

Option deed

Hunter Development Corporation
Lee 4 Pty Ltd (Developer)
35 Honeysuckle Drive

Option deed

Contents

1	Definitions and interpretation	1
	1.1 Definitions	1
	1.2 Interpretation	2
2	Consideration and grant option	3
3	Duration of Option	3
4	Exercise of Option	3
5	Binding Agreement	5
6	Option Fee	5
7	Caveat	5
8	Nominee	6
9	Updated Agreement	6
10	Costs, charges and expenses	6
11	GST	7
12	Notices	7
13	Waiver	7
	13.1 No waiver	7
	13.2 Waiver must be in writing	7
14	Service process	8
15	Governing law and jurisdiction	8
	15.1 Governing law	8
	15.2 Jurisdiction	8
16	Counterparts	8
17	Dispute resolution	8
18	Statutory authority	9
19	Restructure or reconstitution	9
	Schedule 1	10
	Signing page	12
	Annexure A - Buy Back Agreement	13
	Annexure B - Notice of Exercise of Option	14

Option deed

Date

Parties

Hunter Development Corporation ABN 94 688 782 063 of Suite B, Level 5, 26 Honeysuckle Drive, Newcastle, NSW 2300 (**HDC**)

Lee 4 Pty Ltd ACN 620 632 573 of Unit 4, 3 Sydney Avenue, BARTON ACT 2600 (**Developer**)

Recitals

- A The Developer became the registered proprietor of an estate in fee simple in the Property by way of the Contract where HDC was the Vendor of the Property and the Developer was the Purchaser.
- B HDC sold the Property to the Developer, subject to the HDC and Developer entering into this Option for the Buy Back of the Property by HDC.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this deed:

Agreement means a document in the form of Annexure A as updated under clause 9.

Auditor means a registered company auditor independent of the parties and having at least 10 years' experience.

Authorised Officer means:

- (a) in the case of the Developer, a director, secretary or an officer whose title contains the word manager or a person performing the functions of any of them; and
- (b) in the case of HDC, a person appointed by the General Manager of HDC to act as an Authorised Officer for the purpose of this deed.

Buy Back means the re-purchase of the Property by HDC as provided for in the Contract and this Option.

Contract means the contract for sale of land in respect of the Property entered into by the Developer (as Purchaser) and HDC (as Vendor) on or around the date of this deed.

Development means the development as contemplated in the Contract.

Development Works means the excavation, design and construction works required to construct the Development on the Property in accordance with the Contract.

Developer's Solicitors means the firm of solicitors in item 5 of the schedule, or if the Developer notifies HDC that another firm is its solicitor, then that firm.

GST means any form of Goods & Services Tax payable under the GST Legislation.

GST Legislation means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

HDC's Solicitors means the firm of solicitors in item 4 of the schedule, or if HDC notifies the Developer that another firm is its solicitor, then that firm.

HDC's Mine Subsidence Rectification Works has the same meaning as in the Contract.

Market Value means the amount that would have been paid for the Property if sold by a willing but not anxious seller, to a willing but not anxious buyer, being the fair market value for the Property as applicable.

Nominee means the person nominated by HDC under clause 8(a).

Option means any Option granted under this deed.

Option Fee means the amount in item 1 of the schedule.

Option Expiry Date means the date in item 2 of the schedule.

Option Purchase Price means the price to be paid by HDC to the Developer for the Property as applicable, calculated in accordance with clause 4(c) of this deed.

Property has the same meaning as in the Contract.

Purchase Price means the price paid by the Developer to HDC for the purchase of the Property under the Contract.

Substantial Commencement has the same meaning as in the Contract.

Valuer means a licensed valuer having at least 10 years' experience valuing properties such as the Property, and who is licensed as a member of the Australian Institute of Valuers and Land Economists (NSW Division).

1.2 Interpretation

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;

-
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, Receiver, Liquidator, Trustee in Bankruptcy, substitutes (including, without limitation, persons taking by novation) and assigns except that a reference to HDC does not include the Nominee unless expressly specified otherwise in this deed;
 - (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
 - (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (h) 'include' and 'includes' are not words of limitation; and
 - (i) a term that is defined in the Contract but is not defined in this deed bears the same meaning in this deed as it does in the Contract;
 - (j) headings are inserted for convenience and do not affect the interpretation of this deed.

