MAHONEY
LAWYERS

**BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS CTS 40204**

**EDWARD TUGI COSTELLO AS TRUSTEE FOR THE SEASIDE FAMILY TRUST**

**EDWARD TUGI COSTELLO AND VIVIANNE PATRICIA COSTELLO**

# LETTING AGREEMENT

Mahoney Lawyers
ABN 99 349 703 654
Telephone 07 3007 3777
Facsimile 07 3007 3778

Level 15
167 Eagle Street
Brisbane 4000

GPO Box 3311
Brisbane 4001
info@mahoneylawyers.com.au
www.mahoneylawyers.com.au

# LETTING AGREEMENT

**THIS AGREEMENT** is made by way of Deed this 24 day of JULY 2009

**BETWEEN:** **BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS COMMUNITY TITLES SCHEME 40204** a body corporate formed under the Body Corporate and Community Management Act 1997 ("the Act") of 25 Webster Rd (Corner Georges Street and Webster Road) Deception Bay, Queensland ("the Body Corporate")

**AND:** **EDWARD TUGI COSTELLO AS TRUSTEE FOR THE SEASIDE FAMILY TRUST** C/- Hynes Lawyers, PO BOX 359, Surfers Paradise, Queensland ("the Letting Agent")

**AND:** **EDWARD TUGI COSTELLO AND VIVIANNE PATRICIA COSTELLO** c/- Hynes Lawyers, PO BOX 359, Surfers Paradise, Queensland ("the Lot Owner")

**INTRODUCTION:**

A. The Body Corporate has the power to grant the right to conduct the Letting Business and to enter into an agreement for the provision of the Letting Services.

B. The Body Corporate will grant the Letting Agent the right to conduct the Letting Business, and the Letting Agent will provide the Letting Services.

C. The Letting Agent is a letting agent as that term is defined in the Act.

**IT IS AGREED:-**

## 1. DEFINITIONS

1.1 In this Agreement except where inconsistent with the context words used which are defined in the Act will have the meaning so defined and the following terms will have the following meanings -

(a) "Associate" - if the Letting Agent is a company, its directors, substantial shareholders and its management staff, or if the Letting Agent is a partnership, the partners and management staff of the partnership;

(b) "Commencement Date" - July 24, 2009;

(c) "Committee" - the committee of the Body Corporate elected or appointed under the Act;

(d) "Common Property" - the common property as defined by the Act;

(e) "Complex" - the Lots and Common Property comprised in the Scheme and being the complex known as Gloria Bayside Apartments situated at 25 Webster Rd (Corner Georges Street and Webster Road) Deception Bay, Queensland;

(f) "Controller" - the natural person or persons who in the reasonable opinion of the Body Corporate hold effective control of the relevant company;

(g) "Further Term" - 10 years commencing July 24, 2024 and ending July 23, 2034;

(h) "Letting Agent's Unit" – A Lot in the Scheme owned by the Letting Agent, an Associate or an entity associated with the Letting Agent;

(i) "Letting Business" -

(i) the letting agent business pursuant to section 16 of the Act;
(ii) the letting of Lots for permanent and/or short term lettings;
(iii) the sale of Lots;
(iv) the hiring of equipment or items the Letting Agent considers desirable and that are not contrary to the interests of the Body Corporate and the Owners;
(v) the provision of any other ancillary services or goods commonly provided in connection with the letting of lots in a complex of the nature of the Complex and/or which the Letting Agent wishes to provide;

(j) "Letting Services" - the services, duties and obligations of the Letting Agent in this Agreement;

(k) "Lots" - lots in the Scheme;

(l) "Management Rights" has the meaning given to the term "management rights" in the Act.

(m) "Nominee" - the person nominated by the Body Corporate under Clause 7.1;

(n) "Owners" - registered owners of Lots and includes mortgagees in possession;

(o) "Scheme" - the Community Titles Scheme for the Complex and under which the Body Corporate was created;

(p) "Term" - 15 years from the Commencement Date, terminating on the Termination Date; and

(q) "Termination Date" - July 23, 2024.

## 2. INTERPRETATION

In the interpretation of this Agreement unless the context otherwise requires:-

(a) Words denoting any gender include all other genders.

(b) Words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa.

(c) References to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns.

(d) Any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.

(e) Words expressing the singular include the plural and vice versa.

(f) Headings are included for convenience only and do not affect the interpretation of this Agreement.

