

UNDERWRITE DEED

between

OYSTER MANAGEMENT LIMITED

and

OYSTER INDUSTRIAL LIMITED

DEED dated 23 December 2020

PARTIES

- (1) OYSTER MANAGEMENT LIMITED ("OML")
- (2) OYSTER INDUSTRIAL LIMITED ("Company")

BACKGROUND

- A. The Company proposes to offer to the public in New Zealand ordinary shares ("**Shares**") in the Company ("**Offer**"). The Company will invest the money received under the Offer to purchase additional properties for its industrial portfolio, which will be managed by OML in accordance with the Management Agreement.
- B. The Company is proposing to acquire the properties at:
 - (a) 14-16 Makaro Street, Porirua; and
 - (b) 75 Wainui Road, Lower Hutt,("Properties").

pursuant to agreements for sale and purchase dated 18 August 2020 and [] 2020 ("**Sale and Purchase Agreements**").
- C. 58,850,000 Shares in the Company are being offered in accordance with the Financial Markets Conduct Act 2013 for a subscription amount of \$1.03 per Share, with a minimum investment amount of 50,000 Shares (\$51,500 minimum investment amount) and in parcels of 50,000 Shares thereafter ("**Offer**").
- D. In order to facilitate the purchase of the Properties on the settlement dates under the Sale and Purchase Agreements ("**Settlement Dates**"), the Company has entered into underwrites with OML and Wyborn Capital Properties Limited ("**Joint Underwrites**"). Under the Joint Underwrites, the underwriters have agreed to provide up to \$17,100,000 each to the Company. Due to Takeover Code requirements the underwriters are limited to holding no more than 19.99% of the Shares, with any excess being subscribed for Redeemable Preference Shares ("**RPS**") issued by Oyster Industrial Properties Limited. The terms of the Redeemable Preference Shares are listed in Appendix One.
- E. In the event the Joint Underwrites are insufficient to settle the Properties on the Settlement Dates, OML has agreed to subscribe for RPS up to a maximum of 3,398,058 RPS, provided that OML's maximum liability shall not in any case exceed \$3,500,000 ("**Underwrite Amount**").

INTERPRETATION:

1. **Definitions:** In this Deed, unless the context otherwise requires the following words shall have the meanings set out below.

- (a) "**Deed**" means this deed and any subsequent amendments.
- (b) "**Management Agreement**" means the management agreement entered into by OML and the Company on or about the date of this Deed.
- (c) "**Product Disclosure Statement**" means the product disclosure statement that details the Offer prepared in accordance with the Financial Markets Conduct Act 2013.
- (d) "**Related Company**" has the meaning ascribed to that term in section 2(3) of the Companies Act 1993 provided however, for the purposes of this Deed, the reference in that section "company" shall be deemed to include a reference to a body corporate, wherever incorporated. For the purposes of this definition, the fact that an entity is managed by OML does not make it a Related Company of OML.

OPERATIVE PART:

2. UNDERWRITE

- 2.1 If applications have not been received in respect of all of the Shares under the Offer at the Settlement Date of each of the Properties, and the amounts received under the Joint Underwrites are insufficient to settle either or both of the Properties the Company will calculate, and notify OML of, the number of RPS ("**OML Shortfall RPS**") that OML must apply for, being no more than 3,398,058 RPS (\$3,500,000 minimum subscription amount).
- 2.2 OML will then subscribe for any OML Shortfall RPS on the terms and conditions prescribed in this Deed.
- 2.3 In no circumstances will OML be required under this Deed to subscribe for RPS, or advance money, which in aggregate exceeds the Underwrite Amount.
- 2.4 If clause 2.1 applies, OML will immediately complete the requisite application form applying for the OML Shortfall Shares and promptly return the application form to the Company.
- 2.5 On or prior to the relevant Settlement Date, OML shall deposit the requisite subscription amount for the OML Shortfall Shares into the Company's subscription account in cleared funds, with an undertaking from OML's bank that the funds will not be reversed.
- 2.6 The Company and OML agree that, should the underwrite be called upon, the amounts due to OML for the Acquisition Fee and Brokerage Fee (as defined in the Product Disclosure Statement) for the Offer may, at OML's election, be offset against the subscription amount payable by OML under clause 2.5.

