

Petition Glenfields Att 2 Deed of Settlement

DATED 19th JUNE 1998

**DEED OF SETTLEMENT
MORETON LAND**

PARTIES:

MORETON SUGAR LTD ACN 009 657 112 ("MORETON")

AND:

MAROOCHY SHIRE COUNCIL ("THE COUNCIL")

CONNOR O'MEARA McCONAGHY

Solicitors

Level 16

National Bank House

255 Adelaide Street

BRISBANE QLD 4000

Telephone: 3221 3033

Facsimile: 3221 6661

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501702

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SECTION 1 - INTRODUCTION

NO DUTY PAYABLE

20.7.98
Commissioner of Stamp Duties,
Queensland

It is acknowledged that:

- Moreton is the registered owner of the Land and the Development Land;
- Moreton lodged with the Council the Claim for Compensation regarding injurious affection of the Land as a consequence of the 1996 Strategic Plan.
- Moreton filed in the Planning & Environment Court a Notice of Appeal concerning the Council's failure to decide the Claim for Compensation.
- From 30 March 1998 - 3 April 1998 and 25 May 1998 - 28 May 1998 the appeal was heard in the Planning & Environment Court at Brisbane however at commencement no judgment had been given.
- Moreton and the Council are desirous of settling fully and finally the issues in dispute between them arising from the Claim for Compensation without any admission by the Council of liability and have entered into this Deed for that purpose and to provide for the provision of infrastructure to facilitate the Residential Development which is capable of subdivision into approximately 300 allotments.

SECTION 2 - PRELIMINARY

PART 1 - INTRODUCTORY PROVISIONS

1 Commencement

This Deed commences on the date when the last party signs it.

PART 2 - INTERPRETATION

2 Terms and Expressions

In this Deed unless the context otherwise requires:

2.1 "the necessary approvals" means an amendment of the Council's Transitional Planning Scheme to provide for the Residential Development (without conditions other than the requirement to do such external works as are reasonably necessary to connect to Council's water and sewerage infrastructure and contribute to Council's water and sewerage headworks in accordance with Council's headworks policy) pursuant to Section 6.1.6 of the Integrated Planning Act by:

2.1.1 excluding the Development Land from the Rural A Zone and including it in the Residential A Zone.

2.1.2 amending the designation of the Development Land contained in the Strategic Plan forming part of the Transitional Planning Scheme to include the Land in the preferred dominant land use of Urban.

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Jan 9
[Signature]

- 2.2 "Allotments" means parcels of land capable of residential use the average area of which is 800m².
- 2.3 "the Claim for Compensation" means the Claim lodged by Moreton with the Council dated 18 June 1997.
- 2.4 "the Council" means Maroochy Shire Council.
- 2.5 "Development Land" means that land shown on the plan contained in Schedule 1 as "Development Land" provided that if Moreton and the Council are able to agree an amended alignment for the Western Access Road having regard to the matters contained in Schedule 2 then the Development Land shall be amended to accommodate the agreed alignment of the Western Access Road.
- 2.6 "Glenfields Boulevard" means that dedicated road in the Glenfield Estate adjoining the Land to the east.
- 2.7 "the Land" means Lot 2 on RP 151032, Lot 3 on RP 151033 and Lot 4 on RP 803660 excluding the Development Land all Parish of Mooloolah, County of Canning.
- 2.8 "the Monies" means the amount payable by the Council to Moreton pursuant to clause 12.2.
- 2.9 "Moreton" means Moreton Sugar Ltd ACN 009 657 112.
- 2.10 "the Notice of Appeal" means the appeal lodged by Moreton in the Planning & Environment Court on 31 July 1997.
- 2.11 "Open Space Area" means the Public Purpose Reserves shown on the Plan contained in Schedule 1 comprising:
 - Public Purpose Reserve: Conservation - approximately 1.6 ha;
 - Public Purpose Reserve: Recreation and Fire Management - a strip approximately 10 metres in width of approximately 1.44ha.
- 2.12 "Public Ownership" means a transfer of land to the Council or the Council's nominee.
- 2.13 "the Residential Development" means a residential subdivision of the Development Land the minimum requirements of which are:
 - 2.13.1 an area comprising:
 - Allotments and internal roads - 30 ha;
 - Open Space Area - approximately 3.04ha.
 - Road to provide practical access to Mountain Creek Road (as generally indicated on the plan in Schedule 1) - 0.8 hectares.