2 Consideration and grant option

In consideration of the payment of the Option Fee by HDC to the Developer (receipt of which is hereby acknowledged), the Developer as beneficial owner grants to HDC an Option on the terms set out in this deed for HDC or the Nominee to purchase the Property for the Option Purchase Price and on the terms set out in the Agreement.

3 Duration of Option

The Option ends at 5.00 pm on the Option Expiry Date in item 2 of the Schedule.

4 Exercise of Option

- (a) HDC may exercise the Option in accordance with this deed and clause 50 of the Contract.
- (b) If HDC is entitled to exercise an Option, HDC must deliver to the Developer or the Developer's solicitors, before the Option Expiry Date, a notice of exercise of Option in the form of Annexure 'B' executed by HDC.
- (c) After HDC exercises an Option in accordance with clause 4(a), it must within 90 days from the date of exercise of an Option, procure calculation of the Option Purchase Price as follows:
 - (i) the Option Purchase Price will be the lesser of:
 - (A) 90% of the Purchase Price, less:

-
- (1) HDC's reasonable legal costs and disbursements, associated with the exercise of and the completion of the purchase of the Property under this Option; and
 - (2) any stamp duty payable by HDC on the transfer of the Property; and
 - (3) any costs incurred or to be incurred by HDC to make safe any part of the Development Works commenced by the Developer; and
 - (4) any costs incurred or to be incurred by HDC to make good any material change in the condition of the Property;

and

- (B) the Market Value of the Property at the date of exercise of an Option, determined by a Valuer (appointed by the President or authorised representative, for the time being, of the Australian Property Institute (Inc) (New South Wales Division)) less:
 - (1) 10% of the Purchase Price;
 - (2) HDC's reasonable legal costs and disbursements, associated with the exercise of and the completion of the purchase of the Property under this Option;
 - (3) any stamp duty payable by HDC on the transfer of the property;
 - (4) any costs incurred by or to be incurred by HDC to make safe any part of the Development Works commenced by the Developer; and
 - (5) any costs incurred by or to be incurred by HDC to make good any material change in the condition of the Property;
- (C) The Valuer's decision will be final and binding on the parties in the absence of manifest error.
- (d) After the calculation of the Option Purchase Price in accordance with clause 4(c), HDC must within 14 days from the date of the determination of the Option Purchase Price issue to the Developer the Agreement completed with particulars of HDC and executed by HDC as Purchaser, with the Option Purchase Price inserted therein and a bank cheque drawn in favour of the Developer for the amount which is 10% of the Option Purchase Price, by way of a deposit.
- (e) The items in clause 4(b) can be delivered to the Developer's address or the Developer's Solicitors' address as recorded in item 5 of the Schedule.
- (f) If clause 4(c) applies, then HDC must serve a copy of the valuation on the Developer at the same time as it delivers the Agreement to the Developer under clause 4(b).

5 Binding Agreement

- (a) If HDC exercises the Option, then
 - (i) the Agreement is binding on the Developer and HDC from the date of the Agreement as dated by the Developer in accordance with clause 5(a)(ii); and
 - (ii) HDC authorises the Developer to date, and the Developer must date, the Agreement with the date on which the Developer is deemed under clause 12 to have received the Agreement sent to the Developer by HDC in accordance with clause 4(c); and
 - (iii) within seven days after the Developer's receipt of the Agreement executed by HDC or signed for HDC, the Developer must deliver to HDC a counterpart of the Agreement completed and executed by the Developer, as Vendor, and dated the same date as the Agreement delivered by HDC to the Developer under clause 4(c).
- (b) The Agreement is binding on the Developer and HDC whether or not the Developer complies on time with clause 5(a)(iii).

6 Option Fee

- (a) If the Option is exercised, then the Option Fee is part of the deposit provided for in the Agreement.
- (b) If the Option is not rescinded nor exercised in accordance with clause 4 hereof, then the Option Fee becomes the property of the Developer absolutely.

7 Caveat

- (a) HDC is entitled to and the Developer consents to HDC lodging a caveat to protect its interest under this deed. If HDC lodges a caveat against the title to the Property as Option holder under this deed, then it must consent to the registration of any dealing lodged by or with the consent of the Developer promptly when the Developer requests it to do so if that dealing does not prejudice the interests of HDC as HDC under this Option or the rights of HDC under the Contract or, if the Option has been exercised, as Purchaser under the Agreement.
- (b) In addition, at its own expense, HDC must withdraw any caveat it has lodged against the title to the Property:
 - (i) within 40 days after an Option is rescinded or terminated by HDC or otherwise expires; or
 - (ii) if the Developer, in the, opinion of HDC, acting reasonably, has complied with its obligations under the Contract.

