

DATED _____ **2016**

DEVELOPER CALL BACK OPTION DEED

Relating to

Room WW106 Wagons Way Care Home
The Avenue, Washington, Tyne & Wear NE38 7LE

Between

(1) Qualia Care Developments Limited
and

(2) Elljess Investments Ltd

THIS AGREEMENT is dated _____ 2016

PARTIES

- (1) **Qualia Care Developments Limited** (Company Registration Number 10031034) whose registered address is North & South Suite, 2nd Floor, 4 Warehouse, Sowerby Bridge HX6 2AG ("the Seller"); and
- (2) **Elljess Investments Ltd** (Company Registration Number 09326376) whose registered address is at Richmond House, 38 High Street, Hurstpierpoint, Hassocks, BN6 9RG acting through its Trustees **Geoffrey Owen Jones and Lisa Jane Jones** both of Marchants Barn, Little Park Farm, Marchants Close, Hurstpierpoint, Hassocks, BN6 9UZ ("the Buyer").

BACKGROUND

The Buyer owns a leasehold interest in **Room WW106 Wagons Way Care Home, The Avenue, Washington, Tyne & Wear NE38 7LE** and has agreed to grant the Seller an Option to Buy it in accordance with the terms of this Agreement.

AGREED TERMS

1. Interpretation

1.1 The definitions in this clause apply in this Agreement

Agreement for Lease	The Agreement for Lease dated _____ made between The Seller and The Buyer for the Property.
British Time	The time as observed in the United Kingdom on the date the Option is exercised.
Building:	the Care Home within the Estate.
Buyer's Conveyancer	Noble & Co of St.George's House, 7 St. George's Square, Huddersfield, West Yorkshire HD1 1LA (Ref: LG) or any other conveyancer whose details may be notified in writing from time to time by the Buyer to the Seller.
Completion Date	The date 20 Working Days after the service of the Option Notice.
Deposit	10% of the Option Price or lesser amount by agreement between the parties (exclusive of VAT).

Estate	the site located at Wagons Way Care Home, The Avenue, Washington, Tyne & Wear NE38 7LE registered at the Land Registry under Title Number: TY74911 & TY323283
Lease	The Lease of even date between the Seller and the Buyer.
Option	The Option granted by the Buyer to the Seller by this Agreement to buy back the Property.
Option Notice	Written notice exercising the Option and in the form set out in the Schedule to this Agreement.
Option Period	A term beginning on the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 25 th year from the date of the Agreement.
Option Price	The Option Price shall be 125% of the Purchase Price.
Option Sum	£1.00 (exclusive of VAT).
Property	The leasehold property known as Room WW106 Wagons Way Care Home, The Avenue, Washington, Tyne & Wear NE38 7LE as more particularly defined in the Lease.
Purchase Price	The purchase price paid in the Agreement for Lease of £58,500.
Seller's Conveyancer	Linda Heald & Co Property Lawyers of 2nd Floor Central Buildings, 1-3 Town Hall Street, Sowerby Bridge, HX6 2QD.
Standard Conditions	the conditions in Part 1 and Part 2 of the Standard Commercial Property Conditions (Second Edition) and Condition means any one of them.
Sub-Lease	The Sub-Lease of even date between the Buyer and the Seller which expires at on the 25 th anniversary of the date of the Agreement.
VAT	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.
Working Day	any day Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 1.2 The rules of interpretation in this clause apply in this agreement.
- 1.3 Clause and Schedule headings do not affect the interpretation of this agreement.
- 1.4 Except where a contrary intention appears, a reference to a clause of a Schedule is a reference to a clause or a Schedule of this Agreement.
- 1.5 Unless otherwise specified, a reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it .
- 1.6 A person includes a corporate or unincorporated body.
- 1.7 Writing or written includes faxes and e-mail except for the service of any Notices.
- 1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 Any reference to the Seller or to the Buyer includes their respective successors in title.

