

Confidentiality Agreement

This Agreement is made on [insert date and month and year]

Between: Cromwell Corporation Limited (ABN 44 001 056 980) and Cromwell Property Securities Limited (ABN 11 079 147 809) in its capacity as responsible entity of the Cromwell Diversified Property Trust (ARSN 102 982 598) (Cromwell or Provider) of Level 19, 200 Mary Street, Brisbane, Queensland, Australia

And: [insert name of recipient and its ACN / ABN] (Recipient) of [insert address]

1 Background

Cromwell and the Recipient propose to commence discussions in relation to the potential sale of a collective of properties known as the Bundall Corporate Centre, located at Corporate Court, Bundall, Queensland 4217 (the Purpose). In the course of discussions, Cromwell may provide the Recipient with Information which is confidential concerning Cromwell or its related bodies corporate.

2 Definitions

Agreement means this agreement and any amendments or revisions to it in writing agreed to between the Parties.

Confidential Information means Information which is or has been disclosed by the Provider or any of its Related Persons to the Recipient or any of its Related Persons (whether orally or in writing and whether before or after the date of this Agreement) and includes but is not limited to financial, business or technical information relating to the affairs of the Provider, the fact that Information is being made available to the Recipient, the fact that discussions have or will occur between the Recipient and the Provider, and information which is indicated to the Recipient as confidential;

but does not include:

- (a) Information which was already in the Recipient's possession prior to receipt from the Provider pursuant to this Agreement;
- (b) Information which is obtained by the Recipient or its Related Persons from a third party who, insofar as is known to the Recipient or its Related Persons, is not prohibited from transmitting the Information to the Recipient by a contractual, fiduciary or other legal obligation; or
- (c) Information which is or becomes publicly available otherwise than as a result of a breach of this Agreement.

Information includes all information, whether or not it is business information, or information that is only ascertained by implication or inference, or information gleaned from documents or discussions, or

incidentally or accidentally, regardless of the form in which such information is acquired, recorded, stored, or disseminated and includes analyses, compilations, studies or other documents, whether prepared by the Recipient, or its agent, which contain or otherwise reflect such information.

Party means either or both of the parties to this Agreement or (where permitted by this Agreement) their lawful assigns and Parties shall have the correlative meaning.

Purpose means the purpose referred to in clause 1.

Related Person means related bodies corporate, agents or advisers or any of their employees, directors or officers.

3 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) In this Agreement, unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) a reference to a thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 3(b)(ii) implies that performance of part of an obligation constitutes performance of the obligation;
 - (iii) the term “related bodies corporate” has the meaning given to that term under the *Corporations Act 2001* (Cth);
 - (iv) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate, and any government agency; and
 - (v) a reference to a person includes that person’s successors and legal personal representatives.

4 Confidentiality

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information other than as permitted by this Agreement or with the prior written consent of the Provider;
- (b) promptly notify the Provider if it becomes aware of any unauthorised use, storage, copying or disclosure of the Confidential Information; and
- (c) do anything reasonably required by the Provider to prevent or stop a breach or threatened breach of this Agreement or an infringement or threatened infringement of the Provider’s rights arising out of this Agreement by any person, whether by court proceedings or otherwise.

5 Permitted use and disclosure

The Recipient may:

- (a) only use or reproduce the Confidential Information for the Purpose;
- (b) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Provider;
- (c) disclose Confidential Information to its Related Persons, but only if and to the extent that:
 - (i) those Related Persons have a specific need to have access to the Confidential Information for the Purpose;
 - (ii) such disclosure is solely for the Purpose and consists only of such Confidential Information as the Related Persons need to know to properly assist the Recipient in connection with the Purpose; and
 - (iii) the disclosure of the Confidential Information is made on terms which preserve as far as possible the confidentiality of the Confidential Information;
- (d) disclose the Confidential Information to the extent required by law, regulation, any relevant regulator's policy or relief, the rules and regulations of any recognised stock exchange upon which its securities are listed, or pursuant to any order of a court of competent jurisdiction or regulatory authority acting within its powers, provided that the Recipient, to the extent reasonably possible:
 - (i) gives the Provider prompt notice of such requirement so that the Provider may seek a protective order or other appropriate remedy;
 - (ii) consults with the Provider as to the form of the disclosure; and
 - (iii) discloses the Confidential Information on terms which preserve as far as possible the confidentiality of the Confidential Information.

