

OPTION AGREEMENT

NOT FOR USE

Level 2, 77 The Esplanade
P.O. Box 5, Mooloolaba
Queensland 4557

Phone: 07 5444 3466
Facsimile: 07 5444 2150

mt@munrothompson.com.au
www.munrothompson.com.au
ABN: 38 141 168 377

Member of Law Australasia

OPTION AGREEMENT

Dated

2010

PARTIES

Name: _____

Short form Name: Seller

Notice Details: As described in the Reference Schedule

Name: _____

ACN: _____

Short form Name: Grantee

Notice Details: As described in the Reference Schedule

NOT FOR USE



INTRODUCTION:

- A. The Seller owns the Property.
- B. The Seller grants to the Grantee and its nominees an option to purchase the Property.
- C. This Agreement records the terms of the parties arrangements.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Unless the context otherwise requires:

- (1) "**Agreement**" means this deed, including the introduction, schedules and annexures (if any) to it, as it may later be amended or supplemented by the parties in writing;
- (2) "**Agreement Date**" means the date of this Agreement on the top of this page and if there is no date there then the Agreement Date is the date that the last party to execute this Agreement does so;
- (3) "**Ancillary Applications**" means any and all applications and supporting correspondence, plans, drawings and reports, made or to be made by the Grantee to any Minister of the Crown, State Government, Local Government or other statutory authority for permission or consent ancillary or incidental to the Development Application as in the sole opinion of the Grantee may be necessary or desirable;
- (4) "**Authorised Representative**" means:
 - (a) in respect of a party which is a corporation:
 - (i) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - (ii) a person acting with the title or in the office of manager or director; and
 - (b) in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative;
- (5) "**Business Day**" means a day, not being a Saturday, Sunday or gazetted public holiday, on which banks are open for commercial business at Toowoomba and in the place or places where performance of the Obligation is to take place;
- (6) "**Buyer**" means the buyer named in the Contract when the option is exercised;
- (7) "**Call Option**" means the call option granted in clause 5;
- (8) "**Call Option Expiry Date**" means the date described as such in the Reference Schedule;
- (9) "**Call Option Fee**" means the amount described as such in the Reference Schedule, which is GST inclusive;
- (10) "**Call Option Period**" means the period starting on the Agreement Date and ending at 5pm on the Call Option Expiry Date;
- (11) "**Contract**" means the contract for the sale of the Property, to be entered into by the Seller and the Buyer upon exercise of the Call Option, which contract will generally be in the form contained in Annexure "A" as varied by other provisions of this Agreement;
- (12) "**Development**" means any or all of the following (as determined by the Grantee):



- (a) making a material change of use of the Property;
 - (b) carrying out operational work on the Property;
 - (c) for carrying out of building works on the Property;
- for the purposes of a Development Proposal, in a configuration and form as determined in the absolute discretion of the Grantee;
- (13) "**Development Application**" means an application to be lodged with the Assessment Manager by the Grantee under IPA for a Development Approval necessary to permit the Development Proposal to be undertaken, which application may be in a form and configuration as determined in the absolute discretion of the Grantee;
 - (14) "**Development Approval**" means a Decision Notice or a Negotiated Decision Notice given in writing by the Assessment Manager that:
 - (a) approves, wholly or partially, the Development applied for in the Grantee's Development Application (whether or not the approval has conditions attached to it); and
 - (b) is in the form of a development permit;
 - (15) "**Development Proposal**" means the Grantee's proposal to undertake Development of the Property for the primary purpose of a retirement community, residential estate and associated facilities;
 - (16) "**Due Diligence Date**" means the date described as such in the Reference Schedule;
 - (17) "**Event of Default**" means the following events:
 - (a) if a party fails to pay or repay money which is due and payable to the other party under this Agreement, a Contract or document associated with either of them;
 - (b) if a party defaults in the performance of an Obligation on that party's part under this Agreement, the Contract or a document associated with either of them; or
 - (c) any other event specifically described as an Event of Default in this Agreement;
 - (18) "**Grantees Lawyers**" means the lawyers described as such in the Reference Schedule;
 - (19) "**GST**" means a tax imposed under the GST Law;
 - (20) "**GST Law**" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (C'th) or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to it and includes, where the context permits, any ATO ruling or determination;
 - (21) "**IPA**" means the Integrated Planning Act 1997;
 - (22) "**Local Government**" has the same meaning as in the Contract;
 - (23) "**Notice Address**" means in respect of a party:
 - (a) the notice address detailed for that party in the Reference Schedule; or
 - (b) where a party gives Notice to all other parties of another address, the last address so notified;
 - (24) "**Obligation**" means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;
 - (25) "**PAMD**" means the Property Agents and Motor Dealers Act;



