

DEED OF LEASE

between
MARSDEN MARITIME HOLDINGS
LIMITED
and
[TENANT]
and
[GUARANTOR/S]

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DEED OF LEASE

Date:

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1. **MARSDEN MARITIME HOLDINGS LIMITED** (“Lessor”)
2. **[TENANT]** (“Lessee”)
3. **[GUARANTOR/S]** (“Guarantor”)

IN CONSIDERATION of

- the annual rent and
- the covenants, conditions and agreements by or on the part of the Lessee contained or implied in this lease

the Lessor **LEASES** to the Lessee the Lessor's estate in the Premises for the term from and including the Commencement Date and at the annual rent (subject to review if applicable) and subject to the covenants, conditions and restrictions contained in this lease **AND THE LESSEE ACCEPTS** the lease of the Premises to be held by the Lessee as tenant on those terms.

This deed records

1. **LESSEE'S PAYMENTS**

Rent

- 1.1 The Lessee will duly and punctually pay the annual rent (as varied from time to time by any rent review) by equal consecutive monthly payments in advance on the rent payment dates. The rent shall be paid without any deduction by direct payment to the Lessor or as the Lessor from time to time directs. The Lessee shall pay the rent by direct transfer from the Lessee's bank account if the Lessor requires that.

[OPTION 1 – USUAL RENT REVIEWS

Rent reviews

- 1.2 The Lessor may, not earlier than three months before a rent review date or at any time up to the next following rent review date, give written notice to the Lessee specifying the annual rent considered by the Lessor to be the current market rent as at the relevant rent review date.
- 1.3 The Lessee shall have 28 days from the date of service of the Lessor's notice under clause 1.2, time being of the essence, to give the Lessor written notice that the Lessee disputes the rental proposed by the Lessor.
- 1.4 If the Lessee does not give notice under clause 1.3 that the Lessee disputes the rental, time being of the essence, the Lessee shall be deemed to have accepted the rental proposed by the Lessor which shall be the annual rent from the review date and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
- 1.5 If the Lessee does give notice under clause 1.3 that the Lessee disputes the rental, then the new annual rent shall be determined in accordance with clause 1.6. However,

in no circumstances shall the new annual rent be less than the rental payable immediately before the rent review.

- 1.6 Immediately following receipt by the Lessor of the Lessee's notice the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 28 days then the new rent may be determined either:
- a. By one party giving notice to the other requiring the new rent to be determined by arbitration, or
 - b. If the parties so agree, by registered valuers acting as experts and not as arbitrators as follows:
 - i. Each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen days of the parties agreeing to so determine the new rent.
 - ii. If the party receiving a notice fails to appoint a valuer within the fourteen day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
 - iii. The valuers appointed before commencing their determination shall appoint an umpire who need not be a registered valuer.
 - iv. The valuers shall determine the current market rent of the Premises and if they fail to agree then the rent shall be determined by the umpire.
 - v. Each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and they shall have regard to any such representations but not be bound thereby.
 - vi. When the new rent has been determined the arbitrators or the valuers shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.
 - c. In considering a current market rental the arbitrators and umpires shall not reduce the quantum of the rental by reason of any matters pertaining to the site or the terms of this lease which they might perceive as restrictive including but not limited to:
 - i. Any restrictions on the permitted use of the site.
 - ii. Any restrictions on assignment.
 - iii. Any other restrictive clauses in the lease.
 - iv. Any restrictions (such as access) arising from the site being situated near Marsden Point Port.
 - v. The clauses relating to Required Use of the premises
 - vi. This clause.
- 1.7 The annual rent so determined or accepted shall be the annual rent from the review date.

- 1.8 Pending the determination of the new rent, the Lessee shall pay the rent specified in the Lessor's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the new rent an appropriate adjustment shall be made.
- 1.9 The rent review may at the option of either party be recorded in a deed or memorandum, the costs of which shall be payable by the Lessee.]

[OPTION 2 – CPI RENT REVIEWS

Rent reviews - Annual CPI increase

- 1.10 In this clause "the Index" means the Consumer Price Index (All Groups) published by the government statistician at quarterly intervals (or any replacement index).
- 1.11 The Rent will be increased annually on the anniversary of the Commencement Date ("Annual Review Date") (except for on each lease renewal when the rent will be determined in accordance with clause 12) in accordance with the following formula:

$$AR = \frac{Y}{X} \times Z$$

Where: AR is the new annual rental

X is the index figure as at the quarterly date preceding the Commencement Date or the previous rent review date or Annual Review Date (whichever is the later).

