

## **ANNEXURE B**

# **SugarWorld Heights Building Covenants Deed**

ANNEXURE B  
SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

**Building Covenants Deed**

This deed is made between the Buyer named below and SugarWorld Pty Ltd A.C.N.  
102 989 917 ("SugarWorld") of 21 Supply Road, Bentley Park, Queensland in respect of the land  
described below ("Land").

Buyer/s Name:				
Buyer/s Address:				
* Where a company is the buyer the directors and shareholders of the company are required to provide a guarantee and indemnity in respect of the Buyer's obligations				
Guarantor/s Name:				
Guarantor/s Address				
Street Address of Land:				
Lot	Plan	County	Parish	Title Reference
Date of completion of the original sale of the Land by SugarWorld ("Original Sale Date")				

**Background**

- A. The Buyer expressly acknowledges that the Land is situated in and forms part of a large residential development area (the "Estate") being developed and sold by SugarWorld and that it is desirable that supervision and control be exercised by SugarWorld to ensure that a sufficiently high standard in respect of both design and construction of dwelling houses in the Estate should be maintained and further to ensure that the Estate should be developed in a manner which will present a pleasant appearance.
- B. The Buyer has either agreed to purchase the Land from SugarWorld or agreed to purchase or accept a transfer from a person ("Previous Owner") who has previously agreed with SugarWorld to comply with the covenants in this deed in respect of the Land including the provision requiring the Previous Owner to have the Buyer enter into this deed in favour of SugarWorld.
- C. In consideration of SugarWorld agreeing to sell the Land to the Buyer or in consideration of the Previous Owner agreeing to sell, gift or otherwise transfer the Land to the Buyer (as the case may be), the Buyer has agreed to enter into this deed of covenant in favour of SugarWorld agreeing to be bound by the covenants contained herein with the intent that the benefit of the following covenants shall endure to SugarWorld and other land owners in the Estate and continue so to do notwithstanding and after the completion of the transfer of the Land to the Buyer.

**Covenants**

**1. Interpretation**

Except to the extent that such interpretation shall be excluded by or be repugnant to the context whenever the same is used herein:

- 1.1. "Buyer" shall mean and include every person who is a Buyer and each or any of them, their or his assigns and executors and administrators or successors of each guarantor and this guarantee and the obligations and agreements on their part herein contained or implied shall bind each of them and both of them jointly and each of them severally;
- 1.2. "Guarantor" shall mean and include every person who is a Guarantor and each or any of them, their or his assigns and executors and administrators or successors of each guarantor and this guarantee and the obligations and agreements on their part herein contained or implied shall bind each of them and both of them jointly and each of them severally;
- 1.3. "Original Sale Date" - If this deed is being entered into by a Buyer who is purchasing the Land directly from SugarWorld then the "Original Sale Date" will be the date of completion of such sale. If this deed is being entered into by a Buyer who is purchasing or otherwise acquiring the Land from a Previous Owner who agreed with SugarWorld to comply with the covenants in this deed in respect of the Land then the Original Sale Date will be date of completion of the contract where SugarWorld first sold the Land – such date being specified in the table above.

## ANNEXURE B

### SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

- 1.4. "SugarWorld" shall mean and include SugarWorld, its assigns and successors;  
1.5. Words importing the singular number or plural number shall be deemed to include the plural number and the singular number respectively and the words importing any gender shall include any gender; and a reference in the case of incorporation to winding up shall include official management, receivership or scheme or arrangement.

#### 2. Condition Precedent

- 2.1. Where the Buyer is purchasing the Land, this deed is conditional upon completion of the contract for the sale of the Land with the intent that the Buyer must comply with its obligations herein as and from the date of completion of such contract.
- 2.2. Where the Buyer is acquiring possession or title to the Land otherwise than by sale (such as by way of gift or court order), this deed is conditional upon legal possession of the Land being given to the Buyer with the intent that the Buyer must comply with its obligations herein as and from the date legal possession is given to the Buyer.