- (26) "**PAMD Forms**" means the forms required to be completed and signed by the parties to the Contract (including where necessary their lawyers and / or agents) under the PAMD, to ensure that the Contract is, immediately upon execution by the last party to execute the Contract, valid and binding on each party to the Contract and that any cooling off period under the PAMD has been waived;
- (27) "**Power of Attorney Period**" means that period commencing on the Call Option Expiry Date and expiring at 5.00pm on that day which is 14 days after the Call Option Expiry Date;
- (28) "**Property**" means the property described as such in the Reference Schedule;
- (29) "**Purchase Price**" means \$_____ which is GST inclusive;
- (30) "**Reference Schedule**" means the reference schedule attached to and forming part of this Agreement;
- (31) "**Right**" includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;
- (32) "**Sellers Lawyers**" means the lawyers described as such in the Reference Schedule; and

1.2 Interpretation

- (1) Reference to:-
- (a) one gender includes each other gender;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate; and
 - (d) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) If a party consists of more than one person, this agreement binds them jointly and each of them severally.
- (3) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
- (4) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (5) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2. DUE DILIGENCE

2.1 This Agreement is subject to and conditional upon:

- (1) the Grantee giving on or before 5pm on the Due Diligence Date;
 - (2) notice to the Seller that the Grantee has completed a due diligence investigation of the Property;
 - (3) which is satisfactory, in all respects to the Grantee,
- failing which either party may at any time after the Due Diligence Date, but before the Grantee gives a Notice confirming that its Rights under this clause are waived, terminate this Agreement.

2.2 The Grantee may waive the benefit of clause 2.1 by giving notice in writing to the Seller on or before the Due Diligence Date.

2.3 The Seller authorises the Grantee from the Agreement Date, subject to the rights of any Occupier, to have the Property inspected to obtain any certificate or report (including, without limitation, a survey certificate or report) reasonably required by the Grantee and to enable the Grantee to exercise its



rights under this clause, the Seller grants the Grantee and its Authorised Representatives, a limited licence to enter the Property.

- 2.4 In exercising its rights under this clause, the Grantee must:-
- (1) cause as little interference to the Seller as is reasonably possible; and
 - (2) immediately at its own expense, repair damage done to the Property caused directly or indirectly by the Grantee exercising its Rights under this clause.
- 2.5 The Seller authorises the Grantee to inspect all records relating to the Property held by a government authority maintaining any such records and must, if requested by the Grantee, sign an appropriate authority to specific government authorities for the purposes of this clause.

3. DEVELOPMENT APPLICATION

- 3.1 The Seller:
- (1) consents to the Grantee making the Development Application;
 - (2) consents to the Grantee making any Ancillary Applications;
 - (3) must provide promptly on request by the Grantee a written consent as the owner of the Property to the Development Application and any Ancillary Application in the form(s) required by an assessment manager or other body;
 - (4) consents to the erection on the Property of any Notice required in connection with the Development Application or any Ancillary Applications; and
 - (5) authorises the Grantee and its Authorised Representatives to enter the Property for all purposes reasonably incidental to the Development Application or any Ancillary Applications.
- 3.2 The Grantee at its own expense may prepare and make the Development Application to the assessment manager after the Due Diligence Date and if it does then it must give the Seller Notice of the lodgement within five Business Days after lodgement. The Grantee may also lodge any Ancillary Applications required by the Grantee.
- 3.3 The Development Application and/or the Ancillary Applications may be made by the Grantee or by any other person on behalf of the Grantee.
- 3.4 Where the Development Application is:-
- (1) refused or deemed to be refused by the assessment manager;
 - (2) approved by the assessment manager but made subject to conditions not satisfactory in all respects to the Grantee; or
 - (3) approved by the assessment manager but any person institutes an appeal in a Court of competent jurisdiction against the decision of the assessment manager or its validity, then the parties acknowledge the Grantee's Right to appeal to a Court of competent jurisdiction or to become a respondent to the proceedings (as the case may be) in order to obtain a Development Approval which is satisfactory in all respects to the Grantee.
- 3.5 The Grantee indemnifies and must keep the Seller indemnified from and against any loss or claims which the Seller may suffer directly or indirectly as a result of the Grantee exercising a Right granted under this clause or as a result of a failure by the Grantee to comply with the provisions of this clause.



