

Announcement

7 July 2023

Australian Unity Diversified Property Fund (AUDPF) – ARSN 106 724 038

Proposed merger of Australian Unity Diversified Property Fund and Cromwell Direct Property Fund

Australian Unity Property Limited (AUPL), as the responsible entity for AUDPF, is pleased to announce that it has entered into a Merger Implementation Deed (MID) with Cromwell Funds Management Limited (CFML), as the responsible entity for Cromwell Direct Property Fund (CDPF), to merge AUDPF and CDPF via a trust scheme (Proposed Merger).

Overview of the Proposed Merger

If AUDPF unitholders approve the Proposed Merger and it is implemented, AUDPF unitholders will receive new CDPF units in exchange for their AUDPF units. The number of new CDPF units received for each AUDPF unit held will be based on AUDPF's and CDPF's respective audited Net Tangible Assets (NTA) per unit as at 30 June 2023, subject to certain adjustments¹, (Consideration) and will be determined on an 'NTA-for-NTA' basis.

For indicative purposes, if the Consideration was based on AUDPF's and CDPF's respective pro-forma NTAs per unit as at 31 May 2023², AUDPF unitholders would receive 1.028x new CDPF units for each AUDPF unit held, implying AUDPF unitholders would own ~41%³ of the combined AUDPF and CDPF fund (Unlisted Merged Fund). On implementation, the Unlisted Merged Fund's unit price is expected to be at a premium to AUDPF's standalone unit price⁴ (~4.5% premium based on the indicative merger ratio as at 31 May 2023).

If the Proposed Merger is implemented, AUDPF unitholders would have exposure to:

- An unlisted investment property portfolio of ~\$1.1 billion⁵ (vs. AUDPF standalone of ~\$550 million⁶); and
- Interests in 15 high-quality properties across various asset classes in Australia⁷.

One-off Withdrawal Facility

As part of the Proposed Merger, AUDPF unitholders will also have the opportunity to participate in a one-off cash withdrawal facility of up to \$20 million (Withdrawal Facility) funded partially by the Unlisted Merged Fund's balance sheet and partially by Cromwell Diversified Property Trust (Cromwell)⁸ (a different fund to CDPF) subscribing for units in CDPF contemporaneously with the Proposed Merger (up to \$12 million). The aggregate cash available to AUDPF unitholders under the Withdrawal Facility is capped at \$20 million and withdrawal requests in excess of this amount will be subject to a pro-rata scale back. The Withdrawal Facility

¹ AUDPF's NTA will be adjusted for transaction costs, the proceeds received from the sale of Osborne and Williamtown (in certain circumstances), and any special distribution made to fund net capital gains prior to implementation. See clause 4.2(b) of the MID for further details of the NTA adjustments

² Based on NTAs as at 31 May 2023, adjusting for fair market value adjustments to property revaluations that occurred in June 2023 and transaction costs up to 31 May 2023

³ Assuming full take-up of the \$20m Withdrawal Facility

⁴ The premium results from the different unit price methodologies used by AUDPF and CDPF. Where CDPF's unit price methodology capitalises transaction costs and amortises them over five years, AUDPF's does not. The premium arises from prior acquisition costs capitalised in CDPF's unit price

⁵ As at 31 May 2023, adjusting for fair market value adjustments to property revaluations that occurred in June 2023, and sale of Woodvale, Osborne and Williamtown

⁶ As at 31 May 2023, adjusting for fair market value adjustments to property valuations that occurred in June 2023

⁷ Includes indirect interests in two properties that CDPF holds via investments in other managed investment schemes and excludes AUDPF's AOF stake, and Woodvale, Williamtown and Osborne properties

⁸ The Cromwell Diversified Property Trust is part of the ASX-listed stapled security entity, Cromwell Property Group. It is distinct from CDPF

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will be priced based on the prevailing AUDPF exit price⁹ as at the Withdrawal Facility's closing date, currently expected to be in early November 2023. The Withdrawal Facility will be offered in lieu of AUDPF's regular August 2023 quarterly capped withdrawal facility. Further details are set out towards the end of this announcement.

Rationale for the Proposed Merger

The Proposed Merger represents a compelling opportunity to create value for AUDPF unitholders by combining two complementary, high-quality portfolios to deliver:

- An Unlisted Merged Fund unit price which is expected to be at a premium to AUDPF's standalone unit price at the time of implementation of the Proposed Merger¹⁰ (~4.5% premium based on the indicative merger ratio as at 31 May 2023), and is expected to be accretive to AUDPF's forecast pro forma FY24 earnings and distributions per unit;
- Sale of certain assets as a condition precedent¹¹ to the Proposed Merger is expected to reduce overall portfolio gearing risk, particularly in a high interest rate environment;
- Access to an increased amount of liquidity, initially through the Withdrawal Facility (as outlined above) and an improved ongoing liquidity framework, including a monthly capped withdrawal facility and periodic uncapped withdrawal opportunity each 5-year period (next expected in 2025);
- A continuation of the unlisted, diversified property mandate;
- Increased scale and continued diversification, which is expected to reduce risk with respect to assets, tenants, markets and geographies;
- A highly experienced investment and property manager (in CFML), with experience managing unlisted property funds for retail unitholders, supplemented by members of the AUDPF management team who have agreed to transition to the Cromwell Property Group if the Proposed Merger is implemented; and
- Expected lower base management fees, with market-linked performance fees.

Directors' Recommendation

The Board of AUPL, as the responsible entity for AUDPF, unanimously recommends that AUDPF unitholders vote in favour of the Proposed Merger in the absence of a superior proposal and subject to the Independent Expert concluding and continuing to conclude that the Proposed Merger is in the best interests of AUDPF unitholders.

⁹ Including AUDPF's sell spread (0.5%) as disclosed in the AUDPF product disclosure statement

¹⁰ The premium results from the different unit price methodologies used by AUDPF and CDPF. Where CDPF's unit price methodology capitalises transaction costs and amortises them over five years, AUDPF's does not. The premium arises from prior acquisition costs capitalised in CDPF's unit price

¹¹ A condition precedent to the Proposed Merger is that AUDPF sell its Osborne and Williamtown properties

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Overview of the MID

The Proposed Merger remains subject to a number of conditions, including an Independent Expert concluding and continuing to conclude that the Proposed Merger is in the best interests of AUDPF unitholders, AUDPF unitholder approval (as outlined below), AUPL obtaining judicial advice in relation to the Proposed Merger, CDPF obtaining approval from the foreign investment review board (**FIRB**), no AUDPF or CDPF material adverse change, certain consents being granted by key contractual counterparties, the sale of certain assets, and other customary conditions.

The MID contains customary exclusivity provisions, including no shop, no talk and no due diligence obligations, notification obligations and a matching right. A break fee of \$3.2 million will be payable by AUDPF to CDPF in certain circumstances, and a reverse break fee of \$3.2 million will be payable by CDPF to AUDPF in certain circumstances.

Full terms and conditions regarding implementation of the Proposed Merger are included in the MID which is attached to this announcement.

Next Steps and Indicative Timetable

No action is required from AUDPF unitholders at this time.

In early October 2023, AUPL intends to send a notice of meeting and accompanying Unitholder Booklet to AUDPF unitholders. This will include the Board of AUPL's reasons for the recommendation, an Independent Expert's Report and details of the unitholder meeting currently expected to be held in late October 2023. The Proposed Merger will require the approval of AUDPF unitholders by way of a special resolution, being 75% of votes cast (in person or by proxy) by AUDPF unitholders entitled to vote on the resolution.

AUDPF has appointed Deloitte Corporate Finance Pty Limited as the Independent Expert to determine whether, in its opinion, the Proposed Merger is in the best interests of AUDPF unitholders.

The expected key dates in relation to the Proposed Merger are outlined below.

- Dispatch of Unitholder Booklet (including Independent Expert's Report) early October 2023
- Applications close for AUDPF Withdrawal Facility late October 2023
- AUDPF Unitholder Meeting Date late October 2023
- Implementation Date mid November 2023

These dates are indicative only and may change.

Withdrawal Facility — further details

The \$20 million Withdrawal Facility is only available if the Proposed Merger is approved by AUDPF unitholders (and the other conditions precedent to the Proposed Merger are fulfilled or waived). The cut-off date for receiving withdrawal requests is indicatively late October 2023 at this stage. This cut-off date will be confirmed at the time that the Unitholder Booklet is issued (currently expected to be in early October 2023).

AUDPF has the discretion to exclude deceased estates and accounts below the minimum balance from scale back under the Withdrawal Facility.

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The Withdrawal Facility is a variation of AUDPF's quarterly capped withdrawal facility which ordinarily would have closed on 21 August 2023. If the Proposed Merger is not implemented:

- AUDPF intends to process the withdrawal requests received in accordance with the usual quarterly capped withdrawal facility, which includes limiting withdrawals to 2.5% of AUDPF's net asset value (indicatively this represents ~\$8 million); and
- AUDPF unitholders will be able to elect to utilise AUDPF's 'carry forward facility' under which any unfulfilled part of a withdrawal request will continue to be automatically carried forward to the next quarterly capped withdrawal facility and treated as a new withdrawal request for any unfulfilled amount.

See section 5 of the Capped Withdrawal Facility booklet for further details of the 'carry forward facility' [here](#) or at:

australianunity.com.au/wealth/-/media/RebrandWealth/Documents/Funds/AustralianUnity/DPF/capped-withdrawal-facility-booklet.pdf.

The carry forward facility will not be available if the Proposed Merger proceeds.

AUPL Sale

AUPL's parent company, Australian Unity Limited (AUL), and CFML have informed AUPL that AUL and Cromwell Corporation Limited (CCL) have entered into a share sale agreement pursuant to which CCL has agreed to acquire all of the issued shares in AUPL in connection with the Proposed Merger (AUPL Sale). The AUPL Sale is conditional on the Proposed Merger being implemented (amongst other things).

Under the AUPL Sale:

- the management services agreement in respect of AUDPF will be novated to CCL;
- CCL will have the right to access information, books and records of AUDPF;
- AUL will facilitate the transfer of the AUDPF management team to the Cromwell group from implementation of the Proposed Transaction; and
- AUL is entitled to receive consideration of approximately \$17 million from CCL, payable in instalments.

Further details in relation to the AUPL Sale will be set out in the Unitholder Booklet.

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Advisers

AUPL has engaged Greenhill & Co. as its financial adviser and Herbert Smith Freehills as its legal adviser on the Proposed Merger.

Presentation

An investor presentation providing further details on the Proposed Merger and the profile of the Unlisted Merged Fund is attached to this announcement. It has also been uploaded to the AUDPF website at www.australianunity.com.au/wealth/dpf.

More Information

At this stage, no action is required from AUDPF unitholders until the Unitholder Booklet is issued. In the meantime, AUDPF unitholders may call 1300 237 569 (or +61 2 9066 4055) if they wish to discuss the Proposed Merger.

Important information

Units in the Australian Unity Diversified Property Fund (AUDPF) are issued by Australian Unity Property Limited (AUPL) ABN 58 079 538 499, AFS Licence No. 234455. The information in this document is general information only and is not based on the objectives, financial situation or needs of any particular investor. You should obtain financial and legal advice relevant to your circumstances before making investment decisions. In deciding whether to acquire, hold or dispose of the product, investors should obtain the latest Product Disclosure Statement (PDS) and Target Market Determination (TMD) for AUDPF to consider whether the product is appropriate for them. Copies of the PDS and TMD are available at australianunity.com.au/wealth or by calling our Investor Services team on 1300 997 774 or +61 3 9616 8687 (if calling from overseas). Investment decisions should not be made upon the basis of its past performance or distribution rate since each of these can vary. The information is intended for recipients in Australia only. This document is current at the time of publication.



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Deed

Execution version

Merger implementation deed

Australian Unity Property Limited as responsible
entity for Australian Unity Diversified Property Fund

Cromwell Funds Management Limited as
responsible entity for Cromwell Direct Property Fund



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Attachment 1
Supplemental Deed

Attachment 2
Deed Poll



Merger implementation deed

Date ► 6 July 2023

Between the parties

AUDPF RE **Australian Unity Property Limited** ACN 079 538 499 as responsible
entity for Australian Unity Diversified Property Fund

ARSN 106 724 038 of Level 15, 271 Spring Street, Melbourne VIC
3000

CDPF RE **Cromwell Funds Management Limited** ACN 114 782 777 as
responsible entity for Cromwell Direct Property Fund

ARSN 165 011 905 of Level 19, 200 Mary Street, Brisbane QLD 4000

Recitals 1 The parties have proposed that CDPF RE will acquire all of the
Trust Scheme Units pursuant to the Trust Scheme.

2 The parties have agreed to propose and, if approved, to
implement the Trust Scheme on the terms of this deed.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Accounting Standards	<ol style="list-style-type: none">1 the Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board; and2 if no accounting standard or interpretation applies, the principles set out in Australian Statements of Accounting Concepts.
Adviser	any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice).
ASIC	the Australian Securities and Investments Commission.
ASIC Modifications	<ol style="list-style-type: none">1 a modification by ASIC of, or exemption by ASIC from, section 601FC(1)(d) of the Corporations Act to permit AUDPF RE to treat Ineligible Foreign Unitholders differently when implementing the Trust Scheme;2 a modification by ASIC of, or exemption by ASIC from, Divisions 2 to 5A inclusive of Part 7.9 of the Corporations Act, and the requirement to hold an Australian financial services licence, in relation to the proposed offer to purchase Trust Scheme Units under the Trust Scheme and the offer of New CDPF Units under the Trust Scheme;3 a modification by ASIC of, or exemption by ASIC from, the requirement in Division 2 of Part 7.7 of the Corporations Act to provide a financial services guide in relation to the Unitholder Booklet; and4 any other modification or exemption from the Corporations Act or relief from ASIC that AUDPF RE and CDPF RE agree is necessary to give effect to the Trust Scheme or to avoid a breach of law.
Associate	has the meaning set out in section 12 of the Corporations Act as if subsection 12(1) of the Corporations Act included a reference to this deed and AUDPF was the designated body.



Term	Meaning
AUDPF Disclosure Materials	<ol style="list-style-type: none">1 the documents and information contained in the AUDPF Data Room made available by AUDPF RE to CDPF RE and its Related Persons prior to 11.30am on 6 July 2023, the index of which has been initialled by, or on behalf of, the parties for identification; and2 written responses from AUDPF RE and its Related Persons to requests for further information made by CDPF RE and its Related Persons via the Data Room prior to 11.30am on 6 July 2023.
AUDPF	Australian Unity Diversified Property Fund ARSN 106 724 038.
AUDPF Constitution	the constitution establishing AUDPF dated 13 October 2003 as amended by the constitutional modification dated 30 September 2005, supplemental deed dated 22 August 2006, supplemental deed dated 26 October 2006, supplemental deed dated 30 September 2010, supplemental deed dated 25 October 2010, supplemental deed dated 30 July 2015, separate supplemental deeds both dated 2 September 2015, supplemental deed dated 13 June 2017, deed of amendment dated 23 October 2019, supplemental deed dated 4 November 2021, and as further amended from time to time.
AUDPF Data Room	the online data room for Project Joseph established by AUDPF RE which is accessed at https://datarooms.herbertsmithfreehills.com .
AUDPF Group	AUDPF and each of its Controlled entities, and a reference to a ' AUDPF Group Member ' or a ' member of the AUDPF Group ' is to AUDPF or any of its Controlled entities, and for the avoidance of doubt, does not include entities Controlled by AUDPF RE other than in its capacity as responsible entity of AUDPF.
AUDPF Indemnified Parties	AUDPF RE, its Related Bodies Corporate and their respective directors, officers and employees.
AUDPF Information	information regarding the AUDPF Group prepared by AUDPF RE for inclusion in the Unitholder Booklet, which for the avoidance of doubt comprises the entirety of the Unitholder Booklet other than the CDPF Information, the Independent Expert's Report, any investigating accountant's report or other report or opinion prepared by an external adviser to AUDPF RE.
AUDPF Material Adverse Change	An event, change, condition, circumstance, matter or thing occurring after the date of this deed (each a ' Specified Event ') which, whether individually or when aggregated with all such

Term	Meaning
	<p>events, changes, conditions, circumstances, matters, or things of a like kind that have occurred, has had or would be considered reasonably likely to have, the effect of:</p> <ol style="list-style-type: none"> 1 a diminution in the value of the consolidated net assets of the AUDPF Group, taken as a whole, by at least \$20 million against what it would reasonably have been expected to have been but for such Specified Event; or 2 a diminution in FFO by at least \$1 million in any financial year for the AUDPF Group against what it would reasonably have been expected to have been but for such Specified Event, determined after taking into account any matters which offset the impact of the Specified Event giving rise to the adverse effect, in each case other than an event, change, condition, circumstance, matter or thing; 3 required or expressly permitted by this deed, the Trust Scheme or the transactions contemplated by any of them; 4 to the extent that it was Fairly Disclosed by AUDPF in an announcement made on its website, or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's publicly available records), in the 24 months prior to the date of this deed; 5 to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed; 6 to the extent that it is Fairly Disclosed in the AUDPF Disclosure Materials; 7 arising from changes in economic or business conditions that impact on AUDPF and its competitors in a similar manner (including interest rates, general economic, political or business conditions, including disruptions to, or fluctuations in, domestic or international financial markets); 8 which CDPF RE has previously approved or agreed to in writing; 9 arising as a result of any applicable change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or governmental policy; or 10 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like.
AUDPF Material Contract	<p>a contract or commitment:</p> <ol style="list-style-type: none"> 1 requiring total payments in excess of \$1,000,000 or, in the case of a number of related contracts or commitments, \$10,000,000 in aggregate, by AUDPF; and



Term	Meaning
	<p>2 entered into by AUDPF, other than in the ordinary course of business and under which AUDPF does not have an unconditional right to terminate within two years of entry into the contract or commitment,</p> <p>but excludes this deed.</p>
AUDPF Permitted Distribution	a distribution payable to AUDPF Unitholders pursuant to clause 6.4.
AUDPF Prescribed Occurrence	<p>other than:</p> <ol style="list-style-type: none">1 as expressly required or permitted by this deed, the Trust Scheme or the transactions contemplated by either;2 to the extent it is Fairly Disclosed in the AUDPF Disclosure Materials;3 with the prior written consent of CDPF RE;4 in connection with the AUDPF Permitted Distributions;5 as required by law or any Government Agency;6 to the extent that it was Fairly Disclosed by AUDPF in an announcement made on its website or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection), in the 24 months prior to the date of this deed;7 to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed;8 as required in connection with the AUDPF Transaction Withdrawal Facility;9 an issue of AUDPF Units as required to facilitate the reinvestment of distributions by AUDPF Unitholders; or10 an issue of AUDPF Units in the ordinary course, provided that the aggregate issue price does not exceed \$3.5 million per month, <p>the occurrence of any of the following:</p> <ol style="list-style-type: none">11 a member of the AUDPF Group (where applicable, through its responsible entity) converting all or any of its units into a larger or smaller number of units or passing a resolution to do so;12 a member of the AUDPF Group reducing or resolving to reduce its capital in any way;13 a member of the AUDPF Group redeeming or resolving to redeem any of its units;14 a member of the AUDPF Group declaring, resolving to pay or paying any distribution or share of its profits or assets or returning or agreeing to return any capital to its unitholders,

Term	Meaning
	<p>other than to a unitholder who is another member of the AUDPF Group;</p> <p>15 a member of the AUDPF Group:</p> <ul style="list-style-type: none"> – entering into a buy-back agreement; or – resolving to approve the terms of a buy-back agreement under the Corporations Act; <p>16 a member of the AUDPF Group issuing units or granting an option over its units, or agreeing to make such an issue or grant such an option;</p> <p>17 a member of the AUDPF Group issuing, or agreeing to issue, securities convertible into units;</p> <p>18 a member of the AUDPF Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property, such whole or substantial part being material to the AUDPF Group as a whole;</p> <p>19 a member of the AUDPF Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property, such whole or substantial part being material to the AUDPF Group as a whole;</p> <p>20 an Insolvency Event occurs in relation to a member of the AUDPF Group;</p> <p>21 a member of the AUDPF Group repealing, replacing or making any change or amendment to its constituent documents;</p> <p>22 any of the following occur:</p> <ul style="list-style-type: none"> – AUDPF RE ceases to be or takes steps to retire as the responsible entity of AUDPF; – AUDPF Unitholders resolve to remove or replace AUDPF RE as responsible entity of AUDPF; – a meeting being convened to consider a resolution for the removal, retirement or replacement of AUDPF RE as responsible entity of AUDPF; or – any application being made in any court (including by the AUDPF RE or its nominee) for the appointment of a temporary responsible entity for AUDPF in accordance with the Corporations Act; or <p>23 AUDPF becoming or taking steps to become deregistered as a registered managed investment scheme or is otherwise dissolved.</p>
AUDPF RE Board	the board of directors of AUDPF RE.
AUDPF RE Board Member	any director of AUDPF RE comprising part of the AUDPF RE Board.