#### 3. Construction of Dwelling and Outbuildings

- 3.1. The Buyer will not erect or permit to be erected on the Land any dwelling house other than a dwelling house:
- (a) designed and intended for occupation as a single dwelling unit or for such other purposes as may be approved by SugarWorld;
  - (b) having a gross floor area in one piece of at least 120 square metres exclusive of garages, outdoor living area, patios, pergolas and verandahs;
  - (c) having external walls constructed of claybrick, clayblock, properly treated stained or painted timber, properly finished rendered and painted masonry block or such other material as shall be approved by SugarWorld;
  - (d) having a roof extending over the whole of the gross floor area including attached garage areas and clad with tiles, shingles, colourbond, or other non-reflective roof material as shall be approved by SugarWorld;
  - (e) which complies in all regards with the requirements and directions of the Local Government.
- 3.2. The Buyer will not erect or permit to be erected on the Land any detached outbuildings other than:
- (a) to the rear of the dwelling house, or
  - (b) so far as is possible, hidden from view from the street alignment.
- 3.3. Any building works external to the main construction (including but not limited to garages and garden sheds) will be subject to the same controls as for the main dwelling and identified in other parts of this covenant. Metal clad sheds of any size are not permitted.
- 3.4. All buildings must be constructed so as to conceal all sanitary and water plumbing except for that part of that plumbing which extends above the roof cladding.
- 3.5. Main roofs including garage roofs must have a minimum pitch of twenty five degrees unless otherwise approved in writing by SugarWorld.
- 3.6. Covered car accommodation in the form of a garage must be provided prior to the occupation of the dwelling. All car accommodation provided must have a door or doors to the street front compatible with the main building structure and must be fully enclosed on all sides. Carports are not permitted.
- 3.7. The Buyer must expeditiously complete or cause to be completed the construction of any structural improvements on the Land once construction of the dwelling house has commenced. Provided always that under no circumstances shall the Buyer erect or permit to be erected on the Land any outbuilding prior to construction of a dwelling house.
- 3.8. No relocated or relocatable building, tent, caravan or other temporary building is allowed
- 3.9. The erection of any building which has been substantially prefabricated offsite is not allowed.
- 3.10. The Buyer must ensure that any excavation works not built on within four months shall be reinstated to the original condition.
- 3.11. The Buyer must ensure that any storm water runoff resulting from earthworks, building work or other construction is not discharged onto adjoining lands.
- 3.12. The Buyer must ensure that in the event of the dwelling house constructed on the Land being on piers or posts the Buyer shall erect or construct screening to prevent a view of the underfloor structures and support from anywhere along the street alignment.

#### 4. Fences

- 4.1. The Buyer will not erect or permit to be erected any fence further forward on the Land than the front alignment of the building unless otherwise approved in writing by SugarWorld.
- 4.2. Fencing erected by SugarWorld must not be altered removed or modified in any way without the prior written approval of SugarWorld.
- 4.3. The use of corrugated pre-finished and coloured metal (e.g. Colourbond), plain pool fences or non-decorative timber fencing will not be permitted.

**ANNEXURE B**  
**SUGARWORLD HEIGHTS BUILDING COVENANTS DEED**

**5. Colour Schemes**

- 5.1. The external colour schemes of such dwelling house and other buildings erected on the Land:
- (a) shall be designed to reflect natural elements of the environment, and
  - (b) shall not have large area, highly reflective surfaces or high contrast shades of whites, reds, blues, yellows, purples or oranges or other obtrusive colours.

**6. Structures on a Roof**

- 6.1. The Buyer must ensure that so far as is practicable any structures placed on the roof of the dwelling house or outbuildings erected on the Land (such as aerials, solar hot water systems, air conditioning cooling plant) shall be located so as to be out of sight of the roadway.

**7. Landscaping and Vegetation**

- 7.1. The Buyer must keep the Land clear of undergrowth and in a clean and tidy condition (before, during and after construction of the dwelling house).
- 7.2. Within six months of the completion of the dwelling house the Buyer must establish and maintain landscaping to at least that part of the Land between the front of the dwelling house and the street alignment.
- 7.3. The Buyer must not remove any tree from the Land other than as may be reasonably required to permit construction of a dwelling house on the Land and then only in accordance with the requirements of the Local Government.

