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26 December 2005

Our Ref: SWG/GDS/021066
Your Ref:

Darrell Hendry
C/- PO Box 553
NORTH RYDE BC NSW 1670

By Email: endry@bigpond.com.au

Dear Darrell

**RE: PURCHASE FROM SERVICES UNE LIMITED ABN 29 065 648 419 (the "Vendor")
TATTERSALLS HOTEL, 174 BEARDY STREET, ARMIDALE (the "Hotel")**

Thank you for your instructions to act on your behalf in relation to the proposed purchase of the Hotel.

1. Exchanged Contract

You have provided us with a contract for sale of land to purchase the Hotel between yourself and the Vendor dated 6 December 2005 (the "Contract") which was the result of your being the successful tenderer to purchase the Hotel.

2. New Purchaser

Special condition 14 of Contract provides that the Vendor will consent to you establishing a special purpose trust or company to purchase the Hotel.

We confirm your instructions that the purchaser of the Hotel is to be a company acting in its capacity as trustee of 2 unit trusts yet to be formed, one representing your interests and one representing the interests of Colin Cassidy.

To achieve this outcome, it will be necessary for you and the Vendor to rescind the Contract by a deed of mutual rescission and have the Vendor exchange a new contract on the same terms with the new purchaser entity.

On Friday 23 December 2005, Geoff Walker provided us with the name of the company that will purchase the Hotel, Armpub No1 Pty Limited ("Armpub No1") acting in its capacity as trustee of 2 unit trusts, details of which are still to be provided to us.

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We informed the vendor's solicitor of the name of the new purchaser on 23 December 2005.

We enclose a draft deed of mutual rescission we have prepared, for your comment and approval.

What we propose to happen is that simultaneously:

1. you and the Vendor will sign the deed of mutual rescission;
2. Armppub No1 will enter into a new contract with the Vendor to purchase the Hotel on the same terms as the current Contract;
3. you will provide the Vendor with a written direction to apply the Deposit toward the new contract.

3. Enquiries

We are obtaining the usual local and state departmental enquiries to ensure that warranties given by the Vendor in the contract and as required by the Conveyancing Act are correct. Those enquiries ascertain the liabilities of the Vendor, as the registered proprietor of the Hotel, for council rates, water rates, land tax and any outstanding notices and affectations by various authorities including the local Council, Sydney Water, the Office of State Revenue regarding land tax, the Roads & Traffic Authority, Department of Education & Training, State Rail Authority, AGL Gas Networks Limited, Heritage Council, Office of Energy Australia, National Trust, New South Wales Heritage Office, Pacific Power, reference sheet, and a search of the liquor licence. The fees for these enquiries are approximately \$800.00.

4. Search requirements following the Hillpalm Pty Limited -v- Heaven's Door Pty Limited decision (the "Hillpalm Decision")

As a result of the Hillpalm Decision (being a decision of the High Court of Australia in December 2004), in addition to those enquiries referred to in paragraph 4 of this letter, it is now recommended that purchasers conduct a search of the local council's register and records with respect to the Hotel to ensure that there are no conditions of consent relating to sub-divisions creating the Hotel that have not been complied with (the "Council Search"). The Council Search would have to cover not only the development consent by which the Hotel was created but also any earlier sub-divisions of which the Hotel once formed part. There is no obligation upon the Vendor to disclose any outstanding conditions of consent that affect the Hotel. It is the responsibility of the purchaser to carry out its own Council Search.

In the event the purchaser discovers after exchange of contracts but prior to completion that a condition of consent has not been complied with, the rights, if any, of the purchaser will depend upon the nature of the condition and its effect upon the Hotel. The purchaser may have the right to rescind the contract if compliance with the condition would constitute a defect in title. Alternatively, the purchaser may be able to seek compensation from the Vendor. The purchaser may have no rights whatsoever.

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If the purchaser does not carry out the Council Search and proceeds with exchange of contracts and then completes the purchase, the purchaser takes the risk that a condition of consent has not been complied with. The purchaser may be forced to comply with the condition at the purchaser's expense. The Hotel may be adversely affected by the condition and the value of the Hotel may be reduced. In these circumstances, the purchaser may not have any claim against the Vendor and the local council or either one or more of them or anyone else.