6 Security

- (a) The Recipient must take reasonable and necessary precautions with respect to use, copying, duplication, access and security to maintain the Confidential Information in strict confidence and secrecy and without limitation to the foregoing will:
 - (i) store the Confidential Information in such a way so as to prevent unauthorised access or disclosure;
 - (ii) not enter the Confidential Information onto any computer database or network that is not solely operated and controlled by it and its Related Persons;

- (iii) ensure that the Confidential Information is not copied except to the extent necessary for the Purpose; and
 - (iv) ensure all copies of the Confidential Information held are maintained in safe and secure custody.
- (b) The Recipient undertakes to procure that any Related Person to whom it discloses Confidential Information complies with this clause 6 as if that Related Person was the Recipient.

7 Return

- (a) Subject to clauses 7(b) and 7(c), the Recipient will promptly return to the Provider or destroy or delete all Confidential Information upon request.
- (b) Nothing in this clause 7 requires the Recipient to return Confidential Information which may be found in electronic back-up facilities, board papers, analyses, compilations, studies or other documents prepared by the Recipient or its Related Persons or which the Recipient or its Related Persons must retain to comply with a law, regulation, order of a court of competent jurisdiction or regulatory body acting within its power, corporate governance policies or professional standards.
- (c) That portion of the Confidential Information that the Recipient or its Related Persons is not required to return and is not returned by the Recipient or its Related Persons must continue to be held and is subject to the terms of this Agreement which will survive and continue to apply to any Confidential Information retained by the Recipient following termination of this Agreement.
- (d) Return of the Confidential Information pursuant to clause 7(a) does not release the Recipient or its Related Persons from their obligations under this Agreement.

8 Acknowledgment and Indemnity

- (a) The Recipient acknowledges and agrees that:
- (i) the Confidential Information is secret and highly confidential to the Provider;
 - (ii) the Confidential Information is the exclusive property of the Provider and this Agreement does not convey any proprietary or other interest in the Confidential Information to the Recipient or any other person;
 - (iii) the Provider is free to disclose its Confidential Information to any person in addition to the Recipient and the Provider is not obliged to notify the Recipient of that disclosure or any discussions which the Provider may have with any person;

- (iv) disclosure of Confidential Information in breach of this Agreement could cause considerable commercial and financial detriment to the Provider and its related bodies corporate; and
 - (v) damages may be inadequate compensation for breach of this Agreement and, subject to the court's discretion, the Provider may restrain by an injunction or similar remedy any conduct or threatened conduct which is or would be a breach of this Agreement.
- (b) The Recipient indemnifies each Provider and their Related Persons in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal fees on a solicitor and own client basis) which a Provider or its Related Persons suffers, pays, incurs or is liable for as a direct result of:
- (i) any breach of this Agreement by the Recipient;
 - (ii) any failure by the Recipient to ensure compliance by any Related Persons with the terms of this Agreement (as if they were bound by this Agreement); or
 - (iii) any act or omission by a Related Persons, which if done or omitted to be done by the Recipient would constitute a breach of this Agreement,

except to the extent that the claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment was contributed to by an act or omission of a Provider or a Related Person of the Provider.

9 Disclaimer

- (a) None of the Provider nor any of its Related Persons by virtue of this Agreement alone:
- (i) makes any representation or warranty:
 - (A) as to the accuracy or completeness of the Confidential Information;
 - (B) that the Confidential Information has been audited, verified or prepared with reasonable care;
 - (C) that the Confidential Information is the totality of the information that a party in the position of the Recipient may require or expect to find in order to evaluate the Purpose;
 - (D) that the Confidential Information is exclusively disclosed to the Recipient or has not prior to such disclosure, been disclosed to any third party; or
 - (E) that either Party is bound to disclose all or any Confidential Information in their possession, custody or control to the other Party that is relevant to the Purpose;