**8. Cleanliness and Tidiness**

- 8.1. The Buyer will keep the whole of the Land agreed to be sold at all times in a clean and tidy state and condition and free from undergrowth, grass, weeds and vermin, it being expressly agreed by the Buyer that if at any time during a period of one year after the Original Sale Date in the reasonable opinion of SugarWorld, the Land is not so kept clean and tidy and free from undergrowth, grass and weeds and vermin, SugarWorld may cause the Land to be mowed and cleaned up and recover from the Buyer the cost of doing so. The same conditions will apply to the footpath adjoining the property.
- 8.2. No unregistered vehicles or other derelict machinery or rubbish will be stored on the premises or the footpaths and any reserves adjacent to the property at any time.
- 8.3. Excavation material, rubbish or builder's waste must be stored in a bin or enclosure so as prevent material from the site being distributed by wind, water or other means around the site including adjoining land and reserves. No material shall be stored on adjoining land during construction.

**9. Retaining Walls**

- 9.1. If the Buyer excavates or causes any excavations to be carried out on the Land to the extent that the exposed batter exceeds 1.20 meters the Buyer shall forthwith construct or cause to be constructed a properly engineered retaining wall or landscaped earth retaining structure to prevent slippage or erosion as a direct or indirect result of such excavation.
- 9.2. All retaining walls whether on new excavations or existing batters shall only be constructed of rendered concrete, masonry block or rock faced pitching or in such other materials previously approved of in writing by SugarWorld.
- 9.3. In the case of rendered concrete or masonry block retaining walls the same shall be properly painted in colours not inconsistent with the external colours of the house. Any retaining walls on batters adjacent to roads in rendered concrete or masonry block shall be painted in colours approved by SugarWorld.

**10. Clothes Line**

- 10.1. The Buyer must ensure that any clothesline or clothes drying facilities shall be to the rear of the dwelling house and shall be located so as to be out-of- sight from the street alignment.

## ANNEXURE B

### SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

#### 11. Driveway Access and Footpaths

- 11.1. Only one driveway is permitted for each lot and must be completed prior to occupation of the dwelling. The driveway must be at least three metres in width from the street alignment to the garage.
- 11.2. Existing footpaths must not be damaged or removed. The kerb and channel adjacent to the property must not be damaged or altered except for the purpose of installing roof and allotment drainage and must be reinstated within one day of the drainage installation being commenced. In particular the back of the kerb and channel must not be removed for the construction of the access driveway.
- 11.3. The Buyer must ensure that any driveway access to be constructed must be located in a position that does not interfere with Council or Government services on adjacent footpaths and reserves and does not alter the design levels and crossfall of the adjacent footpaths and reserves. No landscaping trees provided by SugarWorld shall be removed or interfered with. This includes trees located between the boundary of the Land and the edge of the roadway ("Street Trees"). The driveway access will therefore be limited to those locations which do not result in Street Trees being removed or damaged in any way. SugarWorld may at its discretion provide to the Buyer a plan showing locations for each allotment over which a driveway access may not be constructed.

#### 12. Building Time

- 12.1. Construction of the house must be completed within two years of the Original Sale Date or as otherwise specified in the special conditions of the contract of sale where SugarWorld first sold the Land.

#### 13. Resale

- 13.1. The resale of the vacant land or the reconfiguration of the Land is not permitted without the prior written approval of SugarWorld.

#### 14. Signs

- 14.1. The Buyer must not erect or permit to be erected on the Land any advertising signs, placards, banners or hoardings save and except that the Buyer may erect not more than one professionally prepared reasonably positioned and maintained sign offering the Land and improvements thereon (if any) for sale or for any other purpose approved by SugarWorld.

#### 15. Builder's Licence

- 15.1. The Buyer agrees to not perform or co-ordinate building work on the Land valued in excess of \$1,100 regardless of whether the Buyer obtains an Owner-Builder Permit from the Building Services Authority (BSA) or not. All such work must be coordinated and performed by a contractor licensed with the BSA who is to be personally responsible for performing the work or dealing with individual subcontractors and who is to be personally responsible for any problems with workmanship. In this clause "Building Work" shall mean all work of a type which the BSA may issue a license to a contractor to perform as a licensed contractor.

