



CROMWELL PROPERTY GROUP EMPLOYEE SECURITY TRUST DEED

Cromwell Corporation Limited
ACN 001 056 980

Cromwell Property Securities Limited
ACN 079 147 809
as responsible entity of the Cromwell Diversified Property Trust
ARSN 102 982 598

Pacific Custodians Pty Limited
ABN 66 009 682 866

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TRUST DEED

DATE: 29 September 2020

PARTIES:

Cromwell Corporation Limited (ACN 001 056 980) of Level 19, 200 Mary Street, Brisbane QLD 4000 (the **Company**).

Cromwell Property Securities Limited (ACN 079 147 809) of Level 19, 200 Mary Street, Brisbane QLD 4000
as responsible entity of the Cromwell Diversified Property Trust (ARSN 102 982 598) (the **Responsible Entity**).

Pacific Custodians Pty Limited (ABN 66 009 682 866) of Level 12, 680 George Street, Sydney, New South Wales 2000 (**Trustee**).

Melissa Jones of Level 12, 680 George Street, Sydney, New South Wales 2000 (**Settlor**).

RECITALS

- A. The Company and the Responsible Entity have established the Employee Security Plan under which Stapled Securities may be offered to Eligible Participants. The Employee Security Plan is designed to assist in retention and motivation and give Eligible Participants the opportunity to have a greater involvement with, and share in the future growth and profitability of, the Group.
- B. The Company wishes to establish a trust for the sole purpose of obtaining Securities for the benefit of participants in the Employee Security Plan and any Future Plan. Such Securities will be registered in the name of the Trustee pursuant to this deed and may either be held on an unallocated basis or as Plan Securities on behalf of a Participant at any particular time. The Trustee may also, at the direction of the Company, acquire Securities in advance of allocating those Securities to Participants.
- C. For the purposes of this trust arrangement, Plan Securities issued, transferred or allocated under a Plan may be subject to such conditions as the Boards determine in accordance with the Plan Rules. Participants may forfeit their entitlements to Plan Securities in certain circumstances.
- D. The Trustee has agreed to act as the first Trustee of the Trust and has agreed to hold Securities and Plan Securities in relation to the Employee Security Plan and any Future Plan on the terms and conditions set out in the relevant Plan Rules and in accordance with this deed. The activities of the Trustee are limited to the Employee Security Plan and any Future Plan.
- E. The Trust has been established to be an "employee share trust" as defined in sub-section 130-85(4) of the Tax Act whose sole activities are as described in that sub-section, and complies with the requirements of the Class Order.
- F. The Settlor has agreed to establish the Trust.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following words and phrases have these meanings in this deed unless the contrary intention appears:

Account means an account in respect to Plan Securities referred to in clause 5.

Accretion means any accretion, dividend, distribution, entitlement, benefit or right of whatever kind whether cash or otherwise which is issued, declared, paid, made, arises or accrues directly or indirectly to or in respect of a Share or a Unit including, without limitation, any rights issue, bonus issue, entitlements offer, or distribution from any reserve and any reduction of capital.

Auditor means any person registered as an auditor under the Corporations Act.

Board means the board of directors of the Company or the Responsible Entity as applicable and **Boards** means the boards of each of the Company and the Responsible Entity and if the relevant powers or discretions have been delegated by the Boards, the committee or individuals acting as delegates.

Bonus Securities means the Securities in respect of the Plan Securities held by the Trustee on behalf of a Participant, issued as part of a bonus issue to holders of Stapled Securities.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Class Order means Class Order 14/1000 (Employee incentive schemes: Listed bodies) as issued by the Australian Securities & Investments Commission or any replacement class order or similar instrument.

Company Secretary means the person appointed to act as company secretary of the Company, from time to time.

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time.

Cromwell Trust means the Cromwell Diversified Property Trust ARSN 102 982 598.

Eligible Participant means a person who is a:

- (a) full time, part time or casual employee of a Group Company;
- (b) director of a Group Company;
- (c) consultant or contractor to a Group Company; or
- (d) person that the Boards considers in their absolute discretion to be appropriate for participation in a Plan provided such person meets the

requirements of section 83A-325 of the Tax Act in relation to the Group,

and meets the eligibility requirements in the relevant Plan Rules.

Employee Security Plan means the Cromwell Property Group Performance Rights Plan established by the Company and the Responsible Entity for the benefit of Participants, subject to Plan Rules approved by the Boards and amended from time to time.

