

SALES INSPECTION REPORT AND EXCLUSIVE SELLING AGENCY AGREEMENT (Residential)

Item Schedule - Sales Inspection Report

Item

1. VENDOR

Clauses 2 and 7

Name/s: **ANTHONY MARCUS & FAY MARIE DALEY**

Business Name: **NOT APPLICABLE**

Address: **9 KENT STREET**

ACN: **NOT APPLICABLE**

TUNCURRY NSW 2428

ABN: **NOT APPLICABLE**

Phone: **NOT APPLICABLE**

Fax: **NOT APPLICABLE**

Mobile: **0407 585 832**

Email: **fay.daley2@bigpond.com**

GST Registered: **Yes / No**

2. VENDOR'S SOLICITOR / CONVEYANCER

Clause 7.4

Solicitor/Conveyancer: **LIZ SCIACCA. KEY 2 CONVEYANCING**

Business Address: **P.O. BOX 697 FORSTER**

1/57 WHARF ST

Service of Documents Address:

Phone: **(02) 6555 8788**

Fax: **(02) 6555 8763**

Mobile: **Not applicable**

Email: **liz@key2conveyancing.com.au**

3. AGENT *(Where the Agent trades as a corporation, include the corporation's licence number)

Name: **JKL Real Estate Pty Ltd T/as JKL Real Estate**

Address: **Shop 4 The Marina, 2 Little Street**

ACN: **134 434 727**

Forster NSW 2428

ABN: **16 134 434 727**

Phone: **(02) 6554 8717**

Fax: **(02) 6555 8664**

Mobile: **0408 078 606**

Email: **karen@jklrealestate.com**

Licence Number/s*: **300473**

GST Registered: **Yes / No**

4. PROPERTY (Includes land and all improvements)

Clause 1.1(7)

4.1 Address: **9 KENT STREET, TUNCURRY NSW 2428**

4.2 Fittings and Fixtures:

Items included in the sale of the Property:

☐ Blinds and Blind Fittings

☐ Built-in Furniture

☐ Clothes Line / Hoist

☐ Curtains and Curtain Fittings

☐ Range Hood

☐ Pool Equipment

☐ Fixed Floor Coverings

☐ Stove / Oven

☐ Fixed TV Antenna

☐ Window Screens

☐ Dishwasher

☐ Satellite Dish

☐ Light Fittings

☐ In Ground Plants

☐ Air Conditioning Unit/s

Other: **As Per Contract**

Excluded Items:

As Per Contract

4.3 Details of any covenants, easements, defects, local government notices or orders affecting the Property:

As Per Contract

4.4 If the Property is occupied or subject to tenancy at time of sale provide details (eg. lease duration, rent amount, etc.)

As Per Contract

Clauses 1.1(8) and 10

(incl. GST if applicable)

(1) Estimated Selling Price:

Note: The Selling Price of a property may be expressed as a price range, but only if the highest price in the price range exceeds the lowest by not more than 10% of the lowest price.

(2) Most suitable method of sale: **Private Treaty**

WARNING: This is general advice and its preparation has not taken into account the individual circumstances of the Vendor or the Vendor's objectives, financial situation or needs.

6. SPECIAL TERMS AND CONDITIONS

Identify any Special Terms and Conditions of sale to be included in the contract:

Not Applicable

7. MARKETING / INSPECTIONS

See Items (D) and (E) for special instructions about showing and marketing of the Property.

8. ACT / REGULATION REQUIREMENTS

The Agent must, in accordance with Clauses 1 and 2 of Schedule 2 of the Regulations to the Act:

- (1) conduct an inspection of the Property prior to the Agent acting on behalf of the Vendor under this Agreement.
- (2) give the Vendor a completed copy of this Sales Inspection Report once the inspection is complete.

9. SIGNATURE OF INSPECTION REPORT

Items (1) to (8) make up the Inspection Report required by The Act and has been completed by the Agent.

Agent's Signature:

Date of Report: 02 / 11 / 2016

Item	<u>Item Schedule - Exclusive Selling Agency Agreement</u>
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A. TERM OF AGREEMENT (EXCLUSIVE AGENCY PERIOD)

Clauses 3, 9.1(a) and 9.1(c)

The Term of this Exclusive Agency Agreement commences on **03/11/2016**

and concludes on 28/02/2017

unless extended in writing by the Vendor.