#### 16. Transfer of Land by Buyer

- 16.1. The benefit of the covenants in this deed shall continue in full force and effect and remain binding on the Buyer and the Buyer's executors, administrators, successors and assigns.
- 16.2. If the Buyer shall lease the Land then the Buyer will make it a condition of the lease that the lessee does not breach these covenants and will take all reasonable steps to enforce the terms of the lease in that regard. Any breach by the lessee of any of the covenants in this deed will be deemed to be a breach by the Buyer.
- 16.3. If the Buyer shall sell, gift or otherwise transfer or part with possession of the Land or an interest in the Land ("Transfer") to any other person (the "Transferee") then the Buyer will obtain from the Transferee two copies of a deed upon the terms herein in favour of SugarWorld wherein the Transferee shall be named as "Buyer" in place of the Buyer and, where the Transferee is a company, the directors and shareholders of the Transferee shall be named as "Guarantor".
- 16.4. Both copies of the deed shall be properly executed by the Transferee and Guarantor as required and delivered to SugarWorld within 3 business days of the Transfer being effected.
- 16.5. To give effect to the above obligations the Buyer agrees to have the Transferee and the Guarantor as required execute the deed at the same time as the contract of sale, deed of gift, family property settlement agreement, consent order or other document evidencing the Transfer is executed noting that clause 2 in this deed makes the deed conditional upon the Transferee obtaining legal possession of the Land. The Buyer further agrees to include in any contract of sale, deed of gift, family property settlement agreement, consent order or other document evidencing the Transfer, a clause stating that the document is not binding on the parties until the Transferee and Guarantor (if required) have executed and delivered the deed to the Buyer.
- 16.6. SugarWorld agrees that if the Buyer has not breached the covenants herein then upon delivery to SugarWorld of two copies of the deed pursuant to this clause properly executed by the Transferee and the Guarantor as required and the completion of the Transfer to the Transferee of the whole of the

## ANNEXURE B

### SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

Land, the Buyer will be released from further obligations under this deed.

#### 17. Legal Action

- 17.1. If any covenant herein or its application to any person or in any circumstances shall become invalid or unenforceable, the remaining covenants shall not be affected. Each covenant shall be valid and enforceable to the full extent permitted by law.
- 17.2. SugarWorld may enforce its rights under this deed against the Buyer and the Buyer's agents, employees, contractors, personal representatives and assigns by way of an injunction issued by any court of competent jurisdiction whenever there is a breach or an attempted breach of these covenants by the Buyer or the Buyer's agents, employees, contractors, personal representatives or assigns.
- 17.3. If SugarWorld signs a certificate setting out the cost of enforcing or rectifying any breach of these covenants then that certificate is prima facie evidence of the cost so incurred and the certified amount shall be a liquidated debt due and payable by the Buyer to SugarWorld and recoverable in a court of competent jurisdiction.
- 17.4. If the Buyer or the Buyer's agents, employees, contractors, personal representatives or assigns breach any covenant and fails to remedy that breach within seven (7) days of receiving a notice of breach from SugarWorld then the Buyer grants a licence to SugarWorld and SugarWorld's agents, employees and contractors to enter upon the Land to remedy the defect. SugarWorld may then recover the costs incurred in remedying the breach from the Buyer as a liquidated debt.
- 17.5. In addition to the above SugarWorld shall be entitled to claim compensation from the Buyer for any breach of these covenants by the Buyer or the Buyer's agents, employees, contractors, personal representatives or assigns.

