

# **DEED OF OPTION**

**DOUGLAS PAISLEY & EMERY  
SOLICITORS  
46 LANGSTON PLACE  
EPPING NSW 2121  
(PO BOX 215, EPPING NSW 1710)  
DX 4404 - EPPING**

**PH: 9876-2273  
FAX: 9868-1058  
REF: D. EMERY**

## **FORM 2 - COOLING OFF PERIOD (PURCHASER'S RIGHTS)**

- 1. This is the statement required by section 66ZH of the *Conveyancing Act 1919* and applies to an option to purchase residential property.**
- 2. The purchaser may rescind the option at any time before 5 p.m. on the fifth business day after the day on which the option was granted, EXCEPT in the circumstances listed in paragraph 3.**
- 3. There is NO COOLING OFF PERIOD:**
  - a. if, at or before the time the option is granted, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF of the Act, or**
  - b. if the option is granted on the same day as the property was offered for sale by public auction but passed in.**
- 4. A purchaser exercising the right to cool off by rescinding the option will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser in relation to the option or from any deposit paid in relation to the purchase of the property and the purchaser is entitled to a refund of any balance.**

## DEED OF OPTION

Date:

Parties:

("Vendor");

and           The Purchaser identified in Item 2 of Schedule 1 ("Purchaser").

### 1. Purpose and Interpretation

1.1 This deed sets out the terms and conditions upon which the Option is granted in respect of the Property.

1.2 The following words have these meanings in this deed unless the contrary intention appears:

**Annexed Contract** means the Contract for the sale of land in the form annexed and marked "A", subject always to clause 4.

**Contract** means the contract formed upon exercise, if applicable, of the Option.

**Nominee** means a person or company duly appointed by the Purchaser under clause 2.

**Notice of Exercise of Option** means a notice in the form annexed and marked "B".

**Option** means the option granted by the Vendor to the Purchaser pursuant to clause 2.

**Option Exercise Period** means the period:

- (i) commencing at 9:00 am on the Business Day immediately following the day six (6) weeks after the date of this Deed; and
- (ii) ending at 4:00 pm on the date being twelve (12) months from the date of this deed.

**Option Fee** means the fee specified in Item 6 of Schedule 1.

**Option Nomination Certificate** means a notice in the form attached and marked "C".

**Property** means the land more particularly described in Item 3 of Schedule 1.

**Purchase Price** means the price specified in Item 4 of Schedule 1.

**Security Sum** means the amount specified in Item 5 of Schedule 1.

- 1.3 Expressions and phrases used but not defined in this deed shall have the same meaning as they have in the Annexed Contract unless the contrary intention appears.
- 1.4 Headings are inserted for convenience and do not affect the interpretation of this deed.

## **2. Option**

- 2.1 The Vendor grants to the Purchaser an option for the Purchaser or the Nominee or Assignee to purchase the Property for the Purchase Price.
- 2.2 The Option can be exercised during the Option Exercise Period and can only be exercised by the Purchaser delivering to the Vendor on any business day at the address set out in the Notice of Exercise of option the following:
  - (i) a Notice of Exercise of Option duly executed by the Purchaser;
  - (ii) the Annexed Contract completed and duly executed and dated by the Purchaser or the Nominee or the Assignee (as the case may be);
  - (iii) the Security Sum; and
  - (iv) if the Purchaser of the Property is to be the Nominee, an option Nomination Certificate properly executed by the Purchaser and the Nominee.
- 2.3 Upon the exercise of the option there shall be concluded between the Vendor and the Purchaser or the Nominee or the Assignee (as the case may be) a contract for the sale and purchase of the Property upon the terms and conditions set out in the Annexed Contract.
- 2.4 Upon receipt of the documents referred to in clause 2.2 the Vendor must execute and cause to be delivered to the Purchaser or the Nominee or the Assignee (as

the case may be) within seven (7) days after exercise of the option a counterpart of the Contract, such counterpart to bear the same date being the date of the exercise of the option. The exchange of counterparts is intended only permanently to record the terms of the Contract. The parties intend to be and will be bound by the Contract on the date of and by virtue of the exercise of the Option.