B. COMMISSION *Note: Prices for goods and services are GST inclusive. See Clause 9.7*

Clauses 6.4 and 9

- (1) Subject to this Agreement the Agent shall be entitled to a Commission determined as follows:

2.75% (incl. GST)

(The Agent's Commission is based on the GST ~~inclusive~~ / ~~exclusive~~ selling price)

- (2) Based on the Agent's estimated selling price (Item 5.2(1)) the Commission (Item B(1)) in dollars would be:

\$24,612.50 based on a selling price of \$895,000.00 (incl. GST)

(Where a range of value is entered into Item 5.2(1) the estimated selling price is based on the maximum value in that range)

(Note: the Commission will vary based on the actual Sale Price of the Property)

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

C. EXPENSES

Clauses 6.4, 9.5 and 9.6

The Vendor shall reimburse the Agent for the following authorised Expenses incurred during this Agreement:

Expense	Amount (incl. GST)	*Due and Payable
Advertising Expenses	\$1000.00	On Invoice
Not Applicable	NIL	Not Applicable

* When Due and Payable is left blank, Expenses are payable on receipt by the Vendor of an itemised invoice.

D. INSPECTIONS

The Agent is authorised to allow a prospective purchaser to inspect the Property according to the following instructions (unless the Vendor instructs otherwise):

Accompanied by Agent

E. ADVERTISING / MARKETING

Clauses 6.12, 8(a) and 16

The Agent shall advertise/market the Property for sale in the following manner:

Websites: www.realestate.com.au, www.domain.com.au, www.jklrealestate.com
TV display, window display, in house colour brochuresSignage erected at the Property advertising the sale is permitted: ☒ Yes ☐ No**F. AGENT DISCLOSURE**

Clause 11

The Agent shall be entitled to retain Rebates, Discounts and/or Commissions as disclosed below:

Source and details of Rebates, Discounts and Commissions	Estimated Amount
Not Applicable	NIL

G. CONSUMER GUIDEThe Agent ~~has~~ **has not** provided the Vendor with a copy of the approved guide entitled "Agency Agreements for the Sale of Residential Property" (being the approved guide mentioned in Section 56 of the *Property, Stock and Business Agents Act 2002*).Date guide was provided to Vendor: **02 / 11 / 2016****H. VENDOR'S BANK DETAILS** (if required)Bank: _____ Branch: _____ BSB No.: _____
Account Name: _____ Account No.: _____**I. ADDITIONAL INSTRUCTIONS**

Not Applicable

J. SPECIAL CONDITIONS

Clause 15

Special Conditions to this Agreement where inserted at the direction of the Vendor were prepared by the Vendor or an Australian Legal Practitioner instructed by the Vendor and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

Not Applicable

K. ESTIMATED SELLING PRICE - EVIDENCE

By signing below the Vendor acknowledges having received the following evidence of the reasonableness of the estimated selling price (Item 5.2(1)):

- (1) ☒ Comparative Market Analysis
(2) ☐ Other (details): _____

L. COOLING-OFF PERIOD

COOLING-OFF PERIOD: You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.

Has a Waiver of Right to Cooling-Off Period form been signed? ☐ Yes ☒ No

M. LOOSE-FILL ASBESTOS INSULATION QUESTIONNAIRE

- ☒ Residential Premises Loose-fill Asbestos Insulation Questionnaire has been completed by the Vendor and given to the Agent prior to signing this agreement.

N. CAPITAL GAINS WITHHOLDING PAYMENT (To be completed by the Vendor)

Note: For properties with a market value of, at or more than, \$2,000,000 a Buyer must withhold 10% of the purchase price and pay such monies to the Australian Taxation Office (ATO) on or before settlement, unless the Vendor has obtained a Clearance Certificate from the ATO (*Taxation Administration Act 1953 (Cth)* - Subdivision 14-D). If this Property is likely to sell for \$2,000,000 or more and the Vendor is an Australian Resident it would be advisable for the Vendor to obtain a Clearance Certificate from the ATO to prevent purchase monies being withheld.