Y is the index figure as at the quarterly date preceding the relevant Annual Review Date.

Z is the Rental payable immediately prior to the Annual Review Date.

- 1.12 The new annual rent fixed in accordance with this clause must be paid as from the relevant Annual Review Date.]

Outgoings

- 1.13 The Lessee will at all times duly and punctually pay all rates taxes impositions charges levies assessments and outgoings made, assessed or payable whether by the Lessor or Lessee in respect of:-
- a. The Premises or their use (the Lessor's income tax alone excepted) including those for any insurance premiums, water, electrical or other energy or other utilities or services to the Premises.
 - b. Any building or structure on it or any business use or other activity carried on or from the Premises.
 - c. Any costs or expenses incurred or payable by the Lessor to discharge any obligation or liability under any statute regulation rule ordinance or by-law to any authority in relation to or by reason of the Premises or any building or other structure use or activity (and in each case whether actual or proposed) on or carried on or from the Premises by the Lessee or any other person whether

directly charged to or payable by the Lessor or by reason of default by the Lessee or any other party.

- 1.14 The outgoings shall be apportioned in respect of any period which is current at the commencement and termination of the term.
- 1.15 If any outgoing is not separately assessed or levied in respect of the Premises the Lessee will pay such fair proportion of that outgoing as the Lessor determines from time to time, provided that land rates shall be apportioned on a land area basis.
- 1.16 The outgoings, or the proportion of them payable by the Lessee, shall otherwise be payable upon demand or by payments on account at such intervals and of such amount as the Lessor may reasonably determine.
- 1.17 If outgoings are paid direct the Lessee will produce to the Lessor forthwith upon demand the receipt for payment.

Goods and Services Tax

- 1.18 The Lessee will pay to the Lessor (or as the Lessor from time to time directs) the Goods and Services Tax payable by the Lessor in respect of the rent and all other amounts payable by the Lessee under this lease. The tax in respect of the annual rent shall be payable on each occasion when any rent payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 1.19 If the Lessee defaults in payment of any instalment of rent or other money payable under this lease and the Lessor becomes liable to pay additional Goods and Services Tax the Lessee shall upon demand pay to the Lessor that additional tax.

Payments Without Deduction

- 1.20 The annual rent and all other money at any time payable by the Lessee to the Lessor will be paid without any deduction or set off as directed by the Lessor from time to time.

2. INTEREST ON UNPAID MONEY

- 2.1 Interest ("Default Interest") shall accrue on any money payable by the Lessee to the Lessor not paid on the due date for payment ("Due Date") until paid in full at the rate of 15% per annum.
- 2.2 The Lessee shall pay to the Lessor the Default Interest accrued on demand.
- 2.3 The Lessor will be entitled to treat and recover the unpaid money and Default Interest as if they were (jointly or severally) rent in arrears (without prejudice to any other rights or remedies of the Lessor pursuant to any other provision contained or implied in this lease).

3. MAINTENANCE AND REPAIR

- 3.1 The Lessee shall maintain in good order condition and repair the Premises and all buildings structures fixtures fences and drains or other improvements now or later erected placed or being upon the Premises (fair wear and tear and damage by fire and earthquake alone excepted).

- 3.2 The Lessee throughout the term shall keep and maintain the Premises and any improvements (and the interior of any improvements) in neat tidy condition in all respects to the reasonable satisfaction and requirements of the Lessor.
- 3.3 The Lessee shall at the Lessee's expense duly and punctually comply in all respects with any notices requirements requisitions or orders which may be issued or given by any competent authority in respect of the Premises or any improvements on it or their use.

