

**DATED \_\_\_\_\_ 2016**

**DEVELOPER ASSURED BUY BACK**

**OPTION AGREEMENT**

Relating to

**Room WW106 Wagons Way Care Home**

**The Avenue, Washington, Tyne & Wear NE38 7LE**

Between

**(1) Qualia Care Developments Limited**

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

## **AGREED TERMS**

### **1. Interpretation**

#### **1.1 The definitions in this clause apply in this Agreement**

<b>Agreement for Lease</b>	The Agreement for Lease dated _____ made between The Seller and The Buyer for the Property.
<b>British Time</b>	The time as observed in the United Kingdom on the date the Option is exercised
<b>Buyer's Conveyancer</b>	<b>Noble &amp; Co of St.George's House, 7 St. George's Square, Huddersfield, West Yorkshire HD1 1LA (Ref: LG)</b> or any other conveyancer whose details may be notified in writing from time to time by the Buyer to the Seller.
<b>Completion Date</b>	The date on which the Seller will complete the Buy Back of the Property from the Buyer as set out in sub clauses 5.3 and 5.4 or earlier by agreement.
<b>Estate</b>	the site located at <b>Wagons Way Care Home, The Avenue, Washington, Tyne &amp; Wear NE38 7LE</b> registered at the Land Registry under Title Number: <b>TY74911 &amp; TY323283</b> .
<b>Lease</b>	The Lease of even date between the Seller and the Buyer.
<b>Option Notice</b>	Written notice exercising the Option and in the form set out in the Schedule 3 (part 2) to this Agreement.

<b>Option Period</b>	The specific period during which the Option is permitted to be exercised. There are five Option Periods throughout the Term:
<b>Option Period 1</b>	Begins on the date which is the expiry of the 5 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 6 <sup>th</sup> year from the date of the Agreement.
<b>Option Period 2</b>	Begins on the date which is the expiry of the 9 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 10 <sup>th</sup> year from the date of the Agreement.
<b>Option Period 3</b>	Begin on the date which is the expiry of the 14 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 15 <sup>th</sup> year from the date of the Agreement.
<b>Option Period 4</b>	Begins on the date which is the expiry of the 19 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 20 <sup>th</sup> year from the date of the Agreement.
<b>Option Period 5</b>	Begins on the date which is the expiry of the 24 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 25 <sup>th</sup> year from the date of the Agreement.
<b>Option Request Notice</b>	<p>Written notice from the Seller to the Buyer to request the Buyer's intention to exercise this Option in the form set out in Schedule 3 (part 1) to this Agreement.</p> <p>The Seller will serve the Option Request Notice on a date which shall be no later than six months before the date that the relevant Option Period shall begin. The Buyer must respond within 6 months of the date of that Notice.</p>
<b>Option Sum</b>	£1.00 (exclusive of VAT).
<b>Option to Buy</b>	The Option for the Buyer to require the Seller to buy back the Property in accordance with the terms of this Agreement.

<b>Option to Buy Price</b>	The amount to be paid by the Seller to the Buyer when exercising the Option to Buy shall be depend upon the Option Period in which the Option is exercised:  Option Period 1 – 105% of the Purchase Price Option Period 2 - 115% of the Purchase Price Option Period 3 - 120% of the Purchase Price Option Period 4 - 125% of the Purchase Price Option Period 5 - 125% of the Purchase Price
<b>Property</b>	The leasehold property known as <b>Room WW106 Wagons Way Care Home, The Avenue, Washington, Tyne &amp; Wear NE38 7LE</b> as more particularly defined in the Lease
<b>Purchase Price</b>	The purchase price paid in the Agreement for Lease of £58,500.
<b>Seller's Conveyancer</b>	<b>Linda Heald &amp; Co Property Lawyers</b> of 2nd Floor Central Buildings, 1-3 Town Hall Street, Sowerby Bridge, HX6 2QD.
<b>Standard Conditions</b>	the conditions in Part 1 and Part 2 of the Standard Commercial Property Conditions (Second Edition) and Condition means any one of them.
<b>Sub-Lease</b>	The Sub-Lease of even date between the Buyer and the Qualia Care Developments Limited.
<b>Term</b>	a period of 25 years from the date of the Agreement for Lease.
<b>VAT</b>	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.
<b>Working Day</b>	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 Buyer paying the Option Sum to the Seller (receipt of which is acknowledged) the Seller grants to the Buyer the right for the Option Period to require the Seller to buy the Property pursuant to the terms of this agreement.