2. Option

- 2.1 In consideration of the Seller paying the Option Sum to the Buyer (receipt of which is acknowledged) the Buyer grants to the Seller the right for the Option Period to require the Buyer to sell the Property to the Seller pursuant to the terms of this Option agreement.
- 2.2 The Option will lapse if it has not been exercised by 12.30pm British Time on the last day of the Option Period.

3. Registration

- 3.1 The Buyer and the Seller consent to the Restriction in the form set out in the Schedule being registered against the Buyer's title to the Property at HM Land Registry in order to protect this Option Agreement.
- 3.2 The Seller confirms that if the Option expires they shall forthwith cancel any registrations made by him in any registers to protect this Agreement and by way of security appoints the Buyer his attorney for the purpose of effecting such cancellations.

4. Undertaking

The Buyer grants licence for the Seller and its agents to enter to inspect the Property at all times during the Option Period, on giving reasonable notice to the Buyer. The Seller will make good any damage caused to the Property as soon as reasonably practicable.

5. Exercise of the Option

- 5.1 The Seller may exercise the Option at any time during the Option Period by serving an Option Notice on the Buyer.
- 5.2 The Buyer will receive Annual Payments from the Seller up to the date of completion of the sale of the Property to the Seller apportioned on a daily basis.

5.3 The service of a valid Option Notice will constitute an agreement by which the Buyer shall sell and the Seller will buy back the Property.

5.4 Upon service of a valid Option Notice the Seller will pay the Deposit to the Buyer.

5.5 At Completion the Seller will pay to the Buyer the Option Price.

5.6 The parties shall do all things necessary to ensure that the exercise of the Option constitutes an enforceable agreement for sale and purchase in accordance with the Law of Property (Miscellaneous Provisions) Act 1989 Section 2 or any statutory re-enactment or modification of it for the time being in force.

6. Title Guarantee

6.1 If the Option is exercised in accordance with the terms of this agreement the Seller will purchase the Property from the Buyer for the Option Price.

6.2 The Buyer will sell the Property with full title guarantee.

7. Conditions

7.1 Upon exercise of the Option, the Part 1 Conditions will be incorporated into this Agreement in so far as they:

- (a) Apply to a sale by private treaty;
- (b) Relate to leasehold property;
- (c) Are not inconsistent with the other clauses in this Agreement; and
- (d) Have not been modified or excluded by any of the other clauses in this Agreement.

7.2 Upon exercise of the Option, the Part 2 Conditions will not be incorporated into this Agreement.

7.3 The following Conditions will not apply:

- (a) Conditions 1.3, 1.4.3 & 1.5;
- (b) Condition 2.2;
- (c) Conditions 3.1.4 and 3.3;
- (d) Conditions 6.2, 6.4.1 and 6.6.2; and
- (e) Condition 7.1.3.

8. Vacant Possession

The Property will be sold with vacant possession on completion but subject to any occupational tenancy to a resident.

9. Transfer

The Transfer to the Seller will contain:

- (a) A declaration as to the Title Guarantee with which the transfer is made in the terms of clause 6.2; and
- (b) A covenant by the Seller by way of indemnity only, on its own behalf and on behalf of its successors in title, to observe and perform the charges, encumbrances, covenants and restrictions contained or referred to in the property and charges register of Title Number **TY74911 & TY323283** in so far as they are subsisting and capable of taking effect and to

keep the Buyer indemnified against all proceedings, costs, claims and expenses on account of any breach.

10. Completion

- 10.1 Completion will take place on the Completion Date.
- 10.2 On completion the Seller will pay the balance of the Option Price.

11. VAT

- 11.1 Each amount stated to be payable by the Seller to the Buyer under or pursuant to this agreement is exclusive of VAT (if any).
- 11.2 If any VAT is chargeable on any supply made by the Buyer under or pursuant to this agreement, the Seller will pay the Buyer an amount equal to that VAT, subject to the Buyer supplying the Seller with a valid VAT invoice at the time of payment.