Future Plan means any employee plan to be established by the Group for the benefit of Participants, subject to Plan Rules approved by the Boards from time to time.

Fund means:

- (a) the Settlement Sum;
- (b) the Securities acquired or accepted by the Trustee for the purposes of the Trust;
- (c) the Plan Securities;
- (d) all other money, property and assets acquired or accepted by the Trustee which become subject to the terms and conditions of this deed; and
- (e) all income of the Trust.

Group means the Company and the Responsible Entity and each of their related bodies corporate (as defined in the Corporations Act) and **Group Company** means each member of the Group.

Listing Rules means the official listing rules of ASX Limited (ACN 008 624 691), except to the extent of any express waiver by ASX Limited in favour of the Group.

Net Income means, in respect of a financial year of the Trust, an amount which the Trustee determines to be the “net income” (as defined in the Tax Act) of the Trust for the Year of Income.

Notice of Withdrawal means a duly completed and executed request, for permission to withdraw a specified number of Plan Securities held by the Trustee on behalf of a Participant from the Trust and to be sold or transferred to the Participant or as the Participant directs, which is submitted by the Participant to the Board in a form approved by the Board.

Offer means an offer or invitation made by the Company or a member of the Group to an Eligible Participant under a Plan.

Participant means an Eligible Participant to whom the Company makes an award under a Plan and determines will have Securities allocated to the Account in accordance with clause 4.3.

Plan means the Employee Security Plan or any Future Plan as the case may be.

Plan Rules means the terms and conditions and other rules relating to a Plan as amended from time to time.

Plan Securities means Securities held by the Trustee on behalf of a Participant in accordance with the requirements of this deed and the relevant Plan Rules.

Responsible Entity means Cromwell Property Securities Limited ACN 079 147 809 as responsible entity of the Cromwell Trust.

Restriction Period means any period under the relevant Plan Rules or relevant terms of Offer during which there are restrictions on dealing with or transferring the relevant Plan Securities.

Securities means Stapled Securities, and for the purposes of this deed, unless the context otherwise suggests by reference to a "Plan Security".

Security Interest means a mortgage, charge, pledge, lien or other encumbrance of any nature.

Settlement Sum means A\$10.00.

Share means fully a paid ordinary shares of the Company.

Stapled Security means one Share and one Unit stapled together to form a single security.

Tax Act means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth), or both as the context requires.

Trust means the trust established by this deed established for the purpose of all Plans.

Trustee means initially Pacific Custodians Pty Ltd (ABN 66 009 682 866) and thereafter means the trustee from time to time of the Trust.

Unit means a fully paid ordinary unit in the Cromwell Trust.

Year of Income means a period of 12 months corresponding with the financial year of the Company and includes the period commencing on the date of this deed and terminating on the next financial year end for the Company and the period ending on the date of termination of the Trust and commencing on the start of the preceding financial year for the Company.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) verbs expressed in the past tense include expressions of the present or future tense (and so verbs such as "issued" or "acquired" may mean "issue" or "acquire" or "to be issued" or "to be acquired" as the context requires);

- (c) a reference to a recital, this deed or a clause means the recital, this deed or the clause as amended from time to time in accordance with this deed;
- (d) a reference to a rule, statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to a person includes a reference to the person's legal personal representatives, executors, administrators and successors, a firm or a body corporate;
- (f) a reference to Trustee includes any replacement, substitute or additional trustee; and
- (g) in the event of any ambiguity, this deed is to be interpreted to allow the Trust to meet the definition of an "employee share trust" as defined in the Tax Act.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. ESTABLISHMENT OF TRUST

2.1 Appointment

The Trustee is hereby appointed by the Company and agrees to act as trustee of the Trust on the terms of this deed.

2.2 Commencement

The Trust comes into operation on the date the Settlement Sum is paid to the Trustee by the Settlor.

2.3 Trust name

The Trust created by this deed will be known by the name "Cromwell Property Group Employee Security Trust".

2.4 Trustee to comply with Plan Rules

Despite anything else in this deed, the Trustee must act in accordance with the Plan Rules, as notified by the Company from time to time.

2.5 Declaration of Trust

The Trustee declares that the Fund is held by the Trustee for and on behalf of Eligible Participants on the terms and conditions of this deed.

