

UNDERWRITE DEED

between

OYSTER MANAGEMENT LIMITED

and

OYSTER INDUSTRIAL LIMITED

DEED dated 6 September 2019

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 in a portfolio of industrial property in New Zealand, which will be managed by OML in accordance with the Management Agreement.
- B. The Company will initially acquire the properties at:
 - (a) 12 Harbour Ridge Drive, Wiri; and
 - (b) 101 McLaughlins Road, Wiri,("Properties")

pursuant to an agreement for sale and purchase dated 17 June 2019 ("**Sale and Purchase Agreement**").
- C. 17,900,000 Shares in the Company are being offered in accordance with the Financial Markets Conduct Act 2013 for a subscription amount of \$1 per Share, with a minimum investment amount of 50,000 Shares (\$50,000 investment amount) / in parcels of 50,000 Shares ("**Offer**").
- D. In order to facilitate the purchase of the Properties on the settlement date under the Sale and Purchase Agreement ("**Settlement Date**"), OML has agreed that OML will subscribe for any Shares that have not been subscribed for prior to 18 October 2019 ("**Phase One Closing Date**") up to a maximum of 14,750,000 Shares, provided that OML's maximum liability shall not in any case exceed \$14,750,000 ("**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.
- (e) **"Shortfall Shares"** means the difference between the number of Shares offered for subscription through the Offer, and the number of Shares subscribed for by the Phase One Closing Date where the total subscription amount due has been received.
- (f) **"Westpac Short Term Facility"** means the short term loan for \$3,150,000 between the Company as borrower and Westpac as the lender.

OPERATIVE PART:

2. UNDERWRITE

- 2.1 At the Phase One Closing Date if applications have not been received in respect of all of the Shares under the Offer, the Company will calculate and notify OML of the number of Shares ("**OML Shortfall Shares**") that OML must apply for, being the lesser of:
 - (a) the number of Shortfall Shares less the Westpac Short Term Facility (equivalent to 3,150,000 Shares), to the extent drawn down (as determined by the Company in its sole discretion); and
 - (b) 14,750,000 Shares (representing the Underwrite Amount).
- 2.2 OML will then subscribe for any OML Shortfall Shares on the terms and conditions prescribed in this Deed and the Product Disclosure Statement for the Company.
- 2.3 In no circumstances will OML be required under this Deed to subscribe for Shares, 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's manager.

2.5 OML shall no later than the Phase One Closing Date 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 that 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. The Underwrite Fee shall be 3% of the Underwrite Amount, plus goods and services tax (if any).

3. OML'S RIGHTS IN RESPECT OF SHARES

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

4. RESTRICTIONS ON OML'S SHARES

4.1 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.

5. COSTS

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

6. COUNTERPARTS AND FACSIMILE/EMAIL SIGNING

6.1 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.

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

7. GOVERNING LAW

- 7.1 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

**Executed by OYSTER MANAGEMENT
LIMITED** in the presence of:

Mark Schiele - Director

Witness signature

Ian Hasell

Print Name

Solicitor

Occupation

Auckland

Address

**Executed by OYSTER INDUSTRIAL
LIMITED** in the presence of:

Joanna Perry - Director

Witness signature

Ian Hasell

Print Name

Solicitor

Occupation

Auckland

Address