

# DRAFT

THIS COVENANT is made this                      day of                      1994

BETWEEN    NEW ZEALAND HISTORIC PLACES TRUST a body corporate under the provisions of the Historic Places Act 1993 (hereinafter called "the Trust") of the one part

AND            SYBIL JOYCE BALLANTYNE of Hastings, Widow (hereinafter called "the Owner") of the other part

## WHEREAS

- (i)            The Owner is registered as proprietor of the land described in the First Schedule hereto (hereinafter called "the Land") and upon which the building described in the Second Schedule hereto (hereinafter called "the Building") is erected.
- (ii)           The Trust considers and is satisfied that the building and its environs should be preserved and maintained as an historic place.
- (iii)           The Trust and the Owner have agreed to enter into a Heritage Covenant in respect of the building and its environs pursuant to the Historic Places Act 1993.

NOW THEREFORE THIS COVENANT WITNESSETH AND THE PARTIES HERETO AGREE WITH EACH OTHER AS FOLLOWS:

1.    The Trust and the Owner hereby acknowledge that the primary object of this Covenant are:

- a. to conserve the building for its historical and architectural significance
  - b. to conserve the integrity of the building
  - c. to conserve all of the trees.
2. The Owner therefore agrees not to damage or demolish or permit the damage or demolition of the building nor to do or permit anything or undertake or permit any activity which in the opinion of the Trust will be detrimental to the building or to the trees shown on the attached plan marked "A" or the preservation thereof.
3. The Trust acknowledges that the primary objects of this Covenant may be adequately met by the preservation of the external facades of the building and those elements of the interior listed in the Third Schedule hereto, and that the Owner may therefore from time to time carry out alterations to the remainder of the interior of the building with the prior written consent of the Trust. The Trust further acknowledges that consent shall not be withheld to such alterations in circumstances where:
- (a) items listed in the Third Schedule hereto are not adversely affected; and
  - (b) the external facades of the building are not affected by the consequences of internal alterations: and
  - (c) the structural integrity and earthquake resistance of the building is not lessened.

4. The Owner agrees that any modification, alteration or addition to or removal of any of the features of the building listed in the Third Schedule hereto shall also require the prior written consent of the Trust, and that in considering any such proposal the factors to be taken into consideration by the Trust shall include the following:
- (a) the extent to which the proposed works could potentially compromise the architectural and historical integrity of the building; and
  - (b) the extent to which the proposed works are deemed necessary to assist in the long-term conservation of the building; and
  - (c) the degree of proposed loss of the original fabric of the building, including the incremental effect of any previously approved works; and
  - (d) the question of whether or not the proposed works could be reversed at a subsequent date; and
  - (e) the necessity or otherwise of the proposed works as a means of ensuring that the building may continue to have an economic use; and
  - (f) the likely effect of the proposed works on the structural integrity and earthquake resistance of the building, including the incremental effect of any previously approved works; and
  - (g) relevant provisions of the draft Aotearoa Charter prepared by ICOMOS New Zealand, a copy of which is annexed as the Fourth Schedule hereto; and

- (h) any other factor that may appear relevant to the Trust in the circumstances.
5. The Trust agrees that, subject to the provisions of clauses 2, 3 and 4 hereof, the Owner may adapt the building to use it for any purpose:
- (a) that is a compatible use in terms of:
    - (i) necessitating no change to the culturally significant features of the property as defined in the Third Schedule hereto; or
    - (ii) necessitating only changes which are substantially reversible to those features; or
    - (iii) necessitating only changes which have a minimum impact on those features; and
  - (b) that complies with relevant provisions of the Resource Management Act 1991.
6. The Owner will at her own expense continue to:
- (a) maintain the building in substantial repair and condition, having regard to its architectural and historical significance and general condition at the date of this Covenant; and
  - (b) maintain the grounds in reasonably presentable condition at all times; and

- (c) maintain the driveway in the condition it is in as at the date of this covenant.
7. The Trust agrees that notwithstanding the provisions of clause 5, it may nevertheless from time to time on application by the Owner consider providing specialist conservation advice and financial assistance towards the cost of restoration and maintenance work on the building (both interior and exterior) and the grounds that is consistent with the Trust's general policies for the time being of assistance to private property owners.
  8. The Owner will allow access to the Trust, its servants, and agents, to inspect the building at reasonable times and upon reasonable written notice for the purpose of ensuring compliance with the provisions of this Covenant.
  9. The Owner agrees to maintain a comprehensive policy of insurance on the building, the value of this cover to be at the Owner's discretion provided that it is at all times maintained at a level that is not less than the average construction cost for new dwelling house of equivalent size in the region as determined from time to time by Government statistics.
  10. The Trust agrees at its expense to arrange for the definition of the land which is the subject of this Covenant to meet the requirements of the District Land Registrar for the noting of a Heritage Covenant on the relevant certificate of title.