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2.13.2 the provision of practical and legal access via the Western Access Road if required by this Agreement;

2.13.3 the provision of practical and legal access to Glenfield Boulevard.

as is generally shown on the Plan contained in Schedule 1.

2.14 "1996 Strategic Plan" means the Council's Strategic Plan gazetted on 10 May 1996.

2.15 "Western Access Road" means that road generally shown on the Plan contained in Schedule 1.

3 References

In this Deed, unless the context otherwise requires:

3.1 a reference to any legislation or legislative provisions includes any statutory modification or re-enactment of, or legislative provisions substituted for, and statutory instruments issued under, that legislation or legislative provisions;

3.2 words denoting the singular number includes the plural number and vice versa;

3.3 a word denoting an individual or person includes a corporation, firm, authority, government or governmental authority and vice versa;

3.4 a word denoting a gender includes all genders;

3.5 a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this Deed;

3.6 a reference to any Deed or document is to that Deed or document as amended novated supplemented or replaced from time to time;

3.7 a reference to any party to this Deed or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

3.8 where an expression is defined another part of speech or grammatical form of that expression has a corresponding meaning;

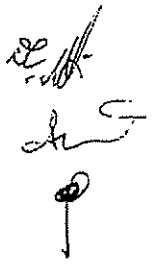
3.9 wherever in this Deed a party is prohibited from doing any act, matter or thing, then that party is also prohibited from permitting or suffering that act, matter or thing to be done;

3.10 references to writing include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form;

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3.11 a reference to an obligation of a party includes a covenant or Deed of that party under this Deed; and



4 Schedules and Annexures

The schedules and annexures to this Deed take that form for convenience only and for all purposes form part of this Deed.

5 Headings

Headings are for convenience of reference only and do not affect interpretation of this Deed.

6 Applicable Law

This Deed is to be construed and takes effect in accordance with the laws for the time being in force in the State of Queensland.

7 Costs

Each party shall bear its own costs in relation to:

7.1 the proceedings arising from the Notice of Appeal;

7.2 the preparation and execution of this Deed, other than any stamp duty payable upon this Deed which shall be paid by the Council.

8 Notice

Any notice given by Moreton may be signed by an officer of Moreton or its solicitor. Any notice given by the Council must be signed by the Chief Executive Officer or the Manager Legal Services. A notice must be in writing and is treated as being duly given if it is:

8.1 left at the other party's address; or

8.2 sent by prepaid mail to the other party's address; or

8.3 transmitted by facsimile to the other party's facsimile number,

a notice given in accordance with this clause is treated as having been duly given and received:

8.4 when delivered (if left at the party's address); or

8.5 on the second Business Day after posting (if sent by prepaid mail); or

8.6 on the first Business Day after transmission (if given by facsimile and no intimation is received that the notice has not been received whether that intimation comes from the party or from operation of

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facsimile machinery or otherwise).

For the purposes of this clause, the address and facsimile number of a party is the address and number set out below or another address or number of which a party may from time to time give notice to the other:

| Party | Address and Number |
|-------------|--|
| The Council | Manager Legal Services - "Urgent" Cnr Bury and Currie Streets, Nambour PO Box 76, Nambour 4560 Facsimile No: 07 5441 8338 |
| Moreton | 21 Magura Street, Enoggera 4051 Facsimile No. 07 3335 8311 |

9 Land Sales Act

- 9.1 This Deed is conditional upon the grant of an exemption from the operation of Sections 8 and 9 of the Land Sales Act 1984 under Section 19 of that Act within 45 days of commencement or such further period as is agreed by the parties.
- 9.2 Moreton will promptly apply for the exemption and do everything reasonably necessary to obtain the exemption.