Term	Meaning
AUDPF Registry	OneVue Funds Services Pty Limited ACN 107 333 308.
AUDPF Representations and Warranties	the representations and warranties of AUDPF RE set out in Schedule 1.
AUDPF Transaction Withdrawal Facility	has the meaning given in clause 4.3.
AUDPF Unit	a fully paid ordinary unit in AUDPF.
AUDPF Unit Register	the register of AUDPF Unitholders maintained by the AUDPF Registry in accordance with the Corporations Act.
AUDPF Unitholder	a person who is registered as the holder of an AUDPF Unit in the AUDPF Unit Register.
Break Fee	\$3,200,000.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne or Sydney.
Calculation Date	30 June 2023 or such other date as the parties agree in writing.
CDPF	Cromwell Direct Property Fund ARSN 165 011 905.
CDPF Constitution	the constitution establishing CDPF dated 13 July 2013 as amended by a supplemental deed dated 25 July 2013, a supplemental deed dated 7 August 2013, a supplemental deed poll dated 30 April 2014, a supplemental deed dated 27 March 2017 and as further amended from time to time.
CDPF Data Room	the online data room for Project Joseph established by CDPF RE which is accessed at www.ansarada.com .

Term	Meaning
CDPF Disclosure Materials	<ol style="list-style-type: none"> 1 the documents and information contained in the CDPF Data Room made available by CDPF RE to AUDPF RE and its Related Persons prior to 11.30am on 6 July 2023, the index of which has been initialled by, or on behalf of, the parties for identification; and 2 written responses from CDPF RE and its Related Persons to requests for further information made by AUDPF RE and its Related Persons via the Data Room prior to 11.30am on 6 July 2023.
CDPF Group	<p>CDPF and each of its Controlled entities, and a reference to a 'CDPF Group Member' or a 'member of the CDPF Group' is to CDPF or any of its Controlled entities, and for the avoidance of doubt, does not include entities Controlled by CDPF RE other than in its capacity as responsible entity of CDPF.</p>
CDPF Indemnified Parties	<p>CDPF RE, its Related Bodies Corporate and their respective directors, officers and employees.</p>
CDPF Information	<p>information regarding the CDPF Group, including following implementation of the Trust Scheme (other than any information provided by AUDPF RE to CDPF RE regarding the AUDPF Group contained in, or used in the preparation of, the information regarding the CDPF Group following implementation of the Trust Scheme), provided by or on behalf of CDPF RE to AUDPF RE in writing for inclusion in the Unitholder Booklet, being:</p> <ol style="list-style-type: none"> 1 information about CDPF, its Controlled entities, its business and interests and dealings in AUDPF Units and CDPF RE's intentions for AUDPF and AUDPF's employees and CDPF RE's funding; and 2 any other information required under the Corporations Act, Corporations Regulations or applicable guidance from a Government Agency to enable the Unitholder Booklet to be prepared that the parties agree is 'CDPF Information' and that is identified in the Unitholder Booklet as such.
CDPF Material Adverse Change	<p>an event, change, condition, circumstance, matter or thing occurring after the date of this deed (each a Specified Event) which, whether individually or when aggregated with all such events, changes, conditions, circumstances, matters, or things of a like kind that have occurred, has had or would be considered reasonably likely to have the effect of:</p> <ol style="list-style-type: none"> 1 a diminution in the value of the consolidated net assets of the CDPF Group, taken as a whole, by at least \$24 million against what it would reasonably have been expected to have been but for such Specified Event; or

Term	Meaning
	<p>2 a diminution in FFO by at least \$1.2 million in any financial year for the CDPF Group against what it would reasonably have been expected to have been but for such Specified Event, determined after taking into account any matters which offset the impact of the Specified Event giving rise to the adverse effect, in each case other than an event, change, condition, circumstance, matter or thing;</p> <p>3 required or expressly permitted by this deed, the Trust Scheme or the transactions contemplated by any of them;</p> <p>4 to the extent that it was Fairly Disclosed by CDPF in an announcement made on its website, or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's publicly available records), in the 24 months prior to the date of this deed;</p> <p>5 to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed;</p> <p>6 to the extent that is Fairly Disclosed in the CDPF Disclosure Materials;</p> <p>7 arising from changes in economic or business conditions that impact on CDPF and its competitors in a similar manner (including interest rates, general economic, political or business conditions, including disruptions to, or fluctuations in, domestic or international financial markets);</p> <p>8 which AUDPF RE has previously approved or agreed to in writing;</p> <p>9 arising as a result of any applicable change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or governmental policy; or</p> <p>10 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like.</p>
CDPF Material Contract	<p>a contract or commitment:</p> <p>1 requiring total payments in excess of \$1,000,000 or, in the case of a number of related contracts or commitments, \$10,000,000 in aggregate, by CDPF; and</p> <p>2 entered into by CDPF, other than in the ordinary course of business and under which CDPF does not have an unconditional right to terminate within two years of entry into the contract or commitment,</p> <p>but excludes this deed.</p>

Term	Meaning
CDPF Permitted Distribution	a distribution payable to CDPF Unitholders pursuant to clause 6.5.
CDPF Prescribed Occurrence	<p>other than:</p> <ol style="list-style-type: none"> 1 as expressly required or permitted by this deed, the Trust Scheme or the transactions contemplated by either; 2 to the extent it is Fairly Disclosed in the CDPF Disclosure Materials; 3 with the prior written consent of AUDPF RE; 4 in connection with the CDPF Permitted Distributions; 5 as required by law or any Government Agency; 6 to the extent that it was Fairly Disclosed by CDPF in an announcement made on its website or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection), in the 24 months prior to the date of this deed; 7 to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed; 8 in connection with the CDPF Limited Monthly Withdrawal Facility as described in the CDPF product disclosure statement dated 17 November 2020; 9 an issue of CDPF Units as required to facilitate the reinvestment of distributions by CDPF Unitholders; or 10 an issue of CDPF Units in the ordinary course, provided that the aggregate issue price does not exceed \$10 million per month, <p>the occurrence of any of the following:</p> <ol style="list-style-type: none"> 11 a member of the CDPF Group (where applicable, through its responsible entity) converting all or any of its units into a larger or smaller number of units or passing a resolution to do so; 12 a member of the CDPF Group reducing or resolving to reduce its capital in any way; 13 a member of the CDPF Group redeeming or resolving to redeem any of its units; 14 a member of the CDPF Group declaring, resolving to pay or paying any distribution or share of its profits or assets or returning or agreeing to return any capital to its unitholders; 15 a member of the CDPF Group: <ul style="list-style-type: none"> – entering into a buy-back agreement; or – resolving to approve the terms of a buy-back agreement under the Corporations Act;

Term	Meaning
	<p>16 a member of the CDPF Group issuing units or granting an option over its units, or agreeing to make such an issue or grant such an option;</p> <p>17 a member of the CDPF issuing, or agreeing to issue, securities convertible into units;</p> <p>18 a member of the CDPF Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property, such whole or substantial part being material to the CDPF Group as a whole;</p> <p>19 a member of the CDPF Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property, such whole or substantial part being material to the CDPF Group as a whole;</p> <p>20 an Insolvency Event occurs in relation to a member of the CDPF Group;</p> <p>21 a member of the CDPF Group repealing, replacing or making any change or amendment to its constituent documents;</p> <p>22 any of the following occur:</p> <ul style="list-style-type: none"> – CDPF RE ceases to be or takes steps to retire as the responsible entity of CDPF; – CDPF Unitholders resolve to remove or replace CDPF RE as responsible entity of CDPF; – a meeting being convened to consider a resolution for the removal, retirement or replacement of CDPF RE as responsible entity of CDPF; or – any application being made in any court (including by the CDPF RE or its nominee) for the appointment of a temporary responsible entity for CDPF in accordance with the Corporations Act; or <p>23 CDPF becoming or taking steps to become deregistered as a registered managed investment scheme or is otherwise dissolved.</p>
CDPF Registry	Boardroom Pty Limited ACN 003 209 836.
CDPF Representations and Warranties	the representations and warranties of CDPF set out in Schedule 2.
CDPF Unit	a fully paid ordinary unit in CDPF.
CDPF Unit Register	the register of CDPF Unitholders maintained by the CDPF Registry in accordance with the Corporations Act.

Term	Meaning
CDPF Unitholder	a person who is registered as the holder of a CDPF Unit in the CDPF Unit Register.
Change of Control Contract	the contract agreed in writing for the purpose of this definition by AUDPF RE and CDPF RE.
Claim	<p>any claim, demand, legal proceedings or cause of action, including a claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"> 1 based in contract (including breach of warranty); 2 based in tort (including misrepresentation or negligence); 3 under common law or equity; or 4 under statute (including the Australian Consumer Law, being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) or Part VI of that Act, or like provision in any state or territory legislation), <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under an indemnity in this deed.</p>
Competing Proposal	<p>any proposal, agreement, arrangement or transaction which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):</p> <ol style="list-style-type: none"> 1 directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the AUDPF Units; 2 acquiring Control of any AUDPF Group Member; 3 directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the business or assets of the AUDPF Group; 4 otherwise directly or indirectly acquiring or merging with AUDPF; or 5 requiring AUDPF to abandon, or otherwise fail to proceed with, the Transaction, <p>whether by way of a trust scheme, unitholder approved acquisition, capital reduction, buy-back, sale or purchase of units, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement.</p> <p>Each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.</p>



Term	Meaning
Condition Precedent	each of the conditions set out in clause 3.1.
Confidentiality Agreement	the confidentiality agreement between AUDPF RE and Cromwell Corporation dated 5 August 2022.
Constitutional Amendment Resolution	a special resolution of AUDPF Unitholders made in accordance with section 601GC of the Corporations Act and substantially in the form set out in Schedule 3 (or such other form as the parties agree in writing).
Control	has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of New South Wales or such other court of competent jurisdiction agreed to in writing by AUDPF RE and CDPF RE.
Cromwell Corporation	Cromwell Corporation Limited ACN 001 056 980.
Cromwell Diversified Property Trust	Cromwell Property Securities Limited as responsible entity for Cromwell Diversified Property Trust ARSN 102 982 598.
Deed Poll	a deed poll to be entered into by CDPF RE substantially in the form of Attachment 2 under which CDPF RE covenants in favour of the Trust Scheme Unitholders to perform the obligations attributed to CDPF RE under the Trust Scheme.
Effective	when used in relation to the Trust Scheme, the coming into effect of the Supplemental Deed under section 601GC(2) of the Corporations Act.
Effective Date	the date on which the Trust Scheme becomes Effective.



Term	Meaning
End Date	20 December 2023, or such later date as the parties agree in writing.
Exclusivity Period	the period from and including the date of this deed to the earliest of: <ol style="list-style-type: none">1 the date of termination of this deed;2 the End Date; and3 the Effective Date.
Fairly Disclosed	disclosed in good faith and in sufficient detail so as to reasonably apprise a recipient as to the nature and scope of the relevant matter, event or circumstance.
FFO	a measure of cashflow from operations that adjusts the statutory Accounting Standards profit for the year for non-cash changes in investment properties, non-cash impairment of goodwill, non-cash fair value adjustments to financial instruments, amortisation of incentives and leasing costs, rental straight-line adjustments and other unrealised or one-off items.
FIRB Approval	the approval or consent set out in clause 3.1(a).
First Court Date	the first day on which an application made to the Court for the First Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.



Term	Meaning
First Judicial Advice	confirmation from the Court that, among other things: <ol style="list-style-type: none">1 AUDPF RE would be justified in convening the Trust Scheme Meeting for the purposes of considering the Constitutional Amendment Resolution; and2 subject to AUDPF Unitholders passing the Constitutional Amendment Resolution by the requisite majority, AUDPF RE would be justified in proceeding on the basis that amending the AUDPF Constitution as set out in the Supplemental Deed would be within the powers of alteration conferred by the AUDPF Constitution and section 601GC of the Corporations Act.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including ASIC).
Implementation Date	the third Business Day after the Trust Scheme Record Date, or such other date after the Trust Scheme Record Date as the parties agree in writing.
Independent Expert	the independent expert in respect of the Trust Scheme appointed by AUDPF RE.
Independent Expert's Report	the report to be issued by the Independent Expert in connection with the Trust Scheme, such report to be included in or to accompany the Unitholder Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion as to whether or not the Transaction is in the best interests of AUDPF Unitholders and the reasons for holding that opinion.
Ineligible Foreign Unitholder	a Trust Scheme Unitholder whose address shown in the AUDPF Unit Register on the Trust Scheme Record Date is a place outside Australia and its external territories, New Zealand, United Kingdom, Thailand, Hong Kong, China, Malaysia, Singapore or Uzbekistan, unless the parties agree in writing that it is lawful and not unduly onerous or impracticable to issue CDPF Units to that Trust Scheme Unitholder on the Implementation Date.
Insolvency Event	in relation to an entity: <ol style="list-style-type: none">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;

Term	Meaning
	<p>2 a Controller (as defined in the Corporations Act), liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</p> <p>3 an application is made to a court, a meeting is convened or a resolution is passed for the entity to be wound up or dissolved or for the appointment of a Controller (as defined in the Corporations Act), liquidator, provisional liquidator or administrator to the entity of any of its assets;</p> <p>4 the entity seeks or obtains protection from its creditors under any statute or any other law;</p> <p>5 the entity executing a deed of company arrangement;</p> <p>6 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</p> <p>7 the entity is or becomes unable to pay its debts when they fall due, is insolvent within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act or any analogous circumstances arises under any other statute or law; or</p> <p>8 the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise),</p> <p>or any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction.</p>
Investigating Accountant	the investigating accountant appointed in respect of the Trust Scheme.
Investigating Accountant's Report	a report to be issued by the Investigating Accountant in connection with the Trust Scheme, such report to be included in or to accompany the Unitholder Booklet, and including any subsequent, updated or supplementary report.
Merged Group	if the Trust Scheme is implemented, the combined AUDPF Group and CDPF Group.
New CDPF Unit	a fully paid ordinary unit in CDPF to be issued to Trust Scheme Unitholders under the Trust Scheme.
NTA	net tangible assets (being total assets excluding goodwill, less total liabilities).



Term	Meaning
Osborne	the property known as 620 Mersey Road, Osborne, South Australia 5017.
PPS Register	the register established under the PPSA.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Recommendation	has meaning set out in clause 5.4(a)(1).
Regulator's Draft	the draft of the Unitholder Booklet in a form that is provided to ASIC for its review prior to the First Court Date.
Related Bodies Corporate	has the meaning set out in section 50 of the Corporations Act.
Related Person	in respect of a person, including each party or its Related Bodies Corporate: <ol style="list-style-type: none">1 a director, officer or employee of that person;2 an Adviser of that person (and each director, officer, employee or contractor of that Adviser);3 an agent or representative of that person; and4 a Related Body Corporate of that person.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
Reverse Break Fee	\$3,200,000.
Sale Price	in relation to the sale of a property, the sale price or purchase price (however described) for that property as set out in the relevant contract of sale, minus a reasonable estimate of transaction costs incurred by AUDPF, and plus or minus (as applicable) a reasonable estimate of settlement adjustments.
Second Court Date	the first day on which an application is made to the Court by AUDPF RE for the Second Judicial Advice or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Term	Meaning
Second Judicial Advice	confirmation from the Court that AUDPF Unitholders having approved the Constitutional Amendment Resolution by the requisite majority, AUDPF RE would be justified in implementing the Trust Scheme, giving effect to the AUDPF Constitution (amended by the Supplemental Deed) and taking all steps to give effect to the Trust Scheme.
Security Interest	any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.
Superior Proposal	<p>a bona fide written Competing Proposal which the AUDPF RE Board, acting in good faith and in order to satisfy what the AUDPF RE Board considers to be its fiduciary or statutory duties (after receiving advice from its financial advisers and reputable external Australian legal advisers specialising in the area of corporate law), determines:</p> <ol style="list-style-type: none"> 1 is reasonably capable of being valued and completed within a reasonable timeframe in accordance with its terms; and 2 would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to AUDPF Unitholders (as a whole) than the Transaction, <p>taking into account all aspects of the Competing Proposal and the Transaction, including conditions, the identity, reputation and financial condition of the person making the proposal, the ability of the proponent to complete the transactions contemplated by the Competing Proposal and the probability of the Competing Proposal being completed compared to the Transaction and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the proposal being completed).</p>
Supplemental Deed	a deed poll under which AUDPF RE will amend the AUDPF Constitution, the form of which is attached as Attachment 1, subject to any alterations agreed to in writing by AUDPF RE and CDPF RE.
Tax	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.



Term	Meaning
Tax Act	the <i>Income Tax Assessment Act 1997</i> (Cth).
Third Party	a person other than AUDPF RE, CDPF RE or their respective Related Bodies Corporate and Controlled entities, or CDPF RE's Associates.
Timetable	the indicative timetable for the implementation of the Transaction as agreed between the parties.
Transaction	the proposed acquisition of the Trust Scheme Units by CDPF through implementation of the Trust Scheme in accordance with the terms of this deed.
Trust Scheme	the arrangement under which CDPF RE acquires all the AUDPF Units from Trust Scheme Unitholders facilitated by amendments to the AUDPF Constitution as set out in the Supplemental Deed, and subject to the Constitutional Amendment Resolution being approved by the requisite majority of AUDPF Unitholders.
Trust Scheme Consideration	the number of New CDPF Units calculated in accordance with clause 4.2(b).
Trust Scheme Meeting	the meeting of AUDPF Unitholders to consider and vote on the Constitutional Amendment Resolution and includes any meeting convened following any adjournment or postponement of that meeting.
Trust Scheme Record Date	7.00pm on the second Business Day after the Effective Date or such other time and date as the parties agree in writing.
Trust Scheme Unitholder	an AUDPF Unitholder as at the Trust Scheme Record Date.
Trust Scheme Units	all AUDPF Units held by the Trust Scheme Unitholders as at the Trust Scheme Record Date.
Unitholder Booklet	the unitholder booklet to be prepared by AUDPF RE in respect of the Transaction in accordance with clause 5.2(a) to be dispatched to the AUDPF Unitholders and which must include or be accompanied by:



Term	Meaning
	<ol style="list-style-type: none">1 a copy of the Supplemental Deed;2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and any applicable guidance from a Government Agency;3 the Independent Expert's Report;4 the Investigating Accountant's Report;5 a copy or summary of this deed;6 a copy of the executed Deed Poll;7 a notice of meeting; and8 a proxy form.
Voting Intention	has meaning set out in clause 5.4(a)(2).
Williamtown	the property known as Williamtown Aerospace Centre, 1& 2 Technology Place, Williamtown, New South Wales 2318.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;



- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;
- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Awareness

- (a) If a representation or warranty is given so far as AUDPF RE is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of AUDPF RE is limited to and deemed only to comprise the facts, matters and circumstances of which certain specified persons agreed to in writing between the parties for the purposes of this clause 1.4 is actually aware as at the date of this deed, having made reasonable enquiries of their direct reports.
- (b) If a representation or warranty is given so far as CDPF RE is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of CDPF RE is limited to and deemed only to comprise the facts, matters and circumstances of which certain specified persons agreed to in writing between the parties for the purposes of this clause 1.4 is actually aware



as at the date of this deed, having made reasonable inquiries of their direct reports.

- (c) Without limiting clause 9, none of the persons referred to in clause 1.4(a) or 1.4(b) will bear any personal liability in respect of the representation or warranty, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.5 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.6 Deed components

This deed includes any schedule.

