

DEED OF LEASE

SIXTH EDITION 2012 (4)

GENERAL address of the premises:
2 Fred Thomas Drive, Takapuna.

DATE: 28th July 2016

LANDLORD:
FRED THOMAS DRIVE INVESTMENTS LIMITED company number 3197268

TENANT:
PROPERTY PARTNERS LIMITED company number 2477231

GUARANTOR:
TY ADAM JONES of 41 Ashwood Avenue, Rd 2, Albany 0792 and STEPHEN MAX MIKKELSEN of 40 Tainui Road, Devonport, Auckland 0624

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT covenant as set out in the First, Second and Third Schedules.

THE GUARANTOR covenants with the Landlord as set out in the Fourth Schedule.

SIGNED by the Landlord *

Fred Thomas Drive Investments Limited

in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address



Signature of Landlord

GREGORY JOHN SMALE

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)



Signature of Landlord

CHRISTOPHER ROBERT SMALE

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)

SIGNED by the Tenant *

PROPERTY PARTNERS LIMITED

in the presence of:



Witness Signature

Victoria Louise Church


Witness Name

Accountant

Witness Occupation

45 Aime McLean Drive


Witness Address Auckland 0629



Signature of Tenant

Ty Adam Jones

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)



Signature of Tenant

Stephen Max Mikkelsen

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)

* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company - please refer to the note on page

SIGNED by the Guarantor *

TY ADAM JONES

in the presence of:

VL

Witness Signature

Victoria Louise Church

Witness Name

Accountant

Witness Occupation

45 Ane McLean Drive,

Witness Address *Auckland 0629*

[Signature]

Signature of Guarantor

Ty Adam Jones

Print Full Name

(for a company specify position:
Director/Attorney/Authorised Signatory)

Signature of Guarantor

Print Full Name

(for a company specify position:
Director/Attorney/Authorised Signatory)

* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.
If two directors sign, no witnessing is necessary.
If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

SIGNED by the Guarantor
Stephen Max Mikkelsen
in the presence of:



Signature of Guarantor



Witness Signature

Stephen Max Mikkelsen
Print Full Name

Victoria Louise Church
Witness Name

Accountant
Witness Occupation

15 Anne McLean Drive, Auckland 0629
Witness Address

FIRST SCHEDULE

SIXTH EDITION 2012 (4)

1. **PREMISES:** Level 2 (second floor) being approximately 1312 m2 of the Landlord's property at 2 Fred Thomas Drive, Takapuna as is shown for identification on the premises plan attached at Annexure A.
2. **CAR PARKS:** 20 car parks comprising eight (8) Allocated Carparks and twelve (12) Unallocated Carparks (but subject always to clauses 35.6 - 35.7)
3. **TERM:** Six (6) years
4. **COMMENCEMENT DATE:** 1 September 2015
5. **RIGHTS OF RENEWAL:** One (1) further term of six (6) years
6. **RENEWAL DATES:** 1 September 2021
7. **FINAL EXPIRY DATE:** 31 August 2027 (if renewal right exercised)
8. **ANNUAL RENT:**
(Subject to review if applicable)

Premises	\$ See Attached	plus GST
Car Parks	\$	plus GST
TOTAL	\$	plus GST
9. **MONTHLY RENT:** ~~\$ See Attached~~ ~~plus GST~~
10. **RENT PAYMENT DATES:** The 1st day of each month commencing on the 1st day of September 2015
11. **RENT REVIEW DATES:**
~~(Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)~~
 1. Market rent review dates:
The renewal date being 1 September 2021
 - Percentage
 2. CPI rent review dates:
1 September 2016 and annually thereafter throughout the term of the initial lease and any renewal term (but excluding the Renewal Date).
12. **DEFAULT INTEREST RATE:**
(subclause 5.1) 14 % per annum
13. **BUSINESS USE:**
(subclause 16.1) Commercial Offices

14. LANDLORD'S INSURANCE:

(subclause 23.1)

(Delete or amend extent of cover as appropriate)

~~(Delete either (a) or (b), if neither option is deleted, then option (a) applies)~~~~(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)~~**15. NO ACCESS PERIOD:**

(subclause 27.6)

~~(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)~~**16. PROPORTION OF OUTGOINGS:**

(subclause 3.1)

See attached

17. LIMITED LIABILITY TRUSTEE:

(subclause 45.2)

18. OUTGOINGS:

(clause 3)

- (1) Rates or levies payable to any local or territorial authority.
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- (5) Any insurance excess (but not exceeding \$2,000) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- (10) Yard and car parking area maintenance and repair charges ~~but excluding charges for repaving or resealing.~~
- (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
- (12) ^{Reasonable} Management expenses ~~(subject to subclause 3.7).~~
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);
OR
at the option of the Landlord

- (b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).
and cover may extend to

- (2) Cover for the following additional risks:

- (a) (i) ~~12~~²⁴ months

OR

- (ii) _____ months

indemnity in respect of consequential loss of rent and outgoings.

- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.

- (c) Public liability

- (d) earthquake cover for full replacement

- (1) 9 months

OR~~(2)~~

% which at commencement date is estimated

to be \$ _____ Plus GST per annum

Lease Further Terms

FIRST SCHEDULE (continued)

8. ANNUAL RENT
(subject to review)

(a) For the first year of the term from 1 September 2015 to 31 August 2016:

Premises:

\$175,000.00 per annum plus GST (calculated at a rate of \$250 per m² plus GST but payable only on a rentable area of 700m²)

Carparking:

- Eight (8) Allocated Carparks @\$40.00 per carpark per week = \$16,640 per annum plus GST
- Twelve (12) Unallocated Carparks @\$35.00 per carpark per week = \$21,840 per annum plus GST

Total annual rent: \$213,480.00 per annum plus GST.

(b) For the second year of the term from 1 September 2016 to 31 August 2017 the annual rent for the premises and carparking shall be calculated in accordance with clause 2.5 applying the percentage rent review mechanism due on 1 September 2016 but where the annual rent for the premises shall be payable only on a rentable area of 900.00m² plus GST.

(c) For the third year of the term from 1 September 2017 to 31 August 2018 the annual rent for the premises and carparking shall be calculated in accordance with clause 2.5 applying the percentage rent review mechanism due on 1 September 2017 but where the annual rent for the premises shall be payable only on a rentable area of 1100.00m² plus GST.

(d) From 1 September 2018 throughout the term and any renewal term the annual rent for the premises and carparks shall be calculated in accordance with the rent review provisions of the Lease and in all cases based on a rentable area of the premises of 1,312m².

9. MONTHLY RENT

(1) For the initial period from the Commencement Date until 1 September 2016 when the annual rent is next reviewed as provided for in clause 2.5:

Premises = \$14,583.33 per month plus GST.

Carparks = \$3,206.66 per month plus GST.

Total monthly rent = 17,790.00 plus GST.

(For clarity outgoings shall be payable from the Commencement Date on the total rentable area of the premises being 1312m² and all leased carparks.)

16. PROPORTION OF OUTGOINGS
(subclause 3.1)

A fair proportion calculated by reference to the ratio that the rentable area of the premises bears to the rentable area of the property.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent

- 1.1 The Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct. ~~(credit being given to the Tenant on account of any deposit previously paid by the Tenant).~~

Market Rent Review

- 2.1 ~~The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:~~
- ~~(a) Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or GPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date;~~
 - ~~(b) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2;~~
 - ~~(c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply;~~
 - ~~(d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable as at the commencement date of the then current lease term.*~~
 - ~~(e) The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4;~~
 - ~~(f) The market rent review at the option of either party may be recorded in a deed.~~

Rent Determinations

- 2.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:
- (a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
 - (b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - (1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.
 - (2) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
 - (3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
 - (4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.
 - (5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
 - (6) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
 - (7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.

When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

Interim Market Rent

- 2.3 Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:
- (a) if both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
 - (b) if only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
 - (c) if no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date, **\$366,480 plus GST per annum.**
- but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.

The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.

- 2.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.