- (ii) accepts any responsibility for any interpretation, opinion or conclusion that the Recipient or a person to whom the Recipient has disclosed Confidential Information may form as a result of examining the Confidential Information;
 - (iii) accepts any responsibility to inform the Recipient of any matter arising or coming to the Provider's notice which may affect or qualify any Confidential Information which the Provider provides to the Recipient; and
 - (iv) is liable, and the Recipient covenants not to make any claim or commence or pursue any proceedings against any of them, for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits or special loss or damage) arising from:
 - (A) an error, inaccuracy, incompleteness or similar defect in the Confidential Information; or
 - (B) any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information.
- (b) The Recipient acknowledges that it is making an independent assessment of the Confidential Information and that it will:
- (i) carry out, and rely solely on, its own investigation and analyses in relation to the Confidential Information; and
 - (ii) verify to its own satisfaction all information on which it intends to rely.
- (c) Any reliance by the Recipient, or any person to whom the Recipient has disclosed Confidential Information, on any Confidential Information, or any use of any Confidential Information, is solely at its own risk.

10 Term

- (a) The obligations and undertakings under this Agreement will survive for a period of 12 months from the date of this Agreement.

11 Governing Law

- (a) This Agreement is governed by the laws of Queensland, Australia. The Parties accept the non-exclusive jurisdiction of the courts having jurisdiction there.

12 Waivers

- (a) Waiver of any right, power, authority, discretion or remedy arising on default under this Agreement must be in writing and signed by the Party granting the waiver.

- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

13 Variation

- (a) Any variation of this Agreement must be in writing and signed by the Parties.

14 Entire agreement and counterparts

- (a) This Agreement is the entire agreement between the Parties in respect of its subject matter.
- (b) This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which when executed and delivered will be an original, but all of which will together constitute one and the same instrument.

15 Limitation of Liability – CPSL

- (a) Cromwell Property Securities Limited (**CPSL**) enters into this Agreement in its capacity as responsible entity of the Cromwell Diversified Property Trust and in no other capacity.
- (b) A liability of CPSL arising under or in connection with this Agreement is limited to the amount CPSL actually receives in the exercise of its right of indemnity from the property of the Cromwell Diversified Property Trust. This limitation of liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of CPSL in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (c) Recipient may not sue CPSL in any capacity other than as the responsible entity of the Cromwell Diversified Property Trust, including seeking the appointment of a receiver (except in relation to property of the Cromwell Diversified Property Trust), a liquidator, an administrator or any similar person to CPSL or prove in any liquidation, administration or arrangement of or affecting CPSL (except in relation to property of the Cromwell Diversified Property Trust).
- (d) The provisions of this clause will not apply to any obligation or liability of CPSL to the extent that it is not satisfied because under the constitution of the Cromwell Diversified Property Trust or by operation of law there is a reduction in the extent of CPSL's indemnification out of the assets of the Cromwell Diversified Property Trust as a result of CPSL's fraud, negligence or breach of trust.
- (e) CPSL is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless CPSL's liability is limited in the same manner as set out in paragraphs above.

16 Notices

- (a) Any notice or other communication including any request, demand, consent or approval given or made by a Party must be in writing and signed by a Director or Company Secretary of the Party. All notices must:
 - (i) be in writing;
 - (ii) addressed as set out at the start of this Agreement or any other address a Party may advise in writing; and
 - (iii) marked to the attention of the Recipient's Company Secretary.

EXECUTED as an agreement

**Executed by Cromwell Corporation Limited
ABN 44 001 056 980** by its attorneys under
power of attorney dated 7 December 2016 in the
presence of

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signature of attorney

Name of attorney (print)

**Executed by Cromwell Property Securities
Limited ABN 11 079 147 809** as responsible
entity of the **Cromwell Diversified Property
Trust ARSN 102 982 598** by its attorneys under
power of attorney dated 7 December 2016 in the
presence of

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signature of attorney

Name of attorney (print)

**Executed by [insert name of recipient and
its ACN / ABN]** in accordance with section
127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)
(Please delete as applicable)