2 Agreement to propose the Transaction

- (a) AUDPF RE agrees to propose the Trust Scheme on and subject to the terms and conditions of this deed.
- (b) CDPF RE agrees to assist AUDPF RE to propose the Trust Scheme on and subject to the terms and conditions of this deed.
- (c) AUDPF RE and CDPF RE agree to implement the Trust Scheme on and subject to the terms and conditions of this deed.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Trust Scheme will not become Effective, and the respective obligations of the parties in relation to steps that need to be taken on and from the Effective Date are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **FIRB Approval:** before 8.00am on the Second Court Date, one of the following has occurred:
- (1) CDPF RE has received written notice under the *Australian Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**), by or on behalf of the Treasurer of the Commonwealth of Australia (the **Treasurer**), advising that the Commonwealth Government does not object to the Transaction, either on an unconditional basis or on terms that are acceptable to CDPF RE, acting reasonably (subject to clause 3.2(c)(5)), and the notice of no objection has not been withdrawn, suspended or revoked before 8.00am on the Second Court Date;
- (2) the Treasurer becomes precluded from making an order or decision under Division 2 of Part 3 of the FATA in respect of the Transaction and the Transaction is not prohibited by section 82 of the FATA; or



- (3) where an interim order is made under the FATA in respect of the Transaction, the subsequent period for making a final order prohibiting the Transaction elapses without a final order being made.
- (b) **ASIC Modifications:** ASIC has granted the ASIC Modifications and has not withdrawn or revoked any of the ASIC Modifications on or before 8.00am on the Second Court Date or, in respect of any ASIC Modification which has not been granted, has indicated in writing that such ASIC Modification is not required.
- (c) **Restraints:** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgement, order or decree, in each case issued by an Australian court of competent jurisdiction or an Australian Government Agency preventing or materially delaying the Transaction is in effect at 8.00am on the Second Court Date.
- (d) **Unitholder approval:** AUDPF Unitholders approve the Constitutional Amendment Resolution at the Trust Scheme Meeting by the requisite majority.
- (e) **Independent Expert:** the Independent Expert:
- (1) issues an Independent Expert's Report which concludes that the Trust Scheme is in the best interests of AUDPF Unitholders; and
- (2) does not change its conclusion or withdraw the Independent Expert's Report before 8.00am on the Second Court Date.
- (f) **Judicial advice:** the Court grants the First Judicial Advice and the Second Judicial Advice.
- (g) **No AUDPF Prescribed Occurrence:** no AUDPF Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (h) **No CDPF Prescribed Occurrence:** no CDPF Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (i) **No AUDPF Material Adverse Change:** no AUDPF Material Adverse Change occurs or is discovered, announced, disclosed or otherwise becomes known to CDPF RE, between (and including) the date of this deed and 8.00am on the Second Court Date.
- (j) **No CDPF Material Adverse Change:** no CDPF Material Adverse Change occurs or is discovered, announced, disclosed or otherwise becomes known to AUDPF RE, between (and including) the date of this deed and 8.00am on the Second Court Date.
- (k) **Change of control consents:** each counterparty to a Change of Control Contract providing to AUDPF (or the relevant member of the AUDPF Group) all necessary consents, approvals, exemptions, waivers or extensions in respect of the Transaction (including in respect of any change of the responsible entity or trustee of any AUDPF Group Member) either on an unconditional basis or subject only to such conditions that are not unduly onerous to CDPF RE, acting reasonably, and no such consents, approvals, exemptions, waivers or extensions have been withdrawn or revoked by 8.00am on the Second Court Date.
- (l) **Sale of certain properties:** before 8.00am on the Second Court Date, the sale of the following properties from AUDPF's portfolio to a Third Party has been completed:
- (1) Osborne; and

- (2) Williamtown.

3.2 Reasonable endeavours

- (a) Each party must, to the extent it is within their power to do so, use all reasonable endeavours to procure that:
- (1) each of the Conditions Precedent in clauses 3.1(b) (ASIC Modifications), 3.1(d) (Unitholder approval), 3.1(e) (Independent Expert), 3.1(f) (Judicial advice), 3.1(k) (Change of control consents) and 3.1(l) (Sale of certain properties) is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (2) there is no occurrence within its control or the control of any of its Controlled entities that would prevent, or would be reasonably likely to prevent, any of the Conditions Precedent being or remaining satisfied (except to the extent such action is required to be taken or procured pursuant to, or is otherwise expressly permitted by, this deed, the Trust Scheme, or is required by law).
- (b) CDPF RE must, to the extent it is within its power to do so, use reasonable endeavours to procure the Condition Precedent in clause 3.1(a) (FIRB Approval) is satisfied as soon as practicable after the date of this deed.
- (c) Without limiting this clause 3.2 CDPF RE:
- (1) must to the extent it has not already done so prior to the date of this deed, provide a copy of its application for the FIRB Approval to AUDPF RE;
 - (2) must take all the reasonable steps required, and for which it is responsible for, under the process of applying for FIRB Approval and which are appropriate to ensure that the Condition Precedent in clause 3.1(a) (FIRB Approval) is satisfied as soon as possible after the date of this deed, including responding to requests for information from FIRB and any other Government Agency in connection with the FIRB Approval at the earliest practicable time, and AUDPF RE must promptly provide any information reasonably requested by CDPF RE to assist with its responses to the requests for information;
 - (3) must keep AUDPF RE reasonably informed of progress in relation to the FIRB Approval (including in relation to any matters raised by, or conditions or other arrangements proposed by, any Government Agency) and provide AUDPF RE with information reasonably requested by AUDPF RE in connection with the FIRB Approval;
 - (4) must reasonably consult with AUDPF RE in advance in relation to the process and progress of, and all material communications with Government Agencies regarding, the FIRB Approval and provide AUDPF RE with a copy of any material communication with a Government Agency in relation to seeking and/or obtaining the FIRB Approval promptly and in any event within 3 Business Days after it is made or received (including in relation to any conditions or undertakings imposed or required by a Government Agency in relation to the FIRB Approval, and details of any such conditions or undertakings); and



- (5) acknowledges and agrees that:
- (A) it will accept the tax conditions set out in Guidance Note 12 issued by the FIRB (if any or all of those conditions are sought to be imposed by the Treasurer (or the Treasurer's delegate)); and
 - (B) the Treasurer (or the Treasurer's delegate) may seek to impose conditions in connection with any no objection notification for the Transaction under the FATA in addition to those referred to in clause 3.2(c)(5)(A) and CDPF RE will act reasonably and in good faith to agree any such conditions, it being acknowledged that it would generally be reasonable for CDPF RE to agree or accept any such conditions or undertakings imposed, required or requested by FIRB unless such conditions or undertakings would, or would be reasonably likely or expected to have:
 - (i) a material adverse impact on the value expected to be obtained by CDPF from the Transaction; or
 - (ii) a material impact on the conduct or operation of the CDPF Group's (including the AUDPF Group) business after implementation of the Trust Scheme,

provided that either party may withhold or redact information or not disclose documents to the other if, and to the extent that, the information is confidential to a third party or commercially sensitive and/or confidential to the disclosing party.

- (d) Without limiting this clause 3.2, each party must:
- (1) to the extent it has not already done so prior to the date of this deed, promptly apply for the ASIC Modification applicable to it and provide to the other party a copy of that application;
 - (2) take all reasonable steps required as part of the ASIC Modification process, including responding to requests for information from ASIC at the earliest practicable time; and
 - (3) keep the other party reasonably informed of progress in relation to the ASIC Modification applicable to it (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, ASIC in relation to the ASIC Modification applicable to it) and provide the other party with all information reasonably requested in connection with the progress of the ASIC Modification applicable to it.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (FIRB Approval) and 3.1(d) (Unitholder approval) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(g) (No AUDPF Prescribed Occurrence) and 3.1(i) (No AUDPF Material Adverse Change) are for the sole benefit of CDPF RE and any breach or non-satisfaction of any of them may only be waived by CDPF RE (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(e) (Independent Expert), 3.1(h) (No CDPF Prescribed Occurrence) and 3.1(j) (No CDPF Material Adverse Change)



are for the sole benefit of AUDPF RE and any breach or non-satisfaction of any of them may only be waived by AUDPF RE (in its absolute discretion) in writing.

- (d) The Conditions Precedent in clauses 3.1(b) (ASIC Modifications), 3.1(c) (Restraints), 3.1(f) (Judicial advice), 3.1(k) (Change of control consents) and 3.1(l) (Sale of certain properties) are for the benefit of both AUDPF RE and CDPF RE and may only be waived with the written agreement of both parties.
- (e) Any waiver of the breach or non-satisfaction of a Condition Precedent by a party who is entitled to do so pursuant to this clause 3.3 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date.
- (f) If a party waives the breach or non-satisfaction of any Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Condition Precedent that was waived.
- (g) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Conditions Precedent

- (a) If:
 - (1) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied;
 - (2) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent or such Condition Precedent is otherwise not satisfied by that time and date; and
 - (3) it becomes more likely than not that the Trust Scheme will not become Effective on or before the End Date,

then either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of the fact being given under clause 3.5(c), and upon delivery of the Consultation Notice the parties must consult in good faith to:

- (4) consider the terms (if any) on which the party with the benefit of the relevant Condition Precedent will waive that Condition Precedent;
- (5) consider extending and, if agreed, extend the relevant date, provided that neither party shall be under any obligation to extend the End Date;
- (6) consider and, if agreed, change the date of the application made to the Court for the Second Judicial Advice to another date agreed to in writing by AUDPF RE and CDPF RE (being a date no later than 5 Business Days before the End Date); or
- (7) consider and, if agreed, determine whether the Transaction may proceed by way of alternative means or methods;



- (b) If the parties are unable to reach agreement under clause 3.4(a) by the earliest of:
- (1) 5 Business Days after a Consultation Notice is given;
 - (2) 5 Business Days after the time and date specified in this deed for the satisfaction of a Condition Precedent; or
 - (3) the End Date,
- as appropriate, then, unless that Condition Precedent has been waived in accordance with clause 3.3, either party may terminate this deed without any liability to the other party because of that termination alone.
- (c) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.4(b) if the relevant Condition Precedent has not been satisfied as a result of:
- (1) a breach of this deed by that party; or
 - (2) a deliberate act or omission of that party which directly and materially contributed to that Condition Precedent not being satisfied,
- although, for the avoidance of doubt, in such circumstances the other party may still terminate this deed.

3.5 Certain notices relating to Conditions Precedent

AUDPF RE and CDPF RE (as the case may be) must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other in writing if it becomes aware that any Condition Precedent has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition Precedent is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.2).

4 Transaction steps

4.1 Trust Scheme

AUDPF RE must propose the Trust Scheme to AUDPF Unitholders in accordance with this deed.

4.2 Trust Scheme Consideration

- (a) If the Trust Scheme becomes Effective, each Trust Scheme Unitholder is entitled to receive the Trust Scheme Consideration in respect of each Trust Scheme Unit held by that Trust Scheme Unitholder in accordance with the terms of this deed and the Trust Scheme.
- (b) The Trust Scheme Consideration shall be calculated as follows:

$$N = \frac{A}{B}$$



Where:

- (1) N = the number of New CDPF Units;
- (2) A = the adjusted NTA per unit of AUDPF as at the Calculation Date calculated as:

$$A = \frac{a}{b}$$

a = the adjusted NTA of AUDPF as at the Calculation Date.

b = the number of AUDPF Units on issue as at the Calculation Date.

- (3) B = the adjusted NTA per unit of CDPF as at the Calculation Date calculated as:

$$B = \frac{c}{d}$$

c = the adjusted NTA of CDPF as at the Calculation Date.

d = the number of CDPF Units on issue as at the Calculation Date.

For the avoidance of doubt, the value of the aggregate Trust Scheme Consideration is equal to the aggregate number of New CDPF Units multiplied by the CDPF unit price as at the Implementation Date.

The AUDPF adjusted NTA and the CDPF adjusted NTA as at the Calculation Date must be calculated using AUDPF's and CDPF's respective audited financial statements for the year ended 30 June 2023, adjusted as follows:

- (4) an increase to the carrying amount of net assets for the amount by which any costs related to the Trust Scheme have been incurred and recognised as an expense to the Calculation Date;
- (5) where Osborne or Williamtown is sold pursuant to clause 3.1(l) for a Sale Price:
- (A) greater than 105% of the property's book value as set out in the AUDPF audited financial statements for the year ended 30 June 2023, then the adjusted NTA of AUDPF will be increased by the amount by which the Sale Price is greater than 105% of the property's book value as set out in the AUDPF audited financial statements for the year ended 30 June 2023; or
- (B) less than 95% of the property's book value as set out in the AUDPF audited financial statements for the year ended 30 June 2023, then the adjusted NTA of AUDPF will be decreased by the amount by which the Sale Price is less than 95% of the property's book value as set out in the AUDPF audited financial statements for the year ended 30 June 2023,

and where the Sale Price is between 95% and 105% of such book value, there will be no adjustment to the adjusted NTA of AUDPF under this clause 4.2(b)(5); and

- (6) the AUDPF adjusted NTA as at the Calculation Date must be decreased by a reasonable estimate of the amount of any special distribution to AUDPF Unitholders to be paid in accordance with this deed prior to implementation of the Trust Scheme in relation to the



sale of Osborne, Williamtown and/or AUDPF's property at Woodvale Boulevard, 931 Whitfords Avenue, Woodvale WA 6026.

- (c) Each party must provide to the other its respective adjusted NTA calculation prepared in accordance with clause 4.2(b), together with supporting information and other reasonable detail to allow the other party to review the calculation, as soon as reasonably practicable after the date on which:
- (1) the party's audited financial statements for the year ended 30 June 2023 are available; and
 - (2) binding sale contracts for Osborne and Williamtown have been entered into pursuant to clause 3.1(l),
- and by no later than 5 business days after that date.
- (d) Each party will be entitled to review and provide comments and suggested changes to the other party's adjusted NTA calculation within 2 Business Days of receiving the calculation pursuant to clause 4.2(c)(1).
- (e) Each party must consider in good faith any comments provided by the other party pursuant to clause 4.2(d) and must reissue its adjusted NTA calculation within 2 Business Days of receiving the comments with any requested changes that the party considers, acting in good faith, to be reasonable.
- (f) As soon as reasonably practicable after the date of this deed (and in any event, by 25 July 2023), each party must provide to the other an indicative adjusted NTA calculation as contemplated by clause 4.2(b) but using management instead of audited financial statements for the year ended 30 June 2023 and, unless binding sale contracts for the sale of Osborne and Williamtown have been entered into pursuant to clause 3.1(l), excluding any adjustment under clause 4.2(b)(5) or clause 4.2(b)(6). For the avoidance of doubt, the adjusted NTA calculations provided under this clause 4.2(f) are indicative only and will not be binding on the parties.
- (g) Subject to clause 3.1 and the terms of the Trust Scheme, CDPF RE undertakes and warrants to AUDPF RE (in its own right and separately as trustee and nominee for each of the Trust Scheme Unitholders) that, in consideration of the transfer to CDPF RE of each AUDPF Unit held by a Trust Scheme Unitholder under the terms of the Trust Scheme, on the Implementation Date, CDPF RE will:
- (1) accept that transfer; and
 - (2) provide, or procure the provision, to each Trust Scheme Unitholder the Trust Scheme Consideration for each Trust Scheme Unit in accordance with the terms of this deed and the Trust Scheme.

4.3 Transaction withdrawal facility

In connection with the Transaction, AUDPF RE and CDPF RE will implement a \$20 million withdrawal facility in respect of AUDPF Units, \$8 million of which will be funded by AUDPF and \$12 million of which will be indirectly funded by Cromwell Diversified Property Trust (**AUDPF Transaction Withdrawal Facility**), in accordance with the terms agreed in writing for the purpose of this clause by AUDPF RE, CDPF RE and Cromwell Diversified Property Trust.



4.4 New CDPF Units

CDPF RE covenants in favour of AUDPF RE (in its own right and separately as trustee and nominee for each of the Trust Scheme Unitholders) that:

- (a) the New CDPF Units issued as Trust Scheme Consideration will, on their issue, rank equally in all respects with all other CDPF Units on issue;
- (b) the New CDPF Units issued as Trust Scheme Consideration will be entitled to participate in and receive any distributions paid and any other entitlements accruing in respect of CDPF Units on and from the Implementation Date; and
- (c) on issue, each New CDPF Unit will be fully paid and free from any Security Interest or encumbrance.

4.5 Ineligible Foreign Unitholders

- (a) CDPF RE will ensure that the New CDPF Units to which an Ineligible Foreign Unitholder would otherwise have been entitled will be issued to a nominee appointed by CDPF RE.
- (b) CDPF RE must appoint the nominee on terms reasonably acceptable to AUDPF RE at least 5 Business Days prior to the date of the Regulator's Draft.

4.6 Provision of AUDPF Unitholder information

- (a) In order to facilitate the provision of the Trust Scheme Consideration, AUDPF RE must provide, or procure the provision of, to CDPF RE a complete copy of the AUDPF Unit Register as at the Trust Scheme Record Date (which must include the name, registered address and registered holding of each Trust Scheme Unitholder as at the Trust Scheme Record Date), within one Business Day after the Trust Scheme Record Date.
- (b) The details and information to be provided under clause 4.6(a) must be provided in such form as CDPF RE may reasonably require.

4.7 No amendment to the Trust Scheme without consent

AUDPF must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Trust Scheme without the prior written consent of CDPF RE (not to be unreasonably withheld or delayed).

5 Implementation

5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must use reasonable endeavours to:
 - (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps within their control and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.



- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Government Agency).
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including, for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe and the overall time period for an extension for implementation of the Timetable is minimised.

5.2 AUDPF RE's obligations

Subject to any change of recommendation by the AUDPF RE Board that is permitted by clause 5.4, AUDPF RE must take all necessary steps to implement the Trust Scheme as is reasonably practicable in accordance with the Timetable, including each of the following (to the extent that AUDPF RE has not already completed the following prior to the date of this deed):

- (a) **preparation of Unitholder Booklet:** subject to clauses 5.3(a) and 5.3(b), prepare and dispatch the Unitholder Booklet in accordance with all applicable laws (including the Corporations Act, the Corporations Regulations and any applicable regulatory guidance from a Government Agency);
- (b) **directors' recommendation:** include in the Unitholder Booklet a statement by the AUDPF RE Board:
 - (1) unanimously recommending that AUDPF Unitholders vote in favour of the Trust Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Trust Scheme is in the best interests of AUDPF Unitholders; and
 - (2) that each AUDPF RE Board Member will (in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Trust Scheme is in the best interests of AUDPF Unitholders) vote, or procure the voting of, any AUDPF Units held or controlled by them or held on their behalf at the time of the Trust Scheme Meeting in favour of the Trust Scheme at the Trust Scheme Meeting,unless there has been a withdrawal, change, modification or qualification of recommendation permitted by clause 5.4;
- (c) **consultation with CDPF RE in relation to Unitholder Booklet:** consult with CDPF RE as to the content and presentation of the Unitholder Booklet including:
 - (1) promptly providing to CDPF RE drafts of the Unitholder Booklet and the Independent Expert's Report (excluding the valuation section) for the purpose of enabling CDPF RE to review and comment on those draft documents, provided that, in relation to the Independent Expert's Report, CDPF RE's review is to be limited to a factual accuracy review;



- (2) taking all timely and reasonable comments made by CDPF RE into account in good faith and acting reasonably when producing a revised draft of the Unitholder Booklet;
 - (3) providing to CDPF RE a revised draft of the Unitholder Booklet within a reasonable time before the Regulator's Draft is finalised and to enable CDPF RE to review the Regulator's Draft before the date of its submission; and
 - (4) seeking written approval from CDPF RE on the form and context in which the CDPF Information appears in the Unitholder Booklet (such consent not to be unreasonably withheld or delayed by CDPF RE);
- (d) **AUDPF Information:** prepare and promptly provide to CDPF RE any information regarding the AUDPF Group that CDPF RE reasonably requires in order to prepare the information regarding the Merged Group for inclusion in the Unitholder Booklet.
- (e) **verification:** take reasonable verification processes in relation to the information contained in the Unitholder Booklet (other than the CDPF Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (f) **ASIC review:** provide the Regulator's Draft to ASIC for its review and approval and keep CDPF RE informed of any material matter raised by ASIC in relation to the Unitholder Booklet or the Transaction, and use reasonable endeavours, in consultation with CDPF RE, to resolve such matters raised by ASIC;
- (g) **update Unitholder Booklet:** until the date of the Trust Scheme Meeting, promptly update the Unitholder Booklet with any information that arises after the Unitholder Booklet has been dispatched that is necessary to ensure that the Unitholder Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement. AUDPF RE must consult with CDPF RE as to the content and presentation of the updated or supplementary Unitholder Booklet in the manner contemplated by clause 5.2(c);
- (h) **Independent Expert:** promptly appoint the Independent Expert to provide the Independent Expert's Report and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Unitholder Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Unitholder Booklet (including any updates to the Unitholder Booklet);
- (i) **Investigating Accountant:** promptly appoint the Investigating Accountant to provide the Investigating Accountant's Report and provide all assistance and information reasonably requested by them in connection with the preparation of the Investigating Accountant's Report for inclusion in the Unitholder Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Unitholder Booklet (including any updates to the Unitholder Booklet);
- (j) **First Judicial Advice:** lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the First Judicial Advice;
- (k) **Trust Scheme Meeting:** convene the Trust Scheme Meeting to seek AUDPF Unitholder approval of the Constitutional Amendment Resolution;



