

# UNDERWRITE DEED

between

OYSTER MANAGEMENT LIMITED

and

OYSTER INDUSTRIAL LIMITED

DEED dated 21 March 2022

## 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 indirectly invest the money received under the Offer in certain properties to be added to the Company's indirectly owned existing portfolio of industrial property in New Zealand, which is managed by OML in accordance with the Management Agreement.
- B. The Company is indirectly acquiring additional properties at 67 Main North Road, Kaiapoi, Canterbury ("**67 Main North Road**") and 100 Harris Road, East Tāmaki, Auckland ("**100 Harris**") (together, the "**Properties**"), pursuant to the terms of the respective agreements for sale and purchase ("**SPAs**").
- C. 41,100,000 Shares in the Company are being offered in accordance with the Financial Markets Conduct Act 2013 for a subscription amount of \$1.19 per Share, with a minimum investment amount of 50,000 Shares (\$59,500 investment amount) / in parcels of 50,000 Shares.
- D. In order to facilitate the purchase of 67 Main North Road on 29 April 2022, OML has agreed that OML will subscribe for any Shares ("**Shortfall Shares**") that have not been subscribed for prior to 26 April 2022 ("**Shortfall Date**") up to a maximum subscription amount of \$6,720,000 ("**Underwrite Amount**").
- E. Following the Company's indirect purchase of 67 Main North Road, the Company and/or OML, will sell some or all of the Shortfall Shares acquired by OML with any proceeds from such sale being paid to OML and able to be redrawn (up to a maximum amount of \$6,720,000) in respect of the indirect acquisition of 100 Harris by the Company.
- F. In addition, the Company has entered into an underwrite agreement with Alvarium Investments (NZ) Limited dated 8 March 2022 ("**Alvarium Underwrite**") under which the Company can require Alvarium to subscribe for up to \$19,324,000 of Shares ("**Alvarium 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 6 September 2019.
- (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 OF 67 MAIN NORTH ROAD**

- 2.1 At the Shortfall Date if applications have not been received in respect of all of the Shares under the Offer, the Company will calculate the Shortfall Shares and notify OML of the number of Shares ("**OML Shortfall Shares**") that OML must apply for.
- 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 Offer.
- 2.3 Should there be Shortfall Shares remaining after OML's subscription under clause 2.1, the Company will give notice under the Alvarium Underwrite in relation to the remaining Shortfall Shares, up to the maximum of the Alvarium Underwrite Amount. The Company will use its reasonable endeavours to enforce its rights under the Alvarium Underwrite.
- 2.4 In no circumstances will OML be required under this Deed to subscribe for Shares, or advance money, which in aggregate exceeds the Underwrite Amount.
- 2.5 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.
- 2.6 OML shall no later than the Shortfall 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.
- 2.7 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 in respect of 67 Main North Road may, at OML's election, be offset against the subscription amount payable by OML under clause 2.6.

- 2.8 The Company will pay to OML an underwrite fee ("**Underwrite Fee**") on the settlement date of 67 Main North Road. The Underwrite Fee shall be 3% of the Underwrite Amount, plus goods and services tax (if any).

3. **SALE OF UNDERWRITTEN SHARES**

- 3.1 The Company and/or OML, will endeavour to sell all of the OML Shortfall Shares to third party investors following settlement of 67 Main North Road at any time until the date which is 3 working days before settlement of 100 Harris pursuant to the SPA ("**100 Harris Shortfall Date**"), with the proceeds of such sale being paid to OML.

4. **UNDERWRITE OF 100 HARRIS ROAD**

- 4.1 The Underwrite Amount shall be able to be drawn down to the extent of any amount undrawn for OML Shortfall Shares plus any amounts paid to OML under clause 3.1 of this Deed for the purposes of OML's underwrite of the Offer in respect of the indirect acquisition of 100 Harris by the Company ("**100 Harris Underwrite Amount**").
- 4.2 On the 100 Harris Shortfall Date, the Company will inform OML of any amount under the 100 Harris Underwrite Amount required to complete the purchase of 100 Harris ("**100 Harris Shortfall**") and the number of Shares which the 100 Harris Shortfall shall be subscribed for ("100 Harris Shortfall Shares").
- 4.3 OML will immediately complete and submit the requisite application form for the 100 Harris Shortfall Shares.
- 4.4 OML will then subscribe for the 100 Harris Shortfall Shares in cleared funds with an undertaking from OML's bank that the funds will not be reversed and on the terms and conditions prescribed in this Deed and the Product Disclosure Statement for the Offer.
- 4.5 In no circumstances will OML be required under this Deed to subscribe for Shares, or advance money, resulting in the total amount outstanding to OML at any time exceeding the Underwrite Amount.
- 4.6 The Company and OML agree that should any amount of the 100 Harris Underwrite Amount 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 [in respect of 100 Harris] may, at OML's election, be offset against the subscription amount payable by OML under clause 4.4.

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

- 5.1 OML shall, subject to clause 6, 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).

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

- 6.1 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.

**7. GENERAL**

- 7.1 Except for the rights and obligations set out in this Deed (which will become binding from signing), all other rights and obligations of each party in respect of the Properties are conditional on the respective SPAs being, or becoming, unconditional.

**8. COSTS**

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

**9. COUNTERPARTS AND FACSIMILE/EMAIL SIGNING**

- 9.1 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.
- 9.2 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.

**10. GOVERNING LAW**

- 10.1 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