4. **USE OF THE PREMISES**

- 4.1 The parties enter into the lease in the knowledge that the Premises are near to Marsden Point Port and that it is essential that these Premises are used for uses which (in the opinion of the Lessor)
- benefit or are connected to the operation of that port; and
 - optimise the Premises for the benefit of the operation of the port.
- 4.2 The Lessee throughout the term shall use the Premises
- for the Required Use specified in Schedule A or
 - as the Lessor in writing from time to time approves or permits.
- 4.3 The parties acknowledge that the Premises and the facilities on the Premises shall be used solely for the handling of cargo which passes over the wharves at Marsden Point Port or for other activities which (in the opinion of the Lessor) benefit or are connected to the operation of that port.
- 4.4 The Lessor may permit other users of Premises in the vicinity of the Marsden Point Port to use Premises for uses similar to or the same as the Required Use.
- 4.5 Any approval by the Lessor of any use or proposed use of the Premises by the Lessee does not constitute a warranty that such use is permitted in respect of the Premises. Any such approval is conditional on the Lessee
- obtaining any requisite consents permits or approvals whether under the Resource Management Act 1991 and the Building Act 1991 or otherwise; and
 - at all times keeping any such consent permit or approval current; and
 - complying with any terms or conditions attaching to any such consent permit or approval and with all relevant statutory and other requirements to the exclusion of any liability attaching to the Lessor.
- 4.6 If at any time during the term of this lease or at any time during any renewal of this lease the Lessee
- ceases to actively use the Premises in accordance with clause 4.2 of this lease and
 - continues that cessation of use for six months
- then the Lessor may determine this lease or any renewed term of this lease or any ensuing tenancy by one calendar month's notice in writing to the Lessee without liability for payment of any compensation.
- 4.7 Any determination of this lease or any tenancy pursuant to this clause 4 shall take effect

- without prejudice to any right of suit or action which may have accrued to the Lessor before that determination and
- without releasing the Lessee from liability for rent or any other payments due or accruing to the time the determination takes effect.

4.8 The Lessee shall not:

- a. Do permit or omit any act matter or thing which may be or become an unreasonable nuisance disturbance or annoyance to the Lessor or adjoining property owners or occupiers or any other person.
- b. Use or permit the Premises to be used for any illegal activity or any unreasonably noisome noxious offensive or hazardous trade business or activity.
- c. Bring or store upon the Premises or any buildings or other structures on the Premises any machinery goods or things of an illegal nature or unreasonably offensive noxious or dangerous nature.
- d. Do suffer or permit any act matter or thing on or from the Premises which may reasonably result in any liability on the part of the Lessor.
- e. (Without limiting the previous paragraph), do suffer or permit, other than as permitted by a resource consent or the District Plan, any use or activity which in the opinion of the Lessor has a reasonable probability that it will or may cause or contribute to any site or environmental contamination or in any other way breach any of the provisions of the Resource Management Act or any legislation regarding water use or the discharge of contaminants into the environment or any other matter provided for or any duty imposed by any legislation or any regulations rules ordinances notices orders or any other thing made or issued by any competent authority pursuant to that Act or any other legislation dealing with those matters.
- f. Subdivide or seek to subdivide the Premises.

5. **ENVIRONMENTAL PROCEDURES**

5.1 In carrying out the Required Use the Lessee shall at its cost and in addition to its other obligations under this lease and not in derogation from them:

- a. Ensure that it only uses chemicals which have been previously approved by the relevant authorities and then use them in the approved manner.
- b. Carry out an annual environmental audit by a person agreed upon by the parties or failing agreement to be appointed by the Lessor to ensure that the Premises or elsewhere is not being contaminated or that there is no illegal adverse effect on the environment, caused by the Lessee's occupation or use of the Premises.
- c. Prepare a plan in respect of its occupation and use of the Premises to:
 - i. Identify possible causes of any adverse effect on the environment
 - ii. Remove (or if that is not possible minimise) such possible causes
 - iii. Ensure that there is no escape from the Premises or from vehicles, pipes, or other systems of conveyance to or from the Premises of any solid,

liquid or gaseous substances which may have an illegal adverse effect on the environment.

- iv. Forthwith take all steps to remedy any escapes or contamination that may occur of the type mentioned in this lease.

5.2 On completion of the term the Lessee shall carry out an environmental audit of the Premises by a person approved by the Lessor to ensure that it is not illegally contaminated and is not able to have any illegal adverse effect on the environment and will provide a certificate to that effect.