- (l) **Court documents:** consult with CDPF RE in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of the First Judicial Advice and the Second Judicial Advice (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of considering amending drafts of those documents, comments from CDPF RE and its legal advisers on those documents;
- (m) **Second Judicial Advice:** if AUDPF Unitholders approve the Constitutional Amendment Resolution by the requisite majority, lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the Second Judicial Advice;
- (n) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of the First Judicial Advice and Second Judicial Advice;
- (o) **Certificate:** at the hearing on the Second Court Date, provide to the Court a certificate (signed for and on behalf of AUDPF RE) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(f)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by AUDPF RE to CDPF RE by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (p) **lodge Supplemental Deed:** lodge with ASIC an executed copy of the Supplemental Deed by no later than 4.00pm on the first Business Day after the later of the date on which the Court grants the Second Judicial Advice and the date on which all the Conditions Precedent are satisfied or waived in accordance with this deed (or such later date as agreed in writing by CDPF RE);
- (q) **Trust Scheme Consideration:** if the Trust Scheme becomes Effective, finalise and close the AUDPF Unit Register as at the Trust Scheme Record Date, and determine entitlements to the Trust Scheme Consideration, in accordance with the Trust Scheme and the Deed Poll;
- (r) **transfer and registration:** if the Trust Scheme becomes Effective and subject to the Trust Scheme Consideration being provided in accordance with the Trust Scheme and Deed Poll:
 - (1) execute, on behalf of Trust Scheme Unitholders, instruments of transfer of AUDPF Units held by Trust Scheme Unitholders to CDPF RE; and
 - (2) register all transfers of AUDPF Units held by Trust Scheme Unitholders to CDPF RE on the Implementation Date; and
- (s) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

5.3 CDPF RE's obligations

CDPF RE must take all necessary steps to implement the Trust Scheme as is reasonably practicable in accordance with the Timetable, including doing each of the following (to the extent that CDPF RE has not already completed the following prior to the date of this deed):

- (a) **CDPF Information:** prepare and promptly provide to AUDPF the CDPF Information for inclusion in the Unitholder Booklet, including all relevant



information regarding the CDPF Group (including following implementation of the Transaction) and the Trust Scheme Consideration, required by all applicable laws (including the Corporations Act and the Corporations Regulations), any applicable guidance from a Government Agency, and consent to the inclusion of that information in the Unitholder Booklet;

- (b) **review of Unitholder Booklet:** review the drafts of the Unitholder Booklet prepared by AUDPF RE and provide comments on those drafts promptly and in good faith;
- (c) **accuracy of CDPF Information:** confirm in writing to AUDPF RE the accuracy of the CDPF Information in the Unitholder Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;
- (d) **update CDPF Information:** until the date of the Trust Scheme Meeting, promptly provide to AUDPF RE any information that arises after the Unitholder Booklet has been dispatched that is necessary to ensure that the CDPF Information contained in the Unitholder Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (e) **Independent Expert's Report:** provide any assistance or information reasonably requested by AUDPF RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Unitholder Booklet;
- (f) **Investigating Accountant's Report:** provide any assistance or information reasonably requested by AUDPF RE or by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report for inclusion in the Unitholder Booklet;
- (g) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of the First Judicial Advice and Second Judicial Advice;
- (h) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to AUDPF RE the Deed Poll;
- (i) **Certificate:** before the commencement of the hearing on the Second Court Date provide to AUDPF RE for provision to the Court at that hearing a certificate (signed for and on behalf of CDPF RE) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(f)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by CDPF RE to AUDPF RE by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (j) **unit transfer:** if the Trust Scheme becomes Effective:
 - (1) accept a transfer of the Trust Scheme Units as contemplated by clause 4.2(g)(1); and
 - (2) execute instruments of transfer in respect of the Trust Scheme Units;
- (k) **Trust Scheme Consideration:** if the Trust Scheme becomes Effective, provide the Trust Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Trust Scheme and the Deed Poll;
- (l) **Tax:** to facilitate the availability of scrip-for-scrip rollover relief under Subdivision 124-M of the Tax Act for eligible AUDPF Unitholders;

- (1) provide AUDPF RE with such assistance and information as may reasonably be requested by AUDPF RE for the purposes of obtaining from the Australian Taxation Office rulings in a form reasonably acceptable to AUDPF RE confirming the availability of scrip-for-scrip rollover relief in respect of the exchange of the AUDPF Units for New CDPF Units pursuant to the Trust Scheme;
 - (2) not make an election under section 124-795(4) of the Tax Act preventing the availability of the rollover relief; and
 - (3) if applicable, make any election required under Subdivision 124-M of the Tax Act in relation to the rollover,
- and
- (m) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

5.4 AUDPF RE Board recommendation

- (a) AUDPF RE represents and warrants to CDPF RE that, as at the date of this deed, each AUDPF RE Board Member has confirmed that:
- (1) his or her recommendation is that AUDPF Unitholders vote in favour of the Trust Scheme at the Trust Scheme Meeting (**Recommendation**); and
 - (2) he or she intends to vote, or cause to be voted, all AUDPF Units which he or she holds or controls in favour of the Trust Scheme at the Trust Scheme Meeting (**Voting Intention**),
- in each case, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Trust Scheme is in the best interests of Trust Scheme Unitholders.
- (b) AUDPF RE will use its best endeavours to ensure that the AUDPF Board collectively, and each AUDPF RE Board Member individually, does not:
- (1) adversely change, withdraw, adversely qualify or adversely modify its or their Recommendation or Voting Intention; or
 - (2) make any public statement supporting, endorsing or recommending a Competing Proposal and/or that is inconsistent with his or her recommendation of the Transaction,
- in each case except where:
- (3) the Independent Expert's Report concludes that, or is amended or updated so as to conclude that, the Trust Scheme is not in the best interests of Trust Scheme Unitholders;
 - (4) AUDPF RE has received a Competing Proposal and the AUDPF RE Board has determined, after the procedure in clause 12.6 has been fully complied with, that the Competing Proposal constitutes a Superior Proposal; or
 - (5) the adverse change, withdrawal, adverse modification or adverse qualification in respect of a AUDPF RE Board Member's Recommendation occurs because of a requirement by a court of competent jurisdiction or ASIC that the relevant AUDPF Board Member abstains from making a recommendation that AUDPF



Unitholders vote in favour of the Trust Scheme after the date of this deed.

- (c) For the purposes of this clause 5.4, customary qualifications and explanations contained in the Unitholder Booklet in relation to a Recommendation, including to the effect that:
- (1) the Recommendation is made in the absence of a Superior Proposal; and
 - (2) the Recommendation is made subject to the Independent Expert concluding and continuing to conclude in the Independent Expert's Report (including in any amendment of it) that the Trust Scheme is in the best interests of AUDPF Unitholders,
- will not be regarded as a failure to make or a withdrawal of a Recommendation in favour of the Trust Scheme.
- (d) Despite anything to the contrary in this clause 5.4, a statement made by AUDPF RE, the AUDPF RE Board or any AUDPF RE Board Member, to the effect that no action should be taken by AUDPF Unitholders pending the assessment of a Competing Proposal by the AUDPF RE Board shall not, by itself, contravene this clause 5.4.

5.5 Responsibility statements

- (a) The Unitholder Booklet will contain a responsibility statement to the effect that:
- (1) CDPF RE is responsible for the CDPF Information contained in the Unitholder Booklet and neither AUDPF RE nor its Related Persons assumes any responsibility for the accuracy or completeness of the CDPF Information; and
 - (2) AUDPF RE is responsible for the AUDPF Information contained in the Unitholder Booklet and neither CDPF RE nor its Related Persons assumes any responsibility for the accuracy or completeness of the AUDPF Information.
- (b) If AUDPF RE and CDPF RE disagree on the form or content of the Unitholder Booklet, they must consult in good faith to try to settle an agreed form of the Unitholder Booklet. If after 5 Business Days of consultation, AUDPF RE and CDPF RE are unable to agree on the form or content of the Unitholder Booklet:
- (1) where the determination relates to CDPF Information, CDPF RE will make the final determination, acting reasonably, as to the form and content of the CDPF Information; and
 - (2) in any other case, the final determination as to the form and content of the Unitholder Booklet will be made by AUDPF RE, acting reasonably.

5.6 Conduct of Court proceedings

In respect of Court proceedings for the purposes of the First Judicial Advice and Second Judicial Advice:

- (a) AUDPF RE and CDPF RE are entitled to separate representation at such Court proceedings;



- (b) nothing in this deed gives AUDPF RE or CDPF RE any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent; and
- (c) AUDPF RE and CDPF RE must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

6 Conduct of business and permitted distributions

6.1 Conduct of business

- (a) Subject to clause 6.3(a), from the date of this deed up to and including the Implementation Date, AUDPF RE must, and must procure that the AUDPF Group:
 - (1) conduct the business of the AUDPF Group in the ordinary and usual course generally consistent with past practice;
 - (2) use all reasonable endeavours to:
 - (A) preserve relationships with customers, suppliers, tenants, licensors, licensees and others having material business dealings with them;
 - (B) maintain the condition of AUDPF Group's business and assets in accordance with the ordinary course of its business;
 - (C) exercise reasonable care and diligence to procure that the AUDPF Group does not incur any inflows, or do any other action, that would result in AUDPF ceasing to qualify as a 'widely held' unit trust for the purposes of the *Duties Act 1997* (NSW), the *Duties Act 2000* (Vic) and the *Duties Act 2001* (QLD);
 - (D) maintain (and where necessary use reasonable efforts to renew) each of its material authorisations, accreditations and licences applicable to each member of the AUDPF Group held by that member as at the date of this deed; and
 - (E) comply in all material respects with:
 - (i) all AUDPF Material Contracts to which an AUDPF Group Member is a party; and
 - (ii) all laws, authorisations and licences applicable to each AUDPF Group Member.
- (b) Subject to 6.3(b), from the date of this deed up to and including the Implementation Date, CDPF RE must, and must procure that the CDPF Group:
 - (1) conduct the business of the CDPF Group in the ordinary and usual course generally consistent with past practice;
 - (2) use all reasonable endeavours to:

- (A) preserve relationships with customers, suppliers, tenants, licensors, licensees and others having material business dealings with them;
- (B) maintain the condition of CDPF Group's business and assets in accordance with the ordinary course of its business;
- (C) exercise reasonable care and diligence to procure that the CDPF Group does not incur any inflows, or do any other action, that would result in CDPF ceasing to qualify as a 'widely held' unit trust for the purposes of the *Duties Act 1997 (NSW)*, the *Duties Act 2000 (Vic)* and the *Duties Act 2001 (QLD)*;
- (D) maintain (and where necessary use reasonable efforts to renew) each of its material authorisations, accreditations and licences applicable to each member of the CDPF Group held by that member as at the date of this deed; and
- (E) comply in all material respects with:
 - (i) all CDPF Material Contracts to which an CDPF Group Member is a party; and
 - (ii) all laws, authorisations and licences applicable to each CDPF Group Member.

6.2 Prohibited actions

- (a) Subject to clause 6.3(a), from the date of this deed up to and including the Implementation Date, AUDPF RE must not, and must procure that the AUDPF Group does not:
 - (1) acquire or dispose of, offer, propose, announce a bid or tender for, any securities, business, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$1,000,000 individually or \$10,000,000 in aggregate;
 - (2) incur any additional borrowings or financial indebtedness or increase existing financial indebtedness in excess of \$1,000,000 in a single transaction or \$10,000,000 in a series of transactions;
 - (3) provide any financial accommodation;
 - (4) enter into, change the terms of, or pay, discharge or satisfy any claims, liabilities or obligations under, any AUDPF Material Contract, other than in accordance with its terms and consistently with past practice;
 - (5) take out any insurance policy with respect to the AUDPF Group or any of its directors or officers other than in the ordinary course of business;
 - (6) waive any material third party default where the financial impact of the waiver on the AUDPF Group as a whole will be in excess of \$1,000,000 (individually) or \$10,000,000 (in aggregate);
 - (7) pay any third party costs or expenses incurred by the AUDPF Group in connection with the transactions contemplated by this deed;



- (8) alter in any material respect any accounting policy of any member of the AUDPF Group, other than any change required by applicable accounting standards; or
 - (9) agree to do any of the matters set out above.
- (b) Subject to clauses 6.3(b) and 6.3(c), from the date of this deed up to and including the Implementation Date, CDPF RE must not, and must procure that the CDPF Group does not:
- (1) acquire or dispose of, offer, propose, announce a bid or tender for, any securities, business, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$1,000,000 individually or \$10,000,000 in aggregate;
 - (2) incur any additional borrowings or financial indebtedness or increase existing financial indebtedness in excess of \$1,000,000 in a single transaction or \$10,000,000 in a series of transactions;
 - (3) provide any financial accommodation;
 - (4) enter into, change the terms of, or pay, discharge or satisfy any claims, liabilities or obligations under, any CDPF Material Contract, other than in accordance with its terms and consistently with past practice;
 - (5) take out any insurance policy with respect to the CDPF Group or any of its directors or officers other than in the ordinary course of business;
 - (6) waive any material third party default where the financial impact of the waiver on the CDPF Group as a whole will be in excess of \$1,000,000 (individually) or \$10,000,000 (in aggregate);
 - (7) pay any third party costs or expenses incurred by the CDPF Group in connection with the transactions contemplated by this deed;
 - (8) alter in any material respect any accounting policy of any member of the CDPF Group, other than any change required by applicable accounting standards;
 - (9) make any change to the distribution policy of CDPF as described in the CDPF product disclosure statement dated 17 November 2020; or
 - (10) agree to do any of the matters set out above.

6.3 Permitted activities

- (a) The obligations of AUDPF RE under clauses 6.1(a) and 6.2(a) do not apply in respect of any matter of event:
- (1) as expressly required or permitted by this deed, the Trust Scheme or the transactions contemplated by either;
 - (2) to the extent it is Fairly Disclosed in the AUDPF Disclosure Materials;
 - (3) to the extent that it was Fairly Disclosed by AUDPF in an announcement made on its website or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection), in the 24 months prior to the date of this deed;



- (4) to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed;
 - (5) for which CDPF RE has provided prior written consent (such consent not to be unreasonably withheld or delayed); or
 - (6) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Governmental Agency.
- (b) The obligations of CDPF RE under clauses 6.1(b) and 6.2(b) (other than clause 6.2(b)(1) and, as it relates to clause 6.2(b)(1), clause 6.2(b)(10)) do not apply in respect of any matter of event:
- (1) as expressly required or permitted by this deed, the Trust Scheme or the transactions contemplated by either;
 - (2) to the extent it is Fairly Disclosed in the CDPF Disclosure Materials;
 - (3) to the extent that it was Fairly Disclosed by CDPF in an announcement made on its website or a publicly available document lodged by it with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection), in the 24 months prior to the date of this deed;
 - (4) to the extent that it was Fairly Disclosed in a publicly available document which would be disclosed in a search of the PPS Register two Business Days before the date of this deed;
 - (5) for which AUDPF RE has provided prior written consent (such consent not to be unreasonably withheld or delayed); or
 - (6) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Governmental Agency.
- (c) The obligations of CDPF RE under clause 6.2(b)(1) and, as it relates to clause 6.2(b)(1), clause 6.2(b)(10) do not apply in respect of any matter or event for which AUDPF RE has provided prior written consent (such consent not to be unreasonably withheld or delayed).

6.4 AUDPF Permitted Distributions

- (a) AUDPF RE must not take any action which would result in income tax being payable by an AUDPF Unitholder in respect of the income year in which the Implementation Date occurs in a manner that does not reflect the distributions payable to the relevant AUDPF Unitholder in respect of that income year.
- (b) AUDPF may make monthly distributions of income to AUDPF Unitholders in accordance with clause 11.11 of the AUDPF Constitution of not more than 0.420 cents per AUDPF Unit per month.
- (c) Subject to clauses 6.4(a) and 6.4(b), AUDPF RE must continue making monthly distributions to AUDPF Unitholders in accordance with past practice, and in respect of the month in which Implementation occurs, AUDPF RE must make a distribution to AUDPF Unitholders on a pro rata basis for that month 2 days prior to the Implementation Date.



6.5 CDPF Permitted Distributions

- (a) CDPF RE must not take any action which would result in income tax being payable by a CDPF Unitholder in respect of the income year in which the Implementation Date occurs in a manner that does not reflect the distributions payable to the relevant CDPF Unitholder in respect of that income year.
- (b) CDPF may make monthly distributions of income to CDPF Unitholders in accordance with clause 32 of the CDPF Constitution of not more than 0.563 cents per CDPF Unit per month.
- (c) Subject to clauses 6.5(a) and 6.5(b), CDPF RE must continue making monthly distributions to CDPF Unitholders in accordance with past practice, and in respect of the month in which Implementation occurs, CDPF RE must make a distribution to CDPF Unitholders on a pro rata basis for that month 2 days prior to the Implementation Date.

7 Access and assistance

7.1 Access to information

- (a) From the date of this deed up to and including the earlier of the Implementation Date and termination of this deed, each party (**Relevant Party**) must provide to the other party reasonable access to information, premises and such senior executives of the Relevant Party as reasonably requested by the other party and agreed by the Relevant Party at mutually convenient times, and afford the other party reasonable co-operation, for the sole purpose of:
 - (1) preparation of financial statements (including for the Merged Group) for inclusion in the Unitholder Booklet;
 - (2) implementation of the Trust Scheme;
 - (3) development and implementation of CDPF RE's plans for the AUDPF business following the Implementation Date; and
 - (4) any other purpose agreed between the parties.
- (b) From the date of this deed up to and including the earlier of the Implementation Date and termination of this deed, AUDPF RE must provide to CDPF RE:
 - (1) all monthly financial reports and safety, environment and quality reports provided to the AUDPF RE Board;
 - (2) regular reports on the financial affairs of the AUDPF Group in the form which is ordinarily used by AUDPF, including the AUDPF Group's monthly management accounts to CDPF RE in a timely manner;
 - (3) regular updates in relation to leasing (including vacancy, details of new deals, arrears or debt reports);
 - (4) regular updates in relation to the developments of the AUDPF Group, including variations, PCG reports, new leases and termination of existing leases;
 - (5) notice (including reasonable detail) of any material damage to the properties of AUDPF Group;

- (6) a copy of all material correspondence in relation to any claims and litigation; and
 - (7) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency.
- (c) From the date of this deed up to and including the earlier of the Implementation Date and termination of this deed, CDPF RE must provide to AUDPF RE:
 - (1) all monthly financial reports and safety, environment and quality reports provided to the CDPF RE Board;
 - (2) regular reports on the financial affairs of the CDPF Group in the form which is ordinarily used by CDPF, including the CDPF Group's monthly management accounts in a timely manner;
 - (3) regular updates in relation to leasing (including vacancy, details of new deals, arrears or debt reports);
 - (4) regular updates in relation to the developments of the CDPF Group, including variations, PCG reports, new leases and termination of existing leases;
 - (5) notice (including reasonable detail) of any material damage to the properties of CDPF Group;
 - (6) a copy of all material correspondence in relation to any claims and litigation; and
 - (7) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency.
- (d) In carrying out the obligations in this clause 7.1:
 - (1) nothing in this clause will require AUDPF RE to provide information concerning its directors' and management's consideration of the Trust Scheme or a Competing Proposal;
 - (2) information will be made available via the AUDPF Data Room or the CDPF Data Room (as applicable);
 - (3) information need not be provided if that would result in unreasonable disruptions to the Relevant Party's business, is (in the reasonable opinion of the Relevant Party) commercially sensitive, would breach a confidentiality obligation owed to a Third Party or any applicable law or require the Relevant Party to make any disclosure that would compromise legal privilege; and
 - (4) the parties acknowledge that their investigations and obligations under this clause 7 are subject to the Confidentiality Deed and all applicable laws and requirements of a Government Agency.