~~2.5 The annual rent payable from each GPI rent review date shall be determined as follows:~~

- ~~(a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the GPI by giving notice to the Tenant of the increase (if any) using the formula:~~

$$A = B \times (G + D)$$

~~Where:~~

~~A = the GPI reviewed rent from the relevant GPI rent review date~~

~~B = the annual rent payable immediately before the relevant GPI rent review date~~

~~G = GPI for the quarter year ending immediately before the relevant GPI rent review date~~

~~D = GPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the GPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)~~

~~where (G+D) shall not be less than 4.~~

- ~~(b) If the GPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the GPI, or a resetting of the GPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.~~

- ~~(c) If the relevant GPI is not published at the relevant GPI rent review date, as soon as the GPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant GPI rent review date.~~

- ~~(d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant GPI rent review date shall not be less than the annual rent payable immediately preceding the GPI rent review date (and in the case where the relevant GPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).~~

~~2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant GPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the GPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.~~

Outgoings from the commencement date

3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.

3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.

3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.

3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.

3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.

3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.

~~3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.~~

See attached Third Schedule

Goods and Services Tax

4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.

4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.

5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

Costs

6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS

Outgoings

7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

Tenant's Obligations

8.1 The Tenant shall be responsible to:

(a) **Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) **Breakages and minor replacements**

Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld. ~~and in any event during the 6 month period prior to the end or earlier expiry of the term of this Lease. This work will be carried out in a good and tradesmanlike manner and generally to the satisfaction of the Landlord.~~

(d) **Floor coverings**

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.

(e) **Damage or Loss**

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.

~~8.2 Where the Tenant is leasing all of the property, the Tenant shall:~~

~~(a) **Care of grounds**~~

~~Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.~~

~~(b) **Water and drainage**~~

~~Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.~~

~~(c) **Other works**~~

~~Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.~~

8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect. ~~See attached Third Schedule.~~

8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

Toilets

9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

Rubbish Removal

10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

Landlord's Maintenance

11.1 The Landlord shall keep and maintain the building, all building services and the car parks in good order and repair and weatherproof but the Landlord shall not be liable for any:

(a) Repair or maintenance which the Tenant is responsible to undertake.

(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.

(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks.

(d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.

11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.

11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule. ~~See attached Third Schedule~~

Notification of Defects

12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

Landlord's Right of Inspection

- 13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord may Repair

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

- See attached Third Schedule
- 15.1 ~~The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by law or requirement of any competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.~~
- 15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.
- 15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.
- 15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 and 15.3.

See attached Third Schedule

USE OF PREMISES**Business Use**

- 16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:
- (a) not in substantial competition with the business of any other occupant of the property which might be affected by the use; and
 - (b) reasonably suitable for the premises; and
 - (c) compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.
- If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.
- 16.2 If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.
- 16.3 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.

16.4 & 16.5 See Attached.**Lease of Premises and Car Parks Only**

- 17.1 The tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

- 18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

Signage See attached Third Schedule

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

on the west and south corners of the building in the position and having the dimensions as shown on the signage plans attached at Annexure C

Additions, Alterations, Reinstatement and Chattels Removal

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises ~~or alter the external appearance of the building~~ without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.
- 20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstate the premises pursuant to subclause 20.1 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.

20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

See attached Third Schedule

Compliance with Statutes and Regulations

21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:

- (a) The Tenant shall not be required to make any structural repairs alterations or additions ~~nor to replace or install any plant or equipment~~ except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
- (b) The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises. See attached Third Schedule
- (c) The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.

21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.

21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.

21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.

21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.

No Noxious Use

22.1 The Tenant shall not:

- (a) Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area.
- (b) Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.
- (c) Use the premises or allow them to be used for any noxious illegal or offensive trade or business.
- (d) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Landlord shall insure

23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.

23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule

Tenant not to void insurance

24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:

- (a) Shall make void or voidable any policy of insurance on the property.
- (b) May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

See attached Third Schedule.

When Tenant to have benefit of Landlord's insurance

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
- (a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
 - (b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
 - (1) occurred on or about the property; and
 - (2) constitutes an imprisonable offence; or
 - (c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES**Total Destruction**

- 26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:
- ~~(a) as to render the premises untenable then the term shall at once terminate from the date of destruction or damage; or~~
 - ~~(b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage. See attached Third Schedule.~~
- Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

Partial Destruction

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
- (a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
 - (b) all the necessary permits and consents are obtainable,
- the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

- 27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:
- (a) a prohibited or restricted access cordon applying to the premises; or
 - (b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
 - (c) restriction on occupation of the premises by any competent authority,
- then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.
- 27.6 This subclause 27.6 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:
- (a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or
 - (b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.
- Any termination shall be without prejudice to the rights of either party against the other.

DEFAULT**Cancellation**

- 28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:
- (a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.
 - (b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
 - (c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
 - (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

- (e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

- 29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

Repudiation

- 30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

- 31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

RENEWAL OF LEASE

- 32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:
- (a) If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term. **\$366,480 per annum plus GST**
- ~~(b) If the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.~~
- (c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date. **but excluding clause 51 and the provisions allowing for a reduced rent to be payable for the first three years of the initial lease term based on an area less than the actual rentable area of 1312m²**
- (d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.
- (e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.
- (f) If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4.
- (g) Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term. *
- (h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease.

ASSIGNMENT OR SUBLETTING

- 33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, the car parks (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:
- (a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.
- (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
- (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord. **by the assignee**
- (d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord ~~or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.~~ **See attached Third Schedule.**
- (e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds. **See attached Third Schedule**
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.

See attached Third Schedule

UNIT TITLE PROVISIONS

or becomes

34.1 Clause 34 applies where the property is part of a unit title development.

Body Corporate

34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.

Act and Rules Paramount

34.3 This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

Insurance

34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.

Landlord's Obligations

34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

Tenant's Obligations

34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.

Consents

34.7 Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.

CARPARKS

Subject to clauses 35.5-35.7

35.1 The Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

~~35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.4 or 27.3.~~

35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.

See attached Third Schedule

GENERAL**Holding Over**

36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting or Sale

37.1 The Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

40.1 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

Land Transfer Title or Mortgagee's consent

41.1 The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

42.1 All notices must be in writing and must be served by one of the following means:

- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - ~~(d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgment.~~
- 42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1 If any person enters into this lease as trustee of a trust, then:
- (a) That person warrants that:
 - (1) that person has power to enter into this lease under the terms of the trust; and
 - (2) that person has properly signed this lease in accordance with the terms of the trust; and
 - (3) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
 - (4) all of the persons who are trustees of the trust have approved entry into this lease.
 - (b) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

- 46.1 This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1 In this lease:
- (a) "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - (b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
 - (c) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - (d) "emergency" for the purposes of subclause 27.5 means a situation that:
 - (1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
 - (2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
 - (3) the event is not caused by any act or omission of the Landlord or Tenant.

- (e) "GST" means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.
- (g) "premises condition report" means the report as set out in the Sixth Schedule.
- (h) "renewal" means the granting of a new lease as provided for in subclause 32.1.
- (i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
- (j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.
- (k) "term" includes, where the context requires, a further term if the lease is renewed.
- (l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
- (m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
- (n) "the property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
- (o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.
- (p) "working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
- (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (r) A reference to the words "include" or "including" are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
 - (1) must not unreasonably withhold consent or approval, and
 - (2) must, within a reasonable time of the Landlord's consent or approval being requested:
 - (i) grant that consent or approval; or
 - (ii) notify the Tenant in writing that the consent or approval is withheld.

See attached Third Schedule.

THIRD SCHEDULE

FURTHER TERMS (if any)

See attached.



THIRD SCHEDULE Further Terms

Percentage Rent Review

2.5

- (a) On the first percentage rent review date being 1 September 2016 the annual rent per square metre for the premises payable immediately prior to the first percentage rent review date shall be increased by 3% per annum to \$257.50 per m² plus GST but payable only in relation to a rentable area 900m² to produce a revised annual rent for the premises of \$231,750 per annum plus GST.

The annual rent for all the leased carparks payable immediately prior to the first percentage rent review date shall also increase by 3% per annum to \$39,634.40 per annum plus GST.

- (b) On the second percentage rent review date being 1 September 2017 the annual rent per square metre for the premises payable immediately prior to the second percentage rent review date shall be increased by 3% per annum to \$265.225 per m² but payable only in relation to a rentable area of 1100m² to produce a revised annual rent for the premises of \$291,747.50 plus GST per annum.

The annual rent payable for all the leased carparks immediately prior to the second percentage rent review date shall also increase by 3% per annum to \$40,823.43 plus GST.

- (c) On the third percentage rent review date being 1 September 2018 the annual rent per square metre for the premises payable immediately prior to the third percentage rent review date shall be increased by 3% per annum to \$273.18 per m² payable in relation to the full rentable area of the premises being 1,312m² to produce an annual rent of \$358,412.16 per annum plus GST.

