

October 1<sup>st</sup> 2005

**Parklane Properties Ltd  
(Landlord)**

**And**

**J STREET LIMITED  
(Tenant)**

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**LEASE OF UNIT 9F  
JOHNSON STREET APARTMENTS**

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LEASE dated October 1<sup>st</sup> 2005

**PARTIES**

**1. Parklane Properties Ltd** ("Landlord")

**2. J STREET LIMITED** at Wellington ("Tenant")

The Landlord hereby leases to the Tenant and the Tenant takes on the lease of the Premises from the Landlord together with the non-exclusive right to use the Common Property, in common with the Landlord, other owners, other tenants (if any) and all others having a right of entry to the Complex, and all others to whom the Landlord or other owners have granted or may grant similar rights, for the Term at the Rent and in accordance with the provisions of this Lease.

**SIGNED by Parklane Properties Ltd**

as Landlord in the presence of:

Witness: *Bruce Woodward*  
**BRUCE WOODWARD**  
Address: ACCOUNTANT  
**TAURANGA**  
Occupation: .....

X *Wright*

**SIGNED by  
J STREET LIMITED**

As Tenant in the presence of:

Witness *Bruce Woodward*  
Address BRUCE WOODWARD  
**ACCOUNTANT**  
Occupation TAURANGA

)  
X *Wright*

## SCHEDULE 1

Premises:	Premises – All accommodation unit 8F on Unit Plan No. 90482. Certificate of Title D2/939 (Wellington Registry) situated at 35 Johnson Street, Wellington  Estate – The land comprised in the Unit Plan
Term:	4 years from the Commencement Date
Commencement Date:	1 <sup>st</sup> October 2005
Rent:	Subject to clauses 2.1 c. and 15, \$13,000 per annum plus GST Due monthly
Permitted Use:	Serviced Apartment Accommodation and/or Rental Accommodation and all associated and ancillary usages
The Further Terms:	Four further terms of 4 years each
Rent Review Dates:	Every 2 years as described in clauses 2 and 14. Reviewed to market at the end of each term .
Schedules forming part of this Lease:	
Schedule 1	Reference Schedule
Schedule 2	Provisions of Lease
Schedule 3	List of Landlord's Contents
Schedule 4	List of Landlord's Fixed Equipment
Schedule 5	Form of Deed of Covenant on Assignment of Lease
Schedule 6	Form of Deed of Covenant on Disposal of Freehold

## SCHEDULE 2

### 1. DEFINITIONS

1.1 In this Lease, unless the context requires otherwise:

"Act"	Means the Unit Titles Act 1972.
"Associate"	Has the same meaning as associate as defined in s OD(7) of the Income Tax Act 1994;
"Body Corporate"	Means the body corporate formed on registration of the Unit Plan;
"Business Operator"	Means a person or entity that is responsible for the operation and management of the Tenant's Business;
"Commencement Date"	Means that date specified in Schedule 1;
"Common Furnishings and Fittings"	Means any furniture, fittings, floor coverings, items, fences, audio security system, external lighting, security doors and mechanical exhaust system, landscaping and plant and equipment from time to time, being, or situated on, the Common Property including without limitation, all plate glass, doors, windows, locks, wires, gutters, sewerage and other pipes, conduits, ducts, lighting, suspended ceiling, partitions and other facilities and installations of the Complex now or later installed in the Complex and further includes all and any heating, air-conditioning, mechanical exhaust and/or ventilation plant, fire detection and protection equipment, lifts, automatic opening doors and other plant and equipment appurtenances or services, of a mechanical nature, all water, gas, electricity, telephone, sewerage, garbage and trade waste disposal and other utilities now or hereafter installed in the Premises or other parts of the Complex as the context requires PROVIDED THAT any item that is acquired from time to time by the Tenant will not form part of the Common Furnishings and Fittings;
"Common Property"	Means all the areas comprised in the Unit Plan that are not comprised in any principal unit or accessory unit on that Unit Plan;
"Complex"	Means J Street, 35 Johnson Street and includes the Premises, all other units on the Unit Plan, the Common Property and such other land which may from time to time be incorporated into or used for the purposes of the Complex, and includes all buildings and structures erected or to be erected thereon and such of the Common Furnishings and Fittings located in the Complex PROVIDED THAT premises and/or other areas

that are not being leased by the Tenant, or in respect of which the Tenant has no rights of use or access, will be excluded from the Complex;