5.3 If the Premises are illegally contaminated or in such a state that it could possibly have an illegal adverse effect to the environment as a result of the Lessee's occupation or use of the Premises the Lessee shall at its own expense remedy or mitigate the contamination as far as practical to the standard required by any relevant environmental authority.

6. BUILDINGS AND OTHER IMPROVEMENTS

6.1 The Lessee shall not at any time make or permit any material -

- a. Excavation of the Premises, or
- b. Demolition of all or any part of any building or other improvements on the Premises, or
- c. Construction placing or erection of any buildings or other improvements on the Premises or any structural alterations or additions, or
- d. Change of use of any building or other improvements on the Premises, or
- e. Installation, alteration or interference with any equipment, fitting or fixture or any services or other system relating to the Premises or their use or any buildings or other improvements on the Premises,

without on each occasion obtaining the Lessor's consent in writing and then only in accordance with any terms or conditions attaching to the consent. Consent will not be unreasonably withheld but may be given subject to any conditions as the Lessor may reasonably see fit to impose.

6.2 When seeking the Lessor's approval under sub-clause 6.1 the Lessee shall submit complete plans and specifications together with a copy to be retained by the Lessor and such evidence as the Lessor may reasonably require that:-

- a. The proposed work or use is properly authorised and will comply with all relevant statutory and other requirements and
- b. The work will be to a reasonable standard and quality both in appearance, design and construction and
- c. The work during progress will be properly carried out supervised and inspected and
- d. The work will be carried out and properly completed by the Lessee and/or its contractors and suitably qualified trades and other persons.

Upon completion of the work the Lessee shall forthwith produce to the Lessor any requisite code compliance or other certificates issued by properly qualified building certifiers or other relevant authorities.

- 6.3 The Lessee, at the Lessee's expense in all things, shall duly punctually and fully comply with and discharge (to the total exclusion of any liability attaching or accruing to the Lessor) the requirements of:
- a. All statutes regulations ordinances by-laws and other lawful requirements applicable to the Premises and any buildings or other improvements on or proposed to be erected or made on the Premises and their uses or proposed uses;
 - b. All notices orders rules requisitions or requirements made or issued by any statutory territorial or other authority;
 - c. All obligations imposed by or pursuant to any such statute provision or authority or any such notice requisition or other requirements whether on the owner occupier builder or user of any land building or other thing.
- 6.4 At the expiry or earlier termination of the lease and any renewals of it, the Lessee shall remove all the Lessee's improvements buildings fittings and chattels and make good (at the Lessee's own expense) all resulting damage. If the Lessee does not remove those items within six months of the Lessor giving written notice to the Lessee requiring removal, then the ownership of all those improvements buildings fittings and chattels may (at the election of the Lessor and without further notice being required to be given to the Lessee) pass to the Lessor and the Lessor may retain them or dispose of them as it sees fit. The cost of making good resulting damage and the cost of removal shall be recoverable from the Lessee on demand and the Lessor shall not be liable to pay any compensation nor be liable for any loss suffered by the Lessee.

7. FENCING

- 7.1 The Lessee shall not at any time call upon or require the Lessor to contribute towards the cost of or to erect or repair any fence between the Premises and any adjoining land. This provision shall not enure for the benefit of any lessee or occupier (other than the Lessor) of adjoining land.

[OPTION 1 – IF TENANT BUILDS THE PREMISES]

8. INSURANCE

- 8.1 The Lessee acknowledges that the Lessor has not insured and will not insure any of the Lessee's buildings and other structures, fixtures and fittings at the Premises and in particular has not insured and will not insure them against fire, flood, explosion, lightning, storm, earthquake, or volcanic activity.
- 8.2 The Lessee at the Lessee's own cost and expense shall:
- a. Forthwith insure and at all times during the term keep insured all of the Lessee's buildings and the Lessee's other structures fixtures and fittings which are now or may at any time be erected placed on or affixed to the Premises against destruction or damage by fire, flood, damage, explosion, lightning, storm, earthquake, volcanic activity, storm water damage and malicious damage and all

other usually insurable risks to their full replacement value with a reputable and responsible insurance office.

- b. On demand produce evidence to the Lessor's satisfaction that the items in clause 8.2a have been and remain so insured and shall at least seven days before the due date of any such premiums hand the Lessor a duplicate receipt of the premium or premiums for the ensuing year.