The Council Search may take considerable time and resources and involve considerable costs. If the purchaser decides to proceed with the Council Search, it should be completed prior to completion of the contract. **If the purchaser discovers a condition of consent that has not been complied with, the purchaser should notify the purchaser's solicitor as a matter of urgency.**

We do not carry out the Council Search on behalf of the purchaser. The Council Search is not included in the enquiries referred to in paragraph 6 of this letter. The purchaser must make its own arrangements to carry out the Council Search. If the purchaser has any queries regarding the Council Search, please contact our office.

5. Survey

In accordance with your instructions, no survey report was obtained with respect to the Hotel.

6. Building report and pest report

The contract contains a clause which provides:

- (a) the purchaser buys the Hotel in its present condition and state of repair and subject to any defects and faults.
- (b) the purchaser must satisfy the purchaser as to the nature, quality and condition of the Hotel.
- (c) the purchaser cannot request the vendor to carry out any works to the Hotel.
- (d) the purchaser cannot make a claim, objection or requisition or delay completion or rescind or terminate the contract in respect to any defect or fault with the Hotel or the inclusions.

We understand that you did not obtain a building report and a pest report prior to exchange of contracts. If you discover defects and faults after exchange of contracts:

- (a) you may have no recourse against the Vendor.
- (b) you may have to proceed with the purchase of the Hotel.
- (c) you may have to rectify the defects and faults at your expense.

If you wish to obtain a building and/or a pest report, we can provide you with a list of companies whom you may contact to arrange the reports.

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7. Building Certificate

Please give us your urgent instructions as to whether you wish us to apply to the local Council for a building certificate.

If you do apply for a building certificate, the Council may:

- (a) issue a notice of any sort;
- (b) refuse to issue a certificate for stated reasons; or
- (c) require work to be done before a certificate will be issued.

By applying for the certificate, you may bring to the notice of the Council matters which:

- (a) would otherwise not have been brought to Council's notice;
- (b) may affect your ability to obtain finance from your financier.

Please let us know if you wish us to apply for a building certificate.

Please note an application for a building certificate must be accompanied by a survey report accurately setting out the improvements on the Property as they currently exist. The cost of a survey report is approximately \$400.00. **Please let us have your instructions if you wish us to order a survey report.**

8. Finance

If you are borrowing money to assist you in the purchase of the Hotel please advise us immediately:

- (a) the name and address of the financier and any contact person (including telephone numbers);
- (b) the amount being borrowed; and
- (c) details of the security for the loan (eg a first registered mortgage to be granted over the Hotel in favour of the financier).

Upon receipt of these details from you, we will write to the financier or their solicitors and provide them with the relevant information to enable them to prepare the loan security documentation.

9. Completion Time

The Contract provides for completion to take place within 42 days after the date of the contract, being 17 January 2006. In the event settlement does not take place on that date then either party is entitled to issue a notice to complete requiring settlement to take place within a further period of 14 days and making the time for completion an essential provision of the contract. Please note there is an interest penalty of 10% per annum on the Balance of the Price payable (being

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\$653.42 per day) in the event settlement does not take place on or before the completion date due to the default of the Purchaser.

As instructed, we wrote to the solicitors for the Vendor to request an extension of time for completion to 14 February 2006, to allow the parties enough time to effect a rescission and re-exchange of contracts, and carry out other necessary tasks to enable completion to take place. We understand verbally from you and the Vendor's solicitors that the Vendor has agreed in principle to extend the time for completion to 31 January 2006.

However, to have a legally binding agreement for an extended completion date, we need the agreement to be confirmed in writing. To safeguard your position, please let us have your urgent instructions on the terms of an agreed extension, so that we can get it confirmed in writing with the Vendor's solicitor.

10. Stamp Duty on a cancelled contract

The new contract will be a separate contract from the current Contract. Although the current Contract is to be rescinded, it will still be liable to stamp duty, in addition to stamp duty payable on the new contract, unless the rescinded contract qualifies for an exemption under the Duties Act.

Stamp duty is \$131,244.00 on a contract for sale of land and business with a sale price of \$2,650,000.00.