3. TRUSTEE

3.1 Nature, appointment and removal

The Trustee ceases to be the Trustee when one of the following occurs:

- (a) the Trustee gives no less than 40 Business Days notice in writing to the Company that it wishes to retire as Trustee;
- (b) the Company gives no less than 40 Business Days notice in writing to the Trustee that it is removed as Trustee of the Trust;
- (c) immediately, when a receiver, manager or administrator is appointed to the Trustee or the Trustee goes into liquidation or an order or resolution is made for its winding up; or
- (d) immediately, when a receiver, manager or administrator is appointed to the Company or the Cromwell Trust or the Company or the Cromwell Trust goes into liquidation or an order or resolution is made for its winding up; and
- (e) a new Trustee is appointed.

3.2 Appointment

On the retirement or removal of the Trustee, the Company may appoint such new Trustee as it thinks fit. The Company shall use its best endeavours to appoint a new Trustee as soon as possible after receipt of a notice that the existing Trustee wishes to retire.

3.3 Transfer of assets

On a change of Trustee, the retiring Trustee must execute all transfers, deeds or other documents and do all other things necessary to transfer assets into the name of the new Trustee as soon as reasonably practicable.

3.4 Powers of Trustee

The Trustee has all the powers in respect of the Trust to the maximum extent permitted by law, including but not limited to the following powers provided that none of the below powers or actions of the Trustee breach the definition of "employee share trust" for the purposes of subsection 130-85(4) of the Tax Act:

- (a) to enter into and execute all contracts, deeds and documents and do all acts or things which it deems expedient for the purpose of giving effect to and carrying out the trusts, powers and discretions conferred on the Trustee by this deed;
- (b) to subscribe for, purchase or otherwise acquire and to sell, transfer or otherwise dispose of Securities which the Trustee is authorised to acquire or dispose of on terms and conditions, which it thinks fit;
- (c) to appoint and, at its discretion, remove or suspend custodians, trustees, managers, servants and other agents, determine the powers to be delegated to them, pay such remuneration to them as it thinks fit and any person so employed or engaged is deemed for the purpose of the deed to be employed or engaged by the Trustee;

- (d) to institute, conduct, defend, compound or abandon any legal proceeding concerning the Trust and also to settle or compromise and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Trustee in respect of the Trust;
- (e) to refer any claim or demand by or against the Trustee in respect of the Trust to arbitration and observe and perform awards arising from such arbitration;
- (f) to make and give receipts, releases and other discharges for money payable to the Trust;
- (g) to open bank accounts and to retain on current or deposit account at any bank any money which it considers proper and to make regulations for the operation of those bank accounts including the signing and endorsing of cheques;
- (h) to buy Securities, to transfer Securities or Plan Securities or sell any Securities or Plan Securities (as the case may be) and apply the proceeds of sale in accordance with this deed;
- (i) to receive any money, dividends or distributions in relation to Securities and Plan Securities and apply those amounts in accordance with this deed;
- (j) to rely on any document executed and provided by a Participant, the form of which has been approved by the Company;
- (k) to take and act upon the advice or opinion of any legal practitioner (whether in relation to the interpretation of this deed, any other document or statute or as to the administration of the trusts hereof) or any other professional person and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with such advice or opinion;
- (l) to determine who is entitled to sign on the Trustee's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (m) to do anything that the Boards reasonably direct or request the Trustee to do in relation to any Plan as contemplated under this deed; and
- (n) generally do all acts and things which the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Trust and in performance of its obligations under this deed.

3.5 Trustee's obligations in relation to unallocated Securities

In respect of an unallocated Security, the Trustee:

- (a) may apply any capital receipts, dividends or other distributions received in respect of the unallocated Security to purchase further Securities to be held on trust for the purposes of this Trust only in accordance with a direction given under clause 4.1 and pay any reasonable disbursements in accordance with clause 9.2;

- (b) must hold any bonus Securities issued in respect of an unallocated Security as an unallocated Security within the Fund;
- (c) must not participate in any issue by the Company of rights (not being by way of a bonus share issue) to acquire Securities or other securities in respect of the unallocated Security without the express consent of the Company; and
- (d) must keep an account of all unallocated Securities held by the Trustee.