12. Entire Agreement

- 12.1 This agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between them relating to the subject matter of this agreement.
- 12.2 The Seller acknowledges and agrees that in entering into this agreement, the Seller is relying upon the written replies given by the Buyer's Conveyancer to any enquiries raised by the Seller or its conveyancer.

13. Notices

- 13.1 Any notice (including the Option Notice) given under this agreement must be in writing and signed by or on behalf of the party giving it.
- 13.2 Any notice or document to be given or delivered under this agreement must be given:
 - 13.2.1 if given to a recipient resident in the United Kingdom by delivering it personally or sending it by recorded or special delivery to the address and for the attention of the relevant party; and
 - 13.2.2 if given to a recipient resident outside the United Kingdom by sending it by reputable international courier such as DHL or Fedex in a sealed, tracked package to the address and for the attention of the relevant party.

The parties' respective addresses for the purposes of this clause are, as follows:

(a) to the Seller at:

Qualia Care Developments Limited at North & South Suite, 2nd Floor, 4 Warehouse, Sowerby Bridge HX6 2AG

or to such other address as was last notified in writing by the Seller to the Buyer; and

(b) to the Buyer at:

Elljess Investments Ltd of Richmond House, 38 High Street, Hurstpierpoint, Hassocks, BN6 9RG

or to such other address or for the attention of such other person, as was last notified in writing by the Buyer to the Seller.

- 13.3 Any such notice will be deemed to have been received:
- (a) If delivered personally, at the time of delivery;
 - (b) In the case of recorded or special delivery, on the first Working Day after posting; and
 - (c) In the case of a tracked courier service, on the first Working Day after the courier tracking service records that a delivery has taken place.
- 13.4 In proving service it will be sufficient to prove, as the case may be, that delivery was made or that the envelope containing the notice was properly addressed and posted as recorded or special delivery letter or that the courier tracking service records that the package was delivered.
- 13.5 A notice given or document delivered under this agreement will not be validly given or delivered if sent by fax or e-mail.

14. Disposals

- 14.1 The Buyer will not dispose of any legal or equitable interest in any part of the Property to a person other than the Seller, unless at the time of such disposal the purchaser or transferee executes and delivers to the Seller a deed of assignment (in the form given in Schedule 2) by which the purchaser or transferee covenants in favour of the Seller in this agreement.
- 14.2 The Buyer will accept a restriction in the proprietorship register of the Buyer's title to the Property in the Land Registry Standard Form as set out in Schedule 1 that no dealing may be registered without a certificate from the buyer's conveyancer that the requirements of this clause 14 have been complied with.
- 14.3 The Seller may assign the benefit of this agreement to any third party who will then be entitled to exercise this agreement as if it were the Seller.

15. Rights of Third Parties

A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights) of Third Parties Act 1999.

16. Disputes

Any dispute arising between the parties on any matter arising out of this agreement may be referred by either party to an independent chartered surveyor agreed upon by the parties or in default of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors. The surveyor will act as an arbitrator in accordance with the Arbitration Acts.

17. LIMITATION OF TRUSTEES' LIABILITY

In this clause, the following definition applies:

Trustees: the persons named as Buyer in this Deed and any person appointed as trustee of Elljess Investments Ltd from time to time.

Any liability of the Trustees arising out of this Deed or matters connected with it shall be limited to the value of the assets of Elljess Investments Ltd in their possession from time to time.

Clause 17.1 will not apply to any liabilities resulting from any wilful or reckless breach of duty or trust by the Trustees.

This agreement has been entered into on the date stated at the beginning of it

Schedules:

1. Form of Restriction to be registered against the Buyer's title to the Property at HM Land Registry in order to protect this Option Agreement
2. Deed of Assignment of Option Agreement
3. Option Notice

Schedule 1

Form of Restriction to be registered against the Buyer's title to the Property at HM Land Registry in order to protect this Option Agreement:

"No Transfer of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number(s) **TY74911 & TY323283** or their Conveyancer that the provisions of Clause 14.1 and 14.2 of the Developer Call Back Option Agreement dated [DATE] and made between **Qualia Care Developments Limited** and **Elljess Investments Ltd** have been complied with."