"Contents"	Means the furniture, fittings, items and equipment and all cutlery and crockery from time to time situated in the Premises including without limiting the generality of the foregoing those items listed in Schedule 3;
"Essential Services"	Has the same meaning as is ascribed to that term in clause 11.6;
"Fixed Equipment"	Means any fixed equipment at the Premises and without limiting the generality of the foregoing includes all air-conditioning and heating systems, hot water service, stove/oven (and built-in microwave ovens) and dishwashers including, but not limited to, those items listed in Schedule 4;
"Further Terms"	Means the Further Terms specified in Schedule 1;
"Guests"	Means persons who rent or occupy the Premises as paying guests of the Tenant;
"Landlord"	Means the Landlord named as a party to this Lease, and the executors administrators successors transferees and assigns of the Landlord and where not repugnant to the context, the employees, agents, licensees, contractors, invitees or any person under the control or direction of the Landlord;
"Lease"	Means this Lease together with any schedule attached to this Lease or any amendments made from time to time;
"Long Term Maintenance Fund"	Means any fund established by the Body Corporate for the purpose of providing for prospective capital works in respect of the Common Property;
"Market Rent"	Means the rent that is obtainable at the time of determination in a free and open market, between a willing landlord and a willing tenant in an arm's length transaction, where: <ol style="list-style-type: none"><li>a. the parties have each acted knowledgeably, prudently and without compulsion; and</li><li>b. The premises were vacant and to be let on similar terms as are contained in this Lease; and</li></ol> All other relevant factors, matters or variables used in proper land valuation practice have been taken into account;

"Other Leases"	Means other leases in respect of each of the premises that comprise the Complex;
"Permitted Use"	Means the purpose specified in Schedule 1;
"Premises"	Means the premises specified in Schedule 1;
"Rent Notice"	Has the same meaning as is ascribed to that term in clause 14.1;
"Rent Review Date"	Means the dates specified in Schedule 1;
"Tenant"	Means the Tenant named as a party to this Lease and the executors, administrators, successors, permitted assigns and sublessees of the Tenant and where not repugnant to the context, the employees, agents, licensees, contractors, invitees and any other person under the control or direction of the Tenant;
"Tenant's Business"	Means the serviced apartment business conducted by the Tenant or an Associate of the Tenant from the Complex;
"Tenant's Fixtures and Fittings"	Means any property brought onto the Premises or the Complex by or on behalf of the Tenant during this Lease and may include, where the context permits, any item of the Common Furnishings and Fittings and the Contents: <ul style="list-style-type: none"> <li>a. Not owned by the Landlord and/or the Body Corporate; and</li> <li>b. Acquired and/or replaced by the Tenant from time to time.</li> </ul>
"Term"	Means the term of the Lease as specified in Schedule 1 and includes, where the context permits, any renewal of that term and any permitted holding over;
"Unit Plan"	Means Unit Plan No. 90482

1.2 In this lease, unless the context otherwise requires:

- a. "Person" and words importing persons includes bodies corporate;
- b. Where a party comprises two or more persons an agreement or obligation to be performed or observed by that party and any reference to that party binds those persons jointly and each of them severally, and a reference to that party will be deemed to include a reference to any one or more of those persons;
- c. Words denoting the singular shall include the plural and vice versa;

- d. Headings are included for convenience and do not affect the interpretation of this Lease;
- e. This Lease will be subject to the laws and the jurisdiction of New Zealand; and
- f. Reference to any statute, regulation, ordinance or by-law shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

## 2. PAYMENTS OF THE RENT AND OUTGOINGS

### The Rent

#### 2.1

- a. The Tenant will duly and punctually pay the Rent to the Landlord as it may direct in writing from time to time on the days and in the manner set out below.
- b. The Tenant will pay Rent to the Landlord by calendar monthly payments, 7 days in arrears from the last day of the month being paid.
- c. Rent shall be reviewed by negotiation between the parties and shall take effect from the Rent Review Date. The Landlord shall notify the Tenant not earlier than 2 months prior to the Rent Review date in writing specifying the annual rent considered by the Landlord to be the current market rent as at that review date. The Tenant has 28 days after receipt of the notice to dispute the proposed rent. If 14 days after the Tenant has disputed the rent the parties cannot agree to the new rent then the new rent shall be determined in accordance with Clause 2.1e PROVIDED HOWEVER that any rental agreed upon shall in no case be less than the rental payable under this Lease during the first 2 years of the current term.
- d. Pending the determination of the new rent, the Tenant shall pay the rent at the rate current on the last day of the immediately preceding term. Upon determination of the new rent an appropriate adjustment shall be made.
- e. Immediately following receipt by the Landlord of the Tenants notice the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 14 days then the new rent will be determined by a Valuer nominated by the NZ Institute of Valuers and such determination will be final and binding upon the parties and the cost of such determination will be borne equally by the Landlord and the Tenant .

### **The Tenant's Outgoings**

- 2.2 The Tenant will pay and/or reimburse to the Landlord immediately upon demand by the Landlord at any time:
- a. All gas, electricity, water, Sky television oil and telephone costs, assessed in respect of the Premises and all charges imposed by any public utility or authority for the supply of any service to the Premises;
  - b. The insurance premium referred to in clause 3.1;
  - c. All costs and expenses associated with and incurred in respect of maintenance and repairs effected to the Premises, including all light bulbs and fixtures, and the repairs to or replacement of (where applicable) the Contents (which are owned by the Landlord) in accordance with clause 10.1; and
  - d. All charges connected with the Tenant's operation or business carried on upon the Premises including all licence and inspection fees.