3.6 Instructions to Trustee

- (a) In respect to Plan Securities held by the Trustee, the Trustee is bound only to observe instructions from a Participant or anybody claiming under him or her in respect of Plan Securities as required by or pursuant to the Plan Rules.
- (b) The Trustee must forward to each Participant a copy of all notices to holders of Securities (including notices of general meeting of holders of Units or Shares) received by the Trustee in respect of that Participant's Plan Securities unless the Participant has notified the Trustee that he or she does not wish to receive such notice.
- (c) With respect to voting:
 - (i) each Participant may direct the Trustee by notice in writing not less than 72 hours before the meeting as to how to exercise the voting rights attaching to their Plan Securities, either in respect of all resolutions or a particular resolution; and
 - (ii) where a Participant gives such a direction to the Trustee, the Trustee must act in accordance with that direction by voting by way of proxy.

Notwithstanding clause 3.4, the Trustee may not, at its own discretion, exercise any voting rights attaching to any of the Plan Securities or Securities it holds on trust, including in relation to any unallocated Security. The Trustee must not vote in respect of any Plan Securities on any resolution where voting occurs by show of hands.

3.7 Remuneration of Trustee

Subject to clause 9.2, the Company will pay to the Trustee from the Company's own resources such fees and reimburse such reasonable expenses incurred by the Trustee as the Company and the Trustee agree from time to time. The Trustee is entitled to retain for its own benefit any such fee or reimbursement.

Subject to clause 9.2, the Trustee is not entitled to receive any fees, commission or other remuneration in respect of its office or its performance of its obligations as trustee of the Trust, from an Account that is established or from the Trust generally.

3.8 No security

Neither the Trustee nor the Company may use as security Securities or Plan Securities held by the Trustee.

3.9 Conflict of interest

A person who is a director of the Trustee may, except where prohibited by the Corporations Act, act in that capacity notwithstanding a conflict of interest or duty.

3.10 Sole activities test

At all times the Trustee must manage and administer the Trust so that it satisfies the definition of “employee share trust” for the purposes of subsection 130-85(4) of the Tax Act.

4. ACQUISITION, ALLOCATION AND DISPOSAL OF SECURITIES BY TRUSTEE

4.1 Notice from the Company

Where the terms of the relevant Plan Rules and/or relevant terms of Offer include that Plan Securities are to be held by the Trustee on behalf of Participant(s), the Boards must by notice in writing instruct the Trustee to subscribe for, acquire and/or allocate a number of Securities specified in the notice, to be held by the Trustee as Plan Securities in respect of an identified Participant or Participants.

The Boards may also by notice in writing instruct the Trustee to subscribe for or acquire a number of Securities as specified in a notice, to be held by the Trustee on an unallocated basis on trust for Participants generally.

The Boards must in any notice referred to in this clause 4.1:

- (a) offer to the Trustee to have the Company or a member of the Group provide funds for the sole purpose of acquiring Securities in accordance with clause 4.2;
- (b) request the Trustee to apply some of the capital of the Trust for the purposes of acquiring Securities; or
- (c) effect a combination of the above acts.

Any funds provided by a Group Company to the Trustee for the purpose of purchasing Securities on the terms of this deed constitute corpus of the Trust and are irretrievable by that Group Company or any other Group Company.

4.2 Acquisition of Securities by the Trustee

The Trustee may, upon direction by the Boards, subscribe for or acquire Securities from time to time in accordance with the instructions contained in the written notice received from the Boards referred to in clause 4.1.

Securities subscribed for or acquired in accordance with this clause 4.2 are to be registered in the name of the Trustee on subscription or acquisition, and are considered to be general Trust property to be held subject to the terms of this deed.

The Company does not, and no Group Company will, have and shall not have any beneficial interest, in any Securities that are subscribed for or acquired under this clause 4.2. This provision overrides any contrary provision in this deed.

4.3 Trustee to allocate Securities as Plan Securities

Upon direction from the Board, the Trustee must allocate Securities as Plan Securities to the Account established for a Participant, provided:

- (a) the Trustee receives sufficient payment from a Group Company or having sufficient capital to subscribe for or acquire the relevant Securities;
- (b) the Trustee holds sufficient Securities on an unallocated basis in the Fund; or
- (c) any combination of (a) and (b) above applies, as directed by the Company.

4.4 Trustee must transfer or dispose of Plan Securities

The Trustee must transfer or dispose of Plan Securities in accordance with the Plan Rules and any Offer.

4.5 Beneficial Interest and forfeited Securities

Plan Securities allocated in accordance with clause 4.3 must be held on the terms of this deed by the Trustee on behalf of the relevant Participant who is the beneficial owner of the Plan Securities until such time as the Plan Securities are transferred or disposed of in accordance with this deed or forfeited by the Participant in accordance with the relevant Plan Rules.