7.2 Change of control provisions

As soon as practicable after the date of this deed, AUDPF RE and CDPF RE must seek to identify any change of control provisions in the AUDPF Material Contracts to which an AUDPF Group Member is party which will be triggered by the implementation of the Transaction (other than a Change of Control Contract). In respect of those contracts, and any other AUDPF Material Contracts in respect of which CDPF RE identifies provisions that contemplate the replacement or retirement of AUDPF RE as the responsible entity of AUDPF, the parties agree as follows:



- (a) AUDPF RE and CDPF RE will in good faith agree a proposed course of action, and then jointly initiate contact with the relevant counterparties and request that they provide any required consents, waivers or agreements to novate the relevant AUDPF Material Contract to the proposed responsible entity of AUDPF.
- (b) AUDPF RE and CDPF RE must use reasonable efforts to promptly seek to obtain consents, waivers or novation agreements prior to the Implementation Date in accordance with the agreed strategy. CDPF RE and its Related Persons must not contact any counterparties without AUDPF RE being present or without AUDPF RE's prior written consent (which is not to be unreasonably withheld or delayed).
- (c) AUDPF RE and CDPF RE must cooperate with, and provide reasonable assistance to, each other to obtain such consents, waivers or novation agreements in accordance with this clause 7.2, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires either party to incur material expense).
- (d) A failure by a AUDPF Group Member to obtain any third party consent, waiver or novation agreement will not constitute a breach of this deed by AUDPF RE and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

8 Representations and warranties

8.1 AUDPF representations and warranties

AUDPF RE represents and warrants to CDPF RE (in its own right and separately as trustee or nominee for each of the other CDPF Indemnified Parties) each of the AUDPF Representations and Warranties.

8.2 AUDPF indemnity

AUDPF RE agrees with CDPF RE (in its own right and separately as trustee or nominee for each CDPF Indemnified Party) to indemnify CDPF RE and each of the CDPF Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that CDPF RE or any of the other CDPF Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the AUDPF Representations and Warranties.

8.3 CDPF representations and warranties

CDPF RE represents and warrants to AUDPF RE (in its own right and separately as trustee or nominee for each of the other AUDPF Indemnified Parties) each of the CDPF Representations and Warranties.

8.4 CDPF's indemnity

CDPF RE agrees with AUDPF RE (in its own right and separately as trustee or nominee for each AUDPF Indemnified Party) to indemnify AUDPF RE and each of the AUDPF Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that AUDPF RE or any of the other



AUDPF Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the CDPF Representations and Warranties.

8.5 Qualifications on representations, warranties and indemnities

- (a) The AUDPF Representations and Warranties in clause 8.1 and the indemnity in clause 8.2, are each subject to matters that:
- (1) are within the actual knowledge of a CDPF Group Member in relation to the Transaction or the Trust Scheme as at the date of this deed; or
 - (2) have been Fairly Disclosed in the AUDPF Disclosure Materials or an announcement on the AUDPF website in the 24 months prior to the date of this deed, or a publicly available document lodged by AUDPF with ASIC or available on the PPS Register, as at the date of this deed.
- (b) The CDPF Representations and Warranties in clause 8.3 and the indemnity in clause 8.4, are each subject to matters that:
- (1) are within the actual knowledge of a AUDPF Group Member in relation to the Transaction or the Trust Scheme as at the date of this deed; or
 - (2) have been Fairly Disclosed in the CDPF Disclosure Materials or an announcement on the CDPF website in the 24 months prior to the date of this deed, or a publicly available document lodged by CDPF with ASIC or available on the PPS Register, as at the date of this deed.

8.6 Survival of representations and warranties

Each representation and warranty in clauses 8.1 and 8.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

8.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 8.2 and 8.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

8.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 8.1 or 8.3 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.



8.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

8.10 Notices relating to representations and warranties

AUDPF RE and CDPF RE (as the case may be) must promptly notify the other in writing if it becomes aware of any fact, matter, change, event or circumstance causing, or which, so far as reasonably be foreseen, would cause a representation or warranty provided in this deed by the relevant party to be false or misleading in any material respect.

9 Releases

9.1 AUDPF RE and AUDPF RE directors and officers

- (a) Subject to any restrictions imposed by law, CDPF RE releases its rights, and agrees with AUDPF RE that it will not make any claim (including any Claim) against any AUDPF Indemnified Party (other than AUDPF RE and its Controlled entities) as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of AUDPF RE or any other member of the AUDPF Group in this deed; or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the AUDPF Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.1(a) limits CDPF RE's rights to terminate this deed under clause 15.2(a).
- (b) This clause 9.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) AUDPF RE receives and holds the benefit of this clause 9.1 to the extent it relates to each AUDPF Indemnified Party for the benefit of each of them.

9.2 CDPF RE and CDPF RE directors and officers

- (a) Subject to any restrictions imposed by law, AUDPF RE releases its rights, and agrees with CDPF RE that it will not make a claim (including any Claim), against any CDPF Indemnified Party (other than CDPF RE and its Controlled entities) as at the date of this deed and from time to time in connection with:



- (1) any breach of any representations and warranties of CDPF RE or any other member of the CDPF Group in this deed; or
- (2) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the CDPF Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.2(a) limits AUDPF RE's rights to terminate this deed under clause 15.2(b).

- (b) This clause 9.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) CDPF RE receives and holds the benefit of this clause 9.2 to the extent it relates to each CDPF Indemnified Party for the benefit of each of them.

10 Public announcements

10.1 Agreed announcement

Immediately after execution of this deed, AUDPF RE must issue, and CDPF RE must procure that its Holding Entity issues, a public announcement regarding the Transaction in the form agreed in writing between the parties.

10.2 Required disclosure

Where a party or a Holding Entity of a party is required by any applicable law to make any announcement or make any disclosure in connection with the Trust Scheme, the party must use all reasonable endeavours, or procure that its Holding Entity uses all reasonable endeavours (as applicable), to the extent possible, to consult with the other party prior to making the relevant disclosure.

10.3 Other announcements

- (a) Subject to clauses 10.1 and 10.2, no party may make, and each party must procure that its Holding Entity does not make, any public announcement or disclosure in connection with the Trust Scheme (including disclosure to a Government Agency) other than in a form approved in writing by the other party (acting reasonably).
- (b) Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause 10 requires the giving of prior notice or the taking of any action if doing so would lead to a party or its Holding Entity breaching an applicable law.

10.4 Holding Entities

In this clause 10, Holding Entity means:

- (a) in respect of AUDPF RE, Australian Unity Limited ACN 087 648 888; and
- (b) in respect of CDPF RE, Cromwell Property Group comprising Cromwell Corporation and the Cromwell Diversified Property Trust ARSN 102 982 598.

11 Confidentiality

- (a) AUDPF RE and CDPF RE acknowledge and agree that AUDPF RE and Cromwell Corporation continue to be bound by the Confidentiality Agreement after the date of this deed save that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency.
- (b) CDPF RE agrees to comply with Cromwell Corporation's obligations under the Confidentiality Agreement as if those obligations were imposed on CDPF RE.

12 Exclusivity

12.1 No current discussions regarding a Competing Proposal

- (a) AUDPF RE represents and warrants to CDPF RE that, as at the date of this deed, each of it, each AUDPF Group Member, and their respective Related Persons:
 - (1) is not a party to any agreement, arrangement or understanding with any person for the purpose of facilitating or that is in connection with a Competing Proposal;
 - (2) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communications, that concern or that is in relation to a Competing Proposal, or which could reasonably be expected to lead to a Competing Proposal; and
 - (3) has ceased to provide or make available any non-public information in relation to the business, assets or affairs of the AUDPF Group or any AUDPF Group Member to a Third Party where such information was provided in connection with, with a view to obtaining or for the purpose of facilitating, or could reasonably be expected to lead to the formulation, development, finalisation, receipt or announcement of, any actual, proposed or potential Competing Proposal.
- (b) As soon as practicable after the date of this deed, AUDPF RE must use (and must procure that each AUDPF Group Member uses) reasonable endeavours to exercise any rights it has that enable it to require that any Third Party to which it has disclosed information in the 18 months preceding the date of this deed in connection with any actual, proposed or potential Competing Proposal, return or destroy that information.

12.2 No shop

During the Exclusivity Period, AUDPF RE must not, and must ensure that each other AUDPF Group Member and each of AUDPF RE and AUDPF Group Member's Related Persons do not, directly or indirectly:

- (a) solicit, invite, encourage, facilitate or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal, negotiation, discussion or other communication by any person:
 - (1) in relation to, or which would reasonably be expected to lead to the making of; or



- (2) with a view to obtaining,
any actual, proposed or potential Competing Proposal; or
- (b) communicate to any person an intention to do anything referred to in this clause 12.

12.3 No talk

During the Exclusivity Period, and subject to clause 12.4, AUDPF RE must not, and must ensure that each other AUDPF Group Member and each of AUDPF RE and AUDPF Group Member's Related Persons do not, directly or indirectly:

- (a) facilitate, participate in or continue any negotiations or discussions with any person with respect to any inquiry, expression of interest, offer, proposal, negotiation, discussion or other communication by any person in relation to, or which would reasonably be expected to lead to the making of, any actual, proposed or potential Competing Proposal;
- (b) negotiate, accept or enter into, or offer to agree to negotiate, accept or enter into any agreement, arrangement or understanding regarding any actual, proposed or potential Competing Proposal;
- (c) disclose or otherwise provide any non-public information about the business, assets, operations or affairs of the AUDPF Group or any AUDPF Group Member (including making available, or permitting access to, any premises used, leased, licensed or owned by the AUDPF Group) to a Third Party (other than a Government Agency) in connection with, with a view to obtaining, or which would reasonably be expected to lead to the formulation, development, finalisation, receipt or announcement of, any actual, proposed or potential Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the AUDPF Group) whether by that Third Party or another person, provided that if AUDPF RE, an AUDPF Group Member or a Related Person of an AUDPF Group Member proposes that any non-public AUDPF information be provided to any Third Party (other than a Government Agency) in reliance on clause 12.4, then before such information is provided to the Third Party, that Third Party must enter into a confidentiality agreement which contains obligations on the recipient in respect of that information which are no less onerous in any material respect than the confidentiality obligations of Cromwell Corporation under the Confidentiality Agreement; or
- (d) communicate to any person an intention to do anything referred to in clause 12.3(a), 12.3(b) and 12.3(c),

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by AUDPF RE, another AUDPF Group Member, or a Related Person of AUDPF RE or a AUDPF Group Member. Nothing in clause 12.2 or 12.3 prevents AUDPF RE, another AUDPF Group Member, or a Related Person of AUDPF RE or a AUDPF Group Member from providing information to brokers, portfolio investors, analysts and other third parties in the ordinary course of business or to promote the merits of the Transaction.

12.4 Fiduciary exception

Clause 12.3 and clause 12.5(b)(2) do not prohibit any action or inaction by AUDPF RE or any of its Related Persons in relation to a bona fide actual, proposed or potential



Competing Proposal provided that the AUDPF RE Board acting in good faith has determined after:

- (a) receiving advice from AUDPF RE's financial advisers and reputable external Australian legal advisers specialising in the area of corporate law that the Competing Proposal could reasonably be expected to lead to a Superior Proposal; and
- (b) receiving written advice from its reputable external Australian legal advisers specialising in the area of corporate law that the failure to take or not take such action (as the case may be) with respect to the Competing Proposal would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the AUDPF RE Board Members,

provided that the actual, proposed or potential Competing Proposal was not brought about by, or in respect of which there has not been, a breach of clause 12.2.

12.5 Notification of approaches

- (a) During the Exclusivity Period, AUDPF RE must as soon as reasonably practicable (and in any event within 24 hours) notify CDPF RE in writing if it, or any of its Related Persons, becomes aware of any:
 - (1) negotiations, discussions or other communications, or approach, in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to, or that would reasonably be expected to lead to, any actual, proposed or potential Competing Proposal;
 - (2) approach or proposal made to, or received by, AUDPF RE or any of its Related Persons, in connection with, or in respect of any exploration or completion of, or that would reasonably be expected to lead to, any actual, proposed or potential Competing Proposal (or which is otherwise, of itself, a Competing Proposal);
 - (3) request made by a Third Party for any non-public information concerning the business, assets, affairs or operations of AUDPF or AUDPF Group other than where the AUDPF RE Board reasonably believes that such request is not in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal; or
 - (4) provision by AUDPF RE or any of its Related Persons of any non-public information concerning the business, assets, affairs or operations of AUDPF or the AUDPF Group to any Third Party (other than a Government Agency) in connection with a Competing Proposal, a proposed or potential Competing Proposal or any of the things described in clause 12.5(a)(1) or 12.5(a)(3),

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 12.5(a)(1) to 12.5(a)(4) may only be taken if permitted by clause 12.4.

- (b) A notification given under clause 12.5(a) must include all material terms and conditions of the proposal, including:
 - (1) to the extent known by AUDPF RE or its Related Persons, the material terms and conditions (including price, value of any non-cash component of the consideration, conditions precedent and proposed timetable) of any Competing Proposal; and



- (2) subject to clause 12.4, the identity of the person who made the proposal (and if different, details of the identity of the proposed bidder or acquirer).
- (c) During the Exclusivity Period, AUDPF RE must promptly provide CDPF RE with:
 - (1) in the case of written materials, a copy of; or
 - (2) in any other case, a written statement of,
any non-public information relating to the business, assets, affairs or operations of AUDPF or the AUDPF Group made available or received by Third Party in reliance on clause 12.4 which has not previously been provided to CDPF RE, except that AUDPF RE is not required to provide:
 - (3) such non-public information if to do so would or would be reasonably likely to breach any applicable law or regulatory requirement; or
 - (4) questions from such Third Party and any responses to such questions by or on behalf of AUDPF RE, including any documents or other information provided by, or on behalf of, AUDPF RE in response to such questions.

12.6 Matching right

- (a) During the Exclusivity Period, without limiting clauses 12.2 and 12.3, AUDPF RE:
 - (1) must not, and must procure that each AUDPF Group Member does not enter into a legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which one or more of a Third Party, AUDPF RE or any AUDPF Group Member proposes or propose to undertake, implement or give effect to any actual, proposed or potential Competing Proposal. For the avoidance of doubt, any such legally binding agreement, arrangement or understanding does not include an AUDPF Group Member entering into a confidentiality agreement or like agreement for the sole or dominant purpose of providing non-public information in relation to an actual, proposed or potential Competing Proposal; or
 - (2) must use its best endeavours to procure that, in relation to a Competing Proposal, no AUDPF RE Board Member:
 - (A) withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation; or
 - (B) approves, recommends, supports or endorses any actual, proposed or potential Competing Proposal,(subject to any change of Recommendation that is permitted by clause 5.4(b)(3) to 5.4(b)(5)),
unless:
 - (3) the AUDPF RE Board has made the determination contemplated by clause 12.4 in respect of that Competing Proposal;
 - (4) AUDPF RE has provided CDPF RE with a written notice (**Relevant Notice**) stating it is given for the purposes of this clause 12.6 and setting out all information required by clause 12.5(b) (to the extent known by AUDPF RE or any of its Related Persons);



- (5) AUDPF RE has given CDPF RE at least 4 Business Days after the date of the provision of the Relevant Notice to announce or otherwise propose or provide to AUDPF a counterproposal to the Competing Proposal (**CDPF Counterproposal**); and
 - (6) CDPF RE has not announced or otherwise proposed or provided to AUDPF RE such a CDPF Counterproposal by the expiry of the 4 Business Day period in clause 12.6(a)(5).
- (b) If CDPF RE announces or otherwise proposes or provides to AUDPF RE a CDPF Counterproposal by the expiry of the 5 clear Business Day period in clause 12.6(a)(5), AUDPF RE must procure that the AUDPF RE Board promptly considers the CDPF Counterproposal and determines, acting in good faith, after consulting with its financial advisers and reputable external Australian legal advisers specialising in the area of corporate law, whether the CDPF Counterproposal would provide an outcome that is no less favourable (or more favourable) for AUDPF Unitholders (as a whole) than the terms of the Competing Proposal, taking into account all terms and conditions and other aspects of:
- (1) the CDPF Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, the ability of the proponent to complete the transactions contemplated by the CDPF Counterproposal, matters affecting the probability of the CDPF Counterproposal being completed compared to the Competing Proposal or other legal, financial, regulatory and other relevant matters); and
 - (2) the Competing Proposal,
(Matching or Superior Proposal).
- (c) If the AUDPF RE Board determines that a CDPF Counterproposal is a Matching or Superior Proposal:
- (3) AUDPF RE must promptly procure that the AUDPF RE Board promptly, and in any event within 2 Business Days, notifies CDPF RE of the determination in writing, stating reasons for that determination; and
 - (4) AUDPF RE and CDPF RE must use their best endeavours to agree any amendments to this deed (and any other transaction documentation required) and the contents of the Unitholder Booklet which are reasonably necessary to implement the CDPF Counterproposal as soon as reasonably practicable.
- (d) If the AUDPF RE Board determines that a CDPF Counterproposal is not a Matching or Superior Proposal, then AUDPF RE must promptly, and in any event within 2 Business Days, notify CDPF RE of the determination in writing, stating reasons for that determination.
- (e) For the purposes of this clause 12.6:
- (1) each new Competing Proposal or successive material modification of any Third Party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal; and
 - (2) for the avoidance of doubt, the process set out in this clause 12.6 must again be followed in respect of each new Competing Proposal or successive material variation or amendment to a Competing Proposal



prior to AUDPF RE or the AUDPF RE Board taking any of the actions prohibited or required by clauses 12.6(a)(1) or 12.6(a)(2).

- (f) Despite any other provision in this deed, a statement by AUDPF RE, AUDPF RE Board or any AUDPF RE Board Member to the effect that:
- (1) the AUDPF RE Board has determined that a Competing Proposal is or may be a Superior Proposal and has commenced the matching right process set out in this clause 12.6; or
 - (2) AUDPF Unitholders should take no action pending the completion of the matching right process set out in this clause 12.6,
- does not of itself:
- (3) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the AUDPF RE Board Members or an endorsement of a Competing Proposal;
 - (4) contravene this deed;
 - (5) give rise to an obligation to pay the Break Fee under clause 13.2; or
 - (6) give rise to a termination right under clause 15.1.

12.7 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction that the agreement by the parties under this clause 12 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the AUDPF RE Board; or
 - (2) was, or is, or would be, unlawful for any other reason,
- then, to that extent (and only to that extent) AUDPF RE will not be obliged to comply with that provision of clause 12.
- (b) The parties:
- (1) must not make or cause to be made, any application to a court for or in relation to a determination referred to in this clause 12.7; and
 - (2) agree that if a Third Party makes an application to a court for or in relation to a declaration or determination regarding any provision of this clause 12, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such declaration or determination should be made.

13 Break Fee

13.1 Background to Break Fee

- (a) Each party acknowledges that, if they enter into this deed and the Trust Scheme is subsequently not implemented, CDPF RE will incur significant costs (which will include significant opportunity costs), including those set out in clause 13.4.



- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 13.2, without which CDPF RE would not have entered into this deed or otherwise agreed to implement the Trust Scheme.
- (c) AUDPF RE confirms that the AUDPF RE Board believes, having taken advice from its external legal adviser, that the implementation of the Transaction will provide benefits to AUDPF Unitholders, and that it is appropriate and reasonable that AUDPF RE agrees to the payments referred to in clause 13.2 in order to secure CDPF RE's participation in the Transaction.

13.2 Break Fee triggers

Subject to clauses 13.5, 13.6 and 13.9, AUDPF RE must pay the Break Fee to CDPF RE, if:

- (a) before the end of the Exclusivity Period, CDPF RE has terminated the deed in accordance with clause 15.1(b), unless the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Trust Scheme is not in the best interests of Trust Scheme Unitholders (except where the sole or dominant reason for that conclusion is due to the existence, announcement or publication of a Competing Proposal (including, but not limited to, a Superior Proposal));
- (b) a Competing Proposal of any kind is announced prior to the Effective Date (or, if earlier, the date this deed is terminated under clause 3 or clause 15) (whether or not such proposal is stated to be subject to any pre-conditions) and, within 9 months of the date of such announcement, a Third Party completes a Competing Proposal of the kind referred to in paragraphs 1, 2, 3 or 4 of the definition of Competing Proposal; or
- (c) CDPF RE has terminated this deed pursuant to clauses 15.1(a)(1) or 15.2(a) and the Transaction does not complete. For the avoidance of doubt, a breach or non-fulfilment of clause 3.1(g) constitutes a material breach for the purposes of clause 15.1(a)(1).

13.3 Payment of Break Fee

- (a) A demand by CDPF RE for payment of the Break Fee under clause 13.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment of the Break Fee;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account into which AUDPF RE is to pay the Break Fee.
- (b) AUDPF RE must pay the Break Fee into the account nominated by CDPF RE, without set-off or withholding, within 15 Business Days after receiving a demand for payment under clause 13.3(a) where CDPF RE is entitled under clause 13.2 to the Break Fee.