- 2.5 The Purchaser agrees to pay the Vendor the sum of Ten thousand dollars (\$10,000.00) for the grant of the option, subject to the further conditions in Clause 7.

### **3. Security Sum (Deposit)**

- 3.1 The Purchaser must pay the Security Sum by giving the Vendor on the date of the exercise of the Option a cheque acceptable to the Vendor for the Security Sum made payable to the Vendor's solicitor as named in the annexed Contract.

### **4. Updated Annexures**

- 4.1 If at any time and from time to time prior to exercise of the Option the Vendor's Solicitor provides to the Purchaser or the Purchaser's Solicitor an updated version of any of the annexures attached to the Annexed Contract, then the Annexed Contract shall be deemed to be in the form of annexure "A" with the insertion of the updated version of such annexures in lieu of those in the copy annexed to this deed or deemed by a previous application of this clause 4.1 to be in annexure "A".

### **5. Assignment**

The Option may be assigned by the Purchaser without the prior consent of the Vendor, but the Vendor must be advised of any assignment.

### **6. Notices**

All approvals consents notices and other items required or appropriate to be given under the provisions of this deed shall be in writing and shall only be properly served if delivered personally to a party to the address of that party set out in this deed or to the address of that party's solicitor in Item 5 of the Schedule or as set out in the Annexed Contract (or in each case to such other address as each party may from time to time designate in writing to the others being an address in Sydney).

## **7. Option Fees**

Whether or not the Option is exercised, the Option Fee of Ten Thousand Dollars (\$10,000.00) shall remain the property of the Vendor absolutely and shall not form part of the Security Sum or the Purchase Price.

## **8. Death of Either Party**

If the Vendor or any of them shall die this Option shall continue to bind his or her Executors, Administrators or Assigns.

## **9. Bankruptcy, Liquidation or Receiver Appointment**

If either the Vendor or the Purchaser or any of them shall be declared bankrupt or enter into any scheme or make any assignment for the benefit of creditors, or being a Company resolve to go into liquidation or have a petition for its winding up presented against it or enter into any scheme of arrangement with its creditors under the provisions of the Corporations Act 2001, or should any liquidator, receiver or official manager be appointed in respect of either party, the other party shall have the right to terminate this Agreement by notice in writing.

## **10. Extension of Option**

Should the Purchaser wish to extend the option period for a further period of twelve (12) months beyond the period granted in the Option Exercise Period, then he may do so at any time before the expiration of the Option Exercise Period on giving notice to the Vendor and paying an additional Option Fee of Ten Thousand Dollars (\$10,000.00) at the time of giving notice, and the provisions of Clause 7 above shall apply in relation to the additional Option Fee.

## **11. Guarantee**

Should this Option be exercised by a Nominee or assigned to an Assignee being a Company, then the Directors of any such Company shall personally guarantee the due performance by the Company of all the terms and conditions of the Option and the Contract for Sale and shall be liable to purchase accordingly.

**12. Access and Applications**

- 12.1 Upon the granting of the Option the Vendor shall provide to the Purchaser a written authority in the form annexed hereto as Schedule 2, addressed to the Council and all other relevant authorities, consenting to the lodgement by the Purchaser of a Development Application in respect of the property, or obtaining any records or information from Council or other relevant authorities in respect of the property.
- 12.2 The Vendor hereby agrees that the Purchaser shall be entitled to have access to the property after giving reasonable notice to the Vendor or occupier with its architects, builders, surveyors, planning consultants, contractors and any other trades people for the purposes of taking measurements and preparing data necessary to enable the Purchaser to prepare a Development Application and associated plans in respect of the subject property and the Vendor hereby consents to the Purchaser lodging such completed Development Application with the Council.
- 12.3 In the event that the Council refuses the Development Application, or grants an approval which is not in terms satisfactory to the Purchaser, the Vendor will consent to the Purchaser lodging an application to any relevant authority or Court to appeal the decision and will sign any document reasonably required by the Purchaser to give effect to such application.