On forfeiture of Plan Securities by a Participant in accordance with the Plan Rules, Plan Securities will cease to be Plan Securities, and those forfeited Securities will be held by the Trustee on an unallocated basis in the Fund as general Trust property. In its discretion, the Boards may from time to time by notice in writing direct the Trustee to:

- (a) reallocate any of those forfeited Securities for the benefit of one or more Participants; and/or
- (b) hold the proceeds of sale of any such forfeited Securities in the Fund.

Whilst Plan Securities are held by the Trustee on behalf of a Participant, that Participant's entitlement to the same rights in respect of the Plan Securities (including the right to receive dividends or distributions paid and participate in any bonus or rights issue) is governed by the Plan Rules.

All interests and benefits to be held by the Trustee on behalf of a Participant under this deed are strictly personal to that Participant.

4.6 No Rights in Securities

Nothing in this deed confers or is intended to confer on any Group Company, any charge, lien or any other proprietary right or proprietary interest in the Securities acquired by the Trustee under this clause 4.

4.7 Restrictions on dealing with Plan Securities

During any Restriction Period, the Trustee and the Participant must not assign, transfer, sell, or grant a Security Interest in or over, or otherwise deal with, a Plan Security, without the express Consent of the Boards in accordance with the relevant Plan Rules.

The Company and the Trustee may enter into such arrangements as they consider necessary to enforce the restrictions in this clause 4.7, including but not limited to, applying or having applied a holding lock on the Plan Securities, and the Trustee and the Participants are deemed to agree to abide by such arrangements.

At any time after a Restriction Period (if any) ceases and subject to any administrative guidelines established by the Boards, a Participant may give to the Company or the Trustee, or be deemed by the relevant Plan Rules and/or relevant terms of Offer to have given, a Notice of Withdrawal, and following any required approval by the Boards of the Notice of Withdrawal, the Trustee must transfer the legal title in those Plan Securities or sell those Plan Securities in accordance with the terms of the approved Notice of Withdrawal and clause 4.8 or clause 4.9 (as applicable).

4.8 Transfer of Plan Securities to Participants

Subject to clause 4.7, the Trustee must do all things required to transfer legal title in Plan Securities to a Participant on whose behalf Plan Securities are held or to any third party as directed by the relevant Participant (and pay to the Participant any other monies held on the account for the Participant):

- (a) where required to do so by the relevant Plan Rules and/or relevant terms of Offer as soon as reasonably practicable;
- (b) if the Trust is terminated under clause 14; or
- (c) otherwise, where the Boards in their discretion determine.

4.9 Sale of Plan Securities

Subject to clause 4.7, if the relevant Plan Rules and/or relevant terms of Offer permit, the Trustee may at the direction of the relevant Participant, sell any of the Plan Securities to which the Participant is entitled. On sale of any such Plan Securities, subject to any Plan Rules and/or relevant terms of Offer, the Trustee will apply the proceeds of sale (and pay to the Participant any other monies held on the account for the Participant):

- (a) first, in payment of any brokerage and other costs and expenses of the sale incurred by the Trustee (including an amount sufficient to meet the tax liability (if any) incurred by the Trustee resulting from that sale); and
- (b) second, the balance (if any) in payment to the relevant Participant.

4.10 Limitation

When the Company and the Responsible Entity wish to rely on the Class Order:

- (a) the Trustee must not hold more than 5 per cent of the voting Securities or voting interests in the capital of the Company or voting interests in the Cromwell Trust at any point in time; and
- (b) the Company and the Responsible Entity are responsible for ensuring compliance with clause 4.10(a).

5. ACCOUNTS

5.1 Accounts

The Trustee must maintain appropriate records in respect of the Securities it subscribes for or acquires.

Where Plan Securities are allocated to a Participant, the Trustee must open and maintain an Account in respect of that Participant in respect of those Plan Securities that are to be held by the Trustee.

5.2 Contents of Accounts

Each Account must record at least:

- (a) the number of Plan Securities which each relevant Participant has been granted or to which they are entitled, as appropriate;
- (b) the date of acquisition of Plan Securities which each relevant Participant has been granted or to which they are entitled as appropriate; and
- (c) the number of Bonus Securities (if any) to which each Participant is entitled.