### **The Landlord's Outgoings**

- 2.3 The Landlord will pay during the Term:
- a. All insurance premiums except those specified in clauses 3.1 and 3.2;
  - b. All Body Corporate levies including any lift maintenance agreement,
  - c. All rates levied by the local authority.

PROVIDED THAT the Tenant may elect to pay to the Body Corporate when due, any of the Landlord's outgoings as referred to in this clause 2.3 and deduct those payments from any rent due and payable by the tenant to Landlord.

## **3. INSURANCE**

### **The Tenant's Insurance Obligations**

- 3.1 The Tenant will insure and keep insured in the name of the Landlord, the Tenant and the Body Corporate (only so far as the same may be practicable and/or necessary) public risk insurance covering liability for loss, injury or damage to any person or property whatsoever in or about or to or from or in relation to the Premises or the common areas of the Complex or state of repair thereof or the business carried out therein or therefrom for an amount of not less than \$5.0 million; The tenant will also insure the unit contents ( loose chattels ) up to the level of indemnity provided by the insurer

### **Body Corporate Insurance Obligations**

- 3.2 Notwithstanding clauses 3.1 and 3.4 all insurances referred to in those clauses that are the responsibility of the Body Corporate will be affected by the Body Corporate and will not be the responsibility of either the Tenant or the Landlord. The Tenant and the Landlord will use their best endeavours to ensure that the Body Corporate effects such insurances.

### **The Landlord's Insurance Obligation**

- 3.3 In the event that a prudent Landlord would reasonably effect any insurances in addition to those insurances detailed in the preceding subclauses, then the Landlord will, at the Landlord's own expense, effect and maintain all such insurances.

### **Reinstatement**

- 3.4 Where a policy of insurance required by this clause 3 relates to loss, damage and/or destruction of any property, then the proceeds of that insurance policy will be used where reasonably possible to reinstate such loss, damage and/or destruction.

### **Further Covenants**

- 3.5 The Tenant and/or the Landlord will not do or commit or permit or suffer to be done or committed any act or thing other than such acts that are contemplated as normal usage, which may prejudice the continuing cover or which may render any increase or extra premiums payable for the insurance of the Complex and/or the Premises or any part thereof or which may make void or voidable any policy of such insurance.

## **4. THE TENANT'S COVENANTS**

### **Use of the Premises**

- 4.1 The Tenant will not at any time use or permit to be used the Premises or any part thereof for any purpose other than for the Permitted Use PROVIDED THAT the Tenant may with the consent of the Landlord, whose consent will not be unreasonably or arbitrarily withheld, alter the Permitted Use.

### **Nuisance**

- 4.2 The Tenant will not at any time use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the Premises or the Complex or any part thereof any illegal purpose or activity or any noxious noisome or offensive trade business occupation or calling.
- 4.3 The Tenant hereby further covenants with the Landlord that the Tenant will at the cost and expense of the Tenant in all respects from time to time and at all times:

### **Management**

- a. Care for and maintain the Premises and in accordance therewith the Tenant will:

- i. Allowing for fair wear and tear, and/or damage by fire, earthquake, earth subsidence, flood, storm or inevitable accident cause the Premises to be kept clean and free from dirt and rubbish (including external surfaces or windows walls and doors); and
  - ii. Subject to clause 5.2 and clause 10.1, paint the interior of the Premises and maintain and keep in good repair carpets as reasonably required during the Term.
- b. Supervise so far as is reasonably practicable the standard and behaviour of occupants of the Premises;
  - c. Not without the prior written consent of the Landlord, whose consent will not be arbitrarily or unreasonably withheld and, where required, the prior written consent of the Body Corporate, make any structural alterations to the Premises;
  - d. Comply at the Tenant's own expense with all statutory requirements affecting the Premises PROVIDED THAT the Tenant will not be required to perform or carry out structural work unless such structural work is required by reason of the neglect or default of the Tenant, the Tenant's servants, agents or invitees;
  - e. Comply with all laws relating to the Complex and the conduct of the Tenant's Business in the Complex; and
  - f. Properly and efficiently conduct the Tenant's business in accordance with the Permitted Use.

## 5. THE LANDLORD'S COVENANTS

### The Landlord's General Covenants

#### 5.1 The Landlord will:

- a. Allow the Tenant quiet enjoyment and possession and use of the Premises, the Contents (which are owned by the Landlord) and the Common Property including the right to assign in accordance with clause 7;
- b. Maintain the structural soundness of the Premises;
- c. Not interfere with the Tenant's business conducted at the Complex unless the Tenant is in breach of the provisions of this Lease;
- d. Obtain at the Landlord's cost upon execution of this Lease and prior to commencement of any further Leases (or upon the grant of any subsequent mortgage) the consent of any mortgagee of the Premises to this Lease;
- e. Assist the Tenant in the event that the Tenant wishes to mortgage any or all of the Tenant's rights and/or interests in the Lease to any other party. Such assistance will include but is not limited to giving the Landlord's consent (which will not be unreasonably withheld), using the Landlord's best endeavours to prepare and execute all reasonable documentation at the