Section 50 of the Duties Act provides that an agreement for the sale or transfer of dutiable property that is cancelled is not liable to duty if the Chief Commissioner is satisfied:

- "(a) that the agreement was not cancelled to give effect to a sub sale, or*
- (b) that the purchaser or transferee under the agreement is a promoter of a named company proposed to be incorporated and that the company is the purchaser or transferee of the dutiable property under a subsequent agreement, or*
- (c) that the Purchaser or transferee under the agreement and the purchaser or transferee under a subsequent agreement relating to the same dutiable property were related persons when the agreement that is cancelled was entered into."*

In this case, it would only be possible to qualify for sub-paragraph (a). A sub sale is a sale between the original purchaser and a new purchaser where consideration passes between the 2 parties. In this case, we understand that no consideration is to pass between you and Armpub No1. Revenue Ruling DUT11 relevantly provides as follows:

- "8. If the only benefit passing to the original purchaser is the benefit of being released from obligations under the original agreement, this would not, of itself, be sufficient to characterise the substituted agreement as a sub sale from the original purchaser to the substituted purchaser....."*

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9. *On the other hand, the inclusion of a novation clause in the original agreement, whereby the original purchaser could require the Vendor to accept a substituted purchaser by way of novation, would tend to suggest that the original purchaser intended to sub sell the property. Accordingly, the Chief Commissioner would be inclined to regard any substituted agreement as a sub sale."*

Hill on Stamp Duty disagrees with paragraph 9 extracted above from Revenue Ruling DUT11 and states as follows:

"With respect to the Ruling, the fact that there was a novation clause in the original agreement permitting the acceptance of a substituted purchaser by way of novation will say little on the question whether there was a sub-sale. For there to be a sub-sale there must be a sale (that is to say a bargain and sale at a price) between the original purchaser and the new purchaser and there can only be a sale (and thus a sub-sale) where consideration passes between the 2."

On the basis that:

1. you and the Vendor rescind the Contract;
2. the Vendor and Armpub No1 enter into a new contract to purchase the Hotel; and
3. no consideration passes from Armpub No1 to you;

we believe that the current Contract, once rescinded, should qualify under Section 50(1) of the Duties Act to be liable to no duty. However, there is a possibility that the Chief Commissioner will take a different view. Accordingly, the matter is not entirely free from doubt.

11. Stamp Duty on the new contract

Government stamp duty will be payable on the new contract and the Transfer of the Hotel from the Vendor to the purchaser. Please forward to us a **bank** cheque drawn in favour of the Office of State Revenue in the sum of \$131,244.00 no later than 24 January 2006.

If you require financial assistance in order to complete the purchase, stamp duty must be marked on the Transfer at least one week before the proposed settlement date in order to send the Transfer to the Vendor for signature, because your mortgagee will require a stamped Transfer at settlement.

Please note in any event stamp duty must be paid within three (3) months of the date of the contract. If stamp duty is not paid within this time:

- (a) interest will be charged;
- (b) penalty tax will be payable in the amount of 25%.

In some circumstances, the Commissioner of Stamp Duties may increase the penalty tax to 75%. If during an investigation by the Commissioner you take steps to prevent or hinder the Commissioner from becoming aware of a failure to pay stamp duty, the penalty tax will be further increased by 20%.

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Please note it is a criminal offence not to stamp a document which is liable for duty within six (6) months.

In any event, Land and Property Information New South Wales will not register the Transfer unless it has been stamped.

12. Requisitions on Title

We will forward requisitions on title to the Vendor's solicitor. These requisitions take the form of statements, requests, demands or enquiries to the Vendor in relation to matters that effect the title of the Hotel but have not been disclosed in the Contract. The Vendor must provide replies to those requisitions prior to completion and we will check the replies on your behalf.

13. Price and Deposit

We confirm the Price is \$2,650,000.00 and that you have paid a deposit of \$265,000.00. The balance of the Price (plus adjustments) is payable on completion.

14. Documents received at settlement

Upon completion we or your financier (as the case may be) shall receive:

- (a) the Transfer;
- (b) certificate of title folio identifier 7/564754;
- (c) a discharge of the mortgage, if any, presently registered on the title;
- (d) a release of ASIC registered charge 562829 from the Hotel;

Thereafter the documents will be registered at Land and Property Information New South Wales and the Certificate of Title will either be returned to us (if you have no financier) or to your mortgagee (ie financier) as the case may be.

15. Vacant Possession

The contract provides for vacant possession and in that regard we suggest that immediately prior to completion you arrange with the Vendor's agent to inspect the Hotel to ensure:

- (a) the Hotel is vacant;
- (b) no damage has been done to the Hotel;
- (c) the inclusions referred to in the contract are in the premises; and
- (d) a full set of keys are available.