Has the Vendor received from the ATO a:

Clearance Certificate: ☐ Yes ☐ Have Applied on: ____ / ____ / ____ ☒ N/A

O. SIGNATURES

Signature of Vendor

Date:

31/11/16

Signature of Vendor

Date:

31/11/16

Signature of Agent

Date:

31/11/16

Terms of Agreement (in conjunction with the Sales Inspection Report and Exclusive Selling Agency Agreement (Residential))

1. Definitions

1.1 In this Agreement the following terms mean:

- (1) **Act:** the *Property, Stock and Business Agents Act 2002* and Regulations thereto as amended from time to time.
- (2) **Agreement:** this Agency Agreement, consisting of:
 - (a) the Item Schedule - Sales Inspection Report; and
 - (b) the Item Schedule - Exclusive Selling Agency Agreement; and
 - (c) the Terms of Agreement; and
 - (d) any additional annexures, schedules or documents that may be attached.
- (3) **Duty Holder:** has the meaning given to it under Chapter 3 of the *Work Health and Safety Regulation 2011*.
- (4) **GST:** where used in this Agreement, has the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (5) **Item:** an Item in the attached Item Schedules forming part of this Agreement.
- (6) **Material Fact:** where used in this Agreement, has the meaning as in Section 52 of the Act.
- (7) **Property:** the land and improvements there on, the subject of this Agreement (as described in Item (4)).
- (8) **Vendor's Listing Price (Item (5.1)):** means the price at which the Vendor has instructed the Agent to list the Property having taken into account the Agents advice as to Estimated Selling Price.

1.2 Other words and phrases not defined in this Agreement take on those meanings given to them in the Act.

2. Vendor's Confirmation

By signing this Agreement the Vendor(s) warrants and confirms:

- (1) having read this Agreement
- (2) having authority to enter into this Agreement
- (3) having authority to grant to the Agent selling rights to the Property during the term of this Agreement specified in Item (A).

3. Exclusive Appointment

- 3.1 The Vendor by this Agreement appoints the Agent as Exclusive Agent for the duration of this Agreement and will refer any prospective purchasers of which the Vendor becomes aware to the Agent.
- 3.2 If the Agreement is for a fixed term that exceeds 90 days the Vendor may, at any time after the end of the first 90 days of the term, terminate the Agreement (without penalty) by giving 30 days notice in writing to the Agent.
- 3.3 Clause 3.2 does not apply to the sale of residential property where the contract for sale provides for the construction by the seller of a dwelling on the land.

4. Non-Exclusive Appointment

Both parties agree that on the conclusion of the Exclusive Agency Period (Item A) this Agreement will continue as a Non-Exclusive Agency Agreement until terminated in writing by either party, or the Property is sold (the Non-Exclusive Agency Period). Such termination will be without prejudice to either party's existing rights, duties or obligations.

5. Appointment of Agent

In consideration of and in accordance with the terms of this Agreement, the Vendor appoints the Agent and its permitted Assigns to sell the Property for the Vendor and the Agent agrees. Authority vested in the Agent by this Agreement shall be deemed to be vested in the Agent's authorised employees.

6. Agent's Selling Obligations and Authority

- 6.1 The Agent is authorised and directed, by the Vendor, to disclose all relevant and material facts in relation to the Property.
 - 6.2 The Agent must, in compliance with Section 52 of the Act, not make any promise that is false, misleading or deceptive or conceal any material facts.
 - 6.3 The Agent will take reasonable steps to ensure goods and services obtained for the Vendor are at competitive prices.
 - 6.4 The Agent is authorised to deduct from monies received by the Agent on behalf of the Vendor all Fees, Commissions and other authorised outlays owing to or incurred by the Agent in association with this Agreement, including those Fees, Charges and payments authorised in Items (B) and (C).
 - 6.5
 - (1) The Agent must provide financial statements and account to the Vendor or Vendor's Solicitor with respect to all monies collected, received, paid or used by the Agent carrying out the Agent's Obligations under this Agreement.
 - (2) The Agent will issue tax invoices when necessary in respect of all monies owing by the Vendor to the Agent.
 - 6.6 Money received by the Agent from the Purchaser as deposit shall be paid into the Agent's trust account as stakeholder in accordance with the Act.
 - 6.7 The Agent's authority does not extend beyond the terms of this Agreement and the Agent will not be required to provide services not authorised by this Agreement.
 - 6.8 The Agent may not participate in the exchange or making of the contract unless expressly authorised to do so by the Vendor or the Solicitor and the Agent is aware of the liability under Section 64 of the Act.
 - 6.9 The Agent must not offer the residential property for sale unless all required documents including the proposed contract for sale of the Property are available for inspection by prospective purchasers at the Agent's registered office.
 - 6.10 This Agreement does not authorise the Agent to contract on behalf of the Vendor with respect to the Property.
 - 6.11 Should the Agent act in conjunction with other Agents to effect a sale, only one Commission will be payable.
 - 6.12 Should the Agent have a relevant interest in the sale of the Property, no advertisement relating to the sale of the Property shall be published unless the relevant interest is disclosed in the advertisement in accordance with Section 50(2) of the Act.
- ## 7. Vendor's Obligations and Authority
- 7.1 The Vendor has at the time of entering into this Agreement disclosed to the Agent all relevant and material facts about the Property and has not provided information that is or is likely to be misleading or deceptive.
 - 7.2 The Vendor will at all times during the currency of this Agreement keep the Agent advised of and disclose to the Agent in writing all relevant and material facts and changes thereto in relation to the Property.
 - 7.3 There is a positive obligation on the Vendor to disclose relevant and material facts. Any failure to disclose information known to the Vendor which may detract from this sale will be a breach of this Agreement.
 - 7.4 By completing Item (2) the Vendor confirms it has authorised and instructed the Solicitor or Conveyancer named therein to act on their behalf and to:
 - (1) carry out all necessary searches
 - (2) prepare the contract