4. OBLIGATIONS PENDING EXERCISE

The Seller must not, without the Grantee's consent, deal with the Property in any manner inconsistent with the Grantee's Rights under this Agreement, including, without limitation, selling, disposing or leasing the Property.

5. GRANT OF CALL OPTION

5.1 The Grantee must pay the Call Option Fee to the Seller at the times specified in the Reference Schedule. The Call Option Fee is not refundable to the Grantee under any circumstances.

5.2 In consideration of the Call Option Fee, the Seller grants to the Grantee and it's nominee/s an option to purchase the Property for the Purchase Price and to enter into a Contract for the sale of the Property.

5.3 The Option constitutes an irrevocable offer by the Seller to enter into a binding Contract for the sale and purchase of the Property, which may be accepted strictly in accordance with the provisions of this Agreement.

6. NOMINEE

6.1 The Grantee may at any time prior to the Call Option Expiry Date nominate another person as being entitled to exercise the Option by delivering to the Seller's lawyers a notice substantially in the form set out in Schedule 1 executed by both the Grantee and the Nominee.

6.2 On and from the Nominate Date:

- (1) the Nominee is entitled to the rights of the Grantee under this Agreement, including the right to exercise the Option and is subject to the obligations of the Grantee under this Agreement; and
- (2) the Grantee may not exercise the Option while the nomination remains in force and has not been withdrawn by the Grantee.

6.3 Nothing in this clause 6 releases the Grantee or Seller in respect of any antecedent breach of this Agreement by the Grantee or the Seller respectively prior to the Nomination Date.

6.4 The Grantee may appoint as its nominee to exercise the Option one or more persons and may include itself as one of the nominees.

7. EXERCISE OF CALL OPTION

7.1 The Call Option may be exercised at any time during the Call Option Period by delivery to the Sellers Lawyers of:-

- (1) the PAMD Forms;
- (2) 3 copies of the Contract signed by the Buyer with the details of the name and address of the Buyer completed;
- (3) a bank cheque payable to the Seller for the deposit in the Contract less the Call Option Fee; and
- (4) where the Buyer does not include the Grantee, a written nomination by the Grantee of the Buyer.

7.2 Exercise of the Call Option under this clause is not effective until clause 7.1 has been complied with.

8. CALL OPTION CONTRACT

8.1 Within 7 days of receiving the Contract from the Buyer, the Seller must:-

- (1) sign the Contract and PAMD Forms (where required);



- (2) return 1 signed copy of the Contract to each of the:
 - (a) Buyer at its address shown in the Contract; and
 - (b) Grantee.

8.2 Failure by the Seller to discharge its Obligations under clause 8.1 is an Event of Default.

8.3 The date of the Contract is the date of signing of the Contract by the Seller.

9. CALL OPTION FEE

9.1 Whether or not the Call Option is exercised, the Call Option Fee may be retained by the Seller.

9.2 If the Call Option is exercised by the Grantee or a nominee of the Grantee, the Call Option Fee forms the deposit under the Contract.

10. POWER OF ATTORNEY

10.1 The Seller irrevocably appoints:-

- (1) the Grantee;
- (2) each director of the Grantee;
- (3) each attorney of the Grantee appointed under a power of attorney by the Grantee (as donor); and
- (4) the substitutes of any of the above, severally to be the attorney of the Seller to sign:-
 - (5) the PAMD forms; and
 - (6) the Contract.

10.2 The rights granted under the power of attorney referred to in this clause 10 can only be exercised by the Grantee during the Power of Attorney Period.

10.3 The power of attorney in this clause 10 is given to the Grantee as security for the performance of the Obligation owed to the Grantee under clause 8.1.

11. CAVEAT

11.1 If requested by the Grantee, the Owner must consent to the registration of a caveat over the Property claiming an interest under the option.

11.2 If the option:

- (1) is not exercised; or
- (2) is exercised but the Contract is lawfully terminated;

the Grantee must promptly deliver to the Owner a withdrawal of the caveat capable of immediate registration and a bank cheque or solicitor's trust account cheque payable to the Department of Natural Resources Mines and Water for the registration fee for that withdrawal.

11.3 If the Grantee defaults under clause 11.2, the Grantee irrevocably appoints the Owner as its attorney to execute a withdrawal of caveat. This clause 11.3 operates as a deed.