6. PAYMENTS

6.1 Payment direction on Plan Securities

Subject to the terms of this deed and the relevant Plan Rules, the Trustee may apply any income received by the Trustee (including, but not limited to, dividends, distributions and returns of capital) in relation to any Plan Securities it holds on behalf of a Participant in the manner directed by the Participant, or otherwise as provided in the Plan Rules.

6.2 Tax

Subject to the terms of this deed, the Trustee may deduct from any amount to be paid to a Participant an amount on account of tax payable or anticipated to become payable by the Trustee, including by the Trustee on behalf of the Participant directly or indirectly, in relation to any Plan Securities held on behalf of the Participant.

6.3 Interest

Interest earned through a bank account opened and operated by the Trustee on monies which form part of the Fund, shall be distributed in accordance with clause 9.3.

7. NOTICES

7.1 Method

Any notice to be given by the Company, the Responsible Entity or the Trustee under this deed shall be deemed to have been duly given if:

- (a) delivered;
- (b) sent by electronic mail; or
- (c) sent by ordinary prepaid mail,

and shall be deemed to have been served:

- (a) if delivered to the recipient's address, on the date of delivery;
- (b) if sent by electronic mail, when electronic communication enters the relevant information system(s); or
- (c) if posted, three Business Days after the date of posting.

7.2 Address

Delivery, transmission and postage shall be to the address of any Participant as indicated on the application form or such other address as the Trustee or any Participant may notify to the other.

The address of the Company, the Responsible Entity and the Trustee are as follows (or as notified from time to time):

Company and Responsible Entity

Cromwell Property Group

Address: Level 19, 200 Mary Street, Brisbane QLD 4000
Attention: Company Secretary
Postal Address: Level 19, 200 Mary Street, Brisbane QLD 4000
Email: Lucy.Laakso@cromwell.com.au

Trustee

Pacific Custodians Pty Limited

Address: c/- Trustee Office, Level 12, 680 George Street, Sydney, New South Wales 2000

Postal Address: PO Box 20344, World Square NSW 2002

Attention: Trustee Office

Email: ess.trustees@linkmarketservices.com.au

8. AUDIT

8.1 Accounts

The Trustee shall keep or cause to be kept true accounts of all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place and of all sales and purchases of Securities and of the assets and liabilities of the Trust.

8.2 Books of Accounts

The books of account of the Trust shall be maintained at the registered office of the Trustee.

An Account held for a Participant shall be available for inspection by that Participant during normal business hours free of charge upon prior written request.

8.3 Auditor

The Trustee shall appoint an Auditor of the Trust, following written approval from the Company.

8.4 Audit

Subject to clause 8.3, the Trustee shall cause the books of account to be audited annually by the Auditor of the Trust.

8.5 Access

The Trustee must ensure that any Auditor of the Trust has access to all papers, accounts and documents concerned with or relating to the Trust.

9. INCOME AND CAPITAL DISTRIBUTIONS

9.1 Plan Securities

Subject to clause 9.2 and the relevant Plan Rules, a Participant is presently entitled to so much of the Net Income of the Trust for a Year of Income which is attributable to:

- (a) the Plan Securities held by the Trustee on behalf of the Participant;
- (b) the proceeds of sales arising from any sale of Plan Securities by the Trustee on behalf of the Participant; and

- (c) transactions or events related to the Plan Securities or property related to or arising from Plan Securities held by the Trustee on behalf of the Participant.

9.2 Fees and charges for administering Trust

The Trustee will not levy any fees or charges for administering the Trust that are payable directly by any Eligible Participant or out of the assets of the Trust, other than reasonable disbursements including brokerage and tax levied or incurred in connection with the Trust.

9.3 Balance of Net Income

Subject to clause 9.2, the balance of the Net Income of the Trust for a Year of Income to which no Participant is presently entitled in accordance with clause 9.1 may, subject to compliance with any restrictions in the Plan Rules or applicable by statute, common law or equity or the Listing Rules, be applied, in whole or in part to meet any reasonable costs and expenses properly incurred by the Company or the Responsible Entity in relation to the establishment, administration or termination of the Trust (including, but not limited to, administration, trust, financial and audit expenses).

9.4 Accretion

The balance of the Net Income of the Trust for a Year of Income to which no Participant is presently entitled in accordance with clause 9.1 and not applied in accordance with clause 9.3 may be accumulated by the Trustee as an Accretion to the Trust.