8 Nominee

- (a) At any time prior to the Option Expiry Date, if the Option has not been rescinded or terminated and HDC has not exercised it, then HDC may give a notice to the Developer in the form of Annexure 'C' nominating another person or entity as being entitled to exercise an Option. HDC must execute the notice under delegation. The notice must include an address for service of the Nominee including a postal address, a business address and a facsimile number for the purposes of service of notices under clause 12.
- (b) On and from the date the Developer is deemed under clause 12 to have received the notice referred to in clause 8(a):
 - (i) the Nominee may exercise the specified Option; and
 - (ii) HDC may not then itself exercise the Option and may only exercise its other rights under this deed to ensure that the Developer performs this deed in favour of the Nominee; and
 - (iii) this deed is taken to be varied by replacing 'HDC' each time it appears in this deed with 'the Nominee'; and
- (c) HDC may exercise all rights to enforce the obligations of the Developer under this deed whether or not those obligations are in favour of HDC or the Nominee.

9 Updated Agreement

- (a) If, before the exercise of this Option, HDC's Solicitors give the Developer's Solicitors an updated version of any of the documents annexed to the Agreement or an updated description of the title to the Property, then, before the Developer signs the Agreement, the Developer must ensure that the updated version of the document replaces that annexed to this deed at the date this deed was executed and that the description of the title to the Property is amended so that it is the same as the updated description of the title given to the Developer's Solicitors by HDC's Solicitors.
- (b) HDC and the Developer acknowledge that the Agreement need not contain the disclosure documents under clause 4 or the implied warranty documents under clause 5 or the implied terms under clause 5A of the *Conveyancing (Vendor Disclosure and Warranty) Regulations*.

10 Costs, charges and expenses

- (a) The Developer agrees to pay any duty payable on or in connection with this deed (if any). For the avoidance of doubt, HDC must pay all stamp and other duties in connection with any purchase of the Property.
- (b) The Developer agrees to pay HDC's reasonable legal costs and disbursements for the execution of this Option and the Agreement including the transfer of the Property to HDC or the Nominee as the case may be.

11 GST

If HDC exercises this option and buys back the Property the parties agree that the margin scheme shall be applied to the buy back and HDC's obligation to pay or reimburse the Developer for GST will be under the margin scheme.

12 Notices

- (a) A notice or other communication in connection with this deed:
- (i) may be given by an Authorised Officer or the solicitor of the relevant party; and
 - (ii) must be writing; and
 - (iii) may be addressed to the relevant party's solicitor; and
 - (iv) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number in item 5 of the schedule or if the addressee notifies another address or facsimile number, then to that address or facsimile.
- (b) A letter or facsimile is taken to be received:
- (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
 - (ii) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause.

13 Waiver

13.1 No waiver

No failure to exercise or delay in exercising any right given by or under this deed to a party constitutes a waiver and the party may still exercise that right in the future. No single or partial exercise of any right precludes any other or further exercise of that or any other right.

13.2 Waiver must be in writing

Any waiver of any provision of this deed or a right created under it must be in writing signed by the party giving the waiver and is only effective to the extent set out in that written waiver.

14 Service process

Without preventing any other mode of service, any document in an action (including, without limitation, any writ or summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices which is set out in item 6 of the schedule.

15 Governing law and jurisdiction

15.1 Governing law

This deed is governed by the laws in force in New South Wales.

15.2 Jurisdiction

The parties submit to the exclusive jurisdiction of any courts of competent jurisdiction in the state of New South Wales and any courts that may hear appeals from those courts about any proceedings in connection with this deed.

16 Counterparts

This deed may be signed in any number of counterparts. All counterparts executed separately when taken together constitute one deed and counterparts executed separately may be consolidated into a single document.