(g) References to Sections, Clauses, Recitals, Schedules and Annexures are to Sections and Clauses of and Recitals, Schedules and Annexures to this Agreement.

(h) References to this Agreement are to this Agreement as amended supplemented or varied from time to time.

(i) References to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time.

(j) Expressions cognate with expressions defined in clause 1 are to be construed accordingly.

(k) References to dates and times are to Brisbane time.

(l) References to "$" and "dollars" are to Australian dollars.

(m) Recitals to this Agreement are to be read as and form part of this Agreement.

(n) References to writing include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form.

(o) References to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it.

(p) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions.

(q) No rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this Agreement or any part of it.

(r) Unless application is mandatory by law, any legislation present or future will not apply to this Agreement so as to abrogate, extinguish, impair, delay or otherwise prejudicially affect the exercise or enjoyment of any rights given or accruing to any party.

## 3. TERM

3.1 The Body Corporate grants to the Letting Agent the right to conduct the Letting Business for the Term from the Commencement Date.

3.2 If there is not, at the time the Letting Agent gives notice under this Clause nor at the Termination Date, an outstanding breach of this Agreement by the Letting Agent entitling the Body Corporate to terminate it, the Letting Agent may by giving written notice to the Body Corporate at any time before the Termination Date, extend or renew this Agreement or the term of it for the Further Term, otherwise upon the same conditions as are contained in this Agreement with the exception of this Clause 3.2 which will be deleted.

3.3 In consideration of the Body Corporate granting to the Letting Agent the right to carry on the Letting Business, the Letting Agent will provide the Letting Services.

## 4. RIGHTS AND OBLIGATIONS OF THE LETTING AGENT

4.1 The Letting Services may be carried out by the Letting Agent, its delegates or its employees.

4.2 The Letting Agent may conduct the Letting Business and will provide the Letting Services from the Letting Agent's Unit or from any other part of the Complex designated for use by the Letting Agent for that purpose.

4.3 The Letting Agent will -

(a) provide the Letting Services for the Owners who require that service;

(b) supervise the standard of tenants of all lettings handled by the Letting Agent and ensure no nuisance is created;

(c) use reasonable endeavours to improve and expand the letting of Lots and to act at all times to further the interests of the Body Corporate and the Owners;

(d) maintain and staff the designated reception area during such hours as are reasonably necessary to properly provide the Letting Services;

(e) be entitled to erect or procure the erection of signs of an appropriate size, type and design in the Complex to promote and foster the Letting Business, in such locations as are appropriate to do so;

(f) obtain all necessary permits, consents or licences required to provide the Letting Services;

(g) act fairly and lawfully and not discriminate between Owners; and

(h) keep proper records and books of all tenancies.

4.4 All costs of the Letting Agent in running the Letting Business will be paid by the Letting Agent including all consents, licences, permits, signs and equipment, except those which under any agreement are payable by some other person.

4.5 The Body Corporate consents to the Letting Agent registering and using a business name incorporating the name "Gloria Bayside Apartments" or any part of it for the Term and the Further Term.

4.6 The Letting Agent acknowledges that the Owners may utilise the service of other agents or let their Lots themselves, and the Letting Agent must not unreasonably interfere with these rights.

## 5. OBLIGATIONS OF THE BODY CORPORATE

5.1 To the extent that it can lawfully so covenant, the Body Corporate will not-

(a) itself conduct; nor

(b) grant to any other person or entity any rights to conduct in the Complex;

a business the same or similar to the Letting Business.

5.2 To the extent that it can lawfully so covenant, the Body Corporate will -

(a) ensure that the Common Property is cleaned and maintained to the standard of a complex of the nature as the Complex;

(b) co-operate with the Letting Agent in taking all action reasonably and practically necessary to stop any person or entity from conducting in the Complex a business the same or similar to the Letting Business.

## 6. REMUNERATION

6.1 The Letting Agent will not be paid any remuneration by the Body Corporate for conducting the Letting Business or providing the Letting Services.

6.2 The Letting Agent will negotiate commissions and charges with the Owners who require use of the Letting Business or the Letting Services.

## 7. INSTRUCTIONS

7.1 The Body Corporate must -

(a) nominate one person to communicate with the Letting Agent on its behalf; and

(b) notify the Letting Agent in writing of the appointment of that Nominee or its replacement.

7.2 The Letting Agent must -

(a) confer with the Nominee concerning the Letting Services; and

(b) attend any general meeting or Committee meeting of the Body Corporate if requested and given reasonable notice by the Nominee.