9.5 Other Application of Capital

The Trustee may, immediately prior to or on the termination of the Trust as set out in clause 14.1, if it thinks fit, apply that part of the capital of the Trust to which no Participant would be entitled as set out in clause 14 if the Trust was terminated at that time, in payment of any costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee.

9.6 Trustee powers as to income and Net Income

Before the end of each Year of Income, the Trustee may in its absolute discretion decide in writing whether:

- (a) any amount received or held by the Trustee under each Plan is to be treated as being on income or capital account; and
- (b) any actual or deemed capital gain arising in that Year of Income under the Tax Act to be included as income of the Trust.

Unless the Trustee has made a decision under clause 14.3(a), an item is taken into account in calculating the income of the Trust if it would be taken into account in calculating the Net Income of the Trust.

The Trustee may decide that any part of a payment or distribution made under a Plan is to be from a particular class or source of income or property of that Plan.

10. AMENDMENT

10.1 Amendment by the Company

- (a) Subject to clauses 2.4 and 10.2, the Company may at any time by written instrument or by resolution of the Board, amend all or any of the provisions of this deed (including this clause 10).
- (b) Any amendment to this Deed must be approved by the Trustee in writing who must not unreasonably withhold or delay consent.

10.2 No material reduction of Participant's rights

No amendment of the provisions of this deed is to materially reduce the rights of any Participant in respect of Plan Securities credited to the Account of the Participant prior to the date of the amendment, other than:

- (a) an amendment introduced primarily:
 - (i) to enable the Trustee or the Group to operate a Plan in accordance with any changes to the Plan Rules;
 - (ii) to enable the Trustee, any Group Company or the Cromwell Trust to take into account any changes to the system of taxation in Australia;
 - (iii) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth legal requirements governing or regulating the maintenance or operation of a Plan;
 - (iv) to correct any manifest error or mistake;
 - (v) to enable contributions or other amounts paid by any body corporate in the Group to the Trust to qualify as income tax deductions for that body corporate or any other body corporate in the Group; or
 - (vi) to enable the Trustee, the Participant or any body corporate in the Group to reduce the amount of fringe benefits tax under the Fringe Benefit Tax Assessment Act 1986 (Cth), the amount of tax under the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth) or the amount of any other tax or impost that may otherwise be payable by the Trustee, the Participant or the body corporate in relation to the Trust; or
- (b) an amendment agreed to in writing by the Participants whose rights will be materially reduced by the proposed amendment.

10.3 Retrospectivity

Subject to the above provisions of this clause 10, any amendment to this deed made pursuant to clause 10.1 may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made.

11. INDEMNITY OF THE TRUSTEE

11.1 Indemnification

Without derogating from the right of indemnity given by law to trustees, the Company hereby covenants with the Trustee that it will indemnify and keep indemnified the Trustee in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted other than a claim arising out of the Trustee's negligence, dishonesty, fraud or the Trustee wilfully or knowingly being a party to a breach of trust.

11.2 Negligence, dishonesty, fraud or wilful breach of trust

The Trustee shall not be under any liability whatsoever except for its negligence, dishonesty, fraud or wilful breach of trust or the negligence, default or wilful breach of trust committed by any of its employees or agents acting as such. For the purposes of this clause 11.2, any act that is ordinarily performed by the Trustee in its professional capacity as a trustee and which is not executed in a manner that a reasonable person would expect from a trustee acting in a professional capacity, will be considered as negligent.

11.3 Costs and expenses

Subject to clause 11.4, nothing in clause 11.1 enables the Trustee to recover any liabilities costs and expenses from any Participant.

11.4 Tax

The Trustee is entitled to be indemnified by a Participant in respect of any tax payable by the Trustee in respect of Securities held by the trustee on behalf of Participants.

11.5 No indemnity from Participant

Except as expressly provided in this deed, the Trustee will have no right of indemnity from a Participant personally.

11.6 Exclusion of consequential losses

Notwithstanding the above, the Trustee will not be liable to the Company or the Responsible Entity for any economic loss, loss of revenue, loss of profits, loss of data or other indirect or consequential loss or damage (whether at law or in equity) in respect of any matter relating to this deed, whether or not the loss or damage was foreseeable or contemplated by either party or if it was advised of the possibility of that loss or damage.