Schedule 2

Deed of Assignment of Option Agreement

THIS DEED is made the day of Two thousand and ****

1. Particulars:

Landlord	Qualia Care Developments Limited
Assignor	Elljess Investments Ltd
Assignee	[New Owner]
Agreement for Lease	The Agreement for Lease dated 2016 made between The Landlord and The Assignor for the Property
Lease	The Lease dated between the Landlord and the Assignor
Option Agreement	An agreement between the Landlord and the Assignor granting an Option to Buy Back
Option Period	A term beginning on the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 25 th year from the date of the Agreement.
Property	Room WW106 Wagons Way Care Home, The Avenue, Washington, Tyne & Wear NE38 7LE

NOW THIS DEED WITNESSES as follows:

2. Interpretation:

The provisions of the Option Agreement apply to this deed as if they were set out in full in this deed.

3. Recitals:

- 3.1 By the Agreement for Lease and the Option Agreement the Assignor contracted with the Landlord an Option to Buy Back during the Option Period.
- 3.2 This deed is supplemental to the Option Agreement.
- 3.3 By the Lease the Property was demised unto the Assignor and by a Sub-Lease back to the Landlord to facilitate the functioning of the Care Home.

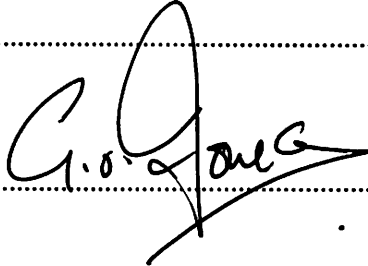
4. Assignee's Covenant

The Assignee hereby covenants with the Landlord that as from the date of the transfer to the Assignee they/he/she will observe the terms and conditions contained in the Option Agreement.

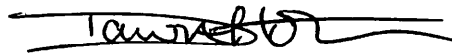
5. **Continuation of the Option Agreement**

The Assignor hereby assigns to the Assignee the benefit and the burden of the Option Agreement until the expiry of the Option Period and on completion of this Deed shall pay to the Landlord all sums due under the terms of the Option Agreement for his consent to this disposition.

Executed as a Deed by the
[Assignee]
in the presence of:-

.....

.....

Executed as a Deed by
Elljess Investments Ltd
in the presence of:-


DAWN HUTCHINGS
14 Furzeland Way
Sayers Common BN6 9JR

Schedule 3

The Option Notice

To: [the Buyer]

At: [Address of Buyer or Conveyancer]

For the attention of: [Name and Position]

Pursuant to a Call Back Option Deed ("the Option Deed") dated *[insert]* made between *[insert]* and *[insert]* relating to *[room address]*

[the Seller/ SUCCESSOR IN TITLE] gives *[the Buyer/SUCCESSOR IN TITLE]* notice of the exercise of the Option contained in the Option Deed to buy the Property on the terms set out in the Option Deed

Dated: [insert date]

Signed by [name of director or officer] _____
for and on behalf of
[Seller or successor in title]

Signed as a deed by **Qualia Care Developments
Limited** acting by

_____, a director,
in the presence of:

.....
Director

SIGNATURE OF WITNESS:

NAME

ADDRESS

Signed as a deed by
Geoffrey Owen Jones
in the presence of:

SIGNATURE OF WITNESS

NAME

ADDRESS

~~Geoffrey Jones~~
G.O. Jones

DAWN HUTCHINGS

14 Furzeland Way
Sayers Common
BN18 9TB

~~Lisa Jones~~

Signed as a deed by
Lisa Jane Jones
in the presence of:

SIGNATURE OF WITNESS

NAME

ADDRESS

~~Lisa Jones~~
Lisa Jones

DAWN HUTCHINGS

14 Furzeland Way
Sayers Common
BN18 9TB

~~Lisa Jones~~