10 Assignment

- 10.1 This Deed shall bind any transferee of the Development Land or part thereof. If Moreton sells the Development Land or any part thereof (other than the sale of any allotments following the subdivision/reconfiguration in respect of the Development Land in accordance with the Residential Development) prior to the fulfilment of its obligations under this Deed it shall procure a covenant from the purchaser of such land to be bound by the terms and conditions of this Deed and shall deliver a copy to the Council.

SECTION 3 - PERFORMANCE OF OBLIGATIONS

11 Objects

The object of this Deed is to fully and finally dispose of the dispute between the parties arising from the Claim for Compensation and to set out with certainty the respective obligations of the parties which involve:

- 11.1 the payment by the Council to Moreton of the Monies.
- 11.2 Moreton will cause to be transferred into Public Ownership the Land.

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12 Obligations

Following the commencement of this Deed:

12.1 Moreton must:

12.1.1 within 7 days of the grant of an exemption in accordance with clause 9.1;

12.1.1.1 wholly discontinue the proceedings against the Council in the Planning & Environment Court arising from the Notice of Appeal; or

12.1.1.2 if judgment is given prior to the grant of an exemption take no steps to enforce any award of compensation;

12.1.2 transfer the Land into Public Ownership in accordance with the obligations in clause 14.1.

12.1.3 transfer the Development Land into Public Ownership in the event that clause 14.2 applies.

12.1.4 waive and release any entitlement for compensation for the land arising from the 1996 Strategic Plan upon the Council performing all of its obligations under the Deed.

12.2 In consideration for Moreton agreeing to perform its obligations under clause 14.1 the Council must pay to Moreton the Monies in the amount and at the times specified:

12.2.1 \$2,500,000.00 14 days after the satisfaction of clause 9.1, or 60 days from the date of this Deed, whichever shall be the later;

12.2.2 \$ 575,000.00 1 year after commencement;

12.2.3 \$ 575,000.00 2 years after commencement;

12.2.4 \$ 600,000.00 3 years after commencement;

13 Development Entitlements

13.1.1 The Council undertakes to use its best endeavours to obtain the necessary approvals within:

13.1.1.1 a period of 9 months from the date of commencement; or

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13.1.1.2 a period of 12 months from the date of commencement in the event that the Council can demonstrate to the reasonable satisfaction of Moreton that notwithstanding its best endeavours the necessary approvals could not be reasonably obtained within the 9 month period.

13.1.2 Moreton must sign all such documents and do all such things which are necessary to permit the Council to obtain the necessary approvals.

13.1.3 The Council indemnifies Moreton for all those costs reasonably incurred by Moreton in performing the obligation set out in Clause 13.1.2.

13.1.4 The Council must keep Moreton fully informed of its efforts to obtain the necessary approvals and in particular must notify Moreton when:

13.1.4.1 the Council resolves to amend its Transitional Town Planning Scheme;

13.1.4.2 on each occasion when the amendments are publicly notified;

13.1.4.3 the Council resolves to proceed with the amendments;

13.1.4.4 the Council give the Minister a copy of the amendments;

13.1.4.5 the amendments have the force of law.

13.2 In the event that the Council has not obtained the necessary approvals as required by clause 13.1.1 then:

13.2.1 the Council must pay to Moreton within 7 days:

13.2.1.1 ~~\$2,100,000~~ ^{\$2,000,000} in the event that the Council is able to demonstrate to the reasonable satisfaction of Moreton that the failure to obtain the necessary approvals is as a consequence of factors outside the Council's control, or

13.2.1.2 \$2,500,000 in any other event.

13.3 In the event that the Council obtains the necessary approvals as required by clause 13.1 then the Council will be relieved of its obligation to pay the amount provided for in clause 13.2.1.

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14 Transfer of the Land to Public Ownership

14.1 Moreton must contemporaneously with the payment of that part of the Monies referred to in clause 12.2.1 sign all such documents and do all such acts or things which are reasonably required by the Council to transfer into Public Ownership the Land.