2.2 The Seller will send the Option Request Notice to the Buyer on or before a date which is no later than six months before the start of the each Option Period asking the Buyer whether he requires the Seller to buy back the Property from the Buyer during that forthcoming Option Period.

2.3 The Buyer will have six months from receiving the Option Request Notice referred to in clause 2.2 to reply indicating whether or not it intends to exercise the Option to Buy during the forthcoming Option Period. If the Buyer replies indicating that he does not intend to exercise the Option to Buy during the forthcoming Option Period or fails to respond then the Seller shall not be required to buy the Property during that Option Period.

2.4 Once the Buyer indicates on their reply to the Option Request Notice that they wish to sell the Property, the Seller will immediately advertise the availability of the Property.

2.5 The Option will lapse if it has not been exercised by 12.30pm on the last day of the Term.

## **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 Periods, after 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 Provided the Buyer responded to the Option Request Notice in accordance with clause 2.3 above, the Buyer may exercise the Option to Buy at any time during the Option Period by serving the Option Notice on the Seller.

5.2 The Buyer will receive Annual Payments from the Seller up to the end of the Option Period in which the Option is exercised regardless of the date of completion of the sale of the Property back to the Seller.

5.3 Following the valid service of the Option Notice the Seller will complete its purchase on a Completion Date which is no more than 180 working days thereafter.

5.4 The Seller is able to complete the buyback of the Property at any point during the Option Period.

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

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 to Buy, 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 to Buy, 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 **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 of Option to Buy the Seller will pay the Option to Buy 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 Notices) 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 e-mail or fax.

#### **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 Assured Buy Back Option Agreement dated [date] 2016 and made between **Qualia Care Developments Limited** and **Eljess 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	<b>Qualia Care Developments Limited</b>
Assignor	<b>Eljess Investments Ltd</b>
Assignee	<b>[New Owner]</b>
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	A Developer Assured Buy Back Option Agreement between the Assignor and the Landlord granting an Option to buy back the Property.
Option Period	The specific period during which the Option is permitted to be exercised. There are five Option Periods throughout the Term.
Option Period 1	Begins on the date which is the expiry of the 5 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 6 <sup>th</sup> year from the date of the Agreement.
Option Period 2	Begins on the date which is the expiry of the 9 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 10 <sup>th</sup> year from the date of the Agreement.
Option Period 3	Begins on the date which is the expiry of the 14 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 15 <sup>th</sup> year from the date of the Agreement.
Option Period 4	Begins on the date which is the expiry of the 19 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 20 <sup>th</sup> year from the date of the Agreement.
Option Period 5	Begins on the date which is the expiry of the 24 <sup>th</sup> year from the date of the Agreement and which ends at 12.30pm (British Time) on the date which is the expiry of the 25 <sup>th</sup> 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 Landlord contracted with the Assignor 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**

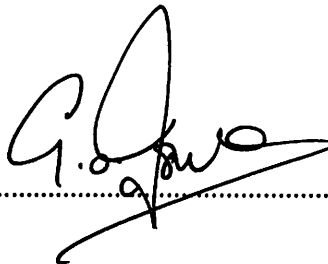
The Assignee hereby covenants with the Landlord that as from the date of the transfer to the Assignee they/he/she will observe the terms and conditions contained in the Option Agreement.

**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.

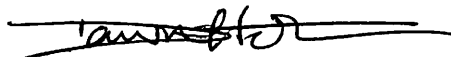
Executed as a Deed by the  
[Assignee]  
in the presence of:-

.....