13.4 Basis of Break Fee

AUDPF RE and CDPF RE acknowledge and agree that the amount of the Break Fee has been calculated to reimburse CDPF RE for costs including the following:



- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by CDPF RE and CDPF RE's employees, advisers and agents in planning and implementing the Transaction; and
- (e) any damage to CDPF RE's reputation associated with a failed transaction and the implications of that damage to the CDPF business,

in each case, incurred by CDPF RE directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and the parties agree that:

- (f) the costs actually incurred by CDPF RE will be of such a nature that they cannot all be accurately ascertained; and
- (g) the Break Fee is a genuine and reasonable pre-estimate of those costs.

13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on AUDPF RE to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee is determined to be unenforceable or unlawful by a court of competent jurisdiction.
- (b) If:
 - (1) clause 13.5(a) applies; and
 - (2) a court determines that an amount lower than the Break Fee is not unenforceable or unlawful (**Permitted Break Fee Amount**),then:
 - (3) AUDPF RE shall be required to pay the Permitted Break Fee Amount in accordance with clause 13.3; and
 - (4) if the Break Fee has already been paid to CDPF RE, CDPF RE will refund to AUDPF RE within 10 Business Days after receipt of a written demand from AUDPF RE an amount equal to the difference between the Break Fee and the Permitted Break Fee Amount to AUDPF RE (unless otherwise required by a court of competent jurisdiction).
- (c) For the avoidance of doubt, any part of the Break Fee that is not unenforceable or unlawful must be paid by AUDPF RE.
- (d) The parties:
 - (1) must not make or cause to be made, any application to a court for or in relation to a determination referred to in clause 13.5(a); and
 - (2) agree that that if a Third Party makes an application to a court for or in relation to a determination regarding any provision of this clause 13, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such determination should be made.



13.6 Break Fee payable only once

Where the Break Fee becomes payable to CDPF RE under clause 13.2 and is actually paid to CDPF RE, CDPF RE cannot make any claim against AUDPF RE for payment of any subsequent Break Fee.

13.7 Other Claims

Notwithstanding any other provision under this deed (except clause 20.11(b)), the maximum aggregate liability of AUDPF RE for any Claims under this deed is the Break Fee and in no event will the aggregate liability of AUDPF RE for Claims under this deed and in connection with the Transaction or the Trust Scheme exceed the Break Fee, other than in the event of AUDPF RE's fraud.

13.8 Exclusive remedy

Notwithstanding any other provision under this deed (except clause 20.11(b)), where the Break Fee is paid to CDPF RE under this deed, CDPF RE cannot make any further Claim against AUDPF RE or the AUDPF Indemnified Parties in relation to any event or circumstance referred to in clause 13.2, and no further damages, fees, expenses or reimbursements of any kind will be payable by AUDPF RE in connection with this deed, other than in the event of AUDPF RE's fraud.

13.9 No Break Fee if Trust Scheme Effective

Despite anything to the contrary in this deed, the Break Fee will not be payable to CDPF RE if:

- (a) the Trust Scheme becomes Effective; or
- (b) at the time that the Break Fee becomes payable under clause 13.2, AUDPF RE was entitled to terminate this deed under clauses 15.1(a)(1) or 15.2(b) and has given the appropriate termination notice to CDPF RE,

notwithstanding the occurrence of any event in clause 13.2 and, if this clause 13.9 applies, any amount or part of the Break Fee that has already been paid to CDPF RE must be refunded by CDPF RE:

- (c) where clause 13.9(a) applies, within 10 Business Days after the Trust Scheme becomes Effective; or
- (d) where clause 13.9(b) applies, within 5 Business Days after the date AUDPF RE notifies CDPF RE that, at the time that the Break Fee became payable under clause 13.2, AUDPF RE was entitled to terminate this deed under clauses 15.1(a)(1) or 15.2(b).

14 Reverse Break Fee

14.1 Background to Reverse Break Fee

- (a) AUDPF RE and CDPF RE acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, AUDPF RE will incur significant costs (which will include significant opportunity costs), including those set out in clause 14.4.



- (b) In the circumstances referred to in clause 14.1(a), AUDPF RE has requested that provision be made for the payments outlined in clause 14.2, without which AUDPF RE would not have entered into this deed or otherwise agreed to implement the Trust Scheme.
- (c) CDPF RE believes, having taken advice from its external legal adviser, that the implementation of the Trust Scheme will provide benefits to CDPF and that it is appropriate for CDPF RE to agree to the payments referred to in clause 14.2 in order to secure AUDPF RE's participation in the Transaction.
- (d) AUDPF RE and CDPF RE must not make or cause or permit to be made any application to a court for or in relation to a determination that the Reverse Break Fee is invalid or unenforceable.

14.2 Reverse Break Fee triggers

Subject to clauses 14.5 and 14.6, CDPF RE must pay the Reverse Break Fee to AUDPF RE if AUDPF RE has terminated this deed pursuant to clauses 15.1(a)(1) or 15.2(b) and the Transaction does not complete. For the avoidance of doubt, a breach or non-fulfilment of clause 3.1(h) constitutes a material breach for the purposes of clause 15.1(a)(1).

14.3 Payment of Reverse Break Fee

- (a) A demand by AUDPF RE for payment of the Reverse Break Fee under clause 14.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment of the Reverse Break Fee;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account in the name of AUDPF RE into which CDPF RE is to pay the Reverse Break Fee.
- (b) CDPF RE must pay the Reverse Break Fee into the account nominated by AUDPF RE, without set-off or withholding, within 15 Business Days after receiving a demand for payment under clause 14.3(a) where AUDPF RE is entitled under clause 14.2 to the Reverse Break Fee.

14.4 Basis of Reverse Break Fee

The Reverse Break Fee has been calculated to reimburse AUDPF RE for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by AUDPF RE and AUDPF RE's employees, advisers and agents in planning and implementing the Transaction; and



- (e) damage to AUDPF RE's reputation associated with a failed transaction and the implications of that damage to AUDPF's business,
- and AUDPF RE and CDPF RE agree that:
- (f) the costs actually incurred by AUDPF RE will be of such a nature that they cannot all be accurately ascertained; and
 - (g) the genuine and reasonable pre-estimate of those costs would equal or exceed the Reverse Break Fee.

14.5 Compliance with law

- (a) This clause 14 does not impose an obligation on CDPF RE to pay the Reverse Break Fee to the extent (and only to the extent) that the obligation to pay the Reverse Break Fee is determined to be unenforceable or unlawful by a court of competent jurisdiction.
- (b) If:
 - (1) clause 14.5(a) applies; and
 - (2) a court determines that an amount lower than the Reverse Break Fee is not unenforceable or unlawful (**Permitted Reverse Break Fee Amount**),then:
 - (3) CDPF RE shall be required to pay the Permitted Reverse Break Fee Amount in accordance with clause 14.3; and
 - (4) if the Reverse Break Fee has already been paid to AUDPF RE, AUDPF RE will refund to CDPF RE within 10 Business Days after receipt of a written demand from CDPF RE an amount equal to the difference between the Reverse Break Fee and the Permitted Reverse Break Fee Amount to CDPF RE (unless otherwise required by a court of competent jurisdiction).
- (c) For the avoidance of doubt, any part of the Reverse Break Fee that is not unenforceable or unlawful must be paid by CDPF RE.
- (d) The parties:
 - (1) must not make or cause to be made, any application to a court for or in relation to a determination referred to in clause 14.5(a); and
 - (2) agree that that if a Third Party makes an application to a court for or in relation to a determination regarding any provision of this clause 14, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such determination should be made.

14.6 Reverse Break Fee payable only once

Where the Reverse Break Fee becomes payable to AUDPF RE under clause 14.2 and is actually paid to AUDPF RE, AUDPF RE cannot make any claim against CDPF RE for payment of any subsequent Reverse Break Fee.



14.7 Other Claims

Notwithstanding any other provision under this deed (except clauses 14.9 and 20.11(b)), the maximum aggregate liability of CDPF RE for any Claims under this deed is the Reverse Break Fee and in no event will the aggregate liability of CDPF RE for Claims under this deed and in connection with the Transaction or the Trust Scheme exceed the Reverse Break Fee, other than in the event of CDPF RE's fraud.

14.8 Exclusive remedy

Notwithstanding any other provision under this deed (except clauses 14.9 and 20.11(b)), where the Reverse Break Fee is paid to AUDPF RE under this deed, AUDPF RE cannot make any further Claim against CDPF RE or the CDPF Indemnified Parties in relation to any event or circumstance referred to in clause 14.2, and no further damages, fees, expenses or reimbursements of any kind will be payable by CDPF RE in connection with this deed, other than in the event of fraud.

14.9 Claims under the Deed Poll

Nothing in clause 14.7 or 14.8, or otherwise in this deed will limit CDPF RE's liability under the Deed Poll.

15 Termination

15.1 Termination for material breach

- (a) Either party may terminate this deed by written notice to the other party:
- (1) other than in respect of a breach of either an AUDPF Representation and Warranty or a CDPF Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed and the relevant breach is material in the context of the Trust Scheme taken as a whole, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given (in which case termination under this clause 15.1(a) will take effect at the expiry of that period);
 - (2) in the circumstances set out in, and in accordance with, clause 3.4;
 - (3) if AUDPF Unitholders have not agreed to the Trust Scheme at the Trust Scheme Meeting by the requisite majority; or
 - (4) if the Effective Date for the Trust Scheme has not occurred, or will not occur, on or before the End Date.
- (b) CDPF RE may terminate this deed by written notice to AUDPF RE at any time before 8.00am on the Second Court Date if, for any reason whether or not permitted by this deed, any of the AUDPF RE Board Members:

- (1) fails to recommend the Trust Scheme in the manner described in clause 5.4(a);
 - (2) withdraws, adversely changes or adversely qualifies or adversely modifies their Recommendation; or
 - (3) makes a public statement:
 - (A) to the effect that they no longer support the Transaction; or
 - (B) indicating that they no longer recommend the Transaction or recommend that AUDPF Unitholders accept or vote in favour of a Competing Proposal (but excluding a statement that no action should be taken by AUDPF Unitholders pending the assessment of a Competing Proposal by the AUDPF RE Board or the completion of the matching right process set out in clause 12.6),

for any reason and whether or not permitted to do so under this deed.
- (c) AUDPF RE may terminate this deed by written notice to CDPF RE at any time before 8.00am on the Second Court Date if, a majority of the AUDPF RE Board Members:
- (1) fails to recommend the Trust Scheme in the manner described in clause 5.4(a);
 - (2) withdraws, adversely changes or adversely qualifies or adversely modifies their Recommendation; or
 - (3) make a public statement:
 - (A) to the effect that they no longer support the Transaction; or
 - (B) indicating that they no longer recommend the Transaction or recommend that AUDPF Unitholders accept or vote in favour of a Competing Proposal (but excluding a statement that no action should be taken by AUDPF Unitholders pending the assessment of a Competing Proposal by the AUDPF RE Board or the completion of the matching right process set out in clause 12.6),

in each case, where expressly permitted by, and in accordance with, this deed.
- (d) A failure to recommend, or a withdrawal, an adverse change, adverse qualification or adverse modification of a recommendation, or a statement made of a kind referred to in clause 15.1(b)(3), due to a court of competent jurisdiction or ASIC requirement that an AUDPF RE Board Member abstains from making a recommendation will be disregarded under clauses 15.1(b) and 15.1(c).

15.2 Termination for breach of representations and warranties

- (a) CDPF RE may, at any time prior to 8.00am on the Second Court Date, terminate this deed for material breach of an AUDPF Representation and Warranty only if:
- (1) CDPF RE has given written notice to AUDPF RE setting out the relevant circumstances and stating an intention to terminate or to allow the Trust Scheme to lapse;
 - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the

- Second Court Date) after the date on which the notice is given under clause 15.2(a)(1); and
- (3) the relevant breach is material in the context of the Trust Scheme taken as a whole.
- (b) AUDPF RE may, at any time before 8.00am on the Second Court Date, terminate this deed for material breach of a CDPF Representation and Warranty only if:
- (1) AUDPF RE has given written notice to CDPF RE setting out the relevant circumstances and stating an intention to terminate or to allow the Trust Scheme to lapse;
 - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(1); and
 - (3) the relevant breach is material in the context of the Trust Scheme taken as a whole.

15.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 15.1 or 15.2:

- (a) each party will be released from its obligations under this deed, except that this clause 15.3, and clauses 8.5 to 8.9, 9, 11, 13, 14, 16, 18, 19 and 20 (except 20.7), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Trust Scheme.

15.4 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed and otherwise complies with the requirements of the relevant clause of this deed.

15.5 No other termination

Neither party may terminate or rescind this deed, except as permitted under clauses 3.4, 15.1 or 15.2.

16 Limitation of liability

16.1 AUDPF limitation of liability

- (a) AUDPF RE incurs Obligations under this deed only as the responsible entity of AUDPF and in no other capacity.



- (b) An Obligation may be enforced against AUDPF RE only to the extent to which it is satisfied out of assets of AUDPF out of which AUDPF RE is actually indemnified for the Obligation.
- (c) The parties other than AUDPF RE may not sue AUDPF RE in any capacity other than as responsible entity of AUDPF, including seeking the appointment of a receiver (except in relation to the assets of AUDPF), a liquidator, an administrator or any similar person to AUDPF RE or prove any liquidation, administration or arrangement of or affecting AUDPF RE (except in relation to the assets of AUDPF).
- (d) The provisions of this clause 16.1 do not apply to the extent an Obligation is not satisfied because under the deed establishing AUDPF or by operation of law there is a reduction in the extent of AUDPF RE's indemnification out of the assets of AUDPF, as a result of AUDPF RE's fraud, negligence or breach of trust.
- (e) AUDPF RE is not to be regarded as being negligent or in breach of trust to the extent to which any failure by AUDPF RE to satisfy its Obligations under this deed has been caused or contributed to by a failure by any person to fulfil its obligations in relation to AUDPF or any other act or omission of another person unless that failure, act or omission by the other person has been caused directly by the neglect or default of AUDPF RE.
- (f) No attorney, agent, receiver or receiver and manager appointed in accordance with this agreement has authority to act on behalf of AUDPF RE in any way which may expose AUDPF RE to any personal liability.
- (g) AUDPF RE is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless AUDPF RE's liability is limited in the same manner as set out in this clause 16.1.
- (h) In this clause 16.1 the word 'Obligation' means all obligations and liabilities of whatsoever kind, undertaking or incurred by or devolving upon AUDPF RE under this deed or any deed, agreement or other instrument collateral with this deed and includes, all liabilities of AUDPF RE in any way connected with any representation, warranty conduct, omission, agreement or transaction related to this agreement.

16.2 CDPF limitation of liability

- (a) CDPF RE enters into this deed in its capacity as responsible entity of CDPF and in no other capacity.
- (b) A liability of CDPF RE arising under or in connection with this deed is limited to the amount CDPF RE actually receives in the exercise of its right of indemnity from the property of CDPF. This limitation of liability applies despite any other provision of this deed and extends to all liabilities and obligations of CDPF RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party may sue CDPF RE in any capacity other than as the responsible entity of CDPF including seeking the appointment of a receiver (except in relation to property of CDPF), a liquidator, an administrator or any similar person to CDPF RE or prove in any liquidation, administration or arrangement of or affecting CDPF RE (except in relation to property of CDPF).
- (d) The provisions of this clause will not apply to any obligation or liability of CDPF RE to the extent that it is not satisfied because under the constitution of CDPF



or by operation of law there is a reduction in the extent of CDPF RE's indemnification out of the assets of CDPF as a result of CDPF RE's fraud, negligence or breach of trust.

- (e) CDPF RE is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless CDPF RE's liability is limited in the same manner as set out in this clause 16.2.

17 Duty, costs and expenses

17.1 Stamp duty

- (a) CDPF RE:
 - (1) must pay all stamp duty and duty imposed in any jurisdiction and any interest, fines and penalties with respect to stamp duty or duty in respect of this deed, or the Trust Scheme or the transaction contemplated by this deed or the Trust Scheme; and
 - (2) indemnifies AUDPF RE against any liability arising from its failure to comply with clause 17.1(a)(1).
- (b) AUDPF RE must cooperate with, and provide assistance to, CDPF RE as reasonably requested by CDPF RE to assist in fulfilment of clause 17.1(a)(1), including but not limited to providing any information in AUDPF RE's possession to assist with timely stamp duty lodgement and payment

17.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

18 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 18(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 18(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing



Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 18(b):

- (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

19 Notices

19.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

Party	Address	Addressee	Email
AUDPF RE	271 Spring Street, Melbourne VIC 3000	Melinda Honig, General Counsel	MHonig@australianunity.com.au CC: dvsanden@australianunity.com.au



CDPF RE	Level 19, 200 Mary Street, Brisbane QLD 4000	Andrew Murray, Chief Legal & Commercial Officer	andrew.murray@cromwell.com.au With a copy (which does not constitute Notice) to: CCondoleon@gtlaw.com.au and KKo@gtlaw.com.au
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19.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	The earlier of: <ol style="list-style-type: none"> 1 when the party sending the email receives notification that the email was successfully transmitted and read by the receiving party; 2 the time that the recipient confirms receipt of the email by reply email to the sender; and 3 four hours after the email was sent (as recorded on the device from which the sender sent the email), unless the party sending the email receives, within that four hour period, an automated message that the email was not successfully transmitted.

20 General

20.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



20.2 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

20.3 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 20.3(a) does not apply where enforcement of the provision of this deed in accordance with clause 20.3(a) would materially affect the nature or effect of the parties' obligations under this deed.

20.4 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 20.4 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

20.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

20.6 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 20.6(a) by a party shall be deemed to be a material breach for the purposes of clause 15.1(a)(1).
- (c) Clause 20.6(b) does not affect the construction of any other part of this deed.



20.7 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

20.8 Entire agreement

This deed, together with the Confidentiality Deed and all other documents referred to in this deed or initialled by or on behalf of the parties on or about the date of this deed, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Deed (excluding any inconsistent provisions)).

20.9 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an electronically executed counterpart sent by email to the email address of the other party specified in clause 19, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

20.10 Relationship of the parties

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

20.11 Remedies cumulative

- (a) Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.
- (b) Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of this deed and that either party is entitled to seek and obtain, without limitation, injunctive relief or specific performance if either party breaches, or threatens to breach this deed, regardless of whether the Break Fee or Reverse Break Fee has been paid.

20.12 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.



- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.
- (c) An obligation to act reasonably (or not unreasonably) under this deed is taken to refer to an obligation to act reasonably (or not unreasonably) in the context of the parties' intentions to implement the Transaction on the terms of this deed.