- (3) forward the contract to the Agent for completion.
- 7.5 The Vendor must retain a signed copy of this Agreement.
- 7.6 Where a product, fixture or fitting provided with the Property has a warning label or safety instructions attached the Vendor is not to deface, damage or remove such label.
- 8. Indemnity**
The Agent having complied with its obligations under this Agreement and not having been negligent, the Vendor indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs damages and expenses arising out of this Agreement in respect of:
- (a) authorised sales advertising and signage; or
 - (b) the Vendor's failure to comply with this Agreement; or
 - (c) the Vendor's failure to give the Agent prompt and appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
 - (d) the Agent acting on behalf of the Vendor under this Agreement; or
 - (e) the Agent incurring legal costs of employing the services of a credit collection agency to recover unpaid debts; or
 - (f) any claim for compensation in respect of damage or loss to the Vendor's goods; or
 - (g) a warning label or safety instructions having been removed, damaged or defaced where a product or fitting has been supplied to the Property with such a label or instruction attached.
- 9. Agent's Commission and Reimbursement**
- 9.1 The Vendor acknowledges the Agent is entitled to Commission if:
- (a) during the initial or any extended Exclusive Agency Period (Item A) the Property is sold; or
 - (b) during the Non-Exclusive Agency Period (Clause 4) the Property is sold to a purchaser who has been effectively introduced by the Agent; or
 - (c) after the conclusion of the Exclusive or Non-Exclusive Agency Periods (Item A and Clause 4), the Property is sold to a purchaser who has been effectively introduced by the Agent during either of those Agency periods.
- 9.2 Should a binding contract be entered into but not completed due to:
- (a) any default by the Vendor; or
 - (b) the Vendor, as Seller, releasing the Purchaser (by mutual agreement or otherwise) from the Purchaser's contractual obligations; or
 - (c) the deposit forfeited to the Seller due to the Purchaser's non performance
- the Vendor agrees the Commission is payable to the Agent forthwith. Provided however, where Clause 9.2(c) applies, Commission will remain due but monies payable shall (subject to the Seller's rights to claim damages for breach of contract) be limited to the receipted deposit monies.
- WARNING: The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.***
- 9.3 The Commission will be payable to the Agent if the Property is sold during the Exclusive Agency Period irrespective of whether the Property is sold by the Agent, Vendor or another person.
- 9.4 The Commission as detailed in Item (B) will be payable on settlement of the sale or if Clause 9.2 applies, on demand.
- 9.5 The Agent is entitled to Commission, Fees for services and reimbursement of Expenses (including any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Vendor) as set out in Items (B) and (C), for the execution of services under this Agreement.
- 9.6 The services and amounts detailed in this Agreement cannot be varied without agreement in writing signed by the parties.
- 9.7 Unless otherwise stated, all prices of Goods and Services under this Agreement include (where applicable) GST.
- 9.8 (1) Failure to comply with the Act, Regulations or this Agreement may result in penalties against the Agent and prevent the Agent from recovering Commission and other monies under this Agreement.
- (2) In accordance with Section 55 of the Act, there will be no entitlement to commission or expenses for services performed unless a copy of this Agreement is served on the Vendor not more than 48 hours after being signed by the Vendor.
- 9.9 The parties acknowledge Section 36 of the Act provides that an application to review a statement of claim or itemised account may be made to the Tribunal under the *Consumer Claims Act 1998* by the Vendor. If such application is not made within 28 days of a statement of claim or itemised account being served upon you, the licensee may commence action for recovery.
- 10. Agent's Opinion (Item 5)**
- 10.1 The Agent makes no representation as to being a financial or investment advisor.
- 10.2 The Agent's estimated selling price is applicable as at the date of this Agreement and is the Agent's honest and fair opinion of the estimated value.
- 10.3 The parties agree this Agreement will be amended in respect to Item 5.2(1) by the Agent notifying the Vendor in accordance with section 72A(4) of the Act of a Revised Estimated Selling Price.
- 11. Agent's Disclosure**
The Agent is entitled to retain any Rebates, Discounts and/or Commissions in connection with services performed by the Agent in the capacity of the Agent for or on behalf of the Vendor and as disclosed in Item (F).
- 12. Work Health and Safety**
- 12.1 The Property as detailed in Item (4) is the property of, and is at all times, notwithstanding the appointment of the Agent, under the control of, the Vendor as Duty Holder.
- 12.2 The Vendor has complied with its obligations under the *Work Health and Safety Act 2011* with respect to ensuring, so far as reasonably practicable, any fixtures, fittings and plant, to which such Act applies, are without risk to the health and safety of any person.
- 13. Provision of Documents**
The parties agree and confirm this Agreement may be forwarded electronically if the recipient has provided an email address or facsimile number in the Item Schedule to this Agreement.
- 14. Provision of Agreement**
Each party has received a signed copy of and understands this Agreement or has had the opportunity to obtain professional advice with respect to this Agreement and each party acknowledges it is bound by the terms of this Agreement.
- 15. Special Conditions**
Any Special Conditions to this Agreement shall form part of this Agreement. Should there be inconsistency between the terms of this Agreement and a Special Condition, the Special Condition shall apply.
- 16. Electronic Use of Advertising Photographs**
Where the Vendor has authorised and directed the Agent to advertise the Property by electronic means (eg. Website), as set out in Item (E), the Agent will take reasonable care to protect copyright of photos used in such advertising material but the Vendor acknowledges once the advertising material is electronically uploaded, to an advertising site, the Agent has no control over the unauthorised reproduction or use of such photos.