Tenants own cost and using the Landlord's best endeavours obtaining the consent of any Mortgagee of the Premises (if any);

- f. Vote to approve and pay any special and/or capital body corporate levies from time to time to maintain the standard of the Premises and/or the Complex, including (if required) repairing and repainting (having regard to the nature of the relevant surfaces) the exterior of the Premises and/or any building in the Complex as and when required, but in any event at the expiration of each Term;

#### **Landlord's Repair, Maintenance and Replacement Obligations at the End of Each Term**

5.2 To ensure the maintenance of the Premises and the Complex to a high standard and to overcome any deterioration during the Term due to wear and tear, the Landlord acknowledges that repairs and/or other works of a capital nature may reasonably be required at the end of each term. In accordance therewith the Landlord will at the end of each Term if any of the options are exercised:

- a. Replace the carpet (if it needs replacing and if it is not replaced, replace it during the next term when it needs replacing) with a carpet selected by the Tenant in the Tenant's reasonable discretion; and with the Landlords approval, and
- b. If reasonably required repaint, clean, renovate and otherwise update and renew the Premises.

5.3 In the event that the Landlord fails to comply with the provisions of this clause 5.2 within 14 days after notice has been given by the Tenant to effect such works, the Tenant may at the Tenant's option elect to carry out such works at the Landlord's costs. Such expenses may be set off by the Tenant against Rent payable by the Tenant to the Landlord.

#### **6. MUTUAL COVENANTS**

6.1 The Landlord and the Tenant (and where applicable, the Body Corporate) further covenant and agree as follows that:

##### **Signage**

- a. The Tenant, at the Tenants own expense, may without further consent being required from the Landlord but subject always to the requirements of any relevant regulatory authority and the Body Corporate, reasonably affix, paint or in any way exhibit such advertisement or signage of any kind upon the inside or outside of the Complex and/or the Premises or any part or parts thereof that the Tenant or any Associate of the Tenant reasonably requires for the use of the Premises and the Complex in accordance with the Permitted Use of the Premises.

##### **Holding Over**

- b. In the event of the Tenant holding over after the expiration of the Term granted by this Lease, the Tenant will become a monthly tenant only of the Landlord at an advance monthly Rent equivalent to the monthly proportion of the then total annual Rent payable and any other monies payable by the Tenant herein at the expiration of the Term and otherwise on the same terms and conditions mutatis mutandis as those herein contained so far as applicable.

#### **Interest**

- c. If the either party fails to pay to the other party any monies which are payable or repayable by the first party to the other party then the first party will pay to the other party upon 14 days notice in writing, interest on unpaid monies at the rate of interest per annum equivalent to that charged at the time of default by the Landlord's bank on commercial overdraft accommodation on debts of size equivalent to what is payable until such monies are paid.

#### **Legal Costs and Expenses**

- 6.2 Each party will bear its own legal costs and expenses associated with entering into this Lease and any lease as a result of a renewal thereof.

#### **Landlord's Inspection**

- 6.3 The Landlord may on giving the Tenant 48 hours notice, and subject to the Tenant's reasonable directions, enter the Premises for the purpose of inspecting the Premises and/or exercising any of the Landlord's rights under this Lease, provided that if the Premises are let out to guests under a serviced apartment operation, and it is inconvenient for the Tenant to allow the Landlord access to the Premises, the rights of the Landlord will not be exercisable until such time as the Premises are vacant.

#### **Consent by the Landlord**

- 6.4 The Landlord must not unreasonably withhold the Landlord's consent to any act by the Tenant which needs consent unless any other clause provides otherwise, but:
  - a. The Landlord may impose reasonable conditions before consenting; and
  - b. The Tenant must reimburse the Landlord's reasonable expenses resulting from an application for the Landlord's consent.

#### **Non-Waiver**

- 6.5 No waiver by the Landlord of one breach of any covenant obligation or provision in this Lease contained or implied will operate as a waiver of another breach of the same unless that breach has been rectified.

#### **Registration**

- 6.6 In the event that either party to this Lease desires to procure the registration of this Lease, then the other party will use their reasonable endeavours to assist in such

registration. In any event, if this Lease is not in the form required for registration, then the party desiring to procure the registration will be responsible for amending the form of this Lease so as to ensure compliance with any registration requirement PROVIDED THAT the desiring party will always be responsible for obtaining the consent of all mortgagees to such registration and the lodging and registration costs and expenses of such registration.

**7. ASSIGNMENT**

**Assignment of Lease**

- 7.1 Subject to the provisions of clause 7.2, the Tenant may assign the Tenant's interest in this Lease with the prior written consent of the Landlord.
- 7.2 The Landlord will prior to giving consent to a proposed assignment be entitled to require:
- a. Satisfactory evidence that the proposed assignee is a responsible and respectable person capable in all respects of satisfactorily performing the duties and obligations of the Tenant pursuant to this Lease;
  - b. In the event that the proposed assignee is a company then the Landlord may require the Directors of the company to provide a guarantee for the Tenant's obligations under this Lease.
  - c. A guarantee from the guarantor set forth in this lease for the obligations of the assignee or franchisee.
- 7.3 The Landlord will not unreasonably withhold the Landlord's consent to a proposed assignment.
- 7.4 If the Landlord refuses to reasonably consent to a proposed assignment the Tenant may refer the matter for dispute resolution.