In default the Lessor may, but shall be under no obligation to, insure or pay the premiums and all premiums and other costs so incurred by the Lessor in so doing shall be recoverable as rent in arrears.

- 8.3 The Lessor and the Lessee agree that the Lessee will at the Lessor's option meet the cost of making good the destruction or damage, or will indemnify the Lessor against the cost of making good the destruction or damage, to the Lessee's buildings and other structures and fittings to the extent that the destruction or damage arises from an event specified in clause 8.2a and the Lessor is not entitled to be indemnified under a policy of insurance for the destruction or damage.

- 8.4 Whenever any building or other structure or any part of them is destroyed or damaged then all money received in respect of any such insurance shall be spent with all convenient speed in

- a. Repairing and reinstating any building or structure partially so destroyed or
- b. Erecting a new building or structure in place of any completely so destroyed.

If however the Lessor, on reasonable grounds, concludes that it would be uneconomic or undesirable to reinstate or repair then this lease shall be deemed without further notice to come immediately to an end without liability for payment to the Lessee of any compensation. Termination under this paragraph shall not release the Lessee from its obligation to clean up the site pursuant to clause 6.4.

[OPTION 2 – IF MMH BUILDS THE PREMISES]

8. INSURANCE

- 8.1 The Lessor will insure, and keep insured during the term of this lease, at the Lessee's cost, the Lessor's buildings, structures, fixtures and fittings at the Premises to their full replacement value against destruction or damage by fire, flood, explosion, lightning, storm, earthquake, or volcanic activity. If the insurance cover required under this clause becomes unavailable during the term of this lease or any renewal, other than because of the Lessor's act or omission, the Lessor will not be in breach while cover is unavailable, provided the Lessor uses all reasonable endeavours on an ongoing basis to obtain cover. The Lessor will advise the Lessee in writing whenever cover becomes unavailable.

- 8.2 The Lessee must not do (or allow to be done) anything which might cause:

- a. The Lessor's insurance cover to become prejudiced, void or voidable; or
- b. An increase in insurance premiums payable by the Lessor without having first obtained the consent of the Lessor and the Lessor's insurer subject to the Lessee meeting the cost of any increased premium in accordance with clause 8.3.a.

- 8.3 Any increase in insurance premiums paid by the Lessor must be paid by the Lessee if the increase is attributable to:
- a. The Lessee's use of the Premises; or
 - b. Any act or omission of the Lessee or a person under the Lessee's control.
- 8.4 Where the Lessee has caused any insurance cover to be prejudiced or void, and the Lessor has suffered loss or damage, the Lessee will compensate the Lessor in full for such loss or damage.
- 8.5 Whenever any building or other structure or any part of them is destroyed or damaged then all money received in respect of any such insurance cover shall be spent with all convenient speed in
- a. Repairing and reinstating any building or structure partially so destroyed or
 - b. Erecting a new building or structure in place of any completely so destroyed.

If however the Lessor, on reasonable grounds, concludes that it would be uneconomic or undesirable to reinstate or repair then this lease shall be deemed without further notice to come immediately to an end without liability for payment to the Lessee of any compensation. Termination under this paragraph shall not release the Lessee from its obligation to clean up the site pursuant to clause 6.4.

9. **ASSIGNMENT OR SUBLETTING**

- 9.1 The Lessee will not during the term of this lease or of any renewal of it assign transfer sublet or part with possession of the Premises or any part without the prior consent in writing of the Lessor.
- 9.2 If the Lessor consents to a subletting the consent shall extend only to the subletting. Notwithstanding anything stated or implied in the sublease the consent shall not permit any sub-lessee to deal with the sublease in any way in which the Lessee is constrained from dealing with this lease without consent.

10. **INDEMNITY**

- 10.1 The Lessee shall indemnify the Lessor against
- all damage or loss to the Premises and
 - all actions claims prosecutions or demands which may be made against the Lessor arising from any act or omission on the part of the Lessee or the Lessee's agents, employees, contractors or visitors.

The Lessee shall compensate the Lessor for all expenses incurred by the Lessor in making good any damage to the demised premises resulting from any such act or omission. The Lessee will obtain and maintain public risk insurance of at least \$10,000,000 and will upon demand produce to the Lessor evidence of such insurance.