11. All legal costs and disbursements including those incurred by the Owner relating and incidental to the preparation, completion and carrying into effect this Covenant shall be borne by the Trust.
12. The Owner or her Trustees and Executors will notify the Trust of any change of ownership or control of all or any part of the land, and will supply the Trust with the name and address of the new owner or lessee.
13. If at any time prior to registration hereof by the District Land Registrar the Owner desires to sell or otherwise dispose of all or any part of the land, such sale or disposition shall be made expressly subject to the restrictions, stipulations and agreements contained in this Covenant.
14. In the event of the building or any part of it being damaged or destroyed from any cause whatever the Owner agrees to notify the Trust immediately. Should the Trust in its own discretion determine that it is not practicable or desirable to repair, restore or reinstate the same, upon the Trust advising the Owner of its decision in this regard then all obligations of the Trust and the Owner under this covenant in respect of the building or part of the building so damaged or destroyed shall cease.
15. For the avoidance of doubt:
  - (a) the covenants contained in the Covenant will bind the Owner and the Owner's heirs, executors, successors and assigns in perpetuity; and
  - (b) the owner will not under any circumstances be liable in damages for any breach of covenant

committed after she has parted, with or sold the land in respect of which such breach occurs; and

- (c) where there is more than one owner for the time being of the fee simple title to the land, the covenants contained in this Covenant will bind each owner jointly and severally; and
  - (d) where the Owner for the time being is a company the covenants contained in this Covenant will bind a receiver, liquidator, statutory manager or statutory receiver. Where the owner is a natural person this Covenant will bind the Official Assignee. In either case this Covenant binds a mortgagee in possession; and
  - (e) the reference to any Act in this covenant extends to and includes any amendment to, or re-enactment of that Act.
16. Any dispute which may arise between the Owner and the Trust relating to the legal interpretation of this Covenant may be resolved by referring the dispute to an Arbitrator acceptable to both parties and appointed in accordance with the provisions of the Arbitration Act 1908, whose decision shall be final.
17. The Owner acknowledges that all of the trees referred to and listed on the attached plan are to be conserved and before any part of any tree is altered or removed (including any branch) the Owner must first obtain the prior written consent of the Trust. The Trust will take into account the following factors (as well as any others it thinks relevant in the circumstances) when considering whether to grant its consent and on what conditions and in the case of an established tree;

- (a) the extent to which its condition may pose a threat either to public safety or to the long term conservation of the buildings and out goings; and
  - (b) the extent to which the proposed works are deemed necessary to prolong the life of the tree, enhance its appearance, combat disease or reduce the risk of damage from strong winds; and
  - (c) whether or not the tree is listed in the Hastings District plan; and
  - (d) the relevant provisions of both the Charter and of the Florence Charter prepared by the ICOMOS-IFLA International Committee for Historic Gardens, copies of which are annexed as the Fifth and Sixth Schedule hereto.
  - (e) Any other factor which may appear relevant to the Trust in the circumstances.
18. The Owner agrees to retain all established trees located on the land for the duration of their natural lives, including but not limited to those trees specifically identified in the plan attached hereto, unless the Trust gives its prior written approval to the removal of any particular tree on the grounds that its retention;
- (a) could potentially jeopardize the long term conservation of the building and or the out buildings; or
  - (b) poses a threat to public safety; or



(c) is undesirable for some other reason.

19. The Owner acknowledges that it is necessary to comply with Local Authority requirements in respect of those trees listed in the District Plan and further agrees that any proposed maintenance, pruning or tree surgery on any established tree, other than work of an emergency nature required after damage, shall also require the prior written consent of the Trust. The Owner further acknowledges that in considering any such proposal the Trust shall be entitled to consider whether or not the person who is intending to undertake the proposed maintenance, pruning or tree surgery is appropriately skilled, and in particular whether or not that person possesses qualifications recognised by the Royal New Zealand Institute of Horticulture as being generally appropriate for the proposed work.
20. Attached hereto and marked "B" are completed registration forms in respect of 10 Notable and Historic Trees (Royal New Zealand Institute of Horticulture) all of which trees are situate in the grounds of the land described in the First Schedule and owned by the Owner.
21. The Owner agrees to manage and maintain the lawns and the driveway. The driveway surface shall remain as compacted shingle and shall be regularly maintained.
22. It is hereby acknowledge that this Covenant is entered into pursuant to the provisions of Section 6 of the Historic Places Act 1993.

## F I R S T   S C H E D U L E

ALL THAT parcel of land containing 2.5907 hectares more or less situate in Block XV Heretaunga Survey District being Lot 1 on Deposited Plan 22834 and being all the land in Certificate of Title P3/530 (Hawkes Bay Registry)

**S E C O N D   S C H E D U L E**

**T H I R D   S C H E D U L E**

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

The Common Seal of )  
THE NEW ZEALAND HISTORIC )  
PLACES TRUST )  
was hereunto affixed in )  
the presence of: )

.....  
Board Member

.....  
Board Member

SIGNED by the Owner )  
SYBIL JOYCE BALLANTYNE )  
in the presence of: )