BROADLEY REES HOGAN
LAWYERS

Building and use Covenant for Mon Terre Ridge Estate

Sugarbag Road Pty Ltd

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Parties

Sugarbag Road Pty Ltd ACN 128 458 882 as trustee under Instrument No. 711429298 of the address stated in **Item 1** (**Seller**)

The person specified in Item 2(a) c/- of the address stated in **Item 2(b)** (**Buyer**)

Background

A. The Seller is the developer of the Estate and wishes to control the Building Works within the Estate and the use of lots within the Estate.

B. The Buyer acknowledges the need to ensure that the construction of improvements are to be of a high quality and certain uses are not to be conducted within the Estate. On that basis, the Buyer agrees to comply with the Obligations in relation to construction and use set out in Schedule 2, the building rules set out in Schedule 3 and also the other Obligations contained in this Deed.

Agreed Terms

1 **Construction and Use Covenants**

1.1 The Buyer covenants in favour of the Seller to strictly comply with its Obligations in relation to undertaking any Building Works as set out in Schedule 2 including the Building Rules as set out in Schedule 3.

1.2 The Obligations in this Deed apply from the Contract Date until that day when improvements have been constructed on the Lot in accordance with this Deed to the satisfaction of the Seller.

2 **Condition**

2.1 If the Contract is terminated for any reason, then this Deed shall also be terminated.

3 **Sale or disposal by the Buyer**

3.1 If the Buyer wishes to Deal With the Lot whilst this Deed is in force, then the Buyer must first obtain a covenant in the form contained in Schedule 4 from the Third Party, by which the Third Party agrees, in favour of the Seller, to be bound by the Obligations contained in this Deed from the date that the Third Party acquires an interest in the Lot.

3.2 The covenant contained in Schedule 4 is to be prepared by the Buyer at the Cost of the Buyer. If the covenant is not in a form approved by the Seller (being the form contained in Schedule 4), the Buyer is in breach of this Deed.

4 **Buyer acknowledgments and damages**

4.1 The Buyer acknowledges that:

(a) the Land forms part of the Estate which is a quality residential community;

(b) that it is necessary and in the interest of all buyers of lots within the Estate that the Seller exercise supervision and control to ensure quality in respect of the design and construction standard of buildings in the Estate and other matters generally; and

(c) if the Buyer fails to comply with its Obligations under this Deed, then:

(i) the ability of the Seller to complete the Estate or to sell all of the lots in the Estate will be affected;

(ii) the prices that the Seller can obtain for lots in the Estate is likely to be reduced;

(iii) the Seller will suffer loss because of that failure; and

(iv) the Buyer is liable to the Seller for all Costs, losses and damages suffered or incurred by the Seller as a result of the failure by the Buyer to strictly comply with any of its Obligations under this Deed. This includes liability for any consequential loss suffered or incurred by the Seller.

5 Notices

5.1 Any notice, consent, information, application or request (called a **Notice**) that must or may be given or made to a party under this Deed must be given or made in writing and otherwise sent or given in the manner authorised by the Contract.

6 Miscellaneous

6.1 Costs

Except as otherwise set out in this Deed, each party must pay its own Costs in relation to preparing, negotiating and executing this Deed and any document related to this Deed.

6.2 Entire agreement

This Deed, the Contract and the Disclosure Statement contains everything the parties have agreed in relation to the matters those documents relate to. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Deed was executed, except as permitted by law.

6.3 Execution of separate documents

This Deed is properly executed if each party executes either this Deed or an identical document. In the latter case, this Deed takes effect when the separately executed documents are exchanged between the parties, including electronic exchange (fax or email).

6.4 Governing law

This document is governed by the law of Queensland.

6.5 Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

6.6 Severability

If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

6.7 Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by the parties to this Deed.

6.8 Waiver

The fact that the Seller fails to do, or delays in doing, something the Seller is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation, by the Seller. A waiver by the Seller is only effective if it is in writing. A written waiver by the Seller is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

7 Definitions and interpretation

7.1 Definitions

In this Deed, unless the contrary intention appears, the following definitions apply:

Building Rules means the rules for constructing improvements (including Building Works) on the Lot contained in Schedule 3.

Building Works means the carrying out on the Lot of any works relating to the construction, alteration, renovation or repair of any one or more of any:

(a) buildings;

(b) fence;

(c) retaining wall;

(d) external fittings; and

(e) landscape and paving.

Buyer's Application means an application made by or on behalf of the Buyer to the Local Council for its approval to any Building Works on the Lot.

Contract means the contract between the Seller and the Buyer in respect of the sale and purchase of the Lot.

Contract Date means the date of the Contract specified in **Item 4**.

Costs includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential, or whether accrued or paid), including where appropriate, fees to professional advisors.

Council Approval means an approval issued by the Local Council pursuant to the Buyer's Application to allow the lawful construction of the Building Works.

Deal With includes doing or agreeing to do any of the following:

(a) transferring;

(b) assigning; or

(c) disposing of;

the Buyer's interest in the Lot.

Deed means this document and includes all schedules and annexures.