## 8. ASSIGNMENT AND DEALING

8.1 The Letting Agent must not assign its interest in this Agreement unless it obtains the Body Corporate's consent.

8.2 The Body Corporate must -

(a) not unreasonably, arbitrarily or capriciously refuse or delay giving its consent to any proposed assignment; and

(b) give its consent or refusal to any proposed assignment within 30 days of the Letting Agent giving to it the information reasonably necessary for the Body Corporate to properly consider the proposed assignment.

8.3 Before giving its consent to any proposed assignment, the Body Corporate will be entitled to require -

(a) satisfactory evidence that the proposed assignee and any Associates who will be providing the Letting Services are financially sound and reputable, responsible, respectable and capable of satisfactorily performing the Letting Services; and

(b) two business references and two personal references of the proposed assignee and any Associates who will be providing the Letting Services.

8.4 As a condition of giving its consent to any assignment, the Body Corporate will be entitled to require -

(a) that the proposed assignee execute in favour of the Body Corporate a Deed of Covenant to comply with the terms of this Agreement;

(b) that the Letting Agent pay to the Body Corporate all reasonable legal costs incurred by it in giving its consent;

(c) if the proposed assignee is a company, other than a public company, personal guarantees from the working directors and principal shareholders; and

(d) that the assignee, or if it be a company then it or its Controller becomes the registered owner of, or otherwise acquires the right to occupy, the Letting Agent's Unit.

8.5 Subject to the Act, the Body Corporate must not require or receive any premium, payment or benefit for any request to consent or consent given under this clause, except as provided in Clause 8.4(b).

8.6 Where it is proposed that one or more of the natural persons that make up the Controller at any time are to cease to do so or are to be replaced, that will be regarded as an assignment requiring approval under this Clause 8.

8.7 Upon an assignment under this clause, the assignor will be released from liability for the performance of this Agreement as from the date of that assignment.

## 9. TERMINATION

9.1 The Body Corporate may terminate this Agreement if the Letting Agent -

(a) is convicted of an indictable offence involving fraud or dishonesty;

(b) is guilty of gross misconduct or gross negligence in performing or failing to perform the Letting Services;

(c) is in breach of this Agreement, and that breach continues at the end of 21 days after notice in writing delivered by the Body Corporate to the Letting Agent requiring that breach to be remedied;

(d) if a company, becomes subject to any form of external administration referred to in the Corporations Law;

(e) if an individual, is bankrupt or makes any assignment for the benefit of creditors or enters into any composition or scheme of arrangement.

9.2 This Agreement may be terminated by the Letting Agent at any time upon the Letting Agent giving the Body Corporate three months written notice of the termination.

## 10. NOTICES

10.1 All notices and other communications between the parties may be sent by certified post with postage prepaid or by hand delivery to the party at the address shown in this Agreement or by facsimile transmission to the facsimile number of the party or to such other address or person as either party may specify by notice in writing to the other.

10.2 All such notices or communications will be deemed to have been duly given or made

(a) if by mail 2 business days after being deposited in the mail with postage prepaid;

(b) if delivered by hand at the time of delivery; and

(c) if sent by facsimile transmission, when the sender's transmission record indicates that the same was received without error.

## 11. LETTING AGENT'S UNIT

11.1 The Letting Agent must, or if it is a company it or its Controller must, own or otherwise have the right to occupy the Letting Agent's Unit.

11.2 If, under Clause 11.1, the registered owner of the Letting Agent's Unit is some person or persons other than the Letting Agent, the Letting Agent must if requested by the Body Corporate procure such person or persons to enter into a Deed of Covenant with the Body Corporate (to be prepared by the Body Corporate at the expense of the Letting Agent) to be bound by the terms of this Agreement as far as they relate to the Letting Agent's Unit.

11.3 If the Body Corporate gives its consent under Clause 8 to an assignment of the Letting Agent's interest in this Agreement, the Letting Agent or the owner of the Letting Agent's Unit will be permitted to sell the Letting Agent's Unit so that upon such assignment and sale, there will be compliance with Clause 11.1.

## 12. LOT OWNERS DEED

12.1 The parties acknowledge and agree that this clause and the covenants contained in it comprise and operate as a deed as prescribed under Section 116(2)(b) of the Act.

12.2 This clause only operates if a Deed is required to be entered into between the Body Corporate and the Lot Owner pursuant to Section 116(2)(b) of the Act.