Schedules

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Schedule 1

AUDPF Representations and Warranties

AUDPF RE represents and warrants to CDPF RE (in its own right and separately as trustee or nominee for each of the other CDPF Indemnified Parties) that:

- (a) **AUDPF Information:** the AUDPF Information contained in the Unitholder Booklet, as at the date the Unitholder Booklet is dispatched to AUDPF Unitholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been honestly held and formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of AUDPF Information:** the AUDPF Information:
 - (1) will be prepared and included in the Unitholder Booklet in good faith and on the understanding that CDPF RE and each other CDPF Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and applicable guidance from a Government Agency,and all information provided by AUDPF RE to the Independent Expert will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the CDPF Information, only to the extent that CDPF RE provides AUDPF RE with updates to the CDPF Information), ensure that the Unitholder Booklet is updated to include all further or new information which arises after the Unitholder Booklet has been dispatched to AUDPF Unitholders until the date of the Trust Scheme Meeting which is necessary to ensure that the Unitholder Booklet is not misleading or deceptive (including by way of omission) in any material respect;
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **registered scheme:**
 - (1) AUDPF is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act and no action has been taken to terminate or wind up AUDPF (whether under Chapter 5C of the Corporations Act or otherwise) nor has the date or any event occurred for the vesting of the assets of AUDPF;
 - (2) as at the date of this deed, so far as AUDPF RE is aware based on the AUDPF Unit Register and AUDPF Unit applications, AUDPF was a 'widely held' unit trust for the purposes of the *Duties Act 1997* (NSW), the *Duties Act 2000* (Vic) and the *Duties Act 2001* (QLD);
 - (3) AUDPF RE is the only responsible entity of AUDPF;



- (4) AUDPF RE has been validly appointed as responsible entity of AUDPF and it has not given any notice of resignation and no action has been taken or proposed to remove it as responsible entity of AUDPF or appoint an additional responsible entity of AUDPF;
 - (5) the AUDPF Constitution is in full force and effect and there are no other documents that modify or supplement the AUDPF Constitution; and
 - (6) AUDPF RE has a right to be fully indemnified out of the assets of AUDPF in relation to this deed and all of its obligations and liabilities under this deed (other than in the case of its fraud, negligence or breach of trust), and there is nothing that would prevent it from being fully indemnified out of the assets of AUDPF for any obligations under this deed or in connection with this deed or any of the transactions contemplated by this deed that it incurs in its capacity as responsible entity of the AUDPF;
- (f) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of AUDPF RE and AUDPF RE has taken or will take all necessary corporate action to authorise the performance by AUDPF RE of this deed and the transactions contemplated by this deed;
- (g) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (h) **deed binding:** subject to the ASIC Modifications being made, this deed constitutes legal, valid and binding obligations of AUDPF RE, enforceable in accordance with its terms, and does not result in a breach of or default under the constituent documents of AUDPF RE or AUDPF or under any other agreement or deed, writ, order or injunction, rule or regulation to which AUDPF RE or AUDPF is a party or to which they are bound;
- (i) **issued capital:** the issued capital of AUDPF as at 29 June 2023 was 271,724,853.7784 ordinary units;
- (j) **authorisations:** AUDPF RE holds all material authorisations that is necessary or desirable to:
- (1) enable it to properly execute this deed and to carry out the transaction that this deed contemplates;
 - (2) ensure that this deed is legal, valid and binding; and
 - (3) enable it to properly carry on its business,
- and it is complying with such material authorisation;
- (k) **material contracts:** with respect to each AUDPF Material Contract to which an AUDPF Group Member is a party, so far as AUDPF RE is aware:
- (1) no AUDPF Group Member is in default, or would be in default but for the requirements of notice or lapse of time, under an AUDPF Material Contract;
 - (2) no other party to any AUDPF Material Contract is in default, or would be in default but for the requirements of notice or lapse of time, under that contract; or
 - (3) no AUDPF Group Member has received, or given, any notice of termination of any AUDPF Material Contract;



- (l) **no Insolvency Event:** neither AUDPF RE nor any AUDPF Group Member is affected by an Insolvency Event, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict performance of this deed;
- (m) **no contravention:** so far as AUDPF RE is aware, each of AUDPF RE and each AUDPF Group Member has complied in all material respects with all laws or regulations applicable to them and neither it nor any AUDPF Group Member has received notice from any Government Agency of any material breach of Australian and foreign laws or regulations applicable to them or orders of Australian and foreign Government Agencies having jurisdiction over them;
- (n) **continuous disclosure:** AUDPF RE has complied in all material respects with its continuous disclosure obligations under the Corporations Act; and
- (o) **Disclosure Materials:** it has:
 - (1) collated and made available all of the AUDPF Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as AUDPF RE is aware, the AUDPF Disclosure Materials have been collated with all reasonable care and skill and are accurate in all material respects and not materially misleading (including by omission); and
 - (2) not knowingly withheld any information that could be material to CDPF RE's evaluation of AUDPF and the merits of the Transaction.

For the purpose of this clause (o), the AUDPF Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed.



Schedule 2

CDPF Representations and Warranties

CDPF RE represents and warrants to AUDPF RE (in its own right and separately as trustee or nominee for each of the other AUDPF Indemnified Parties) that:

- (a) **CDPF Information:** the CDPF Information provided for inclusion in the Unitholder Booklet, as at the date the Unitholder Booklet is dispatched to AUDPF Unitholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been honestly held and formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of CDPF Information:** the CDPF Information:
 - (1) will be provided to AUDPF RE in good faith and on the understanding that AUDPF RE and each other AUDPF Indemnified Party will rely on that information for the purposes of preparing the Unitholder Booklet and proposing the Trust Scheme; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and applicable guidance from a Government Agency,and all information provided by CDPF RE to the Independent Expert will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to AUDPF RE all further or new information which arises after the Unitholder Booklet has been dispatched to AUDPF Unitholders until the date of the Trust Scheme Meeting which is necessary to ensure that the CDPF Information is not misleading or deceptive (including by way of omission) in any material respect;
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **registered scheme:**
 - (1) CDPF is a validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act and no action has been taken to terminate or wind up CDPF (whether under Chapter 5C of the Corporations Act or otherwise) nor has the date or any event occurred for the vesting of the assets of CDPF;
 - (2) as at the date of this deed, so far as CDPF RE is aware based on the CDPF Unit Register and CDPF Unit applications, CDPF was a 'widely held' unit trust for the purposes of the *Duties Act 1997* (NSW), the *Duties Act 2000* (Vic) and the *Duties Act 2001* (QLD);
 - (3) CDPF RE is the only responsible entity of CDPF;
 - (4) CDPF RE has been validly appointed as responsible entity of CDPF and it has not given any notice of resignation and no action has been



- taken or proposed to remove it as responsible entity of CDPF or appoint an additional responsible entity of CDPF;
- (5) the CDPF Constitution is in full force and effect and there are no other documents that modify or supplement the CDPF Constitution; and
- (6) CDPF RE has a right to be fully indemnified out of the assets of CDPF in relation to this deed and all of its obligations and liabilities under this deed (other than in the case of its fraud, negligence or breach of trust), and there is nothing that would prevent it from being fully indemnified out of the assets of CDPF for any obligations under this deed or in connection with this deed or any of the transactions contemplated by this deed that it incurs in its capacity as responsible entity of the CDPF;
- (f) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of CDPF RE, and CDPF RE has taken or will take all necessary corporate action to authorise the performance of this deed and the transactions contemplated by this deed;
- (g) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (h) **deed binding:** subject to satisfaction of the Condition Precedent in clause 3.1(a) (FIRB Approval) and the ASIC Modifications being made, this deed constitutes legal, valid and binding obligations of CDPF RE, enforceable in accordance with its terms, and does not result in a breach of or default under the constituent documents of CDPF RE or CDPF or under any other agreement or deed, writ, order or injunction, rule or regulation to which CDPF RE or CDPF is a party or to which they are bound;
- (i) **issued capital:** the issued capital of CDPF as of 29 June 2023 is 357,011,745.6508 ordinary units;
- (j) **authorisations:** CDPF RE holds all material authorisations that is necessary or desirable to:
- (1) enable it to properly execute this deed and to carry out the transaction that this deed contemplates;
- (2) ensure that this deed is legal, valid and binding; and
- (3) enable it to properly carry on its business,
- and it is complying with such material authorisation;
- (k) **material contracts:** with respect to each CDPF Material Contract to which a CDPF Group Member is a party, so far as CDPF RE is aware:
- (1) no CDPF Group Member is in default, or would be in default but for the requirements of notice or lapse of time, under a CDPF Material Contract;
- (2) no other party to any CDPF Material Contract is in default, or would be in default but for the requirements of notice or lapse of time, under that contract; or
- (3) no CDPF Group Member has received, or given, any notice of termination of any CDPF Material Contract
- (l) **no Insolvency Event:** neither CDPF RE nor any CDPF Group Member is affected by an Insolvency Event, nor has any regulatory action of any nature of



which it is aware has been taken that would prevent or restrict performance of this deed;

- (m) **no contravention:** so far as CDPF RE is aware, each of CDPF RE and each CDPF Group Member has complied in all material respects with all laws or regulations applicable to them and neither it nor any CDPF Group Member has received notice from any Government Agency of any material breach of Australian and foreign laws or regulations applicable to them or orders of Australian and foreign Government Agencies having jurisdiction over them;
- (n) **continuous disclosure:** CDPF RE has complied in all material respects with its continuous disclosure obligations under the Corporations Act;
- (o) **no unitholder approval:** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from the CDPF Unitholders in order to execute and perform this deed;
- (p) **Disclosure Materials:** it has:
 - (1) collated and made available all of the CDPF Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as CDPF RE is aware, the CDPF Disclosure Materials have been collated with all reasonable care and skill and are accurate in all material respects and not materially misleading (including by omission); and
 - (2) not knowingly withheld any information that could be material to CDPF RE's evaluation of AUDPF and the merits of the Transaction.

For the purpose of this clause (p), the CDPF Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed; and

- (q) **Reasonable basis:** as at the date of this deed, the CDPF forecast distribution information provided by or on behalf of CDPF RE to AUDPF RE in writing for inclusion in the AUDPF investor announcement in respect of the Transaction is reasonable and has been prepared with due care and on a reasonable basis.



Schedule 3

Constitutional Amendment Resolution

To consider and, if thought fit, to pass the following resolution as a special resolution of the unitholders of the Australian Unity Diversified Property Fund:

That:

- (a) *the Constitution of Australian Unity Diversified Property Fund be amended with effect on and from the Implementation Date as set out in the Supplemental Deed contained in Annexure 3 of the Explanatory Memorandum accompanying the notice convening this meeting; and*
- (b) *Australian Unity Property Limited as the responsible entity of Australian Unity Diversified Property Fund be authorised to execute and lodge with the Australian Securities and Investments Commission the Supplemental Deed.*

Capitalised terms used in the above resolutions have the meaning given to them in the Explanatory Memorandum accompanying the notice convening this meeting.



Signing page

Executed as a deed

AUDPF RE

Signed sealed and delivered by
**Australian Unity Property
Limited as responsible entity for
Australian Unity Diversified
Property Fund**
by

sign here ▶



Company Secretary/~~Director~~

Director

print name Catherine Visentin

print name Esther Kerr-Smith

CDPF RE

Signed sealed and delivered by
**Cromwell Funds Management
Limited as responsible entity for
Cromwell Direct Property Fund**
by

sign here ▶

Company Secretary/Director

sign here ▶

Director

print name _____

print name _____



Signing page

Executed as a deed

AUDPF RE

Signed sealed and delivered by
**Australian Unity Property
Limited as responsible entity for
Australian Unity Diversified
Property Fund**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____

CDPF RE

Signed sealed and delivered by
**Cromwell Funds Management
Limited as responsible entity for
Cromwell Direct Property Fund**
by

sign here ► _____
Company Secretary/Director

Director

print name Michael Foster

print name Tanya Cox



HERBERT
SMITH
FREEHILLS

Attachment 1

Supplemental Deed



HERBERT
SMITH
FREEHILLS

Deed poll

Supplemental deed

Australian Unity Property Limited as responsible
entity for Australian Unity Diversified Property Fund



Supplemental deed

Date ►

By **Australian Unity Property Limited ACN 079 538 499**
as responsible entity for Australian Unity Diversified Property Fund
ARSN 106 724 038 of Level 15, 271 Spring Street, Melbourne VIC
3000
(AUDPF RE)

- Recitals**
- 1 AUDPF is registered as a managed investment scheme under Chapter 5C of the Corporations Act and was established under the Constitution.
 - 2 AUDPF RE and CDPF RE have agreed, by executing the Implementation Deed, to implement the Trust Scheme.
 - 3 Under clause 18 of the Constitution, AUDPF RE, subject to the Corporations Act, may by supplemental deed modify, repeal or replace the Constitution.
 - 4 Section 601GC(1)(a) of the Corporations Act allows the Constitution to be modified by special resolution of AUDPF Unitholders.
 - 5 At a meeting of members on **[insert date]**, the requisite majority of AUDPF Unitholders approved the Constitution to be modified in accordance with this deed poll.
 - 6 The Constitution will be amended in the manner set out in this deed poll to facilitate implementation of the Trust Scheme.
-

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

- (a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
AUDPF	Australian Unity Diversified Property Fund ARSN 106 724 038.



Term	Meaning
AUDPF Registry	OneVue Funds Services Pty Limited ACN 107 333 308.
AUDPF Unit Register	the register of AUDPF Unitholders maintained by the AUDPF Registry in accordance with the Corporations Act.
AUDPF Unitholder	a person who is registered as the holder of an AUDPF Unit in the AUDPF Unit Register.
AUDPF Unit	a fully paid ordinary unit in AUDPF.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne or Sydney.
CDPF RE	Cromwell Funds Management Limited ACN 114 782 777 as responsible entity for Cromwell Direct Property Fund ARSN 165 011 905.
Constitution	the constitution establishing AUDPF dated 13 October 2003 as amended by the constitutional modification dated 30 September 2005, supplemental deed dated 22 August 2006, supplemental deed dated 26 October 2006, supplemental deed dated 30 September 2010, supplemental deed dated 25 October 2010, supplemental deed dated 30 July 2015, separate supplemental deeds both dated 2 September 2015, supplemental deed dated 13 June 2017, deed of amendment dated 23 October 2019, supplemental deed dated 4 November 2021, and as further amended from time to time.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Deed Poll	the deed poll under which CDPF RE covenants in favour of the Trust Scheme Unitholders to perform the obligations attributed to CDPF RE under the Trust Scheme.
Effective	when used in relation to the Trust Scheme, the coming into effect of this deed poll under section 601GC(2) of the Corporations Act.
Effective Date	the date on which the Trust Scheme becomes Effective.



Term	Meaning
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including ASIC).
Implementation Deed	the merger implementation deed dated 6 July 2023 between AUDPF RE and CDPF RE.
Trust Scheme	the arrangement under which CDPF RE acquires all the AUDPF Units from Trust Scheme Unitholders facilitated by the amendments to the Constitution as set out in this deed poll.
Trust Scheme Record Date	7.00pm on the second Business Day after the Effective Date or such other time and date as AUDPF RE and CDPF RE agree in writing.
Trust Scheme Unitholder	an AUDPF Unitholder as at the Trust Scheme Record Date.

1.2 Interpretation

In this deed poll:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed poll;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed poll;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed poll) includes all amendments or supplements to, or replacements or novations of, that document;



- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed poll includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;
- (l) no provision of this deed poll will be construed adversely to a party because that party was responsible for the preparation of this deed poll or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed poll, whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Sydney, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed poll to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed poll.

1.3 Interpretation of inclusive expressions

Specifying anything in this deed poll after the words 'include' or 'for example' or similar expressions does not limit what else is included.

2 Operation of this deed poll

Subject to clause 3, this deed poll takes effect on and from the Effective Date.

3 Conditions

This deed poll is conditional upon, and will have no force or effect until, the satisfaction of each condition precedent stipulated in clause 3.1 of the Implementation Deed.



4 Amendment to the Constitution

4.1 Amendment

- (a) The Constitution is amended by inserting as a new Schedule 4 into the Constitution, the text contained in the schedule.
- (b) The Constitution, as it applies to AUDPF and as amended by this deed poll, is the constitution of AUDPF.

4.2 Binding conditions

- (a) This deed poll is binding on AUDPF RE, each AUDPF Unitholder and any other person claiming through any of them as if each was a party to this deed poll.
- (b) This deed poll and the amendments to the Constitution as set out in this deed poll attribute certain actions to CDPF RE but do not impose an obligation on CDPF RE to perform those actions. CDPF RE has entered into the Deed Poll for the purposes of covenanting in favour of each Trust Scheme Unitholder to perform actions attributed to it.

4.3 No merger

Each obligation set out in this deed poll which is capable of having future operation continues in force after the Effective Date although this deed poll has otherwise been fully performed.

4.4 Provisions that have not been amended

- (a) This deed poll does not re-settle AUDPF or declare a new fund and does not cause the transfer, vesting or accruing of property to any person.
- (b) Except as amended by this deed poll, all terms and conditions of the Constitution remain in full force and effect.

5 Governing law

This deed poll is governed by the law in force in New South Wales. AUDPF irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.



Schedule

Schedule 4 – Trust Scheme

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Schedule 4 are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
AUDPF Unit	a fully paid ordinary unit in the Fund.
AUDPF Registry	OneVue Funds Services Pty Limited ACN 107 333 308.
AUDPF Unit Register	the register of AUDPF Unitholders maintained by the AUDPF Registry in accordance with the Corporations Act.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne or Sydney.
CDPF	Cromwell Direct Property Fund ARSN 165 011 905.
CDPF RE	Cromwell Funds Management Limited ACN 114 782 777 as responsible entity for Cromwell Direct Property Fund.
CDPF Registry	Boardroom Pty Limited ACN 003 209 836.
CDPF Unit	a fully paid ordinary unit in CDPF.
CDPF Unit Register	the register of CDPF Unitholders maintained by the CDPF Registry in accordance with the Corporations Act.



Term	Meaning
CDPF Unitholder	a person who is registered as the holder of a CDPF Unit in the CDPF Unit Register.
Constitutional Amendment Resolution	the special resolution of AUDPF Unitholders to approve the Trust Scheme in accordance with section 601GC of the Corporations Act.
Control	has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).
Court	the Supreme Court of New South Wales or such other court of competent jurisdiction agreed to in writing by the Entity and CDPF RE.
Deed Poll	the deed poll under which CDPF RE covenants in favour of the Trust Scheme Unitholders to perform the obligations attributed to CDPF RE under the Trust Scheme.
Effective	when used in relation to the Trust Scheme, the coming into effect of the Supplemental Deed under section 601GC(2) of the Corporations Act.
Effective Date	the date on which the Trust Scheme becomes Effective.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including ASIC).
Implementation Date	the third Business Day after the Trust Scheme Record Date, or such other date after the Trust Scheme Record Date as the parties agree in writing.
Implementation Deed	the merger implementation deed dated 6 July 2023 between the Entity and CDPF RE.
Ineligible Foreign Unitholder	a Trust Scheme Unitholder whose address shown in the AUDPF Unit Register on the Trust Scheme Record Date is a place outside Australia and its external territories, New Zealand, United Kingdom, Thailand, Hong Kong, China, Malaysia, Singapore or Uzbekistan,



Term	Meaning
	unless the parties agree in writing that it is lawful and not unduly onerous or impracticable to issue CDPF Units to that Trust Scheme Unitholder on the Implementation Date.
New CDPF Unit	a fully paid ordinary unit in CDPF to be issued to Trust Scheme Unitholders under the Trust Scheme.
Registered Address	in relation to an AUDPF Unitholder, the address shown in the AUDPF Unit Register as at the Trust Scheme Record Date.
Sale Nominee	the sale nominee appointed in accordance with clause 4.5 of the Implementation Deed.
Security Interest	any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the <i>Personal Property Securities Act 2009</i> (Cth).
Trust Scheme	the arrangement under which CDPF RE acquires all the AUDPF Units from Trust Scheme Unitholders facilitated by amendments to this Constitution, and subject to the Constitutional Amendment Resolution being approved by the requisite majority of AUDPF Unitholders.
Trust Scheme Consideration	[insert number] New CDPF Units for each Trust Scheme Unit held by a Trust Scheme Unitholder as at the Trust Scheme Record Date.
Trust Scheme Meeting	the meeting of AUDPF Unitholders held on [insert date] to vote on the Constitutional Amendment Resolution.
Trust Scheme Record Date	7.00pm on the second Business Day after the Effective Date or such other time and date as the parties agree in writing.
Trust Scheme Unitholder	an AUDPF Unitholder as at the Trust Scheme Record Date.
Trust Scheme Units	all AUDPF Units held by the Trust Scheme Unitholders as at the Trust Scheme Record Date.



Term	Meaning
Unit Transfer Form	a duly completed and executed proper instrument of transfer in respect of the Trust Scheme Units in favour of CDPF RE as transferee, which may be a master transfer of all or part of the Trust Scheme Units.

1.2 Interpretation

In this Schedule 4, a reference to a clause is a reference to a clause of this Schedule 4, unless otherwise indicated.

2 Transfer of Trust Scheme Units

On the Implementation Date:

- (a) subject to the provision of the Trust Scheme Consideration in the manner contemplated by clause 3.1, the Trust Scheme Units, together with all rights and entitlements attaching to the Trust Scheme Units as at the Implementation Date, must be transferred to CDPF RE, without the need for any further act by any Trust Scheme Unitholder (other than acts performed by the Entity as attorney and agent for Trust Scheme Unitholders under clause 5.4), by:
 - (1) the Entity delivering to CDPF RE a duly completed Unit Transfer Form (which can be a master transfer on all or part of all of the Trust Scheme Units), executed on behalf of the Trust Scheme Unitholders by the Entity, for registration; and
 - (2) CDPF RE duly executing the Unit Transfer Form, attending to the stamping of the Unit Transfer Form (if required) and delivering it to the Entity for registration; and
- (b) immediately following receipt of the Unit Transfer Form in accordance with clause 2(a)(2), but subject to the stamping of the Unit Transfer Form (if required), the Entity must enter, or procure the entry of, the name of CDPF RE in the AUDPF Unit Register in respect of all the Trust Scheme Units transferred to CDPF RE in accordance with the Trust Scheme.