The annual rent for all the leased carparks payable immediately prior to the third percentage rent review date shall also increase by 3% per annum to \$42,048.13 plus GST.

- (d) On each percentage rent review date from and including 1 September 2019 the annual rent payable immediately prior to the relevant percentage rent review date for the premises and all leased carparks shall be increased by 3% per annum. Applying this percentage rent review mechanism the annual rent payable from 1 September 2019 shall be as follows:

1. For the fifth year of the term from 1 September 2019 – \$412,474.09 plus GST per annum.
2. For the sixth year of the term from 1 September 2020 – \$424,848.13 plus GST per annum,

and thereafter the annual rent payable immediately prior to each relevant percentage rent review date shall continue to be increased by 3% per annum on each percentage rent review date occurring during any renewal term.

Such increased rent shall be payable by the Tenant immediately from the relevant percentage rent review date.

Outgoings

- 3.7 For clarity from the commencement date the Tenant's liability to pay outgoing shall be based on the full rentable area of the premises being approximately 1312m² together with all leased carparks.

Maintenance and Care of Premises

- 8.2 Notwithstanding any other provision of this lease the Tenant shall be responsible for repairing, maintaining and (where beyond repair) replacing the Further Works at the sole cost of the Tenant. The Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the Further Works and for clarity, the provisions of clause 20 of this lease shall equally apply to the Further Works notwithstanding any provision to the contrary, including that the Further Works otherwise comprise part of the Landlord's fixtures and fittings and the provisions of this clause 8.2 shall prevail.
- 8.4 ... unless and save to the extent that any inherent defect is caused or contributed to by the Tenant including (without limitation) in carrying out any fitting out works to the premises, including the Further Works, any other alterations carried out by the Tenant or any other act or default of the Tenant.

Landlord's Maintenance

- 11.4 Notwithstanding any other provision of this lease the Landlord shall have no repair, maintenance or other obligations in relation to the Further Works and the provisions of clause 8.2 shall apply in relation to the same.

Access for Works

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (and at any time and without notice in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out repairs and other works to the premises or adjacent premises or to the building or to the utility or other services provided to the Tenant and/or to other tenants of the building and to install, inspect, repair, renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any current or future statutes, regulations, by-law or requirement of any competent authority. The Landlord shall use reasonable endeavours to ensure that all repairs and inspections and work shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.
- 15.5 For clarity the provisions of this clause 15 shall not apply to any Development or to the exercise by the Landlord of any of its rights in each case under clause 35 and instead the provisions of clause 35 only shall apply to the same.

Business Use

- 16.4 The Tenant must at the cost of the Tenant provide for the safety and security of the Tenant's premises.
- 16.5 The Tenant acknowledges that the premises may not be used:

- (a) for the purposes of providing education services to members of the public including but without limitation the provision of language tuition;
- (b) for providing a cafe or coffee bar open to members of the public;
- (c) for the provision of general medical and/or specialist medical services to members of the public;
- (d) for any use associated with the sex industry;
- (e) as an optometrist or for optometry purposes.

Signage

- 19.2** The Tenant acknowledges that while any part of the property at 4 Fred Thomas Drive, Takapuna is occupied by AON New Zealand that no signage will be permitted on the outside of the building at 4 Fred Thomas Drive by any insurance broker other than AON New Zealand.
- 19.3** The Tenant will at the expiration or sooner determination of this lease at the Tenant's cost remove all signs and advertising affixed or installed in accordance with this lease and will make good any damage or disfigurement caused by reason of the installation or removal.
- 19.4** Any right to install signage under this lease does not confer on the Tenant any form of naming right.
- 19.5** The Tenant shall pay all costs (including professional fees) incurred by the Landlord in considering the Tenant's proposed signage and changes to such signage.
- 19.6** The Tenant will be responsible for obtaining and maintaining all consents required by any relevant authority to install and maintain signage on the exterior of the building which is consented to by the Landlord under clause 19.1(a).
- 19.7** The Tenant shall have the right to have its name entered on the electronic directory board in the foyer of the building.
- 19.8** The Landlord will not permit any signage on the outside of the building at 2 Fred Thomas Drive within the area shown edged pink on the plan attached at Annexure D ("Excluded Signage Area") save only for signage of the Tenant on the southern and western faces of the building in the position as shown on the signage plan attached at Part 1 of Annexure C having the dimensions as shown on the plan attached at Part 2 of Annexure C. For clarity the Tenant acknowledges that notwithstanding its signage rights set out in clause 19.1, the Tenant shall not have any rights to install signage in the Excluded Signage Area other than in the position and having the dimensions as shown on the signage plans attached at Annexure C and subject always to the provisions of this clause 19.

Additions and Alterations

- 20.5** If the Landlord consents to the proposed additions or alterations to the interior of the premises then the Tenant as a condition of this consent must:
 - (a) Obtain all necessary consents and approvals for the proposed works;

- (b) Carry out the proposed works in a proper and tradesmanlike manner in accordance with the provisions of the applicable Building Code and employing such contractors and consultants as have first been approved by the Landlord;
 - (c) Provide the Landlord with the code compliance certificate from the appropriate territorial authority that the works have been carried out in compliance with all consents; and
 - (d) Pay any professional fees incurred by the Landlord in perusing the Tenant's plans and specifications and assessing the proposed additions and alterations provided that no fees will be payable in respect of any proposed additions or alterations by way of initial fit-out to the interior of that part of the premises comprising 612m² being the balance of the premises which were not fitted out prior to the commencement date.
- 20.6 Without prejudice to the Tenant's reinstatement and removal obligations under clauses 20.1 and 20.3, pending such removal, the Tenant must pay to the Landlord an occupation fee on a daily basis calculated in the same manner, with the necessary changes, as the monthly rental payable by the Tenant on holding over by the Tenant after the expiration of the term under clause 36.1 of this Lease.
- 20.7 Notwithstanding the previous provisions of this clause 20 the Tenant shall not make any alterations to the exterior of the premises or alter the external appearance of the building or paint the exterior of the premises save only for exterior signage permitted under clause 19.1.

Compliance with Statutes and Regulations

- 21.1 (b) ... or the Tenant is required to comply pursuant to clause 16.2 which obligations shall prevail over this clause 21.1(b) or the obligation relates to works carried out by the Tenant.

Tenant not to void insurance

- 24.3 Throughout the term the Tenant is to take out and maintain the following:
- (a) a policy of public risk insurance applicable to the premises and the business carried on in the premises for an amount not less than \$5,000,000 (being the amount that may be paid out arising out of any one single accident or event) or such higher amount as the Landlord may reasonably require; and
 - (b) an insurance policy in the name of the Tenant for the full insurable value on a reinstatement basis against all insurable risks covering all additions or alterations to the premises made by the Tenant and all of the Tenant's fixtures and fittings.

The above insurance policies are to be taken out and maintained with underwriters or a reputable insurance company and, as and when required by the Landlord, the Tenant is to provide the Landlord with copies of such policies and evidence of payment of the last premium.

Total destruction

- 26.1 ... in the reasonable opinion of the Landlord so as to require demolition or reconstruction then the Landlord must elect to either:

- (a) within three (3) months of the date of damage give the Tenant one month's written notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage; or
- (b) within three (3) months of the date of damage confirm that the lease is still on foot in which case the provisions of clauses 27.1-27.4 shall apply, as if the building had only been partially destroyed or damaged but not so as to render the premises untenable.

Assignment or Subletting

- 33.1 (d) ... or at the election of the Landlord at its sole discretion, a bank guarantee from a registered trading bank in New Zealand approved by the Landlord for a sum equivalent to twelve (12) month's rent and outgoings payable under the lease as at the date of the assignment and for a period expiring not earlier than the date three (3) months following the expiry date of the then term of the lease and otherwise on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease, is delivered to the Landlord.
- 33.1 (f) In the case of a sublease the Landlord has first approved in writing the form of the sub-lease and the extent of the premises to be the subject of the sublease (such approval not to be unreasonably withheld or delayed) but for clarity the Landlord shall not be entitled to approve the annual rent payable under the sublease.
- 33.4 When the Tenant or sub-tenant is a partnership, a retirement of an existing partner or admission of a new partner is taken to be an assignment or, where appropriate a subletting of this lease and will require the prior written consent of the Landlord in accordance with the terms of this clause 33.