**8. OWNERSHIP OF THE CONTENTS**

**Initial Ownership of the Contents**

- 8.1 Subject to the provisions of this clause the Landlord is the owner of all items of the Contents as detailed in the Third Schedule.

**Assignment of Warranties**

- 8.2 The Landlord will assign to the Tenant the benefit of any warranties applicable to or in respect of the Contents (which are owned by the Landlord).

## **Replacement of the Contents**

- 8.3 In the event that the Tenant replaces any item of the Contents (which are owned by the Landlord) then such replacement item will be the property of the Tenant, until reimbursed by the Landlord. All replacements and costs need to be notified in writing to the Landlord within 48 hours or will become the property of the Landlord by default.

## **9. OWNERSHIP OF THE COMMON FURNISHINGS AND FITTINGS**

### **Ownership**

- 9.1 Subject to the provisions of this clause the Body Corporate is the owner of all items of the Common Furnishings and Fittings.

### **Replacement or Supply of the Common Furnishings and Fittings**

- 9.2 In the event that the Tenant at the request of the Body Corporate or as otherwise required by this Lease, replaces or supplies any item of the Common Furnishings and Fittings then such replacement item will be the property of the Tenant, until reimbursed by the Body Corporate, and if required by the Tenant, the Landlord will procure the Body Corporate's consent thereto.

## **10. REPAIR, MAINTENANCE AND REPLACEMENT OF THE CONTENTS AND THE COMMON FURNISHINGS AND FITTINGS**

### **Repair, Maintenance and Replacement at the expense of the Tenant**

- 10.1 Subject to clause 5.2 and clause 10.3, the Tenant will at the Tenant's own expense repair, maintain and (except for Fixed Equipment) replace:
- a. All damaged Contents (which are owned by the Landlord);
  - b. All Common Furnishings and Fittings that it is directly responsible for and are not the responsibility of the Landlord or the Body Corporate; and
  - c. The Fixed Equipment;

To the condition or standard commensurate with a serviced apartment facility and suitable for immediate use by succeeding tenants or occupiers PROVIDED THAT the Tenant is not required to repair, maintain and replace any Contents not owned by the Landlord, and PROVIDED ALSO THAT the responsibility of the Tenant in respect of repairs, replacement and general maintenance of the Premises and Contents, Furniture and Fittings will (except in the case of damage caused by the Tenant) be limited to a maximum amount of \$300 plus GST per apartment per year subject to the lease during the Term or any Renewed Term. Any unused balance will be contributed towards Capital repair and replacement per item 10.3

### **Repair, Maintenance and Replacement at the expense of the Body Corporate**

- 10.2 The Landlord will use its best endeavours to procure the Body Corporate to:
- a. Repair, maintain and replace the Common Furnishing and Fittings;
  - b. Carry out repairs or make payments of a capital nature in respect of the Common Furnishing and Fittings; and
  - c. Enter into and keep in force a contract with a reputable contractor for the maintenance and repair of the Common Furnishing and Fittings.

### **Capital Repair and Replacement at the expense of the Landlord**

- 10.3 The Landlord will at the Landlord's own expense replace the Contents and Fixed Equipment, in the event that the Tenant reasonably determines that such repair and/or replacement is of a capital nature, and, when they are at least 10 years old, then at the Tenant's suggestion and the Landlord's discretion, the Landlord will replace the Contents and Fixed Equipment by upgrading them at the Landlord's expense to new Contents and Fixed Equipment designed and supplied by the Tenant and approved by the Landlord or, alternatively, will transfer ownership of the Contents and Fixed Equipment to the Tenant without charge. The Landlord will also be responsible for the payment of any Body Corporate levies relating to expenses of a capital nature PROVIDED THAT in the event that the Landlord fails to comply with the provisions of this clause 10.3 within fourteen days after notice in writing has been given to effect such repairs and/or replacements, the Tenant may at the Tenant's option elect to carry out such repairs and/or replacements at the Landlord's cost. Such expenses may be set off by the Tenant against Rent payable by the Tenant to the Landlord.

### **Tenant to Indemnify Landlord and Body Corporate**

- 10.4 The Tenant hereby indemnifies the Landlord and the Body Corporate in relation to the cost of carrying out repairs or making payments of a capital nature in respect of the Contents (which are owned by the Landlord) and the Common Furnishings and Fittings in the event that the need for them results from:
- a. Negligence by the Tenant or the Tenant's employees, agents, contractors, customers or visitors; or
  - b. Failure by the Tenant to perform the Tenant's obligations under this Lease.