2.7 The Company will pay to OML an underwrite fee ("**Underwrite Fee**") on the Settlement Date for 75 Wainui Road. The Underwrite Fee shall be 3% of the Underwrite Amount, plus goods and services tax (if any).

2.8 Except for the rights and obligations set out in this underwrite (which will become binding from signing), all other rights and obligations of each party in respect of a Property are conditional on the Sale and Purchase Agreement in respect of that Property being, or becoming, unconditional.

3. **OML'S RIGHTS IN RESPECT OF SHARES**

3.1 OML shall, subject to clause 4 and the terms in Appendix One, be entitled to all the rights and benefits of a holder of RPS in the Company (including OML's proportion of the monthly return paid by the Company).

4. **REPAYMENT**

4.1 OML agrees and acknowledges that this underwrite will not be repaid until the RPS and Shares issued to the underwriters under the Joint Underwrites have been, in the case of the RPS, redeemed in full, all Shares have been sold and all amounts outstanding paid or repaid pursuant to the Joint Underwrites.

5. **RESTRICTIONS ON OML'S SHARES**

5.1 While any Share is held by OML or a Related Company of OML, OML acknowledges that the rights attaching to that Share shall be suspended as detailed in clause 5.8 of the Management Agreement.

6. **COSTS**

6.1 The Company shall pay OML's reasonable legal costs of, and incidental to, the preparation of this Deed.

7. **COUNTERPARTS AND EMAIL SIGNING**

7.1 This Deed may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

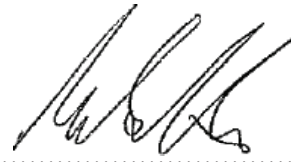
7.2 The parties acknowledge that this Deed may be executed on the basis of an exchange of email copies and confirm that their respective execution of this Deed by such means shall be a valid and sufficient execution.

8. **GOVERNING LAW**

8.1 The parties agree that the terms of this Deed, and any disputes in relation to this Deed, shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand accordingly.

EXECUTED AS A DEED

SIGNED for and on behalf of)
OYSTER MANAGEMENT)
LIMITED in the presence of:)



.....
Director

Witness signature 

Witness name: Ian Hasell

Occupation: Solicitor

Address: Auckland

SIGNED for and on behalf of)
OYSTER INDUSTRIAL)
LIMITED in the presence of:)



.....
Director

Witness signature 

Witness name: Ian Hasell

Occupation: Solicitor

Address: Auckland

APPENDIX ONE

Terms of Issue of Redeemable Preference Shares

1. Oyster Industrial Properties Limited ("**OIPL**") will issue to Oyster Management Limited ("**Underwriter**") redeemable preference shares ("**RPS**") pursuant to clause 2.2 of OIPL's constitution.
2. The RPS will have the following terms of issue:
 - (a) The subscription price per RPS will be the same as the subscription price per ordinary share to be issued by Oyster Industrial Limited ("**OIL**"), OIPL's shareholder, at or about the same time as the RPS.
 - (b) The RPS will carry no right to vote or to appoint directors.
 - (c) Dividends on the RPS are to be paid in preference to dividends on ordinary shares issued by OIPL, and will be paid on the RPS at the same time, and at the same amount (per RPS), as dividends paid on the ordinary shares issued by OIL (per ordinary share).
 - (d) The RPS are redeemable in whole or in part at the option of OIPL at any time after the date of their issue, including the payment of any amount of dividends on the RPS which are, at the time of the redemption, payable but unpaid. Such redemption to occur in amounts not less than \$50,000.
 - (e) In the event of a liquidation of OIPL, the Underwriter as holder of the RPS will rank in preference to any holder of ordinary shares issued by OIPL in the distribution of any surplus assets.
 - (f) Other than the rights set out in these Terms of Issue, the RPS shall carry no rights including the rights attaching to shares set out in section 36(1) of the Companies Act 1993.
3. OIPL agrees to issue, and the Underwriter agrees to subscribe for, the RPS on the terms set out in these terms of issue, 5 days following OIPL providing written notice to the Underwriter that it will require the Underwriter to subscribe for the RPS.

DATED: 23 December 2020

SIGNED as an agreement:

**OYSTER INDUSTRIAL PROPERTIES
LIMITED** by:

OYSTER MANAGEMENT LIMITED by:

Signature of Director / authorised person

Joanna Perry

Name of Director / authorised person

Signature of Director / authorised person

Mark Schiele

Name of Director / authorised person