12. DEFAULT

12.1 A party will be in default of this Agreement if an Event of Default occurs.

12.2 At any time after an Event of Default occurs then the non-defaulting party may, by Notice to the defaulting party, elect to either:

- (1) proceed with this Agreement and waive its Rights against the defaulting party; or
- (2) terminate this Agreement.



13. COSTS OF THE AGREEMENT

Each party must pay its own costs of and incidental to the preparation, negotiation and execution of this Agreement. The Grantee must pay all stamp duty on this Agreement.

14. NOTICES

14.1 Notices given under this Agreement must be:

- (1) in writing;
- (2) signed by the party giving the Notice or its Authorised Representative; and
- (3) addressed to the Notice Address of the person to whom it is to be given.

14.2 Notices must be either:

- (1) delivered by hand;
- (2) posted by pre-paid security or certified mail; or
- (3) transmitted by facsimile,

to the Notice Address of the person receiving the Notice.

14.3 A Notice given to a person in accordance with this Agreement is deemed to have been given and received if:

- (1) delivered, on the day of delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day;
- (2) posted by pre-paid security mail or certified mail, on the second day after the day on which the Notice was accepted by the post office from the party sending the Notice; or
- (3) transmitted by facsimile, the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 5:00pm on a Business Day, otherwise on the next Business Day.

15. PROPER LAW, JURISDICTION

15.1 This Agreement is governed by and construed in accordance with the laws of Queensland.

15.2 Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland.

15.3 Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

15.4 A party may by Notice appoint another person at a specified address in Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.

16. GENERAL PROVISIONS

16.1 No variation of this Agreement nor consent to a departure by a party from a provision, is of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

16.2 The non-exercise of or delay in exercising a Right of a party will not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by Notice, signed by the party (or its Authorised Representative) to be bound by the waiver.



- 16.3 Each party to this Agreement will do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another party to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the Rights of the other parties to this Agreement.
- 16.4 If a party consists of more than one person:
- (1) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
 - (2) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
 - (3) a representation, warranty or undertaking made by those parties is made by each of them.
- 16.5 This Agreement may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.
- 16.6 Each person signing this Agreement:
- (1) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
 - (2) as an Authorised Representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that party.
- 16.7 This Agreement will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:
- (1) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
 - (2) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.
- 16.8 Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.
- 16.9 This Agreement binds each of the parties to the full extent provided in this Agreement even though:
- (1) one or more person named in this Agreement has not or does not sign or execute this Agreement; or
 - (2) the signature or execution of this Agreement by any of the parties (other than the party sought to be made liable) is or may become void or voidable.
- 16.10 The Grantee may assign this Agreement.

17. TIME OF THE ESSENCE

For the purposes of this Agreement, time will be of the essence.



Reference Schedule

Seller	Name: _____ Address: _____ Fax No: _____
Seller's Lawyer	Name: _____ Address: _____ Fax No: _____
Grantee	Name: _____ Address: _____ Fax No: _____
Grantee's Lawyer	Name: Munro Thompson Address: PO Box 5, Mooloolaba, QLD, 4557 Fax No: 07-5444 2150
Property	Address: _____ Description: _____ _____
Due Diligence Date	90 days from the Agreement Date
Call Option Fee	\$ _____ payable as follows:- (1) \$ _____ on signing of this Agreement by the Grantee; and (2) \$ _____ within 5 Business Days of Clause 2.1 being satisfied.
Call Option Expiry Date	18 months from the Agreement Date



SCHEDULE 1

Nomination Under Option Agreement

TO: _____

We, _____ appoint _____
_____ as our nominee to exercise the Option to purchase granted by the Option Agreement between
_____ as Seller and Queensland Property & Investment Pty Ltd
as Grantee.

DATED _____

Signature

The Nominee, _____ accepts its appointment as nominee
under the Option Agreement and:-

1. Agrees to be bound by the terms and conditions of the Option Agreement; and
2. Acknowledges it is entitled to the rights of the Grantee under the Option Agreement including the right to exercise the Option and is subject to the obligations of the Grantee under the Option Agreement.

DATED _____

Signature of Nominee



ANNEXURE

Contract of Sale

NOT FOR USE



SIGNING PAGE

SIGNED as an Agreement.

SIGNED by _____ as)
Seller in the presence of:)

Signature

Witness

Print Name

SIGNED by _____ as)
Seller in the presence of:)

Signature

Witness

Print Name

EXECUTED by _____)
as Grantee in accordance with section 127 of)
the *Corporations Act/Law* with the authority)
of the Director / Sole Director and Secretary)

[*Sole] Director

Director / Secretary

Print Name

Print Name

