

# DEED OF NOMINATION

between

OYSTER PROPERTY HOLDINGS LIMITED

and

OYSTER INDUSTRIAL PROPERTIES LIMITED

DEED dated 6 September 2019

## PARTIES

- (1) OYSTER PROPERTY HOLDINGS LIMITED ("Nominator")
- (2) OYSTER INDUSTRIAL PROPERTIES LIMITED ("Nominee")

## BACKGROUND

- A. By an agreement for sale and purchase dated 17 June 2019 (as varied on 29 July 2019) ("**Agreement**") made between the Nominator and Rock Solid Holdings Limited ("**Vendor**"), the Nominator agreed to purchase and the Vendor agreed to sell the properties situated at 101 McLaughlins Road and 12 Harbour Ridge Drive, Wiri, Auckland being all that parcels of land containing Lot 3 Deposited Plan 525619, Unique Identifier 841803 and Lot 31 Deposited Plan 508731, Unique Identifier 774841 ("**Property**").
- B. The Nominator wishes to nominate the Nominee as the purchaser under the Agreement.
- C. The Nominee wishes to accept the nomination as purchaser under the Agreement.

## OPERATIVE PART:

- 1. **Nomination:** The Nominator nominates the Nominee as the purchaser under the Agreement, and acknowledges that all the rights, interest and benefits of the purchaser pursuant to the Agreement shall pass to the Nominee.
- 2. **Acceptance:** The Nominee accepts the nomination specified in clause 1.
- 3. **Date of nomination:** The obligations of the purchaser under the Agreement shall be complied with by the Nominee from the date of this Agreement ("**Nomination Date**"). The obligations of the purchaser under

the Agreement shall be complied with by the Nominator up to and including the Nomination Date.

4. **Nominator's warranties:** The Nominator:

- (a) warrants that all the obligations of the purchaser under the Agreement to be complied with up to and including the Nomination Date shall be duly complied with by the Nominator; and
- (b) shall indemnify the Nominee from and against all actions, proceedings, claims, costs and demands arising through any default by the Nominator in complying with the warranty contained in clause 4(a).

5. **Nominator's indemnity not limited:** The liability and obligations of the Nominator pursuant to the indemnity contained in clause 4(b) shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:

- (a) the granting of time or any indulgence or other concession to the Nominator, or by any compounding, compromise, agreement, abandonment, waiver, variation or renewal of any of the rights of the Nominee against the Nominator, or by any neglect or omission to enforce any rights of the Nominee, or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Nominator in whole or in part from the Nominator's obligations under this deed;
- (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Nominator; or
- (c) the Nominee obtaining judgment against the Nominator.

6. **Nominee's warranties:** The Nominee:

- (a) warrants that all the obligations of the purchaser under the Agreement to be complied with from the Nomination Date shall be complied with by the Nominee; and
  - (b) shall indemnify the Nominator from and against all actions, proceedings, claims, costs and demands arising through any default by the Nominee in complying with the warranty contained in clause 6(a).
- 7. **Nominee's indemnity not limited:** The liability and obligations of the Nominee pursuant to the indemnity contained in clause 6(b) shall not be abrogated, prejudiced or affected by any of the following and shall continue to remain in full force and effect notwithstanding:
  - (a) the granting of time or any indulgence or other concession to the Nominee, or by any compounding, compromise, agreement, abandonment, waiver, variation or renewal of any of the rights of the Nominator against the Nominee, or by any neglect or omission to enforce any rights of the Nominator or by any other thing which pursuant to the law relating to indemnities would or might, but for this provision, release the Nominee in whole or in part from the Nominee's obligations under this deed;
  - (b) the insolvency, liquidation, winding up, bankruptcy, receivership, dissolution or a judicial or statutory management of the Nominee; or
  - (c) the Nominator obtaining judgment against the Nominee.
- 8. **Payment by Nominee:** On the Nomination Date, or such later date as the parties may agree, the Nominee shall reimburse the Nominator:
  - (a) **Money paid under the Agreement:** for all money paid by the Nominator to the Vendor under the Agreement, including the deposit; and

- (b) **Other costs:** for all other costs and disbursements incurred by the Nominator relating to the Agreement including (without limitation) external consultancy and legal costs.
- 9. **GST treatment:** For the purposes of effecting the nomination, the parties acknowledge and agree that:
  - (a) the Purchase Price for the Property under the Agreement is payable on a plus GST (if any) basis;
  - (b) the sale of the Property pursuant to the Agreement is a supply that wholly or partly consists of land and, as a consequence, the sale is zero rated for GST purposes pursuant to section 11(1)(mb) of the GST Act; and
  - (c) if it subsequently transpires that GST is chargeable in respect of the supply made under the Agreement at a rate other than zero percent then the provisions of clause 14.0 of the Agreement shall apply (and, as between the Nominator and Nominee and without limiting any other provision of this Deed, the Nominee shall perform the obligations of the purchaser specified therein).
- 10. **Nominee section 78F Statement:** The Nominee warrants that, at the Nomination Date and at the settlement date of the Property:
  - (a) the Nominee will be a registered person for GST purposes (the Nominee's GST number is 129-990-252); and
  - (b) the Nominee is acquiring the Property with the intention of using it for making taxable supplies; and
  - (c) the Nominee does not intend to use the Property (or any part thereof) as a principal place of residence for it or a person associated with it under section 2A(1)(c) of the GST Act.

The warranties in this clause 10 are made by the Nominee on the date of this Deed, the Nomination Date, and the settlement date of the Property.

11. **Notice of provisions of agreement:** The Nominee acknowledges that the Nominee has executed this deed with full notice of all provisions contained or implied in the Agreement.
12. **Counterparts:** This agreement 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.
13. **Electronic execution:** The parties acknowledge that this agreement may be executed on the basis of an exchange of facsimile or email copies and confirm that their respective execution of this agreement by such means shall be a valid and sufficient execution.

Executed as a deed.

**Executed by OYSTER PROPERTY  
HOLDINGS LIMITED as Nominator:**

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Mark Schiele - Director

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Joanna Perry - Director

**Executed by OYSTER INDUSTRIAL  
PROPERTIES LIMITED as Nominee in  
the presence of:**

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Joanna Perry - Director

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Witness signature

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Ian Hasell

Print Name

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Solicitor

Occupation

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Auckland

Address