12.3 The Lot Owner is the owner of the Letting Agent's Unit and is the lot holder pursuant to, and as that term is defined in, the Act.

12.4 The Lot Owner agrees to transfer the Lot Owner's interest in the Letting Agent's Unit, in accordance with the arrangements provided for in this Deed, if the Letting Agent is required to transfer the Letting Agent's Management Rights under Division 8 of Part 2 of Chapter 3 of the Act.

12.5 The Lot Owner, as the proposed registered owner of the Letting Agents Unit –

(a) agrees to transfer its interest in the Letting Agent's Unit if the Body Corporate gives the Letting Agent a valid transfer notice under Section 140 of the Act;

(b) must do all that is required to ensure that the transfer of the Letting Agent's Unit under this clause occurs contemporaneously with the transfer of the Management Rights;

(c) agrees, in relation to the Letting Agent's Unit, to follow and comply with the procedures set out in Division 8 of Part 2 of Chapter 3 of the Act, so that upon any transfer under that Division of the Management Rights, the Letting Agent's Unit is also transferred; and

(d) authorises the Body Corporate to act in its place if it does not comply with its obligations under this Clause.

12.6 Nothing in this Deed implies or requires that Division 8 of Part 2 of Chapter 3 of the Act applies to this Agreement or to the Management Rights.

## 13. COSTS

13.1 Each party must pay their own costs in relation to the preparation and execution of this agreement, however the Letting Agent will pay any stamp duty on it.

## 14. SEVERANCE

14.1 If any provision of this Agreement is, for any reason, considered or found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, or to reduce the term of this Agreement, that provision is to be severed from the remainder of the provisions of this Agreement and will be deemed never to have been part of this Agreement. The remainder of the provisions of this Agreement will remain in full force and effect unless the basic purposes of this Agreement are defeated.

14.2 It is not the intention of the parties that the Letting Services or Letting Business should constitute the Letting Agent a body corporate manager pursuant to section 14 of the Act. If the Letting Services or Letting Business in any way constitute the Letting Agent a body corporate manager pursuant to the Act, then to the extent that any or all of the Letting Services or Letting Business constitute the Letting Agent a body corporate manager, the Letting Services or Letting Business shall be read down or omitted so that the Letting Agent is not a body corporate manager, provided that in all cases the Letting Agent shall remain authorised to conduct a letting agent business pursuant to the Act.

## 15. FURTHER ASSURANCE

15.1 The parties agree and agree to procure every other person as required to sign all documents and otherwise do all such acts, matters and things as may be necessary or desirable to give full force and effect to this Agreement.

## 16. GOVERNING LAW

16.1 This Agreement will be construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Queensland Courts notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland.

## 17. WARRANTY OF AUTHORITY

17.1 Each person signing this Agreement -

(a) as attorney for any party, warrants to the other parties that at the date of execution by him or her, he or she has not received any notice or information of the revocation of the power of attorney appointing him or her; and

(b) as an authorised officer, agent or trustee of any party, warrants to the other parties that at the date of execution by him or her, he or she has full authority to execute this Agreement in that capacity.

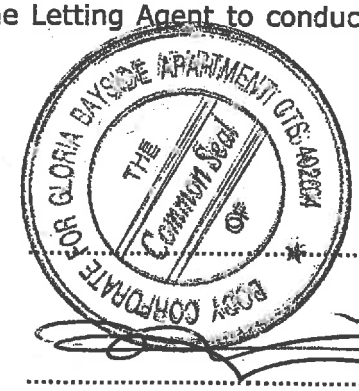
## 18. OCCUPATION AUTHORITY

18.1 In accordance with the Act and the applicable Regulation Module, the Body Corporate authorises the Letting Agent to have the exclusive use and occupation of that part of the Common Property identified on the plan or plans attached to this Agreement for

all purposes necessary to enable the Letting Agent to conduct the Letting Business and provide the Letting Services.

**EXECUTED AS A DEED**

**THE COMMON SEAL of THE BODY CORPORATE FOR GLORIA BAYSIDE APARTMENTS COMMUNITY TITLES SCHEME 40204** was affixed pursuant to a resolution of the Body Corporate in the presence of the signatory/s who certify that he/she/they is/are authorised by the Body Corporate to affix that seal )

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Name *(printed)*

PHILLIPO BYUNG-KWAN RIM
Name *(printed)*

**SIGNED by EDWARD TUGI COSTELLO AS TRUSTEE FOR THE SEASIDE FAMILY TRUST** in the presence of: )

.....
Witness

Graham Mclaw
Name: (block letters)

.....