#### 18. Liquidated Damages

- 18.1. If the Buyer or the Buyers' agents, employees, contractors administrators, successors, or assigns, shall be in default under these covenants or breach any of these covenants SugarWorld may give written notice to the Buyer's last known address of such default or breach.
- 18.2. If such default or breach remains unremedied by the Buyer for a period of seven (7) days from the notice to remedy being sent, SugarWorld shall be entitled to recover from the Buyer or the Buyer's administrators, successors, or assigns or any of them by way of agreed liquidated damages the amount set out in the table below adjacent to the description of the breach that has occurred.
- 18.3. The Buyer and SugarWorld agree that amounts set out in the table represent the reasonable and ascertainable damages likely to be incurred by SugarWorld on account of the default or breach set out adjacent to the amounts. In determining the reasonable amount of damages payable, the parties considered and acknowledged that a major aspect of saleability of lots within the Estate is the ability to uphold a minimum level of standards and conditions that will apply to the Estate that involves SugarWorld exercising control over the Estate by way of the covenants contained in this document. If there is a breach of the standards by way of a breach of the covenants, then this affects the amenity and saleability of the other lots within the Estate.
- 18.4. SugarWorld's right to recover the liquidated sums is without prejudice to SugarWorld's other rights and remedies and powers to enforce the covenants.

**ANNEXURE B**  
**SUGARWORLD HEIGHTS BUILDING COVENANTS DEED**

Description of breach	Liquidated damages claim amount
Clauses 3.1, 3.2 or 3.3	\$20,000
Clause 3.4	\$2,000
Clauses 3.5 through to 3.12	\$10,000
Clause 4.1	\$7,500
Clause 4.2 or 4.3	\$12,500
Clause 5	\$9,000
Clause 6	\$9,000
Clause 7.1 or 7.2	\$7,500
Clause 7.3	\$4,000
Clause 8	\$6,000
Clause 9	\$15,000
Clause 10	\$5,000
Clause 11	\$15,000
Clause 12	\$15,000
Clause 13	\$25,000
Clause 14	\$2,500
Clause 15	\$25,000
Clause 16	\$25,000

18.5. The Buyer acknowledges that the Liquidated Damages Claim Amounts expressed in table above are exclusive of GST.

18.6. The Buyer agrees that if SugarWorld is liable for GST as a result of the payment of a Liquidated Damages Claim Amount then the Liquidated Damages Claim Amount will be increased by an amount calculated as:  $A \times R$

Where A = the Liquidated Damages Claim Amount  
Where R = the current rate of GST.

18.7. If SugarWorld is liable for GST as described in the above sub-clause then SugarWorld shall do such things and supply such information as may reasonably be required to enable the Buyer to claim an input tax credit under the GST Law including providing a valid tax invoice.

18.8. In this clause:

- (a) "GST" means the goods and services tax as provided for by the GST Law;
- (b) "GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and any associated legislation including without limitation delegated legislation;
- (c) Any expression used that is defined in the GST Law has that defined meaning.

## 19. Waiver by SugarWorld

19.1. Notwithstanding the terms of this deed, SugarWorld shall have the right in any other sale to vary or relax the conditions of the building covenants at any time and in that event the Buyer shall have no claim whatsoever against SugarWorld.

19.2. SugarWorld does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy by SugarWorld does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy by SugarWorld must be in writing and executed by it. A waiver or consent is only effective in the specific instance and for the purpose for which it is given.

## ANNEXURE B

### SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

#### 20. Assignment by SugarWorld

- 20.1. SugarWorld may assign the benefit of these covenants to any company or person.

#### 21. Severability

- 21.1. Notwithstanding anything else herein each provision of this deed shall apply only to the extent to which it is not prohibited by law. Each provision shall be deemed to be separate and severable from the others of them. If any provision of this deed is determined to be invalid or unenforceable, such determination and the consequential severance (if any) shall not invalidate the rest of the deed which shall remain in full force and effect as if such provision had not been made a part thereof.

#### 22. Facsimile Copies

- 22.1. The execution of a faxed copy of this deed and the faxing of such copy of this deed to another party or their solicitor shall constitute due execution and delivery by the party executing and faxing the same.

#### 23. Counterparts

- 23.1. This deed may be executed in any number of counterparts. All those counterparts taken together shall be deemed to constitute one and the same document.