- 10.2 The Lessor may from time to time during the term of this lease and any renewal of it review the amount of insurance cover required under paragraph 10.1 to a figure which is considered in the reasonable opinion of the Lessor to be appropriate.

10.3 The obligations of the Lessee under this clause 10 shall apply notwithstanding any time or other indulgence that has at any time been given to the Lessee in respect of any covenant or obligation of the Lessee under this lease.

11. LAND TRANSFER TITLE OR MORTGAGEE'S CONSENT

11.1 The Lessor shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the Premises and the Lessee will not register a caveat in respect of the Lessee's interest under this lease.

12. RIGHT OF RENEWAL

12.1 If the Lessee:

- Has given to the Lessor written notice to renew the lease at least three calendar months before the end of the term (time being of the essence); and
- Is not at the date of the giving of such notice and at the renewal date in breach of this lease

then the Lessor will grant a new lease for a further term as set out in Schedule A to this lease from the renewal date as follows:

- a. If the renewal date is a rent review date the annual rent shall be agreed upon or failing agreement shall be determined in accordance with clause 1.2 but the new annual rent shall not be less than the rent payable immediately before the renewal date.
- b. Subject to the provisions of paragraph a the new lease shall be upon and subject to the covenants and agreements in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.
- c. The new annual rent shall be subject to review at each Rent Review date.
- d. The Lessor as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Lessee who has given notice.
- e. Pending the determination of the rent, the Lessee shall pay an interim rent in accordance with clause 1.8.

13. COSTS

13.1 The Lessee shall pay the Lessor's solicitor's reasonable costs of and incidental to the preparation of this lease and any variation or renewal and any stamp or other duty payable and the Lessor's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of any of the Lessor's rights remedies or powers under this lease and in each case plus Goods and Services Tax.

14. RIGHTS RESERVED BY LESSOR

Right of Access and Inspection

- 14.1 The Lessor and the Lessor's employees contractors and invitees may at all reasonable times enter upon the Premises and any buildings structures or other improvements erected or situated upon or being erected or placed on the Premises to view their condition and state of repair and to ascertain whether or not there has been any breach of any of the Lessee's covenants or obligations under this lease. The Lessor shall give reasonable notice and exercise its rights under this clause with as little inconvenience as is reasonably possible.
- 14.2 The Lessor and its employees, agents or contractors shall at all times have reasonable access to the Premises for the purpose of complying with this agreement and its obligations as a port authority. The Lessor shall give reasonable notice and exercise its rights under this clause with as little inconvenience as is reasonably possible.
- 14.3 The Lessor may serve upon the Lessee notice of any repairs or other remedial action required and the Lessee shall with all reasonable speed comply with any such notices.
- 14.4 If the Lessor exercises its rights of access and inspection under either of sub-clauses 14.1 or 14.2, the Lessor shall comply with the Lessee's standards and requirements for Health and Safety relating to visitors on site so far as is reasonably practicable.

Lessor may repair

- 14.5 If -
- a. Default shall be made by the Lessee in the due and punctual compliance with any notice given pursuant to the previous sub-clause, or
 - b. Any repairs or work for which the Lessee is responsible require to be undertaken as a matter of urgency -

then without prejudice to the Lessor's other rights and remedies expressed or implied in this lease the Lessor by the Lessor's employers and contractors may with all necessary equipment and materials at all reasonable times enter upon the Premises to execute such works.
 - c. Any moneys expended by the Lessor in doing so shall be payable by the Lessee to the Lessor upon demand with interest calculated in accordance with clause 2.1 from the date of expenditure until payment is made by the Lessee.
 - d. Any such expenditure shall be recoverable by the Lessor from the Lessee as rent in arrears.

Default by Lessee

- 14.6 Without however in any way limiting the rights of the Lessor under clause 14.5 if and whenever:-
- a. The rent (or any part of it) is in arrears 10 working days after the due date appointed for payment thereof, whether the same shall have been legally demanded or not, and the Lessee has failed to remedy the breach within 10 working days after service on the Lessee of a written notice in accordance with section 245 of the Property Law Act 2007; or

- b. The Lessee makes default in the observance or performance of any of the Lessee's obligations under this lease (other than the covenant to pay rent), express or implied, and such default has not been remedied within the period specified in a notice served on the Lessee in accordance with section 246 of the Property Law Act 2007:

then and in any such case the Lessor may forthwith or at any time thereafter cancel this lease by re-entering the Premises or any part of it in the name of the whole. That cancellation shall not discharge the Lessee from liability for rent due or accruing due or for any previous breach of any of the covenants conditions or agreements contained or implied in this lease.