Carparks

- 35.5 The Landlord may carry out repairs to any of the car parks and no abatement of rent or other compensation shall be claimed by or be payable to the Tenant except that during such period as the Tenant does not have access to any of its leased carparks (if any) or a replacement car park or car parks then rent will abate at the rate per car park being paid at that time for such period as the Tenant has no use of the relevant car park or a replacement car park.
- 35.6 The Landlord has the right to relocate any of the carparks leased to the Tenant under this Lease (whether Allocated Carparks or Unallocated Carparks) from time to time to other carparks on the property at 2 and 3 Fred Thomas Drive including providing the right to park a specified number of vehicles in a shared carpark area or a multilevel carpark and the Tenant must cease to park in the previously allocated or unallocated car park or car parks and commence parking in the relocated car park or car parks upon receiving notice from the Landlord to do so but subject always to the following:
 - (a) The Landlord may only relocate any of the Allocated Carparks where relocation is required to comply with any requirement of the local authority, or to comply with any statute, regulation or by-law and/or for any other purpose reasonably required by the Landlord; and
 - (b) The location of any relocated Allocated Carparks or any one or more of them shall be in such alternative location as is reasonably proximate to the location

of the premises having regard to the nature of the Allocated Carparks as primarily carparks for visitors of the Tenant rather than its employees.

For clarity the conditions set out in clause 35.6(a) and (b) above shall not apply to the relocation of any Allocated Carparks during any Development Period or to relocation of any Unallocated Carparks whether or not during any Development Period. There will be no rent abatement or other compensation as a result of relocation of any allocated or unallocated leased carparks granted to the Tenant under this lease.

35.7 If the Landlord proceeds to erect a car park or other development on the Landlord's land at 2-4 Fred Thomas Drive, Takapuna including but not limited to construction of the Project as referred to in clause 51 ("Development") then during the course of such development ("Development Period") the following shall apply:

- (a) The erection of the car park or other Development on the Landlord's land at 2- 4 Fred Thomas Drive, Takapuna will not be a breach of the quiet enjoyment of the Tenant under this Lease;
- (b) The Landlord will have the right to give the Tenant one months' notice to vacate all or any of the car parks leased under this lease (whether Allocated Carparks or Unallocated Carparks) for the Development Period and at the expiry of that notice the Tenant must cease to park in those car parks for such period as is specified by the Landlord;
- (c) The Landlord will provide temporary relocated car parks for use by the Tenant during the Development Period which spaces the Tenant acknowledges may be in a shared carpark area or within a multi level carpark on the property at 2 and 3 Fred Thomas Drive save that during the Development Period as it relates to construction of the Project only, the location of such relocated spaces may be within the Temporary Carpark Area. During any Development Period the Tenant acknowledges that the location of relocated carparks may not be as convenient in terms of location and/or proximity to the premises as maybe enjoyed by the Tenant prior to commencement of any Development Period but during any Development Period the Tenant shall continue to have the use of a total of 20 carparks comprising 8 allocated carparks and 12 unallocated carparks.
- (d) From the commencement date until expiry of the Development Period as it relates to construction of the Project only, the location of the Allocated Carparks shall initially be as shown tinted yellow on the plan attached at Annexure B, Part 1 and the location of the Unallocated Carparks shall initially be within the area tinted blue on the plan attached at Annexure B, Part 1, but subject always to the Landlord's right to relocate the same in accordance with this clause 35.7 and where the Tenant acknowledges that such allocation during this period constitutes a temporary variation by the Landlord pursuant to clause 35.7(e) to carparking arrangements from the position as recorded at Item 2 of the First Schedule but notwithstanding such temporary variation the Tenant is not entitled to any more than eight (8) Allocated Carparks and twelve (12) Unallocated Carparks as provided for in this lease.
- (e) Notwithstanding any other provisions of this lease, during the Development Period relating to construction of the Project only, the Tenant acknowledges that the Landlord may (but shall not be obliged) to vary the number Unallocated Carparks provided that at all times the Tenant has the right to use a minimum of 8 Allocated Carparks. If during such period the Landlord increases the number of Allocated Carparks for use by the Tenant and

reduces the number of Unallocated Carparks forming part of the 20 leased spaces the subject of this lease, the Tenant's obligations to pay annual rent in relation to such carparks shall continue to be calculated by reference to the Tenant enjoying 8 Allocated Carparks and 12 Unallocated Carparks even if during the Development Period for construction of the Project the Tenant benefits from more than 8 Allocated Carparks.

- (f) Subject to the Landlord complying with its obligations under this clause 35.7 there will be no rent abatement or other compensation payable by the Landlord to the Tenant as a result of relocation of any of the Allocated Carparks or Unallocated Carparks during any Development Period.
- (g) Following expiry of the Development Period in relation to construction of the Project only, the indicative location of the 8 Allocated Carparks shall be as shown tinted pink and purple on the plans attached at Annexure B Part 2 and the remaining 12 Unallocated Carparks shall be located within Levels 1-4 of the new multi-storey carpark to be constructed on 3 Fred Thomas Drive but in each case subject always to the Landlord's right to relocate the same at any time in accordance with clauses 35.6 and 35.7.
- (h) Without limitation at the expiry of the Development Period the Landlord may exercise its right to relocate some or all of the carparks in terms of clause 35.6.

35.8 The Tenant acknowledges that the Landlord has the right to use, build on, add to, expand, improve, extend, vary, reduce and in any manner whatsoever alter, deal with or develop the Landlord's building and property or any part including common parts. In so doing the Landlord will endeavour to cause as little inconvenience to the Tenant as is reasonably practicable and will notify the Tenant in advance of any such works but in no event will any compensation be payable by the Landlord to the Tenant PROVIDED that the Landlord will not materially diminish the accessibility to or visibility of the premises or the Allocated Carparks.

35.9 The Tenant expressly consents to any resource consent applications and building consent applications for the Landlord's building and property which might be applied for by the Landlord or be made by or on behalf of the Landlord or by any adjoining owner with the consent of the Landlord and will sign all documents required to evidence such consent on demand by the Landlord.

35.10 Exercise by the Landlord of its rights contained in clause 35.8 shall not be a breach of the quiet enjoyment covenants contained in this lease.

35.11 The provisions of clause 15 shall not apply to the exercise by the Landlord of any its rights under this clause 35.

Definitions and Interpretation

- 47.1** (w) "Allocated Carparks" means eight (8) carparks specifically identified for use by the Tenant in the position designated by the Landlord from time to time in accordance with this lease and subject to relocation under clauses 35.6 – 35.7;
- (x) "Unallocated Carparks" means twelve (12) unallocated carparks within the carparking area designated by the Landlord from time to time in accordance with this lease and subject to relocation under clauses 35.6 – 35.7.

- (y) "2 and 3 Fred Thomas Drive" means the area shown tinted orange on the plan attached at Annexure E.
- (z) "Temporary Carpark Area" means 2 - 4 Fred Thomas Drive as shown edged red on the plan attached at Annexure F together with the land comprised in Lot 1 DP 377462 known as the Shoalhaven Apartments, 130 Anzac Street, Takapuna.
- (aa) "Further Works" means all the items listed at part 2 of the Fifth Schedule.

Tenant to Occupy Premises at its Risk

48. The Tenant agrees to occupy and use the premises at the Tenant's risk and releases to the full extent permitted by law the Landlord and the Landlord's employees and agents from all liabilities, claims and demands of any kind which may arise in respect of an accident, damage or injury occurring to any person or property in or about the premises unless it is due to breach of covenant under this lease by the Landlord or due to breach of statutory obligations by the Landlord.

Health and Safety in Employment Act

49. The Tenant acknowledges that it is aware of its obligations and duties under the Health and Safety in Employment Act 1992 and that:
- 49.1 The Tenant has written rules and procedures relating to health and safety which the Tenant shall follow to ensure the safety of its employees and persons attending the premises.
 - 49.2 The Tenant shall identify possible hazards for its employees or other persons in the vicinity of the premises.
 - 49.3 The Tenant shall take all practicable steps to eliminate, isolate or minimise the hazards and ensure that people working in the vicinity of the premises are not harmed by the hazards.
 - 49.4 The Tenant shall maintain a register of accidents and conform with any code of practice and regulations promulgated in respect of the particular work being done.

Fire Safety

50. The Tenant acknowledges that it is aware of its obligations under the Fire Safety and Evacuation of Building Regulations 1992 and that it shall comply with its obligations under those regulations and in particular shall (if necessary) maintain an approved evacuation scheme.