Development Approval means the order of His Honour Judge Rackemann in respect of Appeal No. 2064 of 2009, made on 17 December 2009, a copy of which is contained in the Disclosure Statement.

Disclosure Statement has the meaning given to that term in the Contract.

Estate means the Estate known as 'Mon Terre Ridge' and includes any changes to the Estate approved by the Seller from time to time.

Item means an item contained in Schedule 1.

Law means federal, state, territorial or local government legislation and/or regulations, ministerial determinations, rulings or guidelines for Australia (as the case may be).

Local Council means the Sunshine Coast Regional Council.

Lot means the lot described in **Item 3**.

Obligations means any covenants and agreements under this Deed, as the context requires whether they:

(a) are positive or negative;

(b) touch or concern the Lot; or

(c) are express or implied.

Plans and Specifications means the plans and specifications for the Building Works provided by the Buyer to the Seller for the Seller's approval under this Deed.

Seller means Sugarbag Road Pty Ltd as trustee and includes its successors and assigns.

Third Party includes a transferee, assignee, disponee or other party to any relevant dealing.

7.2 **Interpretation**

In this Deed:

(a) Plurals and genders

(i) The singular includes the plural and the plural includes the singular.

(ii) One gender includes each other gender.

(iii) A person includes a body corporate.

(iv) A party includes the executors, administrators, successors and permitted assigns.

(b) Parties

(i) If a party consists of more than one person, this Deed binds them jointly and each of them individually.

(ii) A party that is a trustee is bound both personally and in its capacity as a trustee.

(c) Statutes and regulations - Reference to statutes includes all statutes amending, consolidating or replacing them.

(d) Headings - Headings are for convenience only and do not form part of this Deed or affect its interpretation.

Execution

Executed as a Deed

Date:

Executed by **Sugarbag Road Pty Ltd**
ACN 128 458 882 as trustee in accordance with s127 of the Corporations Act 2001 by:

Signature of Director

Print full name of Director

Signature of *Director/Secretary

Print full name of *Director/Secretary

* Delete one

Signed Sealed and Delivered by
[ ] as Buyer in the presence of:

Signature of Witness

Print full name of Witness

Signed Sealed and Delivered by
[ ] as Buyer in the presence of:

Signature of Witness

Print full name of Witness

Schedule 1

Details

Item 1 **Seller's address**

Item 2 **Buyer's Details**

(a) Name of Buyer _____

(b) Buyer's Address _____

_____

_____

_____

Fax: _____

Email: _____

Item 3 **Lot** _____

Item 4 **Contract Date** _____ 20____

Schedule 2

Building Works obligations

1. Building Works

1.1 Building Covenants

(a) The Buyer acknowledges that:

(i) the Lot comprises part of the Estate;

(ii) it is in the interests of the Buyer for the Seller to control the quality of Building Works in the Estate to help protect the Buyer's investment in the Lot;

(iii) the Seller has the sole discretion as to whether or not the Seller seeks to enforce covenants which are obtained from any other buyer, owner or occupant of land within the Estate;

(iv) the Lot may also be subject to further statutory requirements regarding, without limitation, acoustic levels, building envelopes, vegetation removal and replanting, these Building Covenants are in addition to any statutory requirements; and

(v) it has read and understood the terms of the Development Approval and is aware of the compliance requirements under the Development Approval, including but not limited to location of access, building envelopes, statutory covenants and development criteria, as set out in the Development Approval.

(b) The Seller may authorise any person or entity to administer and enforce the provisions contained in Schedule 2 and Schedule 3.

1.2 Plans and Specifications for Building Works

Before commencing any Building Works on the Lot and making an application to the Local Council (or any other authority or person, including a private certifier) for approval for Building Works, the Buyer must first submit to the Seller 2 copies of each of the following:

(a) a site plan showing:

(i) real property description;

(ii) cut and fill details;

(iii) retaining wall details;

(iv) boundaries including bearing and dimensions;

(v) road name and location;

(vi) northpoint;

(vii) boundary set back dimensions;

(viii) contours;

(ix) services (sewer, stormwater, power etc);

(x) building outline and overhangs,

(b) a floor plan showing:

(i) dimensions;

(ii) room names;

(iii) schedule of areas (m2) for:

(A) dwelling;

(B) garage;

(C) verandahs/pergolas,

(c) elevations for each side showing:

(i) existing and proposed ground lines;

(ii) maximum height above existing ground line;

(iii) external materials;

(iv) retaining wall details;

(v) cross section indicating;

(vi) floor to ceiling heights;

(vii) roof pitch,

(d) a schedule of the external colours and materials;

(e) a landscape plan showing:

(i) minimum number of [five] new trees in front of the dwelling;

(ii) fencing details;

(iii) driveways and footpaths inside the Lot (including finishes and crossover details);

(iv) open space (area and location);

(v) type of turf to be used and details of other ground covers;

(vi) retaining wall details; and

(f) such other information as may be reasonably required by the Seller to determine if the Building Works will comply with this Deed,

for approval by the Seller. The Buyer must not commence any Building Works until it has obtained the approval of the Seller to those Building Works.