### **Insurance to Indemnify Tenant Where Available**

- 10.5 In the event that the Tenant repairs, maintains and/or replaces the Contents (which are owned by the Landlord) which are insured, then the benefits of such insurance will be paid to the Tenant to reimburse the Tenant for any and all costs and expenses relating to such repair, maintenance and/or replacement.

**11. DAMAGE, DESTRUCTION AND SUSPENSION OF SERVICES**

**Damage and Destruction**

- 11.1 If, as a result of actions other than those of the tenants or its agents or its customers:
- a. The Premises (including the interior of the Premises) or any part of the Common Property is destroyed or damaged;
  - b. The Premises are wholly or partially unfit for occupation or use;
  - c. The same will not have been caused by some default act or neglect on the part of the Tenant; and
  - d. The insurance policy or policies effected by the Tenant, Landlord or the Body Corporate will not have been vitiated or payment refused in consequence of some act default or neglect of the Tenant;

Then

- e. The Landlord will:
  - i. Where the interior of the Premises is damaged, use the Landlord's best endeavours to repair the Premises as soon as is practicably possible; or
  - ii. Make or cause the Body Corporate to take any appropriate action including if applicable to make an application for the Unit Plan to be cancelled or altered as the case may be,

Within a reasonable time after the damage or destruction;

- f. A fair proportion of the Rent and outgoings as agreed between the Landlord and Tenant is to be suspended until the Premises are again wholly fit for the purpose specified in Item 8 of the First Schedule PROVIDED THAT the suspended portion of the Rent and outgoings must be proportioned to the nature and extent of the damage.

**Failure of the Landlord to Comply**

- 11.2 If as a result of such damage or destruction the Landlord has not complied with clause 11.1 e., the Landlord and the Tenant will meet with a view to reaching agreement on reinstatement. If such agreement is not reached within 60 days after the date of the damage or destruction then either party may at the end of the 60 day period by written notice to the other terminate this Lease from the date of the damage or destruction but will retain any prior accrued rights.

**Failure of the Landlord and Tenant to Reach Agreement**

- 11.3 If as a result of such damage or destruction the Landlord and Tenant have failed to reach an agreement as to the fair proportion of Rent and outgoings that is to be suspended pursuant to clause 11.1 f. within 60 days after the date of damage or destruction then such determination of a fair proportion of Rent and outgoings will be referred at the insistence of either the Landlord or Tenant to a valuer nominated by

the New Zealand Institute of Valuers and such valuer in so determining will be deemed to act as an expert and not as an arbitrator and such determination will be final and binding upon the parties and the cost of such determination will be borne equally by the Landlord and Tenant.

#### **Use of Insurance Monies**

- 11.4 Any insurance money received by the Tenant or Landlord in respect of any damage will be applied to:
- a. Reinstatement of the damaged Premises or Common Property; or
  - b. Where the Premises or Common Property are not reinstated then, to the rightful Landlord or Landlords.

#### **Termination on Damage or Destruction**

- 11.5
- a. The Landlord acknowledges that the Tenant has taken a Lease over many or all of the principal units and accessory units that comprise the Complex.
  - b. In the event that Damage or Destruction is sustained by more than one half of the number of principal units in the Complex over which the Tenant has taken a lease then notwithstanding anything hereinbefore contained to the contrary the Tenant may upon 7 days notice in writing to the Landlord terminate this Lease.
  - c. This clause 11.5 is included for the benefit of the Tenant and will operate notwithstanding that no damage or destruction has been suffered by the Premises.
  - d. In the event that this Lease is terminated in accordance with this clause 11.5, all parties will retain their accrued rights hereunder.

#### **Suspension of Essential Services**

- 11.6 In the event that provision of any of the electricity, water, telephonic or other essential services ("the Essential Services") are disrupted for any reason beyond the control of the Tenant, and such disruption continues for a period of 48 hours or greater, during which period the operation of the Tenant's Business is materially disrupted, then the Rent for such period of disruption is to be adjusted to reflect a rent amount only for those rooms occupied during the disruption.

#### **12. ATTORNEY**

- 12.1 The Landlord agrees that for the purposes of allowing the Tenant to better conduct the Tenant's business and to ensure compliance with the Landlord's and the Body Corporate's covenants as contained in this Lease, the Landlord will at all or any meetings of the Body Corporate or of the committee of the Body Corporate held during the Term, vote in accordance with the reasonable directions given by the Tenant.

13. SALE OF THE PREMISES BY THE LANDLORD

- 13.1 If the Landlord wishes to dispose of the Premises or any interest therein the Landlord will obtain from the proposed purchaser, prior to the disposal, a duly executed Deed of Covenant in the form set out in Schedule 6 in favour of the Tenant.