Tenant Option for Further Carparking Spaces

- 51.1 For the purpose of this clause 51 the following definitions shall apply:
- (a) "Project" means construction of the buildings, carpark and other improvements at the property to create the building to be known as 3 Fred Thomas Drive;

- (b) "Additional Carpark" means 28 additional carpark spaces all of which shall be unallocated carparks to be leased by the Tenant on the terms set out in this clause 51;
- (c) "Effective Variation Date" means the later of the commencement date, the date on which a code compliance certificate is issued by the relevant authority for the Project and the date two (2) months after service of the Tenant's Carpark Notice;
- (d) "Tenant's Carpark Notice" means written notice served by the Tenant on the Landlord calling for a lease of the Additional Carparks on not less than two (2) months prior notice.

51.2 Subject always to the Landlord having first undertaken the Project then in addition to the twenty leased carparks the subject of the lease, the Tenant shall be entitled to take a lease of the Additional Carparks following service of the Tenant's Carpark Notice on the following terms:

- (a) The Tenant shall be entitled to serve the Tenant's Carpark Notice at any time prior to and including 30 May 2021 calling for a lease of the Additional Carparks. It is acknowledged that in doing so, the Tenant shall only be entitled to request on one occasion a lease of the Additional Carparks (numbering 28 in total) and the Landlord shall not be required to grant a lease other than for all the Additional Carparks, on the terms set out in this clause 51.
- (b) The Additional Carparks shall be leased on the same terms as this lease (subject to the variations referred to in this clause 51) and including payment of annual rent for the Additional Carparks at the same rate payable by the Tenant for the existing carparks the subject of this lease as at the Effective Variation Date as applicable to the Unallocated Carparks. Review of the annual rent for the Additional Carparks will be in accordance with the provisions of this lease on the same dates and applying the same rent review mechanism but revised to incorporate the Additional Carparks save that reference to \$366,480 as it appears by way of ratchet in clauses 2.3 and 32.1(g) of this lease shall be deleted and replaced with the figure which is the aggregate of \$366,480 plus the annual rent for the Additional Carparks as at the Effective Variation Date. Following service of the Tenant's Carpark Notice the parties shall enter into a deed of variation of this lease by way of grant of new lease of the Additional Carparks to commence on the Effective Variation Date and to be co-terminus with this lease including any renewal of the lease in accordance with its terms. Such deed of variation shall be in a form required by the Landlord acting reasonably to give effect to the lease of the Additional Carparks. The Landlord shall instruct its solicitor to prepare the deed of variation and each party shall pay its own costs of preparing, negotiating and concluding the deed of variation.
- (c) For clarity, if the Tenant exercises its right under this clause 51 the Landlord shall not be required to make the Additional Carparks available to the Tenant until the Effective Variation Date.
- (d) The Tenant shall only be entitled to make one request for the Additional Carparks pursuant to this clause 51 and following service of the Tenant's Carpark Notice the Landlord shall have no liability to make any further carparks available to the Tenant.

- (e) Without limitation to the previous provisions of this clause the Tenant acknowledges that the deed of variation to incorporate the grant of a further lease of the Additional Carparks on the same terms as this lease (as varied as referred to above) may allow the Landlord to relocate the Additional Carparks in the same manner as the Landlord is entitled to relocate the Allocated Carparks and the Unallocated Carparks as provided for in accordance with clauses 35.6 – 35.7 of this lease.

ANNEXURE A

Premises Plan

TOTAL PERIMETER AREA = 1323.77m²
LESS DUCTS
= 1312.61m²

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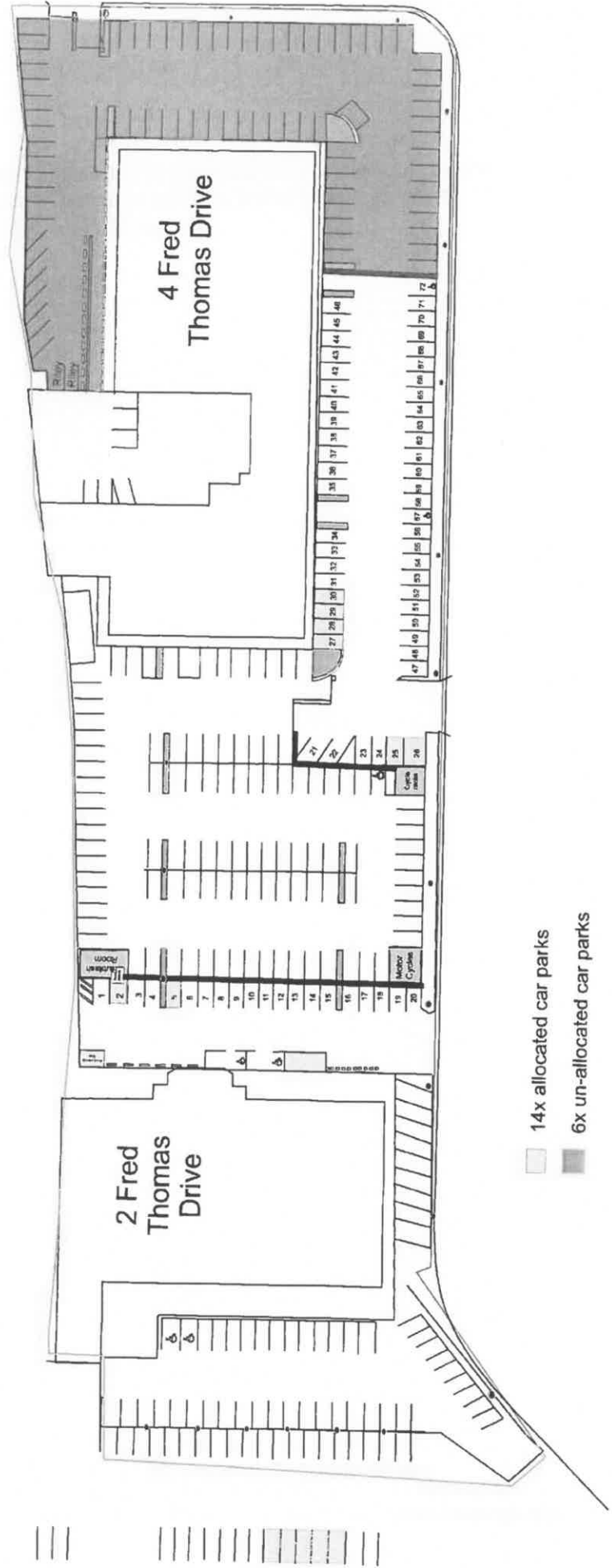
ANNEXURE B

Part 1

**Plan showing initial location of Allocated Carparks and Unallocated Carparks
(but subject always to clauses 35.6 – 35.7)**

