

BINDING HEADS OF AGREEMENT

Wyborn Underwrite

Background

Oyster Industrial Properties Limited, or its nominee, ("**Oyster**") intends to enter into the following agreements ("**SPAs**"):

- with Woolstore Six Limited, to acquire records of title CT 531959 and CT 531960 together with improvements thereon at 14 – 16 Makaro Street, Wellington ("**Downer Property**"), for a purchase price of approximately NZ\$35,600,000, subject to the terms of that SPA anticipated to settle on 31 March 2021; and
- with Flight Limited to acquire record of title CT 871447 together with improvements thereon at 75 Wainui Road, Wellington ("**Wainui Property**"), for a purchase price of approximately NZ\$29,400,000, subject to the terms of that SPA anticipated to settle on 29 January 2021,

(the Downer Property and the Wainui Property together, being the "**Properties**").

Oyster Industrial Limited ("**OIL**") intends to make offers of shares ("**Offer**") in accordance with the Financial Markets Conduct Act 2013 to finance the equity component of the purchase price for the Properties and potentially the property at 71 Westney Road, Auckland.

This Binding Heads of Agreement sets out the key commercial terms on which Wyborn Capital Properties Limited ("**Underwriter**") will underwrite ("**Underwrite**") settlement of each of the Properties.

Key terms of Underwrite

KEY TERMS		
1.	Binding	The parties agree that this Binding Heads of Agreement is to be binding upon each of them.
2.	Underwritten Amount	The Underwritten Amount to be made available by the Underwriter is NZ\$17,100,000. Amounts drawn down will be subscribed in the name of the Underwriter: a) first, under the Offer for ordinary shares in OIL ("OIL Shares") up to 19.99% of the ordinary shares on issue by OIL following the transactions or such lesser amount permitted under the Takeovers Code (without approval of the other ordinary shareholders of OIL) and the Overseas Investment Act 2005, and without affecting the PIE status of OIL under the Income Tax Act 2007, and b) then, for Redeemable Preference Shares issued by Oyster on the terms set out in Appendix One.
3.	Use of funds	Purchase of the Properties, which will be underwritten by an additional matched underwrite of NZ\$17,100,000 (" Matched Underwrite ") by Oyster Management Limited (" Other Underwriter "). The rights and obligations of the Other Underwriter under the Matched Underwrite rank pari pasu with the rights and

KEY TERMS

		obligations of the Underwriter under this Binding Heads of Agreement as to drawing and repayment of underwritten amounts.
4.	Formal Documents	Any party may, at any time, require that formal documents ("Formal Documents") be drafted and entered into to reflect the terms agreed in this Binding Heads of Agreement and other terms which are usual for such agreements. The parties must use all reasonable endeavours to procure that any Formal Documents are entered into no later than 10 business days after any party requests that they be drafted.
5.	Underwriting Fee	3% of the total Underwritten Amount (plus GST (if any)) with half of the Underwriting Fee payable on settlement of the Wainui Property, and the remaining half payable on settlement of the Downer Property.
6.	Drawdown Amount	The Drawdown Amount for a Property (being the amount of the Underwritten Amount which the Underwriter is required to subscribe for OIL Shares or Redeemable Preference Shares with respect to that Property under this Binding Heads of Agreement, and which shall be the Underwriter's Underwritten Amount reduced by 50% of the aggregate amount received from third party investors under the Offer as at the time any OIL Shares are issued) is to be notified by Oyster to the Underwriter no less than 3 business days prior to anticipated drawdown.
7.	Drawdown Fee	1% of the Drawdown Amount in respect of a Property, payable on Settlement of that Property in addition to the Underwriting Fee.
8.	Return on Underwritten Amount	Base: Dividends will be payable on the OIL Shares in the same amount and at the same time as dividends on the other ordinary shares issued by OIL, and the dividends payable on the Redeemable Preference Shares will be on the terms set out in Appendix One. Penalty: The penalty return on the Drawdown Amount in respect of a Property will be 9% p.a., payable by OIL to the Underwriter on any amount of the Drawdown Amount for that Property not repaid 5 months after the drawdown of that Drawdown Amount, calculated daily and paid monthly in arrears. For the sake of clarity the penalty return is payable in addition to any dividends payable to the Underwriter as a holder of OIL Shares and/or Redeemable Preference Shares.
9.	Guarantee	Oyster Property Group Limited guarantees the payment of any penalty return amount due to the Underwriter from OIL under clause 8 of this Binding Heads of Agreement.
10.	Conditions	Except for the rights and obligations set out in clause 14 of this Binding Heads of Agreement (which will become binding from signing), all other rights and obligations of each party in respect of a Property under this Binding Heads of Agreement are conditional on the SPA in respect of that Property being, or becoming, unconditional.
11.	Underwrite	Oyster agrees to procure that the proceeds of the subscription for any securities issued to third party investors under the Offer will be applied in the following order:

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		a) first in redemption of the Redeemable Preference Shares, and the payment of any dividends payable but unpaid on the Redeemable Preference Shares, held by the Underwriter and the Other Underwriter in equal proportions; and b) once all the Redeemable Preference Shares have been redeemed, by selling down to third party investors any OIL Shares issued to the Underwriter and the Other Underwriter in equal proportions, until the total Drawdown Amount, any dividends payable (including for any broken period up to the transfer to a third party) but unpaid on the Redeemable Preference Shares, any interest on the Drawdown Amount, and any fees outstanding to the Underwriter and to the Other Underwriter, have been paid or repaid in full. The Other Underwriter, or a related entity, will also underwrite a proportion of the purchase price of the Properties of up to NZ\$3,500,000 ("Oyster Underwrite"). The Other Underwriter acknowledges and agrees that the Oyster Underwrite will not be repaid until the Redeemable Preference Shares have been redeemed in full, and the OIL Shares have all been sold, and all amounts outstanding paid or repaid pursuant to this Underwrite and the Matched Underwrite.
12.	First Right of Refusal	The Underwriter is granted the first right to underwrite the equity funding of the next property acquired by OIL which is not included in the Offer (on terms no worse than this Binding Heads of Agreement), such right to be exercised within five days of being notified by Oyster.
13.	Prohibition on further offers	Until the Underwriter is repaid in full pursuant to this Binding Heads of Agreement, including all fees and interest due, OIL shall not make another offer of securities in respect of other properties without the prior written consent of the Underwriter which consent may be withheld in the Underwriter's sole discretion.
14.	General	Assignment: No party to this Binding Heads of Agreement shall assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under or in connection with this Binding Heads of Agreement, except with the prior consent of the other party, such consent not to be unreasonably withheld. Confidentiality: Each party shall keep confidential, and make no use or disclosure of: a) the existence and contents of this Binding Heads of Agreement; or b) all information obtained from the other party or the other party's advisers in connection with this Binding Heads of Agreement (including during any due diligence investigations), except if: c) disclosure is required by law; or d) disclosure is necessary to obtain the benefits of, and fulfil obligations under, this Binding Heads of Agreement; or e) the information already is, or becomes, public knowledge other than as a result of a breach of paragraph (a) or (b) above by that party; or

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- f) such disclosure is on a "need to know" basis to its officers, employees and/or professional advisers provided that the party disclosing the information will procure that any such person who receives the information complies with these confidentiality provisions as if such person was a party to this Binding Heads of Agreement.

Counterparts: This Binding Heads of Agreement is deemed to be signed by a party if that party has signed, or has attached its signature(s) to, any of the following formats of this Binding Heads of Agreement:

- a) an original; or
- b) a PDF or email image copy,

and if each party has signed or attached its signature(s) to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

Entire agreement: This Binding Heads of Agreement constitutes the entire agreement between the parties relating to the subject matter of this Binding Heads of Agreement and supersedes and cancels any previous agreement, understanding or arrangement, whether written or oral.

Governing law: This Binding Heads of Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Binding Heads of Agreement.

Costs: OIL shall pay the Underwriter's costs for the negotiation of, and entry into, this Binding Heads of Agreement capped at \$3,500 plus GST.

DATED: 27 November

2020

SIGNED as an agreement:

**OYSTER INDUSTRIAL PROPERTIES
LIMITED** by:

Signature of Director / authorised person

Mark Schiele

Name of Director / authorised person

OYSTER MANAGEMENT LIMITED by:

Signature of Director / authorised person

Mark Schiele

Name of Director / authorised person

OYSTER PROPERTY GROUP LIMITED
by:

Signature of Director / authorised person

Mark Schiele

Name of Director / authorised person

**WYBORN CAPITAL PROPERTIES
LIMITED** by:



Signature of Director / authorised person

Andrew Reed

Name of Director / authorised person

APPENDIX ONE

Terms of Issue of Redeemable Preference Shares

1. Oyster Industrial Properties Limited ("**OIPL**") will issue to Wyborn Capital Properties 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: 27 November

2020

SIGNED as an agreement:

**OYSTER INDUSTRIAL PROPERTIES
LIMITED** by:

Signature of Director / authorised person

Mark Schiele

Name of Director / authorised person

**WYBORN CAPITAL PROPERTIES
LIMITED** by:

Signature of Director / authorised person

Andrew Reed

Name of Director / authorised person