.....

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



DAWN HUTCHINGS  
14 Furzeland Way  
Sayers Common  
BN6 9JB

### Schedule 3 – Part 1

#### The Option Request Notice

To: **Elljess Investments Ltd**

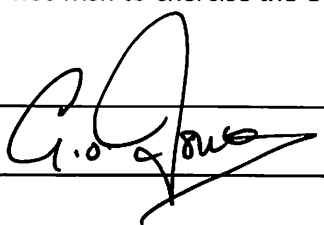
At: **Richmond House, 38 High Street, Hurstpierpoint, Hassocks, BN6 9RG**

Pursuant to the Developer Assured Buy Back Option Agreement ("the Option Agreement") dated \_\_\_\_\_ made between **Qualia Care Developments Limited** and **Elljess Investments Ltd** relating to **Room WW106 Wagons Way Care Home, The Avenue, Washington, Tyne & Wear NE38 7LE**.

The forthcoming Option Period is Option Period \_\_\_\_ [specify which]. During this Option Period you may exercise the Option to Buy for the Option to Buy Price which is \_\_\_\_% of the Purchase Price [specify percentage].

**Qualia Care Developments Limited** [successor in title] requires you to indicate below whether, during the forthcoming Option Period, you wish:

<b>A</b> <input type="checkbox"/>	<b>Qualia Care Developments Limited</b> to buy back Room WW106 for the relevant Option to Buy Price for the forthcoming Option Period.
<b>B</b> <input type="checkbox"/>	I do not wish to exercise the Option to Buy during the forthcoming Option Period.

Signed:  (Elljess Investments Ltd )

Dated: \_\_\_\_\_

**Please Note**

*Under the terms of the Option Agreement you have **six months** from the date of this Option Request to indicate your intentions to the Seller. Please tick one of the boxes above and return this form to:*

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

Sent from Qualia Care Developments Limited  
\_\_\_\_\_[insert date]

## Schedule 3 – Part 2

### The Option Notice

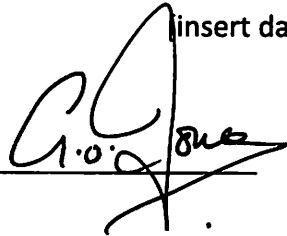
From: **Elljess Investments Ltd**

At: **Richmond House, 38 High Street, Hurstpierpoint, Hassocks,  
BN6 9RG**

Pursuant to the Developer Assured Buy Back Option Agreement ("the Option Agreement") dated \_\_\_\_\_ made between **Qualia Care Developments Limited** and **Elljess Investments Ltd** relating to **Room WW106 Wagons Way Care Home The Avenue, Washington, Tyne & Wear NE38 7LE**

**Elljess Investments Ltd / [SUCCESSOR IN TITLE]** gives **Qualia Care Developments Limited / [SUCCESSOR IN TITLE]** notice of the exercise of the Option contained in the Option Agreement to requiring the Seller to buy the Property on the terms set out in the Option Agreement

Dated: \_\_\_\_\_ [insert date]

Signed by \_\_\_\_\_ 

Signed as a deed by **Qualia Care Developments  
Limited** acting by \_\_\_\_\_,  
a director, in the presence of:

.....  
Director

SIGNATURE OF WITNESS

NAME

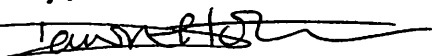
ADDRESS

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

.....

SIGNATURE OF WITNESS



NAME DAWN HUTCHINGS 

ADDRESS 14 Furzeland way  
Sayers Common  
BN16 9JB

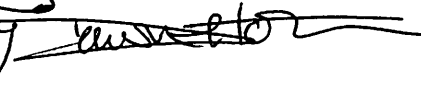
Signed as a deed by  
**Lisa Jane Jones**  
in the presence of:

.....

SIGNATURE OF WITNESS



NAME DAWN HUTCHINGS

ADDRESS 14 Furzeland way   
Sayers Common  
BN16 9JB