17 Dispute resolution

If there is a dispute in relation to the calculations required under clause 4(c)(i)(A) or 4(c)(i)(B) then either the Developer or HDC is entitled to issue a written notice to the other party notifying the other party of the dispute. Both parties agree that fourteen (14) days (excluding the day on which that notice is given) is a reasonable period to allow a party to respond to the notice. If a notice is served on either party in accordance with this clause then it is agreed between the parties that both the Developer and the HDC will acting in a bona fide manner and in good faith, use their reasonable endeavours to meet and consult with a view to resolving the dispute within seven (7) days of receipt of written notice of the dispute. If the dispute is unable to be resolved satisfactorily by the parties within seven (7) days from the date the parties meet then either party may within fourteen (14) days after expiration of the seven (7) day period refer the dispute for expert determination by an Auditor . The Auditor will act as an expert and not as an arbitrator, will be directed to provide a written determination to both the Developer and the HDC. Neither party may dispute the decision of the Auditor, except in the case of manifest error. Any party wishing to dispute the decision must do so within fourteen (14) days of delivery of his decision. The cost of the Auditor will be borne by the unsuccessful party to the expert determination.

18 Statutory authority

The parties acknowledge and agree that nothing in this deed will in any way affect HDC's unfettered discretion to exercise any of its statutory powers under law. Without limiting this clause, anything which HDC does or fails to do under its functions and powers under any law will be deemed not to be an act or omission under this deed and will not entitle the Developer to make a claim against HDC arising out of the subject matter of this deed.

19 Restructure or reconstitution

HDC may, for its sole convenience and at its sole discretion, assign, novate or otherwise deal with its rights and obligations under this deed at its absolute discretion and without the Developer's consent to any other government agency or statutory state owned corporation or growth corporation.

EXECUTED as a deed.

Option deed

Schedule 1

1 Option fee

\$10.00

2 Option Expiry Date

The later of:

- (a) the Developer providing the HDC with undisputed evidence of completion of Substantial Commencement of the Development in accordance with the Contract; and
- (b) if there is a dispute in relation to Substantial Commencement under the contract, the date 30 days after the Quantity Surveyor's determination of that dispute; and
- (c) the date 30 days after the final determination of any dispute in relation to the Quantity Surveyor's determination under the Contract.

3 Name and address of HDC

Attention: Chief Executive Officer
Hunter Development Corporation
Suite B, Level 5, 26 Honeysuckle Drive, Newcastle, NSW, 2300.

With a copy to HDC's Solicitor

4 Name and address of HDC's solicitor

Attention: Katrina Reye
Hall & Wilcox
Level 4, 400 Hunter Street,
Newcastle, NSW, 2300.

5 Name and address of Developer's solicitor

Attention: Helen Murray

Sparke Helmore Lawyers

Level 7, 28 Honeysuckle Drive

Newcastle NSW 2300

6 Address for service of Developer

Gavin Edgar

Doma Group

4/3 Sydney Ave

BARTON ACT 2600

Option deed

Signing page

SIGNED by an authorised delegate **HUNTER DEVELOPMENT CORPORATION** and I hereby certify that I have no notice as to the revocation of such delegation:

Signature of Witness

Authorised Person (PRINT NAME)

Name of Witness (BLOCK LETTERS)

EXECUTED by **LEE 4 PTY LTD ACN 620 632 573** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by:

Signature of sole director and sole company secretary

Name of sole director and sole company secretary *(please print)*

Option deed

Annexure A - Buy Back Agreement

Option deed

Annexure B - Notice of Exercise of Option

(clause 4)

TO:

HUNTER DEVELOPMENT CORPORATION exercises the option granted in the deed of Call Option to purchase the real property between [insert] as grantor and **HUNTER DEVELOPMENT CORPORATION** as grantee dated [] to purchase the Property being 35 Honeysuckle Drive, Newcastle.

Dated:

SIGNED by an authorised delegate of **HUNTER DEVELOPMENT CORPORATION** and I hereby certify that I have no notice as to the revocation of such delegation:

.....
Signature of Witness

.....
Authorised Person (PRINT NAME)

.....
Name of Witness (BLOCK LETTERS)

Option deed

Annexure C - Nomination Notice

(clause 8)

To:

HUNTER DEVELOPMENT CORPORATION nominates [full name and address of Nominee] (**the Nominee**) to be its nominee to exercise the option granted by the Option deed between [insert] as Developer and **HUNTER DEVELOPMENT CORPORATION** to purchase the property known as 35 Honeysuckle Drive Newcastle.

The Nominee's address for service is:

[insert]

Dated:

SIGNED by an authorised delegate of **HUNTER DEVELOPMENT CORPORATION** and I hereby certify that I have no notice as to the revocation of such delegation:

Signature of Witness

Authorised Person (PRINT NAME)

Name of Witness (BLOCK LETTERS)