14.2 In consideration for the payment provided for in clause 13.2.1 Moreton must contemporaneously with the payment sign all such documents and do all such things or acts which are reasonably required by the Council to transfer into Public Ownership the Development Land.

14.3 The Council indemnifies Moreton for all those costs reasonably incurred by Moreton in performing the obligations set out in clauses 14.1 and 14.2.

15 Requirements about the Provision of Infrastructure to and for the Development Land

15.1 In addition to its other obligations under this Deed the Council to the extent permitted by law will use its best endeavours to ensure a means of practical and legal access to the Development Land from an extension to Glenfield Boulevard.

15.2 The parties agree that:

15.2.1 in the event that practical and legal access to the Development Land is achieved from an extension to Glenfields Boulevard; and

15.2.2 construction of the Western Access Road has not been substantially commenced,

Moreton will not construct the Western Access Road and will dedicate the Western Access Road to the Crown at no cost save that the Council will indemnify Moreton for all costs reasonably incurred by Moreton in dedicating the Western Access Road.

15.3 In the event that Moreton does construct the Western Access Road it will be designed in accordance with the requirements set out in Schedule 2.

15.4 The Council will grant a legal point of discharge for stormwater and drainage purposes for all runoff which is directed to the existing gullies which lie north of the Development Land and drain immediately to Mountain Creek as is general shown in the Plan contained in Schedule 1. The Council will allow the construction on the Land of those stormwater and drainage measures deemed necessary to comply with Council requirements in respect of the

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quality and quantity of runoff discharged from the Development Land. The adequacy or otherwise of proposed works shall be determined by the Council's Director of Engineering Service, and shall be in line with accepted engineering and environmental practices.

Only minor drainage works, as determined by the Director of Engineering Services, shall be allowed to be constructed on the southern side of the Development Land. Moreton shall ensure that the rate of runoff directed to the south and/or east is either not greater than the pre-development rate, or does not cause a detrimental impact to downstream lands.

15.5 The conditions imposed by the Council in assessing any subdivision/reconfiguration of allotment application in respect of the Development Land shall:

- (a) comply with the Council's Development Manual;
- (b) comply with the Queensland Urban Drainage Manual; and
- (c) comply with the Council's Local Laws with respect to Water Supply and Sewerage Infrastructure.
- (d) require the dedication of the Open Space Area.
- (e) discount the requirement for the provision of open space, park and recreation required for the Residential Development by the area of the Open Space Area.
- (f) comply with Council's Transitional Town Planning Scheme and Transitional Local Planning Policies.

EXECUTED as a Deed on the date set out above.

SIGNED BY MAROOCHY SHIRE)
 COUNCIL in the presence)
 of *MAGDY VOUSSEF*)
 and *[Signature]*)

[Signature: J. Gulley]

[Signature: M. Ridge]

THE COMMON SEAL of MORETON)
 SUGAR LTD was affixed in the)
 presence of, and the sealing is)
 attested by:)



[Signature: R. Young]