The inclusions specified in the contract are plant, business licence and includes gaming machines.

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16. Adjustments

Upon completion water rates and council rates will be adjusted on the basis that those fees have been paid and the Purchaser will be responsible for those fees from the date of completion and the Vendor will be responsible for them up to the date of completion. Land tax will be similarly adjusted.

17. Employees

The Contract requires the Vendor to nominate the employment of employees of the Hotel prior to completion. The Vendor's solicitor has verbally informed us that the Vendor has already given notice to the employees of the Hotel. The purchaser will need to advise the Vendor prior to completion which employees, if any, the purchaser will re-employ at the Hotel.

18. Hotelier's Licence

The purchaser appoints the Vendor as agent of the Purchaser to apply to the Licensing Court for a provisional transfer of hoteliers licence.

The purchaser must notify the Vendor of the full name and address of the transferee for the hotelier's licence within 14 days of the date of the Contract ie on or before 20 December 2005.

Please urgently provide us with instructions on the full name and address of transferee and proposed licensee.

We confirm in accordance with the contract the purchaser must within 21 days after the date of this contract (ie on or before 27 December 2005) deliver to the vendor's solicitor in original and sufficient copies of the application and affidavit of the transferee completed and sworn in accordance with the requirements of the Liquor Act for lodgement at the licensing court and a cheque in favour of the licensing court for the prescribed application fee and a managerial agreement. The application and affidavit of the transferee must contain a request to the court pursuant to section 61(3) Liquor Act that the application be the subject of a provisional grant.

We enclose the relevant blank liquor licence forms for you to consider in the meantime. We will need your urgent instructions to fill in all the details for these forms.

19. Business Name

On completion the vendor will execute and deliver to you all necessary forms to notify under the Business Names Act, 1962 the change of ownership of the business name "Tattersall's Hotel Armidale".

20. Stocktake

The contract provides that the parties agree to conduct a stock take of all stock immediately before completion.

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The contract also provides that the purchaser shall purchase from the vendor all the good and saleable stock at the wholesale value at the date of completion, such value and saleability to be determined by a valuer agreed by the parties and in default of agreement a valuer appointed by the Vendor's solicitor. The valuation shall be made prior to completion. The parties shall share equally the cost of the stocktake and valuation.

Any item of stock rejected by the purchaser must be rejected at the time of stocktake and the purchaser bears the onus of proving the item of stock is not good and saleable.

The contract provides that within 30 days of completion of the contract you must pay to the vendor or as the vendor may direct in writing, the sum for the stock determined in accordance with the contract. If the purchaser default on payment by the due date, interest will accrue at the rate of 10% per annum until the day the stock is paid for.

To secure payment for stock, the purchaser is required to provide a bank guarantee or undertaking of not less than \$50,000.00 on or before completion. We note your instructions that the Vendor agreed to amend the contract to cap the guarantee and the amount of stock to purchased at \$25,000.00. The new contract will be amended to reflect that change.

21. Business expenses and profits

Business expenses, including the licence fee and gaming machine tax, will be adjusted on completion.

The Vendor is entitled to the takings, profits and debtors of the Hotel business up to but excluding completion. On and from completion the purchaser is entitled to the takings, profits and debtors of the Hotel business

22. Summary of Cheques Required

We require the following cheques to be forwarded to our office as soon as possible and in any event prior to settlement:

- | | | |
|-----|--|--------------|
| (a) | Office of State Revenue (<u>bank</u> cheque)
- in payment of stamp duty on the contract and Transfer | \$131,244.00 |
| (b) | Brown Wright Stein (ordinary cheque)
- in payment of the fees for the property enquiries | \$1,650.00 |

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Should you have any queries in relation to any of the above matters please do not hesitate to contact Michael Malanos (until 13 January 2006), Simon Griesz (after 13 January 2006), or Geoff Stein of our office.

Yours faithfully
BROWN WRIGHT STEIN

Brown Wright Stein

cc Geoffrey Walker
By email: gnw@wlm.com.au

*We advise our office is closed from
Friday 1 pm 23 December 2005 till Tuesday 3 January 2006.*



From the Partners and Staff of Brown Wright Stein Lawyers



*We wish you a very Merry Christmas
and a Happy New Year!*