2-4 Fred Thomas Drive

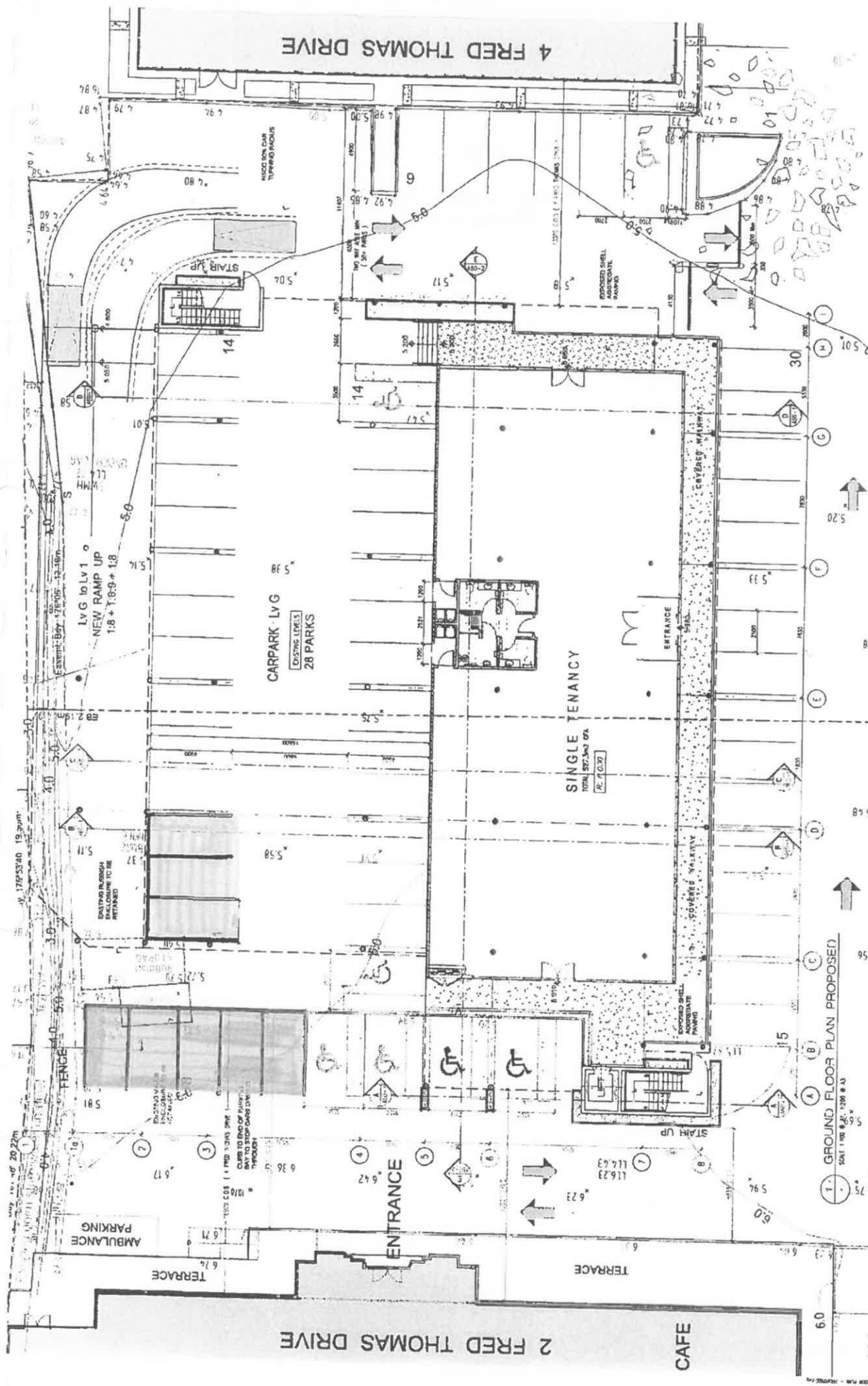
Updated: 09.09.2015



ANNEXURE B

Part 2

**Plans showing initial location of Allocated Carparks following expiry of the
Development Period relating to construction of the Project only (but subject
always to clauses 35.6 – 35.7)**



W A R D L E A R C H I T E C T S
 PO BOX 80189 • GREEN BAY • AUCKLAND
 P: 04 817 9811 M: 020 333 1249
 E: apdesign@wardlearchitects.co.nz E: wardlearchitects@gmail.com

PROPOSED PARKING BUILDING
 3 Fred Thomas Drive Takapuna

DATE: 14/07/15
 SCALE: 1:100 @ A1: 1200 x 810

GROUND FLOOR PLAN PROPOSED

REVISIONS

NO.	DATE	DESCRIPTION
1	14/07/15	ISSUED FOR INFORMATION
2	14/07/15	FOR INFORMATION TO SHAW 2015
3	14/07/15	FOR INFORMATION TO SHAW 2015
4	14/07/15	FOR INFORMATION TO SHAW 2015

FOR INFORMATION

NO.	DATE	DESCRIPTION
1	14/07/15	FOR INFORMATION
2	14/07/15	FOR INFORMATION
3	14/07/15	FOR INFORMATION
4	14/07/15	FOR INFORMATION

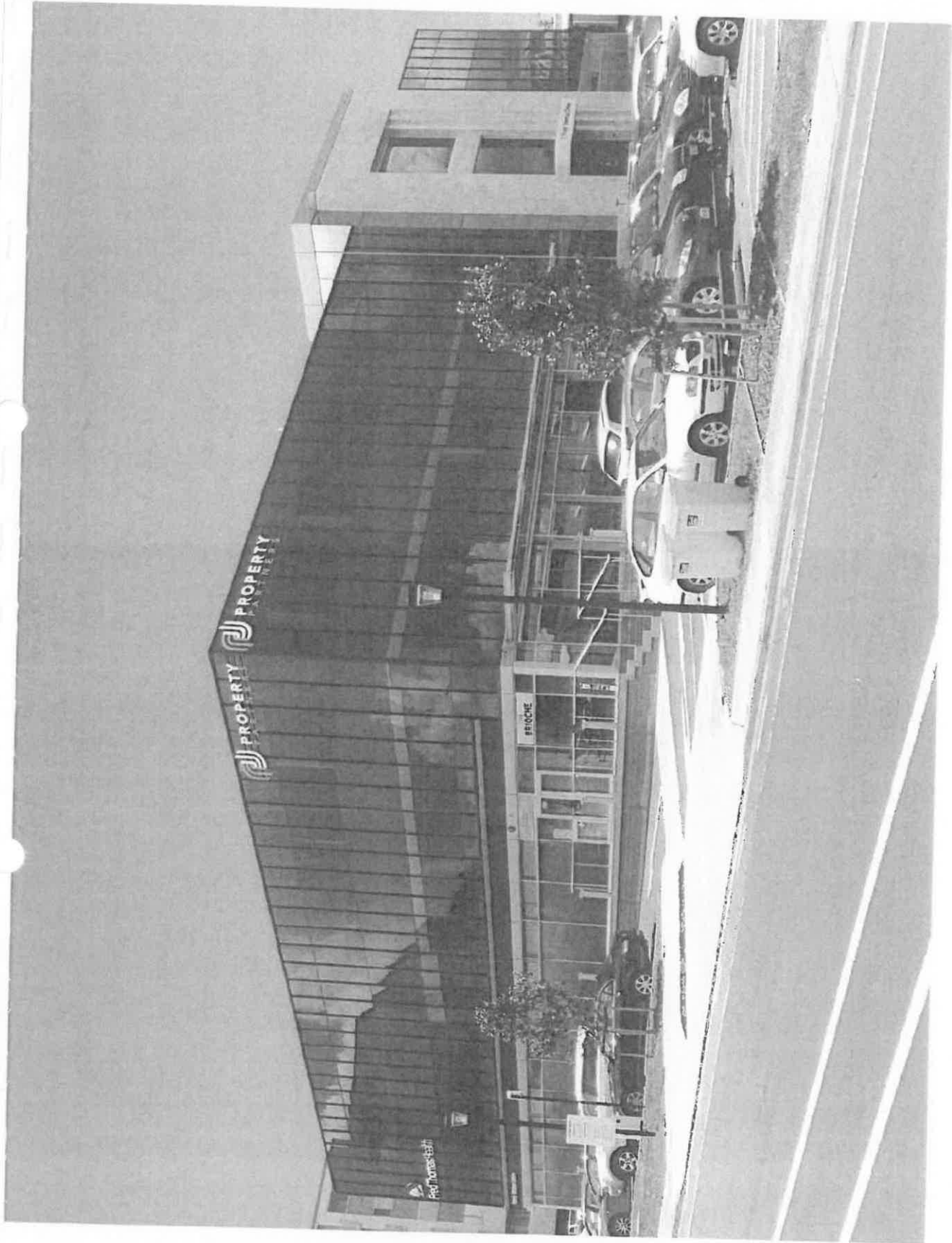
LEVEL G - FLOOR PLAN - PROPOSED

Up to 3x allocated covered carports + 12x unallocated carports.

