted under s. 218 of the *Land Title Act* in

³³ The existence of a covenant is a matter of public record and accessible to anyone who searches the records of the Land Titles office. The covenant holder, as a public charity, must be able to tell its members what it holds and what it does.

³⁴ Signs on covenanted land are not common, but in some cases it will be appropriate to tell the world what is being saved. This may encourage others to follow the good example.

³⁵ Torte means civil damages

³⁶ If the covenant holder does not enforce the covenant in one instance or allow the owner to do something that is in violation of the covenant it does not mean that the owner can get away with it a second time.

³⁷ The covenant stays on the title of the land no matter how many times it is sold. It is perpetual.

respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

22.Registration

22.1 The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and the interests it creates, is registered against title to the Land.

23.Severance

23.1 If any part of this Agreement is held by a court to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by that holding or by the severance of that part as if the part was never part of this Agreement.

24.No other agreements

24.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other agreements and arrangements regarding its subject. This Agreement may only be changed by a written instrument signed by all the parties.

25.Binding on successors

25.1 This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

26.Independent Advice³⁸

26.1 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holder that the Owner should seek legal advice as to the meaning and effect of this Agreement, and the Owner further acknowledges and agrees that no legal advisor of the Covenant Holder has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement.

27.Deed and contract³⁹

27.1 By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed and covenant executed and delivered under seal.

28.Rights of the Covenant Holder

28.1 The Covenant Holder may exercise its rights under this Agreement through its directors, officers, employees, agents or contractors.

³⁸ It is very important that the owner obtains independent advice and that this fact be documented. At some time in the future someone contesting the covenant might state that the owner was not properly informed about the meaning of implications of the documents and attempt to have it overturned. The presence of this section should make that attack unlikely.

³⁹ The use of a seal is a very ancient practice it makes an agreement more important, more binding and more solemn.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE A

Attached to and forming part of the Covenant Agreement between the TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, the Owner, and TURTLE ISLAND EARTH STEWARDS, Covenant Holder, dated as of the 14th day of October, 1999.

BASELINE DOCUMENTATION REPORT

1.0 Acknowledgment

1.1 The Owner hereby acknowledges and agrees that the following is an accurate description of the Property, as of the reference date of this agreement.

2.0 Property Location and description.

2.1

3.0 Significance of the Land and Amenities

4.0 The Management Vision

4.1 .

5.0 Site History

5.1

6.0 List of buildings, structures and other improvements

6.1

7.0 Inventory of Species.

7.1