#### 24. Guarantee and Indemnity

- 24.1. This clause applies where the Buyer is a company in which case the directors and shareholders of the Buyer are to provide a guarantee and indemnity to SugarWorld in respect of the obligations of the Buyer upon the terms set out in this clause.
- 24.2. The Guarantor hereby guarantees to SugarWorld the due punctual payment by the Buyer to SugarWorld of all sums of money becoming due, owing or payable by the Buyer to the SugarWorld under the terms of and or as a result of this deed (the "Guaranteed Monies") at the times and in the manner as set out in this deed or otherwise on demand.
- 24.3. The Guarantor hereby guarantees the due and punctual performance and observance by the Buyer of all and any of the covenants, provisions and stipulations on the part of the Buyer to be performed and observed under and pursuant to this deed ("the Guaranteed Obligations").
- 24.4. The Guarantor further indemnifies SugarWorld against and in respect of any damage, loss, claim, demand, cost, expense or obligation direct or indirect which the SugarWorld has or may suffer incur or sustain as a result of the Buyer's failure to pay the Guaranteed Monies when due or to perform the Guaranteed Obligations when due.
- 24.5. This guarantee and indemnity shall be a continuing guarantee and indemnity until the whole of the Guaranteed Monies are paid and the whole of the Guaranteed Obligations performed and shall be independent of and in addition to and in no way affected by any other security instrument or document which SugarWorld may hereafter obtain or hold for any indebtedness or liability whatsoever of the Buyer or other Guarantor to SugarWorld.
- 24.6. The liability of the Guarantor shall not be affected or discharged in any way whatsoever in the event that the SugarWorld grants or agrees to grant to the Buyer any time or any other indulgence or consideration or in the event that SugarWorld compounds with or releases or assents to the winding up of the Buyer or wholly or partially releases or discharges the Buyer from any of the terms of this deed or in the event that the SugarWorld varies any of the terms of this deed.
- 24.7. SugarWorld shall not be bound at any time to exercise any of its rights under this deed or in any collateral or other deed or contract and any omission failure of refusal by SugarWorld so to do shall not prejudice, affect, discharge or diminish any of the liabilities of the Guarantor hereunder and the liability of the Guarantor hereunder shall not be affected or discharged by any other laches or mistakes on SugarWorld's part.
- 24.8. If by reason of any statute, rule of law or for any other reason whatsoever any covenant, term or condition of this deed is rendered unenforceable by the SugarWorld against the Buyer then the Guarantor agrees hereby at all times to indemnify SugarWorld to the full extent in respect of the Guaranteed Monies or any part thereof which have thereby been rendered unrecoverable by SugarWorld from the Buyer.
- 24.9. For the purposes of this guarantee, the Guarantor may be treated as the principal debtor under the Contract and the Guarantor waives all rights either at law or under any statute that the Guarantor might otherwise be entitled to claim or enforce in respect thereof.
- 24.10. Any notice or consent to be given or any demand to be made by SugarWorld to the Guarantor under or pursuant to this guarantee may be given or made by writing under the hand of SugarWorld or of any manager, acting manager, clerk, solicitor or any other person acting on behalf of SugarWorld and may be delivered by prepaid post addressed to the Guarantor's address stated herein and any such notice consent or demand shall be deemed to have been received by the Guarantor on the day after posting or sending.



ANNEXURE B  
SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

## Executed as a deed

Execute by SugarWorld Pty Ltd in accordance with Section 127 of the Corporations Act 2001	Director/Sole director .....
Dated this ..... day of ..... 20...	Director/Secretary .....

Signed sealed and delivered by the buyer ..... Buyer's name	Buyer's signature .....
In the presence of ..... Witness name	Witness signature .....
Dated this ..... day of ..... 20...	

Signed sealed and delivered by the buyer ..... Buyer's name	Buyer's signature .....
In the presence of ..... Witness name	Witness signature .....
Dated this ..... day of ..... 20...	

Execute by Buyer in accordance with Section 127 of the Corporations Act 2001	Director/Sole director .....
Dated this ..... day of ..... 20...	Director/Secretary .....

ANNEXURE B  
SUGARWORLD HEIGHTS BUILDING COVENANTS DEED

Signed sealed and delivered by the guarantor  ..... Guarantor's name	Guarantor's signature  .....
In the presence of  ..... Witness name	Witness signature  .....
Dated this ..... day of ..... 20...	