1.3 The Seller will endeavour to approve the Buyer's Plans and Specifications within 10 Business days. Approval will be at the Seller's absolute discretion and after due consideration as to whether the Buyer's Plans and Specifications conform to the requirements of this Deed and the high standard of the Estate.

1.4 The Buyer must provide to the Seller a copy of the Council Approval no later than 4 business days after it is received by the Buyer from the Local Council.

1.5 **Doing the Building Works**

The Buyer must ensure that the Building Works are done:

(a) in accordance with the Plans and Specifications for the proposed Building Works approved by the Seller;

(b) in accordance with the Council's Approval, the Development Approval and all relevant Laws; and

(c) in accordance with the Building Rules.

1.6 **No reliance on the Seller's approvals**

Any approval granted by the Seller to the Buyer's Application or the Building Works will not constitute any agreement, statement, representation or warranty by the Seller (and any persons authorised by the Seller) as to:

(a) the adequacy, suitability, siting or fitness of the Buyer's Application or the Building Works; and

(b) the Local Council and any other authority or person granting its approval to the Buyer's Application or the Building Works,

and the Buyer will not place any such reliance on any approval given by or on behalf of the Seller.

Schedule 3

Building Rules

1. The Buyer promises to the Seller that in undertaking any Building Works on the Lot:

1.1 Any roof shall be constructed with new, sound material of a non-reflective nature.

1.2 Any external wall cladding shall be constructed with new, sound material of a non-reflective nature

1.3 Any car accommodation and subfloor area shall be built of the same materials as the dwelling and be fully screened.

1.4 The appearance and presentation of the improvements shall be of a quality and attractive dwelling consistent with the nature and the type of the estate.

1.5 The balance areas of the Lot shall be landscaped including the surfacing of the driveway .

1.6 Any improvements in the form of a recreation or storage shed erected separately to the dwelling shall be built out of the same materials used in the construction of the dwelling.

1.7 Rainwater tanks shall be coloured to complement the dwelling and will be located to the side or rear of the home, screened such that they cannot be viewed from the street.

1.8 Air-conditioning equipment must be fully screened from the street.

1.9 Fences on the estate are to be a maximum of 1800 mm high and be constructed from face brick, rendered masonry, natural stone, coloured metal (in conjunction with other materials), painted or treated timber or a combination of these materials.

1.10 Retaining walls must be no higher than 2000mm and constructed from stone or rendered masonry unless invisible from the street.

(Collectively, clause 1.1-1.10 (inclusive) shall be called the **Building Guidelines**).

Schedule 4

Deed

DEED POLL – "MON TERRE RIDGE" - BUILDING AND USE COVENANT

TO: **Sugarbag Road Pty Ltd ACN 128 458 882 as trustee under Instrument No. 711429298 ("Developer")**

FROM:

[insert New Owner's name]

[insert New Owner's name]

[insert New Owner's address]

[insert New Owner's address] **("New Owner")**

LAND: _____ "Mon Terre Ridge"

BACKGROUND

A. The New Owner is buying or has agreed to buy the Land from _____ (**"Current Owner"**).

B. The Land forms part of a quality residential community known as "Mon Terre Ridge" (the "**Estate**"). Accordingly, it is necessary and in the interest of all owners of land in the Estate that the Developer exercise supervision and control so as to ensure quality in respect of the design and construction standard of buildings in the Estate and other matters generally.

C. The Current Owner is a party to a Building and Use Covenant regulating the construction of improvements on the Estate, a copy of which is attached to this Deed (**Building and Use Covenant**).

D. The New Owner is required by the terms of the Contract of Sale that the New Owner has entered into to buy the Land, to enter into this Deed Poll agreeing to be bound by the terms of the Building and Use Covenant.

OPERATIVE PART

1. The New Owner promises the Developer as follows:
   (a) the New Owner agrees to abide by the terms of the Building and Use Covenants as though the New Owner was the "Buyer" and the Developer was the "Seller" referred to in the Building Covenants;
   (b) the New Owner agrees not to sell, transfer, dispose of, lease or in any other way part with possession of the Land without first obtaining a covenant from any disposee in favour of the Developer agreeing to be bound by the terms of the Building and Use Covenant as varied by the Developer from time to time.
2. The New Owner acknowledges that it is bound by the terms of the Building and Use Covenant and is responsible for all Costs incurred by the Developer in the enforcement or attempted enforcement of any Obligations under the Building and Use Covenant and that it will be subject to legal action for rectification costs, damages, legal costs (on a solicitor and own client basis), fines and punitive penalties for any breach of its Obligations under the Building and Use Covenant.
3. Queensland Law applies to this Deed. The parties submit themselves to the jurisdiction of the courts of Queensland. Any term not defined in this Deed has the meaning given to it in the Building and Use Covenant.
4. This Deed takes effect from the date the New Owner has effected settlement of the Contract of Sale to buy the Land.

The New Owner must give to the Developer a copy of this signed and witnessed Deed Poll.

DATED THIS _____ 20___.

SIGNED SEALED AND DELIVERED AS A DEED POLL

SIGNED, SEALED AND DELIVERED by the)
New Owner in the presence of:)

_____
New Owner's Signature

_____
Witness