 Secretary
 Roderick Christopher Young

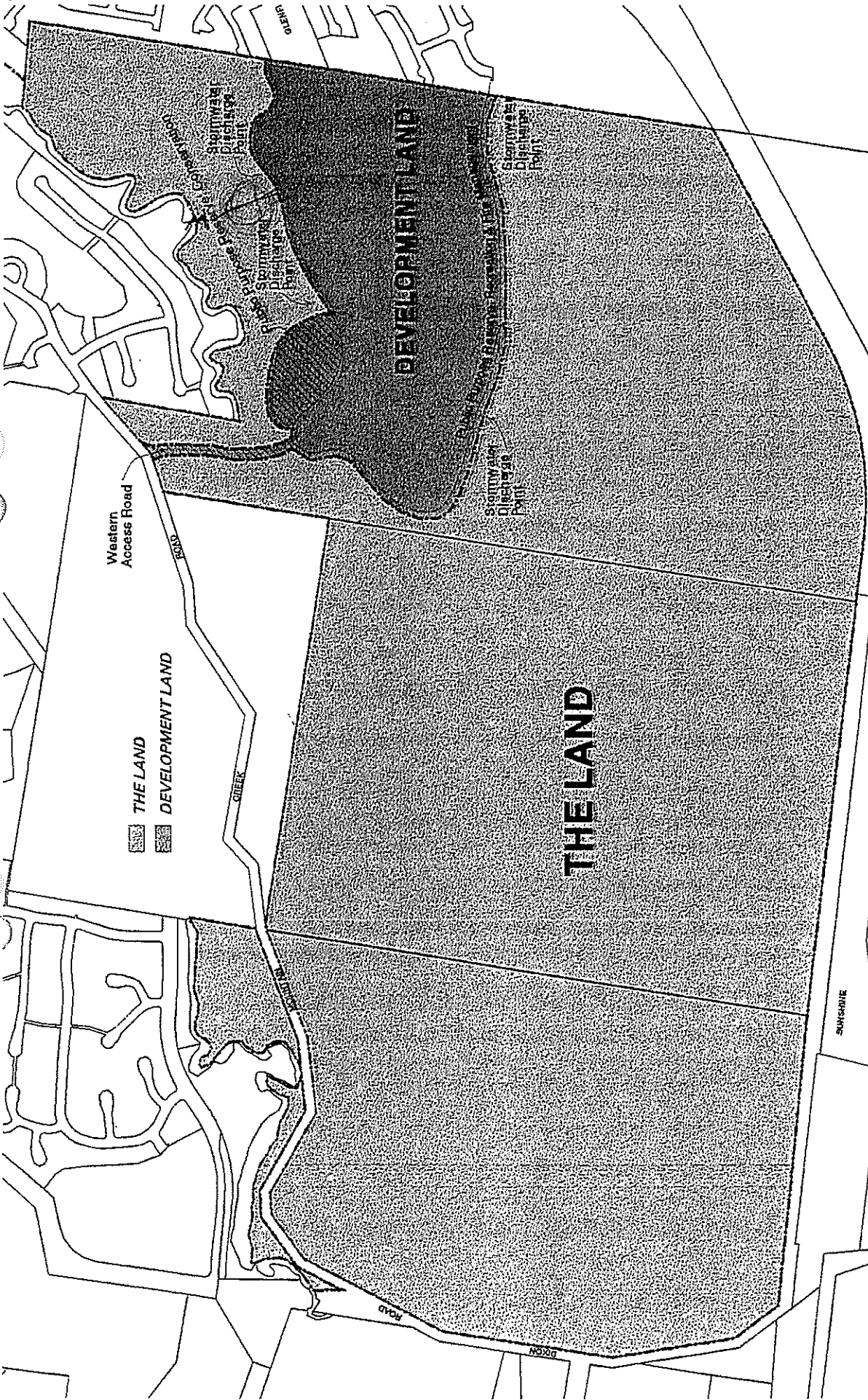
[Signature: A. Woodward]

 Director
 Allan Woodward



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SCHEDULE 1

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Western Access Road

 THE LAND
 DEVELOPMENT LAND

DEVELOPMENT LAND

THE LAND

BUNDA BERG SUGAR

MOUNTAIN CREEK

SCALE 1 : 10 500

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SCHEDULE 2

REQUIREMENTS FOR THE CONSTRUCTION OF THE WESTERN ACCESS ROAD

The Western Access Road must take into account the following:

- The road must be designed in a way that effectively minimises the speed of vehicles. The maximum permissible speed on the road will be 50kph.
- Provision, where possible, should be made for crossing of native fauna.
- The road (including the bridge across Mountain Creek) shall be constructed to provide a Q20 immunity from flooding and on an alignment that:
 - (i) minimises impacts on rare and threatened flora and fauna and avoids to the extent possible impacts on the endangered species present;
 - (ii) follows the natural profile of the land as far as possible.
- Provide measures to prevent uncontrolled access to the land (to prevent vehicles leaving the formed road surface for activities such as off-road 4WD eg. post and rails or bollards).
- The road must not unduly impede natural drainage on the land.
- The lighting to be provided shall be environmentally sensitive.
- The road shall be constructed to a low speed rural road standard (6-8 metres pavement width) so as to provide a safe trafficable carriageway whilst trying to minimise impacts upon existing vegetation.
- During the construction phase environmental impacts are to be kept to a minimum. The following specific issues are to be taken into account to minimise any adverse impacts:
 - (i) the potential presence of acid sulphate soils;
 - (ii) importation of weeds and harmful soil pathogens.
- The road should be as aesthetically pleasing as possible.