**SIGNED by EDWARD TUGI COSTELLO AND VIVIANNE PATRICIA COSTELLO** in the presence of: )

.....
Witness

Graham Mclaw
Name: (block letters)

.....
V. Costello

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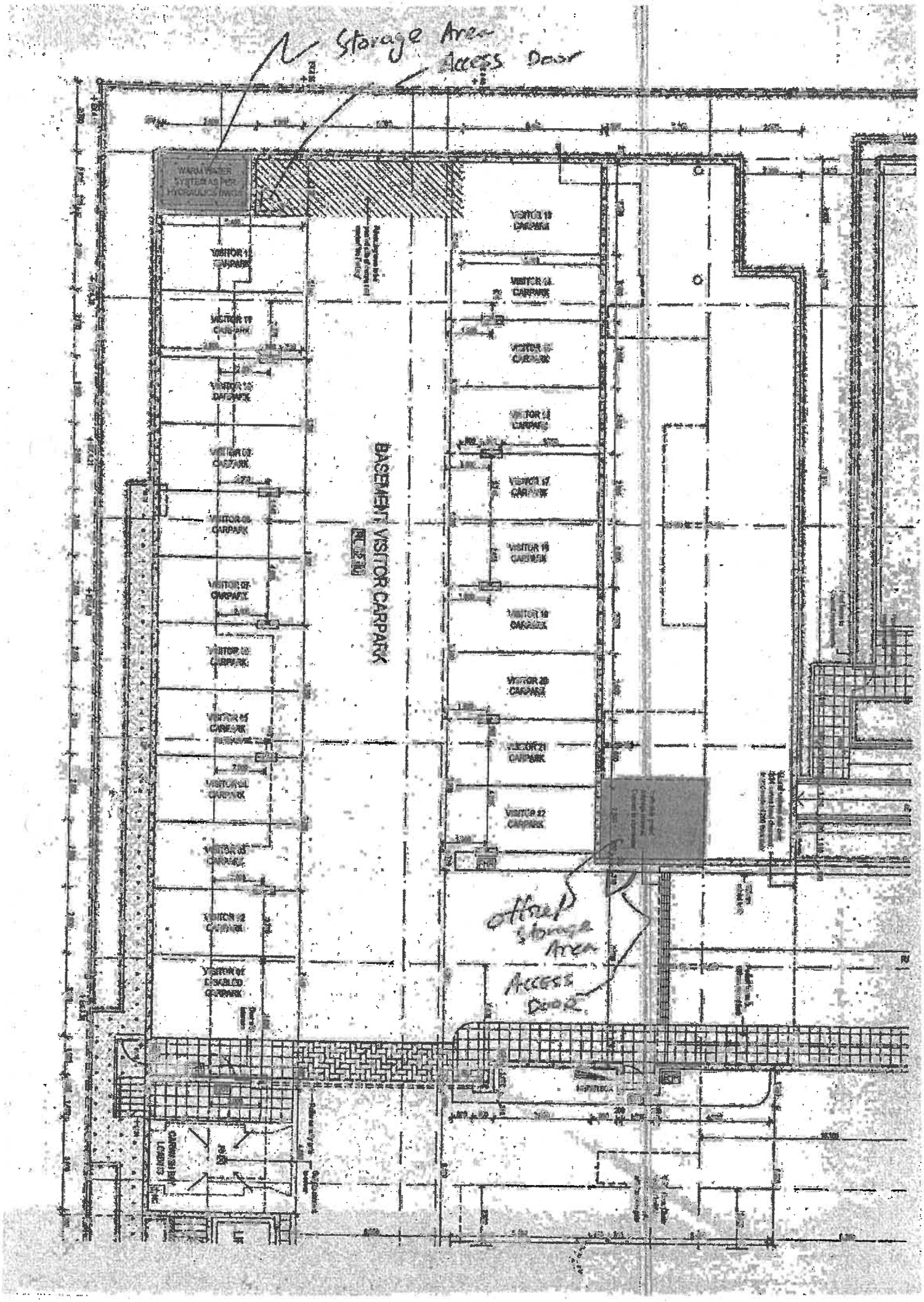
Storage Area Access Door
WARM WATER SYSTEM AS PER HYDRAULICS ENGR
BASEMENT VISITOR CARPARK
Hotel Storage Area Access Door