ANNEXURE C

Part 1

Signage Location Plan (clause 19.1)



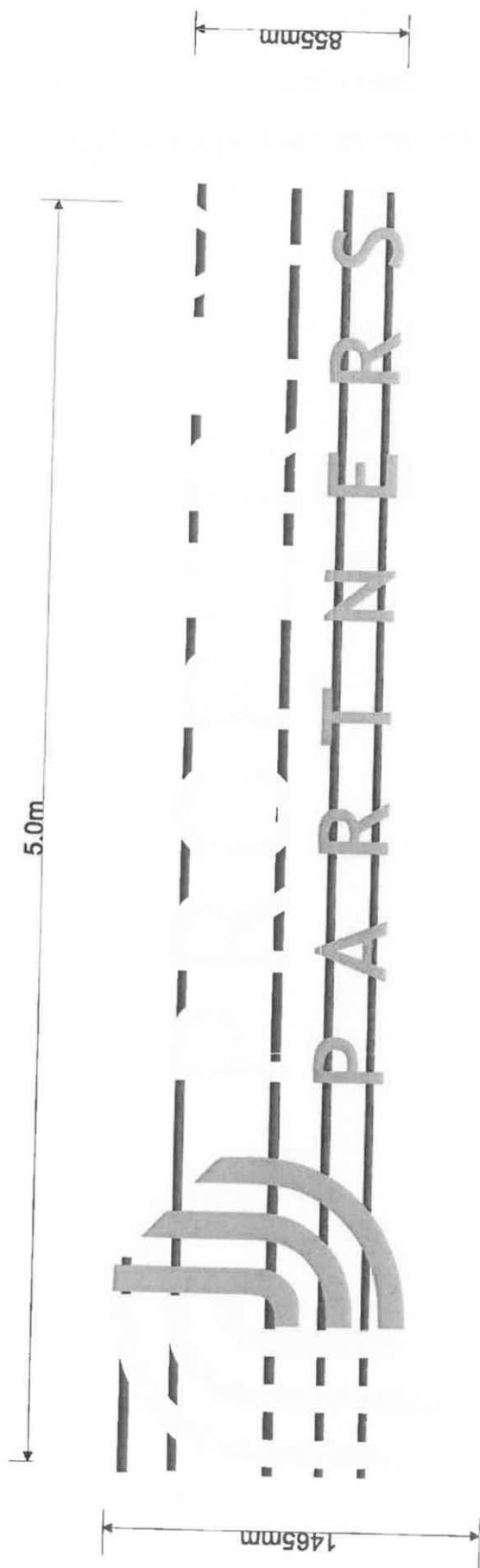
CLIENT SMALES FARM MANAGEMENT	PROJECT LOCATION 2 FRED THOMAS DRIVE	DESCRIPTION BRANDING	DATE	01 - V01 01/10/2024 - DM	GLOBAL SIGNAGE CONCEPTS
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ANNEXURE C

Part 2

Signage Dimensions Plan (clauses 19.1 and 19.8)



CLIENT SMALES FARM MANAGEMENT	PROJECT LOCATION 2 FRED THOMAS DRIVE	DESCRIPTION WEST ELEVATION	DATE	01 - V01 DESIGNER - DM	GLOBAL SIGNAGE CONCEPTS
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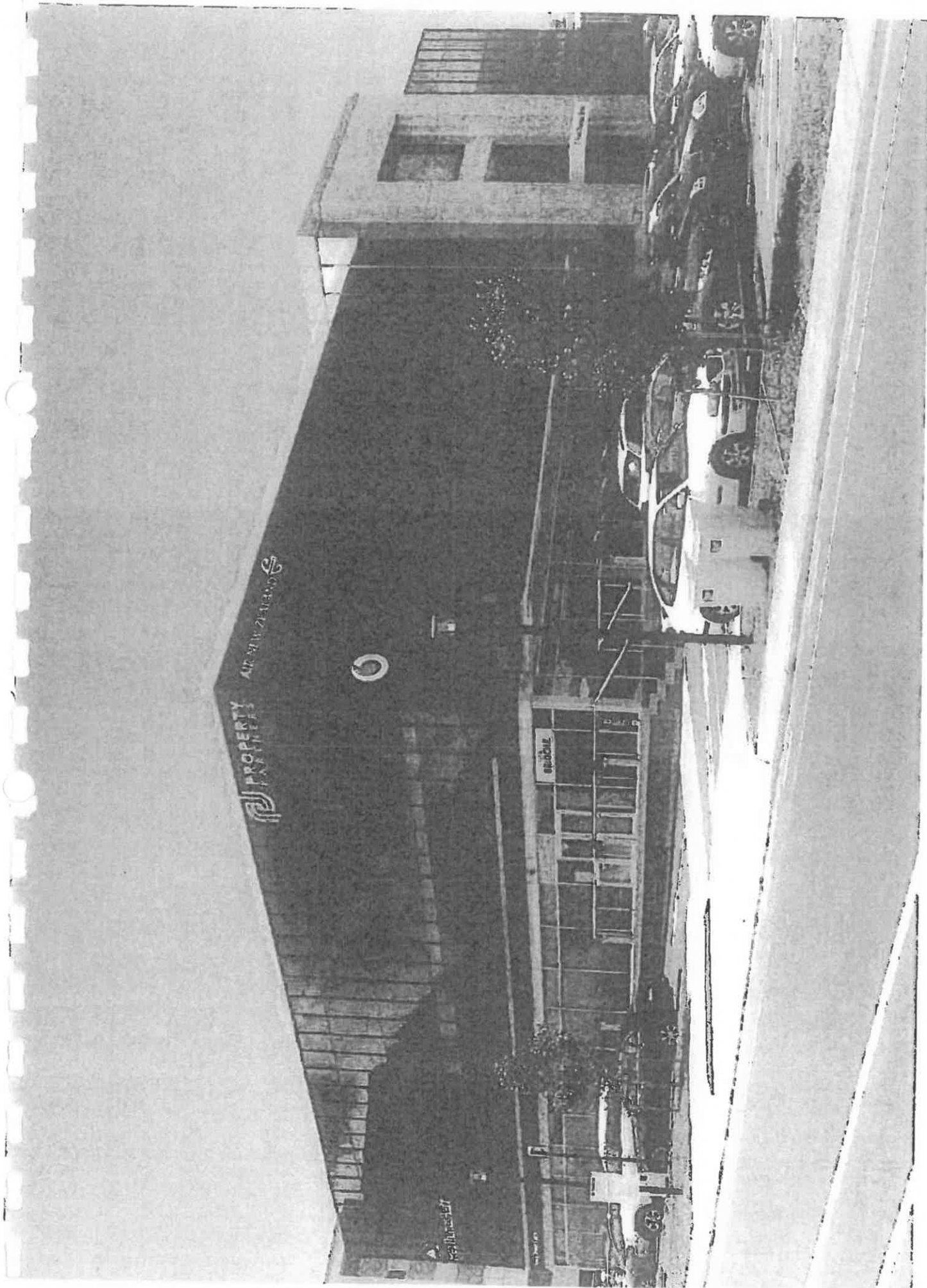


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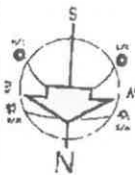
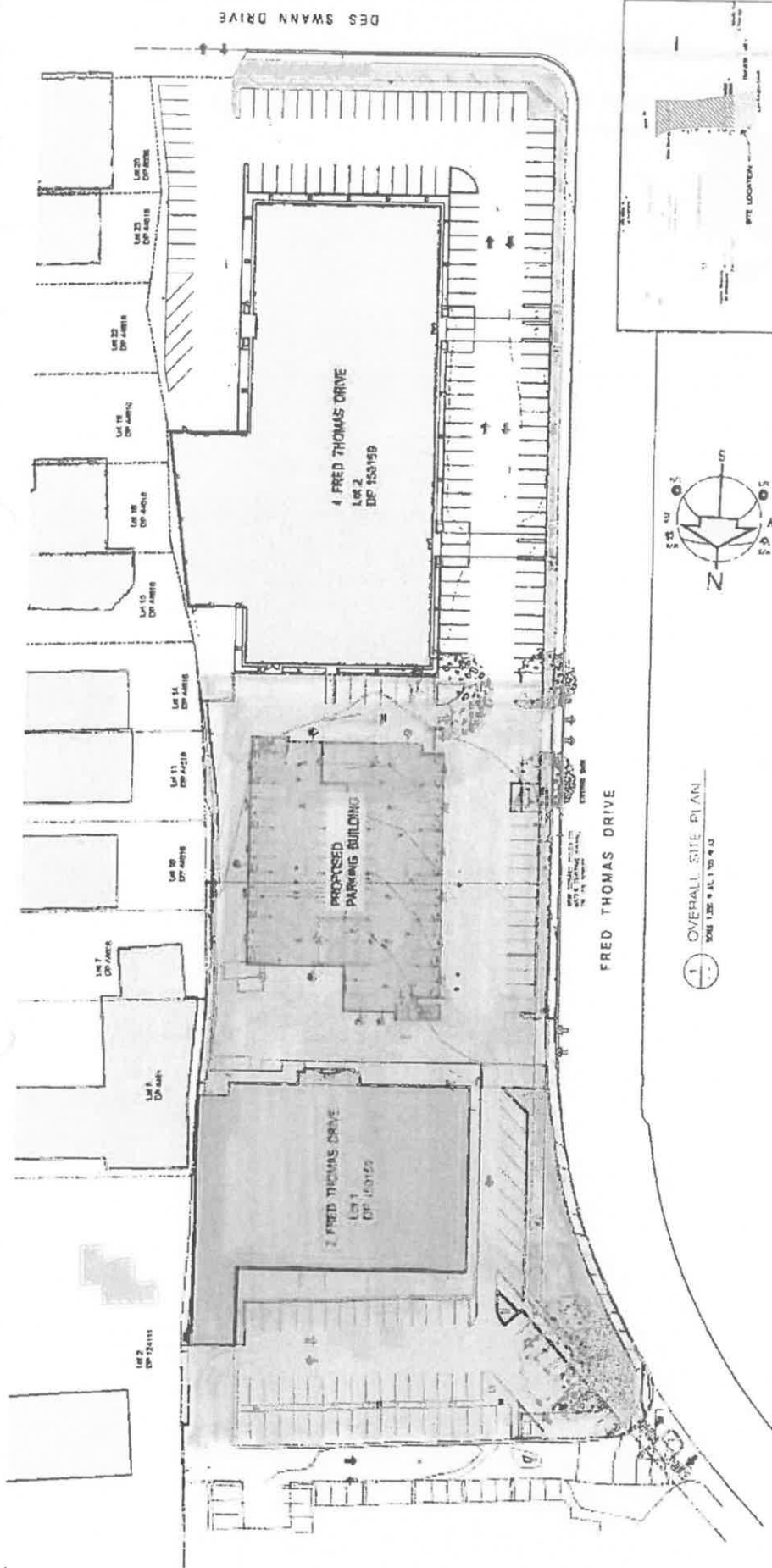
ANNEXURE D