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DATED _____ 1999

MAROOCHY SHIRE COUNCIL

and

MORETON SUGAR LTD ACN 009 657 112

and

AUSTRALAND HOLDINGS LIMITED ACN 008 443 696

DEED OF COVENANT

Connor O'Meara McConaghy
Solicitors
Level 16
255 Adelaide Street
BRISBANE 4000
Ph: 3221 3033
Fax: 3221 6661
Our Ref: 1356daed.ass

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THIS DEED is made on

1999

BETWEEN: MAROOCHY SHIRE COUNCIL of Cnr Bury & Currie Streets,
Nambour, Queensland ("Council")

AND: MORETON SUGAR LTD ACN 009 657 112 of 21 Magura Street,
Enoggera, Queensland ("Moreton Sugar")

AND: AUSTRALAND HOLDINGS LIMITED ACN 008 443 696 of 32
Logan Road, Woolloongabba, Queensland ("Australand")

INTRODUCTION:

- A. On 19 June 1998 Moreton Sugar entered into a deed with the Council ("Deed of Settlement") in relation to land at Mountain Creek ("Moreton Mill land").
- B. Under the Deed of Settlement, Moreton Sugar acquired certain rights and obligations.
- C. On 24 June 1999, Moreton Sugar and Australand entered into a contract of sale ("contract") for part of the Moreton Mill land.
- D. Under special condition 5.4 of the contract, Australand agreed to sign a deed of covenant in terms of clause 10.1 of the Deed of Settlement.

IT IS AGREED:

1 Assignment of Clause 10.1 of the Deed of Settlement

1.1 Moreton Sugar assigns to Australand all its rights and obligations under clauses:

- 15.2;
- 15.3;
- 15.4; and
- 15.5,

of the Deed of Settlement. Australand requests and accepts the assignment of all Moreton Sugar's rights and obligations under those clauses.

1.2 Australand covenants that it will comply with clauses 15.2 and 15.3 of the Deed of Settlement and indemnifies Moreton Sugar

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against any loss, including consequential loss, arising out of or in any way connected to any breach of this deed.

2 Costs

2.1 Each party will bear its own costs in connection with the preparation and execution of this deed.

2.2 Australand will pay any stamp duty on this deed.

EXECUTED AS A DEED on the date appearing on page one.

Signed by MAROOCHY SHIRE
COUNCIL in the presence of

and

The Common Seal of MORETON
SUGAR LTD was affixed in
the presence of and the sealing is
attested by:

.....
Director

.....
Full name of Director

The Common Seal of AUSTRALAND
HOLDINGS LIMITED was affixed in
accordance with its Articles of
Association in the presence of:

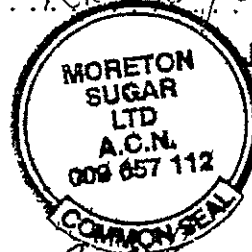
.....
Director

BRENDAN PATRICK CROTTY

.....
Full name of Director

.....
DELEGATED OFFICER

being the proper
person to affix
such Seal

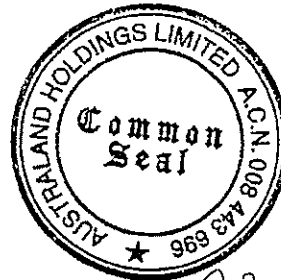


.....
K. Hills (ploual) Reg no 69891

KYLIE PATRICIA HILLS
JUSTICE OF THE PEACE

.....
Director/Secretary
Roderick Christopher Young

.....
Full name of Director/Secretary



.....
C. E. SIMPSON
COMPANY SECRETARY

.....
Director

.....
Full name of Director

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