12. ADMINISTRATION OF THE PLANS

12.1 Further documentation

The Trustee and the Company may each from time to time require a Participant to complete and return such other documents as may be required by law to be completed by the Participant or such other documents which the Trustee or the Company considers should, for legal or taxation reasons, be completed by the Participant. This may include but is not limited to the Participant appointing the Trustee as the Participant's attorney to execute documents on its behalf and to act in its best interests.

12.2 Suspension or cancellation of a Plan

The Company may from time to time suspend the operation of any Plan and may at any time cancel any Plan. The suspension or cancellation of the any Plan will not prejudice the existing rights of Participants.

13. RIGHTS OF PARTICIPANTS

Except as expressly provided in this deed or any respective Plan Rules, nothing in this deed:

- (a) confers on any employee of any body corporate in the Group the right to receive any Plan Securities or Securities;
- (b) confers on any Participant the right to continue as an employee of any body corporate in the Group;
- (c) affects any rights which any body corporate in the Group may have to terminate the employment of any employee;
- (d) may be used to increase damages in any action brought against any body corporate in the Group in respect of any such termination; or
- (e) confers on an Eligible Participant any expectation to become a Participant.

14. TERMINATION OF TRUST

14.1 When Trust terminated

The Trust will terminate and be wound up as provided below upon the first to occur of the following events:

- (a) an order being made or an effective resolution being passed for external administration of the Company or the Cromwell Trust (other than for the purpose of amalgamation or reconstruction);
- (b) the Boards determining that the Trust is to be wound up; or
- (c) the day before the 80th anniversary of the date of this deed.

14.2 Consequence of Trust termination

If the Trust is terminated, the Trustee must transfer to each Participant the Plan Securities standing to the credit of the Account of the Participant.

14.3 Balance of capital or income of Trust

If the Trust is terminated, the Trustee shall dispose of all Securities and the balance of the capital or income of the Trust to which no Participant is entitled in accordance with clause 9.1 may be applied in whole or in part in accordance with clauses 9.3 or 9.4 by the Trustee. For the purposes of this clause 14.3, the Company acknowledges that payment under clause 9.3 takes precedence over any other provision in clauses 9.3 or 9.4.

15. GOVERNING LAW, JURISDICTION AND PROCESS

This deed will be governed by the laws of and applicable in the State of New South Wales and will be construed and take effect in accordance with those laws and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

16. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

17. STAMP DUTY

The Company must arrange for this this Deed to be stamped and must pay all requisite stamp duties.

EXECUTED as a Deed.

SIGNED by **MELISSA JONES** in
the presence of:

B.A. Ellis
Bernadette Ellis

)
) *M Jones*
) _____
) MELISSA JONES
)
)
)

EXECUTED for and on behalf of
CROMWELL CORPORATION
LIMITED
(ACN 001 056 980)
in accordance with section 127(1) of
the Corporations Act:

) *P. Weightman*
) _____
) Paul Weightman Director
) *L. Laakso*
) _____
) LUCY ELLEN LAAKSO Company Secretary

EXECUTED for and on behalf of
CROMWELL PROPERTY
SECURITIES LIMITED (ACN 079
147 809) as Responsible Entity of
the **Cromwell Diversified Property**
Trust (ARSN 102 982 598) in
accordance with section 127(1) of
the Corporations Act:

) *P. Weightman*
) _____
) Paul Weightman Director
) *L. Laakso*
) _____
) LUCY ELLEN LAAKSO Company Secretary

EXECUTED for and on behalf of
PACIFIC CUSTODIANS PTY LTD
(ABN 66 009 682 866)
in accordance with section 127(1) of
the Corporations Act:

)
)
)
)


EXECUTED as a Deed.


SIGNED by **MELISSA JONES** in)
the presence of:)
)
)
)
)
)
)
)

EXECUTED for and on behalf of)
CROMWELL CORPORATION)
LIMITED)
(ACN 001 056 980))
in accordance with section 127(1) of)
the Corporations Act:)

EXECUTED for and on behalf of)
CROMWELL PROPERTY)
SECURITIES LIMITED (ACN 079)
147 809) as Responsible Entity of)
the **Cromwell Diversified Property**)
Trust (ARSN 102 982 598) in)
accordance with section 127(1) of)
the Corporations Act:)

EXECUTED for and on behalf of)
PACIFIC CUSTODIANS PTY LTD)
(ABN 66 009 682 866))
in accordance with section 127(1) of)
the Corporations Act:)


John McMurtrie
Director


Lysa McKenna
Director