Plan showing Excluded Signage Area (clause 19.8)



ANNEXURE E

2 and 3 Fred Thomas Drive (clause 47.1(y))



1 OVERALL SITE PLAN
SCALE 1:250 @ A1 1700 x 915

LEGAL SITE DESCRIPTION & ZONING REQUIREMENTS

ADDRESS 2 FRED THOMAS DRIVE,
TAKAPUNA, AUCKLAND

LOT LOT 1

D P DP 150159

PAR ID : 4807162

AREA : 3,915 m²

LEGAL SITE DESCRIPTION & ZONING REQUIREMENTS

ADDRESS 4 FRED THOMAS DRIVE,
TAKAPUNA, AUCKLAND

LOT LOT 2

D P - DP 150159

PAR ID : 4779502

AREA 9,291 m²

WARDLE

ARCHITECTS
PO BOX 80169 @ GREEN BAY @ AUCKLAND
P : 64 9 817 8911 M : 020 303 1249
@ AP@wardlearchitects.co.nz @ WardleArchitects@gmail.com

PROPOSED PARKING BUILDING
3 FRED THOMAS DRIVE
TAKAPUNA



SITE & LOCATION PLAN

FOR INFORMATION
DRAWING SCALE 1:250 @ A1
PROJECT NO 14045
DATE 01-01-2011
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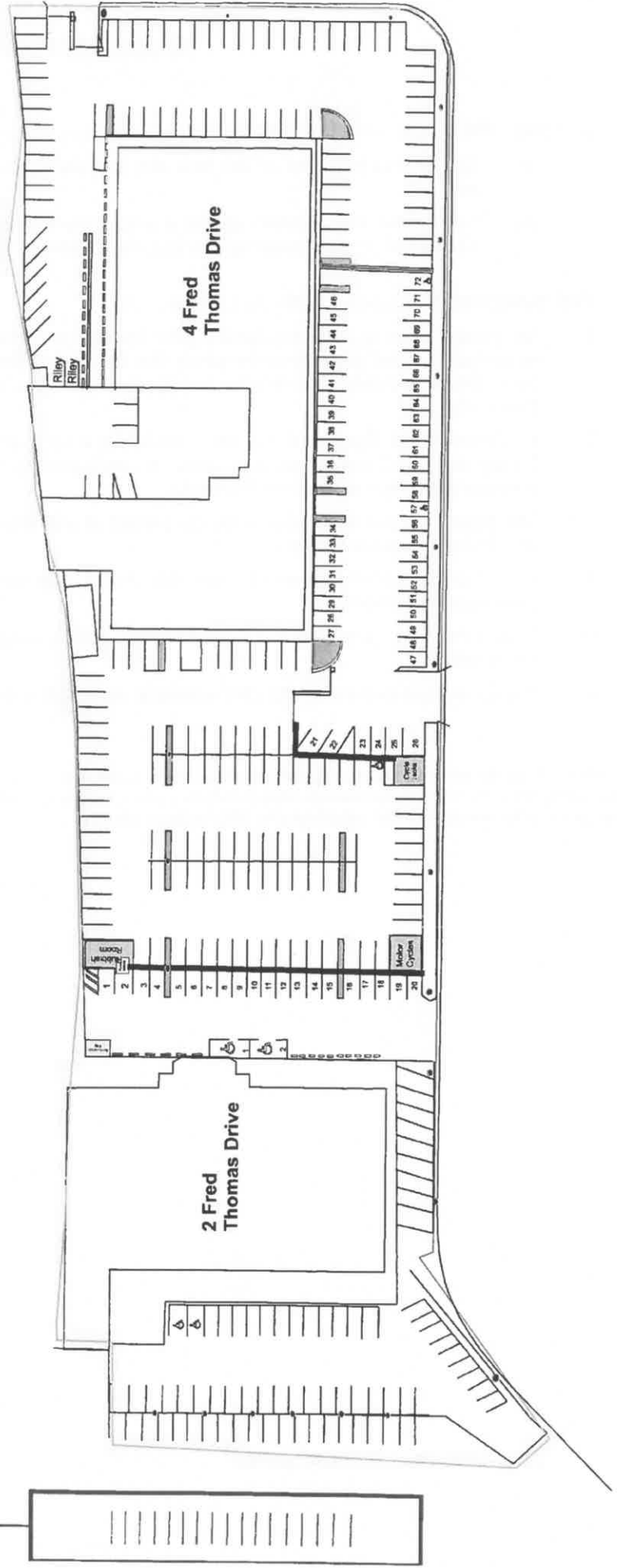
ANNEXURE F

2-4 Fred Thomas Drive being part of the Temporary Carparking Area
(clause 47.1(z))

2-4 Fred Thomas Drive

Updated: 10.02.2015

Shoalhaven Apartments
(130 Anzac Street)



FOURTH SCHEDULE

GUARANTEE

IN CONSIDERATION of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- (a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.
- (b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

THE GUARANTOR covenants with the Landlord that:

- 1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- 2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.
- 3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
- 4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
- 5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.
- 6. The Guarantee and indemnity shall extend to any holding over by the Tenant.

Notwithstanding the above provisions the liability of the initial Guarantor, Ty Adam Jones and Stephen Max Mikkelsen shall not at any time during the term of this Lease and any renewal of this Lease exceed a sum which is the aggregate at the date of default of twenty four (24) months annual rent and outgoings plus GST on that amount.

FIFTH SCHEDULE

LANDLORD'S FIXTURES AND FITTINGS

(Subclause 47.1(f))

Part 1

All of the following provided new at the premises to an open plan floor layout:

Quality Floor coverings
Quality 0.9 NRC mineral fibre ceiling tiles
Energy Saving LED tubed lighting
Air conditioning
Cardax security and CCTV system
Fire and emergency lighting
Bathroom furniture

Part 2

Further Works

All of the following installed at the premises:

Partitioning
Decoration
Feature flooring
Feature lighting
Kitchen and general cabinetry
Data cabling and electrical
Security works

SIXTH SCHEDULE

PREMISES CONDITION REPORT

(Subclause 8.1)

No report prepared but premises as new and in first class order and condition as at the Commencement Date but disregarding:

(1) The Further Works and the Tenant's fitting out of the premises undertaken by the Tenant in accordance with the agreement to lease dated 30 April 2015; and

(2) Any damage caused by implementation of the Further Works and the Tenant's fit-out.

Dated

Between

FRED THOMAS DRIVE INVESTMENTS LIMITED

Landlord

and

PROPERTY PARTNERS LIMITED

Tenant

and

TY ADAM JONES and STEPHEN MAX MIKKELSEN

Guarantor

DEED OF LEASE

General address of the premises:

2 Fred Thomas Drive, Takapuna.

Keegan Alexander