Repudiation

- 14.7 The Lessee shall compensate the Lessor and the Lessor shall be entitled to recover damages for any direct loss or damage suffered by reason of any acts or omissions of the Lessee constituting a repudiation of this lease or the Lessee's obligations under this lease. Such entitlement shall subsist notwithstanding any determination of this lease and shall be in addition to any other right or remedy which the Lessor may have.

15. LOSS OR DAMAGE

- 15.1 The Lessor shall not be liable for any loss or damage of any kind resulting from the flow or escape of water earth or silt from any cause from any adjoining or neighbouring land (whether occupied by the Lessor or not) on or to the Premises.

16. DISPENSATION

- 16.1 The Lessor reserves the right at any time to
- dispense with or allow departure from all or any of the covenants obligations or stipulations in the case of any lessee of any adjacent or other land owned by the Lessor and
 - at any time to vary any scheme of subdivision in the locality of the Premises.

17. NO WAIVER

- 17.1 No failure on the part of the Lessor to exercise and no delay on its part in exercising any right power or remedy under this lease (and whether expressed or implied) shall operate as a waiver. No single or partial exercise of any right power or remedy shall preclude any other or further exercise of the power or remedy or the exercise of any other right power or remedy.

18. IMPLIED PROVISIONS

- 18.1 Any provisions of the Land Transfer Act 1952 and the Property Law Acts 1952 or 2007 which are inconsistent with or contradictory to any provisions in this lease are negated or are modified to the extent of the inconsistency to the extent that negation or modification is permitted.

19. HEALTH AND SAFETY AT WORK ACT 2015

- 19.1 The Lessee will do all things necessary as a “person conducting a business or undertaking” (as that term is defined in the Health and Safety at Work Act 2015) and as the occupier of the Premises to comply with its duties and obligations under the Health and Safety at Work Act 2015 including but without limitation:
- a. Take all reasonably practicable steps to ensure that:
 - i. The Premises (as a work environment) does not pose any risk to health and safety;
 - ii. All plant, structures and systems situated on the Premises are safe and maintained;
 - iii. There are adequate facilities for the Lessee’s employees and workers welfare while on the Premises;
 - iv. All persons entering the Premises receive appropriate information, training, instructions and/or supervision necessary to protect them from any health and safety risks;
 - v. The health of the Lessee’s employees and workers and the conditions at the Premises, as a workplace, are monitored so as to prevent illness or injury to any employee or worker.
 - b. Implement or update the Lessee’s health and safety management system, including undertaking a safety review of the Lessee’s business and the hazards and risks register, to ensure that all hazards, risks and controls, as they relate to the Premises, are appropriately recorded and up to date; and
 - c. Notify Worksafe of all notifiable incidents, illnesses or injuries (as those terms are defined in the Health and Safety at Work Act 2015) occurring on the Premises as soon as the Lessee becomes aware of such incident, illness or injury.
 - d. Ensure that comprehensive training is provided to all of the Lessee’s employees and workers on matters of health and safety so as to satisfy any requirements of the Health and Safety at Work Act 2015.

20. NOTICES

- 20.1 Any notice or other document required to be given or served under this lease (in addition to any other method permitted by law) may:
- a. In the case of the Lessee be given or served by registered post or by delivery to the Lessee’s registered office, and
 - b. In the case of the Lessor be given or served by registered post or by delivery to the Lessor’s principal place of business or such address as may be notified to the Lessee from time to time.
- 20.2 Any notice or other document shall be deemed to have been served on the other party five working days after the date of posting or in the case of delivery on the day of delivery.

- 20.3 In the case of any notice or document required to be served or given by the Lessor the same may be signed on behalf of the Lessor by any authorised officer of the Lessor or by the Lessor's solicitors.
- 20.4 Either party may serve any notice by facsimile to the other in which case the notice shall be deemed to have been served on the other party the following working day.