**13. Costs**

Each party shall pay its own legal costs and disbursements in respect of this Deed of Option and Contract for Sale.

**14. Time**

Time shall be of the essence in respect of all provisions of this Agreement.

**EXECUTION**

The parties acknowledge payment of the Option Fee of \$10,000.00 and in consideration of same, the Option referred to in this Deed is hereby granted.

Dated this                      day of    , 2012.

.....  
Executed by Vendor(s)  
in the presence of:

.....  
Executed for and on behalf of the Purchaser  
in the presence of:

.....  
Witness

.....  
Witness

## Schedule 1

**Item 1:**

**Vendor:** Name:  
Address:

**Item 2:**

**Purchaser:** Name: Winten Lyon Pty Ltd ACN: 158 554 717  
Address: Level 2, 486 Pacific Highway  
St Leonards NSW 2065  
PO Box 784, CROWS NEST NSW 1585

**Item 3:**

**Property:**

**Item 4:**

**Purchase Price:** \$2,300,000.00

**Item 5:**

**Security Sum:** \$115,000.00

**Item 6:**

**Option Fee:** \$10,000.00

**Item 7:**

**Vendor's  
Solicitor:** Name:  
Address:  
Phone:  
Fax:  
Email:  
Reference:

**Purchaser's**

**Solicitor:** Name: Douglas Paisley & Emery  
Address: Suite 5, 1<sup>st</sup> Floor, 46 Langston Place, Epping 2121  
PO Box 215, Epping 1710 (DX 4404 - Epping)  
Phone: 9876-2273  
Fax: 9868-1058  
Email: davidbemery@bigpond.com  
Reference: David Emery



Schedule 2

To:           The General Manager  
              Hornsby Shire Council  
              PO Box 37  
              Hornsby NSW 1630

And To:       All other Relevant Authorities

Dear Sir/Madam,

**Re:   Vendor:**  
      **Purchaser:**  
      **Property:**

I am the owner of the above property.

I consent to the abovementioned Purchaser or its consultants lodging, at the Purchaser's expense, applications including without limitation, development applications with Hornsby Shire Council, or any other statutory or consent authority with respect to the above property, and further consent to the abovementioned Purchaser or its consultants perusing Council's file with respect to the above property.

I also consent to the Purchaser lodging an application to Council or to any relevant statutory or consent authority or Court to appeal any unfavourable decision by Council or other authority.

Date:

.....  
Signature of Owner(s)

.....  
Print Name(s)

ANNEXURE B

NOTICE OF EXERCISE OF OPTION

TO: (VENDOR)

AND TO YOUR SOLICITORS:

TAKE NOTICE that \_\_\_\_\_ exercises the Option granted by you to Winten Lyon Pty Ltd dated \_\_\_\_\_ for the purchase of the property \_\_\_\_\_, for \$2,300,000.00.

Enclosed is a cheque for \$ \_\_\_\_\_ in favour of \_\_\_\_\_ being the Security Sum of \$115,000.00 referred to in Item 5 of Schedule 1.

Dated:

Executed for and on behalf of )
(ACN ) ) Director
in accordance with Section 127(1) )
of the Corporations Act 2001: ) Director / Secretary

Name of Director

Name of Director/Secretary

ANNEXURE C

OPTION NOMINATION CERTIFICATE

TO: (VENDOR)

AND TO YOUR SOLICITORS:

TAKE NOTICE that Winten Lyon Pty Ltd nominates \_\_\_\_\_ as Nominee for the purpose of exercising the Option granted by you to Winten Lyon Pty Ltd dated \_\_\_\_\_ for the sale of the property \_\_\_\_\_, to the Grantee or Nominee for \$2,300,000.00.

Dated:

Executed for and on behalf of WINTEN LYON PTY LTD (ACN 158 554 717) in accordance with Section 127(1) of the Corporations Act 2001: ) ) ) ) ) ..... Director ..... Director / Secretary

..... Name of Director

..... Name of Director/Secretary