14. OPTION FOR RENEWAL FOR EACH OF THE FURTHER TERMS

- 14.1 Upon the written request of the Tenant or the Landlord at any time after the Commencement Date but not less than three months prior to the expiration of the Term (time not being of the essence), the Landlord will grant and the Tenant will accept a new Lease for the Further Term as set out in this Lease and commencing on the day after the Term of this Lease ends PROVIDED THAT the Rent which in no case less than the Minimum Guarantee Rental, payable pursuant to clause 2.1 c. by the Tenant during the Further Term will be:

- a. During the period from the commencement date of the Further Term to the next Rent Review Date a Rent determined by the Tenant giving notice in writing ("the Rent Notice") to the Landlord that it considers such Rent of the Premises should be the amount stated in the Rent Notice for the period under review specified in the Rent Notice. The Tenant must give the Rent Notice to the Landlord not less than two months prior to the expiration of the Term failing which the Landlord may give the Rent Notice. If within fourteen days from the service of the Rent Notice, the party receiving the Rent Notice:
- i. Does not object in writing, then such Rent will be adjusted accordingly for that period; or
  - ii. Does object in writing then such Rent for the said period will be agreed to between the Landlord and the Tenant and in default of agreement between the Landlord and Tenant, the Rent will be determined by a valuer nominated by the New Zealand Institute of Valuers and such determination will be final and binding upon the parties and the cost of such determination will be borne equally by the Landlord and Tenant

PROVIDED THAT:

- iii. Pending the determination of such Rent payable the Tenant will continue to pay on account of such Rent ultimately determined to be payable Rent at the rate current on the last day of the immediately preceding Term and the balance thereof on the next date due for payment of Rent occurring immediately after such determination; and
- iv. Any failure of the parties to determine the updated Rent payable when the update ought to have come into force will not be deemed a waiver by the Landlord of any of the Landlord's rights herein contained and such failure will in no way prejudice the Landlord's rights in relation to the determination of any such updated Rent payable;

## 15. DEFAULT AND TERMINATION

### Default of the Tenant

15.1 In the event that any of the following occurs:

- a. If the Rent or any part thereof is unpaid for the period of 7 days after any of the days on which the same ought to have been paid in accordance with the covenants for payment herein contained;
- b. If the Tenant commits permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provisions of this Lease;
- c. If the Tenant being a Company:
  - i. An order is made or a resolution is effectively passed for the liquidation of the Tenant (except for the purpose of reconstruction or amalgamation);
  - ii. The Tenant goes into liquidation or appoints a receiver or makes an assignment for the benefit of or enters into an arrangement or composition with the Tenant's creditors or is insolvent;
- d. If the Tenant being an individual becomes bankrupt or enter into a scheme of arrangement for creditors or commits an act of bankruptcy;
- e. If execution is levied against the Tenant's property, goods or effects under any judgement against the Tenant in any Court for a sum in excess of \$20,000; or
- f. If the business conducted in the Premises will be discontinued or the Premises deserted or vacated or left unoccupied for the space of one week (other than for seasonal holidays, maintenance and/or repairs, defaults of the Landlord and/or reasons beyond the control of the Tenant)

Then and in any one or more of such events and notwithstanding that the Landlord may not have exercised any of the Landlord's rights under this clause 15.1 in respect of some previous breach or default by the Tenant whether of a like nature or not the Landlord will subject to the provisions of all applicable legislation, be entitled at any time or times thereafter to re-enter (forcibly if necessary) into and upon the Premises or any part thereof in the name of the whole and to have again repossess and enjoy the same as of the Landlord's former estate anything herein contained to the contrary notwithstanding but without prejudice to any action or other remedy which the Landlord has or might or otherwise could have for arrears of Rent or breach of covenant or for damage as a result of any such event. The Landlord shall have the right to offset payment for any contents on the premises owned by the Tenant against rent due.

### Conditions On Termination

15.2

- a. The Tenant will at the expiration or sooner determination of this Lease peaceably surrender and yield up unto the Landlord the whole of the Premises clean and free from rubbish and in a state of repair order and

condition which is in all respects consistent with the covenants on the part of the Tenant herein contained.

- b. The Landlord may at the expiration or sooner determination of this lease cause any of the Tenant's Fixtures and Fittings to be removed and will be entitled to make any such alterations to the Premises so that the Premises are reasonably reinstated and the Landlord may recover the costs thereof from the Tenant as a liquidated debt payable on demand.

## 16. DISPUTE RESOLUTION

### Arbitration

16.1 Any Dispute, difference or question arising between the Parties:

- a. Interpretation: as to the interpretation of this Lease; or
- b. Matters Arising: concerning anything contained in or arising out of this Lease; or
- c. Rights, Liabilities or Duties: as to the rights, liabilities or duties of the Parties; or
- d. Other Matters: as to any other matter touching upon the relationship of the Parties in respect of this Lease (including claims in tort as well as in contract);

Shall be referred to and finally resolved by arbitration in accordance with the Arbitration Act 1996 and the express provisions of this clause which shall prevail in the event of any inconsistency with that Act, to the extent permitted by law. Any arbitration will be by a sole arbitrator to be agreed upon between the Parties or failing an agreement within seven days of a referral by either party of a sole arbitrator to be appointed by the President of the Auckland District Law Society or his/her nominee on the application of either party. The decision of such Arbitrator on any matter so referred to him shall be final and binding on the parties.