21. COMPLIANCE WITH STORMWATER CONSENT

- 21.1 The Lessor is the holder of a Resource Consent (10723) from the Northland Regional Council to discharge stormwater. The Resource Consent is subject to certain conditions, restrictions and requirements, including a monitoring programme.
- 21.2 Without derogating from, or in any way limiting, any other provisions of this lease requiring the Lessee to comply with any conditions imposed on the Lessor under any resource consents or by any territorial authority, the Lessee shall at all times comply with the conditions of the Resource Consent, including the monitoring programme, as if it were the Lessor. The Lessee shall fully indemnify the Lessor for any breach of this clause.
- 21.3 A copy of the Resource Consent, including the monitoring programme, is attached hereto.

22. INTERPRETATION

- 22.1 In this lease:
- a. Words importing the singular shall include the plural and vice versa.
 - b. Words importing one gender include the other genders.
 - c. "Person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, or agency of state, state owned enterprise, government department and statutory, territorial, local or any other authority whatever and in each case whether or not having separate legal personality or constitution.
 - d. Clause headings or sub-headings are inserted for reference only and shall not affect the interpretation of this lease.
 - e. References to any statute refer also to any regulation rule by-law order or notice made or issued under or pursuant to that statute.
 - f. Any reference to any statute shall extend to any statutory amendment modification or re-enactment of that statute.
 - g. Any words or expressions defined by any statute will have the same meaning unless inconsistent with the context.
 - h. Where there is more than one Lessee all covenants and obligations shall bind those persons jointly and severally.
 - i. Benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any assignees or transferees (or

permitted assignees or transferees in the case of the Lessee) and references to the parties shall be construed accordingly.

- j. No provision in any clause or sub-clause will be limited or restricted by reference to any other clause or sub-clause.

23. **GUARANTEE**

23.1 In consideration of the Lessor entering into the lease at the Guarantor's request the Guarantor:

- a. guarantees payment of the rent and the performance by the Lessee of the covenants in the lease, and
- b. indemnifies the Lessor against any loss the Lessor might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

23.2 The Guarantor covenants with the Lessor that;

- a. No release delay or other indulgence given by the Lessor to the Lessee or to the Lessee's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- b. As between the Guarantor and the Lessor the Guarantor may for all purposes be treated as the Lessee and the Lessor shall be under no obligation to take proceedings against the Lessee before taking proceedings against the Guarantor.
- c. The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
- d. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
- e. Should there be more than one Guarantor their liability under this guarantee shall be joint and several.
- f. The Guarantee shall extend to any holding over by the Lessee.

[OPTION – IF REQUIRED]

24. **BANK GUARANTEE**

24.1 The Lessee will provide and maintain during the term of the lease and any renewal or extension of the Term a bank guarantee in favour of the Lessor from a trading bank registered in New Zealand. The bank guarantee will:

- a. Be provided to the Lessor prior to this lease being signed by the Lessee [and as set out in the agreement to lease entered into by the Lessor and the Lessee]. The Lessor will be entitled to prevent the Lessee taking possession of the Premises until the guarantee is signed. The provision of the guarantee is an essential term of this lease to the Lessor;
- b. Guarantee payment of the rent and the performance by the Lessee of the covenants in this lease;

- c. Provide for the bank to indemnify the Lessor against any loss the Lessor might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver, or other person;
- d. Be limited to \$[] plus GST;
- e. be released by the Lessor in the event the Lessor consents to an assignment of this lease provided that the assignee provides a replacement guarantee or security that is in all respects acceptable to the Lessor;
- f. Otherwise be on terms satisfactory to the Lessor.

SCHEDULE A

Premises:

Commencement Date:

Term of Years:

Annual Rent:

Periodic Rent:

Rent Review Dates:

Final Expiry Date:

Rent Payment Dates:

Rights of Renewal:

Required Use:

Signed

Signed for and on behalf of **MARSDEN MARITIME HOLDINGS LIMITED** as Lessor by a director and duly authorised officer in the presence of:

Director's signature

Signature of witness

Authorised Signatory

Name of witness

Occupation

Address

Signed by _____ as Lessee:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by _____ as Guarantor in the presence of:

Signature of witness

Name of witness

Occupation

Address