17. Privacy Statement

- 17.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988*) and where required maintain a Privacy Policy.
- 17.2 The Privacy Policy outlines how the Agent collects and uses personal information provided by you as the Vendor, or obtained by other means, to provide the services required by you or on your behalf.
- 17.3 You as the Vendor agree the Agent may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
- (1) potential buyers, to the extent required to prepare a contract for the sale of the Property; and/or
 - (2) property data collection agencies; and/or
 - (3) Owner's Corporations and financial institutions; and/or
 - (4) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services and complying with legislative and regulatory requirements.
- 17.4 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.
- 17.5 The Vendor has the right to access such personal information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 17.6 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.

RESIDENTIAL PREMISES - LOOSE-FILL ASBESTOS INSULATION QUESTIONNAIRE

Home Building Act 1989

(Properties constructed before 1980 may contain loose-fill asbestos insulation)

PROPERTY

Address: **9 KENT STREET, TUNCURRY NSW 2428**

VENDOR/S

Name: **ANTHONY & FAY DALEY**

Address: **9 KENT STREET, TUNCURRY NSW 2428**

AGENT

Name: **JKL Real Estate Pty Ltd T/as JKL Real Estate**

Address: **Shop 4 The Marina, 2 Little Street, Forster NSW 2428**

QUESTIONNAIRE *Note: Where details are required enter details in sub-item 6 (Further Details)*

1. What year was the property originally constructed? _____
2. Has the property been renovated since it was originally built? ☐ Yes ☒ No
If 'Yes' provide details
3. Is the Vendor aware of the presence of any loose-fill asbestos insulation in the property? ☐ Yes ☒ No
If 'Yes' provide details of all locations where the loose-fill asbestos is present
4. Has a Licensed Asbestos Assessor inspected the property for loose-fill asbestos insulation? ☐ Yes ☒ No
If 'No' provide details of any proposed inspections
If 'Yes':
(a) Date of Asbestos Assessment inspection: ____ / ____ / ____
(b) Is a copy of the Asbestos Assessment inspection report available? ☐ Yes ☒ No
5. Is the property listed on the LFAI Register? ☐ Yes ☒ No
6. Further Details (where required as a result of questions 1 to 5 above):

ACTIONS TO BE CARRIED OUT *[if applicable by either party] - provide details*

Actions to be completed by: ____ / ____ / ____

SIGNATURES

Signature of Vendor

Date:

Signature of Vendor

Date:

Signature of Agent

Date:

Agent to sign after completion by the Vendor