16.2 This clause shall survive the expiration or earlier determination of this Deed.

### Mediation

16.3 Notwithstanding the provisions of clause 15 the parties may agree, having regard to the nature of the dispute between them and the potential delays and costs which might arise as a consequence of the reference of any dispute, difference or question to arbitration, to refer any particular dispute, difference or question to informal mediation by a senior solicitor or barrister practising in the district in which the Premises are located. The mediation shall be agreed upon by the parties, or failing agreement shall be nominated on the application of either party by the President for the time being of the Wellington District Law Society or his or her nominee. The decision of such solicitor or barrister on any matter so referred to him shall not be binding on the parties.

**17. SEVERABILITY**

- 17.1 All stipulations contained in this Lease will be so construed as not to infringe the provisions of any statute, ordinance, regulation or bylaw but if any such stipulation or its true interpretation does infringe any such provisions the same will be deemed to be void and severable.

**18. NOTICES**

- 18.1 Any notice required to be served under this Lease may be signed by the respective party's solicitors or other duly authorised representative and will be sufficiently served on the Tenant if forwarded by prepaid post or served personally or if delivered or left addressed to the Tenant at the Tenant's address herein or the Complex or to the last known place of abode or business of the Tenant or affixed to any part of the Premises and will be sufficiently served on the Landlord if addressed to the Landlord and left at or sent to the Landlord's address herein or the Landlord's registered office for the time being and a notice sent by post will be deemed to have been received 48 hours after the time of posting unless the same is received prior thereto.

**19. GOODS AND SERVICES TAX**

- 19.1 The Tenant shall pay to the Landlord or as the Landlord directs, the GST payable by the Landlord in respect of the Rent and other payments payable by the Tenant under this Lease. The tax in respect of the Rent shall be payable on each occasion when any Rent falls due for payment and in respect of any other payment shall be payable upon demand.

**EXECUTED** as a deed on the date appearing on page 1.



## SCHEDULE 3

### The Contents Owned by the Landlord

#### J Street Furniture Package – Studio

Living area    **Modular wall unit incorporating:**

- Pantry
- *Washing machine / dryer*
- *Microwave*
- Kitchen unit with under bench fridge and storage
- Kitchen recess with two element hob and sink.
- Extractor above hob.
- Storage shelf above kitchen unit.
- Bulkhead above kitchen featuring downlights.
- Wardrobe with wire drawers and shelving.
- Bed recess with downlights and bedside units.
- Bulkhead above bed featuring downlights and *speakers*
- Storage unit with *stereo / CD player*.

1 x queen base, bed, mattress and protector

1 x continental blanket

1 x bedspread or duvet and inner

4 x pillows

1 x radio alarm clock

12 x coathangers

2 x lounge chairs

4 x toss cushions

1 x television wall bracket

1 x *14" television*

1 x *video*

1 x coffee table

2 x small art print

1 x feature mirror

1 x dining table

2 x dining chairs

1 x telephone

1 x *heater (oil filled)*

**Kitchen**

1 x dinner set (four place)

1 x salad server

1 x colander

1 x *electric jug*

1 x *toaster*

1 x cutlery set

1 x serving dish

1 x salad bowl

1 x knife set

1 x saucepan set (two piece)

1 x shallow frying pan

1 x *electric frying pan*

1 x bottle / can opener

**Kitchen (cont.)**

- 4 x coffee mugs
- 4 x tumblers
- 4 x wine glasses
- 1 x salt and pepper shaker set
- 1 x kitchen tidy bin
- 1 x breadboard
- 1 x corkscrew
- 1 x utensil set (fish slice, potato masher, potato peeler etc.)
- 1 x coffee plunger
- 1 x set of storage containers
- 1 x tongs
- 1 x grater
- 1 x potato peeler

**Bathroom      1 x toilet brush and holder**

- 1 x waste tidy
- 1 x mirror
- 1 x towel rail (heated)
- 1 x ironing board
- 1 x *iron*
- 1 x brush / pan set

**Window Coverings      Drapes**

## SCHEDULE 4

### The Fixed Equipment Owned by the Landlord

Washing Machine  
Clothes Dryer  
Floor covering  
Oven  
Cook Top



SIGNED by )  
As Landlord in the presence of: ) X \_\_\_\_\_

Witness: .....

Address: .....

Occupation: .....

SIGNED by )  
As Tenant in the presence of: ) X \_\_\_\_\_

Witness: .....

Address: .....

Occupation: .....



**SIGNED** by )  
As Landlord in the presence of: ) X \_\_\_\_\_

Witness: .....

Address: .....

Occupation: .....

**SIGNED** by )  
As Landlord in the presence of: ) X \_\_\_\_\_

Witness: .....

Address: .....

Occupation: .....

**SIGNED** by )  
As Tenant in the presence of: ) X \_\_\_\_\_

Witness: .....

Address: .....

Occupation: .....