3 Trust Scheme Consideration

3.1 Provision of Trust Scheme Consideration

CDPF RE must, subject to clauses 3.2, 3.3 and 3.5:

- (a) on or before the Implementation Date, provide, or procure the provision of, the Trust Scheme Consideration to the Trust Scheme Unitholders and procure that the name and address of each Trust Scheme Unitholder is entered in the CDPF Unit Register in respect of those New CDPF Units; and
- (b) procure that on or before the date that is 10 Business Days after the Implementation Date, a unit certificate or holding statement (or equivalent



document) is sent to the Registered Address of each Trust Scheme Unitholder representing the number of New CDPF Units issued to the Trust Scheme Unitholder pursuant to the Trust Scheme.

3.2 Joint holders

In the case of Trust Scheme Units held in joint names:

- (a) the New CDPF Units to be issued under the Trust Scheme must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under the Trust Scheme will be made payable to the joint holders and sent to either, at the sole discretion of AUDPF RE, the holder whose name appears first in the AUDPF Unit Register as at the Trust Scheme Record Date or to the joint holders; and
- (c) any other document required to be sent under the Trust Scheme, will be forwarded to either, at the sole discretion of the Entity, the holder whose name appears first in the AUDPF Unit Register as at the Trust Scheme Record Date or to the joint holders.

3.3 Ineligible Foreign Unitholders

- (a) CDPF RE will be under no obligation to issue any New CDPF Units under the Trust Scheme to any Ineligible Foreign Unitholder and instead:
 - (1) subject to clause 3.5, CDPF RE must, on or before the Implementation Date, issue the New CDPF Units which would otherwise be required to be issued to the Ineligible Foreign Unitholders under the Trust Scheme to the Sale Nominee;
 - (2) CDPF RE will procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the Implementation Date, such Sale Nominee, in consultation with CDPF RE, sells or procures the sale of all of the New CDPF Units issued to the Sale Nominee pursuant to clause 3.3(a)(1), and remits to CDPF RE the proceeds of sale (after deducting any reasonable brokerage or other selling costs, taxes and charges) (**Sale Proceeds**);
 - (3) if the Sale Nominee fails to sell any New CDPF Unit in accordance with clause 3.3(a)(2), CDPF RE must redeem those New CDPF Units under the next CDPF Limited Monthly Withdrawal Facility as described in the CDPF product disclosure statement dated 17 November 2020 (the proceeds of such redemption being the **Redemption Proceeds**);
 - (4) promptly after the last sale of New CDPF Units in accordance with clause 3.3(a)(2) and the last redemption of New CDPF Units being redeemed under clause 3.3(a)(3) (if any), CDPF RE will pay to each Ineligible Foreign Unitholder the amount 'A' calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = \left(\frac{B}{C} \right) \times D$$

where

B = the number of New CDPF Units that would otherwise have been issued to that Ineligible Foreign Unitholder had it not been an



Ineligible Foreign Unitholder and which were issued to the Sale Nominee;

C = the total number of New CDPF Units which would otherwise have been issued to all Ineligible Foreign Unitholders and which were issued to the Sale Nominee; and

D = the Sale Proceeds plus the Redemption Proceeds (as defined in clauses 3.3(a)(2) and 3.3(a)(3)).

- (b) The Ineligible Foreign Unitholders acknowledge that none of CDPF RE, AUDPF RE or the Sale Nominee gives any assurance as to the price that will be achieved for the sale of New CDPF Units described in clause 3.3(a), and CDPF RE, AUDPF RE and the Sale Nominee expressly disclaim any fiduciary duty to the Ineligible Foreign Unitholder which may arise in connection with this clause 3.3.
- (c) AUDPF RE must make, or procure the making of, payments to Ineligible Foreign Unitholders under clause 3.3(a) by either (in the absolute discretion of AUDPF RE, and despite any election referred to in clause 3.3(c)(1) or authority referred to in clause 3.3(c)(2) made or given by the Trust Scheme Unitholder):
- (1) if an Ineligible Foreign Unitholder has, before the Trust Scheme Record Date, made a valid election in accordance with the requirements of the AUDPF Unit Registry to receive distribution payments from AUDPF RE by electronic funds transfer to a bank account nominated by the Ineligible Foreign Unitholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (2) paying or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Ineligible Foreign Unitholder by an appropriate authority from the Ineligible Foreign Unitholder to AUDPF RE; or
 - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Unitholder by prepaid post to their Registered Address (as at the Trust Scheme Record Date), such cheque being drawn in the name of the Ineligible Foreign Unitholder (or in the case of joint holders, in accordance with the procedures set out in clause 3.2).
- (d) If AUDPF RE receives professional advice that any withholding or other tax is required by law or by a Government Agency to be withheld from a payment to an Ineligible Foreign Unitholder, AUDPF RE is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Unitholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of the Trust Scheme, including clause 3.3(a)(4)). AUDPF RE must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Unitholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Unitholder.
- (e) Each Ineligible Foreign Unitholder appoints AUDPF RE as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Foreign Unitholders under the Corporations Act or any other applicable law.



- (f) Payment of the amount calculated in accordance with clause 3.3(a) to an Ineligible Foreign Unitholder in accordance with this clause 3.3 satisfies in full the Ineligible Foreign Unitholder's right to Trust Scheme Consideration.

3.4 Unclaimed money

- (a) AUDPF RE may cancel a cheque issued under this clause 3 if the cheque:
 - (1) is returned to AUDPF RE; or
 - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Trust Scheme Unitholder to AUDPF RE (or the AUDPF Unit Registry) (which request may not be made until the date which is 10 Business Days after the Implementation Date), AUDPF RE must reissue a cheque that was previously cancelled under this clause 3.4.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Trust Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)), but any interest or other benefit accrued from unclaimed Trust Scheme Consideration will be for the benefit of CDPF RE.

3.5 Orders of a court or Government Agency

If written notice is given to the Entity (or the AUDPF Registry) or CDPF RE (or the CDPF Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Trust Scheme Units held by a particular Trust Scheme Unitholder, which would otherwise be payable or required to be issued to that Trust Scheme Unitholder by CDPF RE in accordance with this clause 3, then CDPF RE shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents CDPF RE from providing consideration to any particular Trust Scheme Unitholder in accordance with this clause 3, or the payment or issuance of such consideration is otherwise prohibited by applicable law, CDPF RE shall be entitled to not to issue (or direct CDPF to issue), or to issue to a trustee or nominee, such number of New CDPF Units as that Trust Scheme Unitholder would otherwise be entitled under clause 3.1 until such time as provision of the Trust Scheme Consideration in accordance with this clause 3.5(b) is permitted by that (or another) order or direction or otherwise by law.

3.6 Status of New CDPF Units

Subject to the Trust Scheme becoming Effective, CDPF RE must issue the New CDPF Units required to be issued by it under the Trust Scheme on terms such that each New CDPF Unit will:

- (a) rank equally in all respects with all other CDPF Units on issue;
- (b) be entitled to participate in and receive any distributions paid and any other entitlements accruing in respect of CDPF Units on and from the Implementation Date; and



- (c) on issue, be fully paid and free from any Security Interest or encumbrance.

4 Dealings in AUDPF Units

4.1 Determination of Trust Scheme Unitholders

- (a) To establish the identity of the Trust Scheme Unitholders, dealings in AUDPF Units or other alterations to the AUDPF Unit Register will only be recognised if registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Trust Scheme Record Date at the place where the AUDPF Unit Register is kept.
- (b) The Entity must not accept for registration, nor recognise for any purpose (except a transfer to CDPF RE pursuant to the Trust Scheme and any subsequent transfer by CDPF RE or its successors in title), any transfer or transmission application or other request received after the Trust Scheme Record Date, or received prior to such time but not in registrable or actionable form, as appropriate.

4.2 Maintenance of AUDPF Unit Register

- (a) For the purpose of determining entitlements to the Trust Scheme Consideration, the Entity must maintain the AUDPF Unit Register in accordance with the provisions of this Constitution including this clause 4.2 until the Trust Scheme Consideration has been provided to the Trust Scheme Unitholders. The AUDPF Unit Register in this form will solely determine entitlements to the Trust Scheme Consideration.
- (b) All statements of holding for AUDPF Units (other than statements of holding in favour of CDPF RE or any of its Controlled entities) will cease to have effect after the Trust Scheme Record Date as documents of title in respect of those units and, as from that date, each entry current at that date on the AUDPF Unit Register (other than entries on the AUDPF Unit Register in respect of CDPF RE) will cease to have effect except as evidence of entitlement to the Trust Scheme Consideration in respect of the AUDPF Units relating to that entry.

4.3 No disposal after the Effective Date

If the Trust Scheme becomes Effective, a holder of Trust Scheme Units (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Trust Scheme Units or any interest in them on or after the Trust Scheme Record Date otherwise than pursuant to the Trust Scheme, and any attempt to do so will have no effect and the Entity shall be entitled to disregard any such disposal or other dealing.

5 General Trust Scheme provisions

5.1 Trust Scheme Unitholders' agreements and warranties

- (a) Each Trust Scheme Unitholder:

- (1) agrees to the transfer of their AUDPF Units together with all rights and entitlements attaching to those AUDPF Units in accordance with the Trust Scheme;
 - (2) agrees to the variation, cancellation or modification of the rights attached to their AUDPF Units constituted by or resulting from the Trust Scheme;
 - (3) agrees to, on the direction of CDPF RE, destroy any unit certificates relating to their AUDPF Units;
 - (4) agrees to become a unitholder of CDPF and to be bound by the terms of the constitution of CDPF;
 - (5) agrees to provide the Entity with such information as it may reasonably require to comply with any law in respect of the Trust Scheme and the transactions contemplated by this Schedule 4; and
 - (6) acknowledges and agrees that the Trust Scheme binds the Entity and all Trust Scheme Unitholders (including those who did not attend the Trust Scheme Meeting, did not vote at the Trust Scheme Meeting, or voted against the Constitutional Amendment Resolution at the Trust Scheme Meeting).
- (b) Each Trust Scheme Unitholder is taken to have warranted to the Entity and CDPF RE on the Implementation Date, and appointed and authorised the Entity as its attorney and agent to warrant to CDPF RE on the Implementation Date, that all their AUDPF Units (including any rights and entitlements attaching to those units) which are transferred under the Trust Scheme will, at the date of transfer, be fully paid and free from all Security Interests and encumbrances, and that they have full power and capacity to transfer their AUDPF Units to CDPF RE together with any rights and entitlements attaching to those units.
- (c) AUDPF RE undertakes that it will provide such warranty in clause 5.1(b) to CDPF RE as agent and attorney for each Trust Scheme Unitholder.

5.2 Title to and rights in Trust Scheme Units

- (a) To the extent permitted by law, the Trust Scheme Units (including all rights and entitlements attaching to the Trust Scheme Units) transferred under the Trust Scheme to CDPF RE will, at the time of transfer of them to CDPF RE, vest in CDPF RE free from all Security Interests and encumbrances.
- (b) Immediately upon the provision of the Trust Scheme Consideration to each Trust Scheme Unitholder in the manner contemplated by clause 3.1(a), CDPF RE will be beneficially entitled to the Trust Scheme Units to be transferred to it under the Trust Scheme pending registration by the Entity of CDPF RE in the AUDPF Unit Register as the holder of the Trust Scheme Units.

5.3 Appointment of sole proxy

Immediately upon the provision of the Trust Scheme Consideration to each Trust Scheme Unitholder in the manner contemplated by clause 3.1(a) and until the Entity registers CDPF RE as the holder of all Trust Scheme Units in the AUDPF Unit Register, each Trust Scheme Unitholder:

- (a) is deemed to have irrevocably appointed CDPF RE as attorney and agent (and directed CDPF RE in each such capacity) to appoint any director, officer, secretary or agent nominated by CDPF RE as its sole proxy and, where applicable or appropriate, corporate representative to attend unitholders'



- meetings, exercise the votes attaching to the Trust Scheme Units registered in their name and sign any unitholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 5.3(a));
 - (c) must take all other actions in the capacity of a registered holder of Trust Scheme Units as CDPF RE reasonably directs; and
 - (d) acknowledges and agrees that in exercising the powers referred to in clause 5.3(a), CDPF RE and any director, officer, secretary or agent nominated by CDPF RE under clause 5.3(a) may act in the best interests of CDPF RE as the intended registered holder of the Trust Scheme Units.

5.4 Authority given to the Entity

Each Trust Scheme Unitholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints the Entity and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against CDPF RE, and the Entity undertakes in favour of each Trust Scheme Unitholder that it will enforce the Deed Poll against CDPF RE on behalf of and as agent and attorney for each Trust Scheme Unitholder; and
- (b) on the Implementation Date, irrevocably appoints the Entity and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Trust Scheme and the transactions contemplated by it, including (without limitation) executing the Unit Transfer Form,

and the Entity accepts each such appointment. The Entity as attorney and agent of each Trust Scheme Unitholder, may sub-delegate its functions, authorities or powers under this clause 5.4 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

5.5 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Trust Scheme Unitholder to the Entity that are binding or deemed binding between the Trust Scheme Unitholder and the Entity relating to AUDPF or AUDPF Units, including instructions, notifications or elections relating to:

- (a) whether distributions are to be paid by cheque or into a specific bank account;
- (b) participation in any distribution reinvestment plan;
- (c) currency elections; and
- (d) notices or other communications from the Entity (including by email),

will be deemed from the Implementation Date (except to the extent determined otherwise by CDPF RE in its sole discretion), by reason of the Trust Scheme, to be made by the Trust Scheme Unitholder to CDPF RE and to be a binding instruction, notification or election to, and accepted by, CDPF RE in respect of the New CDPF Units issued to that Trust Scheme Unitholder until that instruction, notification or election is revoked or amended in writing addressed to CDPF RE or the CDPF Registry.



5.6 Binding effect of the Trust Scheme

The Trust Scheme binds the Entity and all of the Trust Scheme Unitholders (including those who did not attend the Trust Scheme Meeting, did not vote at the Trust Scheme Meeting, or voted against the Constitutional Amendment Resolution at the Trust Scheme Meeting) and, to the extent of any inconsistency, overrides any other part of this Constitution.

6 General

6.1 Stamp duty

CDPF RE must pay all stamp duty and duty imposed in any jurisdiction and any interest, fines and penalties with respect to stamp duty or duty in respect of the Trust Scheme and the Deed Poll, the performance of the Deed Poll or the transactions effected by or made under the Trust Scheme and the Deed Poll.

6.2 Consent

- (a) Each of the Trust Scheme Unitholders consents to the Entity doing all things necessary or incidental to, or to give effect to, the implementation of the Trust Scheme, whether on behalf of the Trust Scheme Unitholders, the Entity or otherwise, and that consent applies notwithstanding, and is not limited by, any other provision of this Constitution.
- (b) Subject to the Corporations Act, the Entity and CDPF RE or any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this Schedule 4 even if they have an interest (financial or otherwise) in the outcome.

6.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in the Trust Scheme is sent by post to the Entity, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the Entity's registered office or at the office of the AUDPF Registry.
- (b) The accidental omission to give notice of the Trust Scheme Meeting or the non-receipt of such notice by an AUDPF Unitholder will not, unless so ordered by the Court, invalidate the Trust Scheme Meeting or the proceedings of the Trust Scheme Meeting.

6.4 Further action

The Entity must do all things and execute all documents necessary to give full effect to the Trust Scheme and the transactions contemplated by it.

6.5 Paramountcy

This Schedule 4 has effect irrespective of any other provisions of this Constitution and any provision of this Constitution which is inconsistent with this Schedule 4 does not operate to the extent of the inconsistency.



6.6 Cessation of operation

This Schedule 4 ceases to have any force or operation if the Implementation Deed is terminated in accordance with its terms.

6.7 Amendment

The Entity may amend the Trust Scheme and, as applicable, this Schedule 4 if such amendment is not inconsistent with the approvals given by the Trust Scheme Unitholders in the Constitutional Amendment Resolution, and this Schedule 4 shall apply to the Trust Scheme as amended.

6.8 Entity not liable

- (a) Notwithstanding any other provision of this Constitution but subject to law, except to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Entity, the Entity is not liable to any Member for any loss or damage arising directly or indirectly from the Entity doing or refraining from doing any act (including the execution of documents) pursuant to or in connection with the Trust Scheme or its implementation.
- (b) To the maximum extent permitted by law, neither the Entity nor any of its respective directors, officers, employees or associates will be liable for anything done or omitted to be done in the performance of the Trust Scheme in good faith.



Signing page

Executed as a deed poll

AUDPF RE

Signed sealed and delivered by
**Australian Unity Property
Limited as responsible entity for
Australian Unity Diversified
Property Fund**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____



HERBERT
SMITH
FREEHILLS

Attachment 2

Deed Poll



HERBERT
SMITH
FREEHILLS

Deed poll

Deed poll

Cromwell Funds Management Limited as
responsible entity for Cromwell Direct Property Fund
ARSN 165 011 905



Deed poll

Date ►

This deed poll is made

By **Cromwell Funds Management Limited** ACN 114 782 777 as responsible entity for Cromwell Direct Property Fund
ARSN 165 011 905 of Level 19, 200 Mary Street, Brisbane QLD 4000
(**CDPF RE**)

in favour of each Trust Scheme Unitholder

Recitals

- 1 AUDPF RE and CDPF RE have entered into the Implementation Deed.
- 2 In the Implementation Deed, CDPF RE agreed to make this deed poll.
- 3 CDPF RE is making this deed poll for the purpose of covenanting in favour of the Trust Scheme Unitholders to perform its obligations under the Implementation Deed and the Trust Scheme.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
Implementation Deed	the merger implementation deed dated 6 July 2023 between CDPF RE and AUDPF RE.

(b) Unless the context otherwise requires, terms defined in the Implementation Deed have the same meaning when used in this deed poll.



1.2 Interpretation

Clauses 1.2 and 1.3 of the Implementation Deed apply to the interpretation of this deed poll, except that references to 'this deed' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

CDPF RE acknowledges that:

- (a) this deed poll may be relied on and enforced by any Trust Scheme Unitholder in accordance with its terms even though the Trust Scheme Unitholders are not party to it; and
- (b) under the Trust Scheme, each Trust Scheme Unitholder irrevocably appoints AUDPF RE and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent to enforce this deed poll against CDPF RE.

2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of CDPF RE under this deed poll are subject to the Supplemental Deed becoming Effective.

2.2 Termination

The obligations of CDPF RE under this deed poll to the Trust Scheme Unitholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Supplemental Deed is not Effective on or before the End Date, unless AUDPF RE and CDPF RE otherwise agree in writing.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) CDPF RE is released from its obligations to further perform this deed poll except those obligations under clause 8.1; and
- (b) each Trust Scheme Unitholder retains the rights they have against CDPF RE in respect of any breach of this deed poll which occurred before this deed poll was terminated.

3 Trust Scheme obligations

3.1 Undertaking to issue Trust Scheme Consideration

Subject to clause 2, CDPF RE undertakes in favour of each Trust Scheme Unitholder to:



- (a) provide, or procure the provision of, the Trust Scheme Consideration to each Trust Scheme Unitholder in accordance with the terms of the Trust Scheme; and
 - (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Trust Scheme,
- subject to and in accordance with the terms of the Trust Scheme.

3.2 Units to rank equally

CDPF RE covenants in favour of each Trust Scheme Unitholder that the New CDPF Units which are issued to each Trust Scheme Unitholder in accordance with the Trust Scheme will:

- (a) rank equally in all respects with all other CDPF Units on issue;
- (b) be entitled to participate in and receive any distributions paid and any other entitlements accruing in respect of CDPF Units on and from the Implementation Date; and
- (c) on issue, be fully paid and free from any Security Interest or encumbrance.

3.3 Attribution of capital gains

CDPF RE acknowledges and agrees that:

- (a) in relation to AUDPF, any capital gain made from the sale of the AOF Securities by AUDPF to CDPF in connection with the Trust Scheme will be attributed (and CDPF RE will procure the attribution) solely to CDPF and no part of the gain will be attributed directly from AUDPF to AUDPF Unitholders; and
- (b) in relation to CDPF, it will include any such gain in its net capital gain, which will be attributed proportionately among the CDPF Unitholders in the merged fund,

such that the net capital gain from the sale of the AOF Securities by AUDPF to CDPF is ultimately attributed proportionately to the CDPF Unitholders in the merged fund and that it is fair and reasonable to do so.

4 Warranties

CDPF RE represents and warrants in favour of each Trust Scheme Unitholder that:

- (a) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **registered scheme:**
 - (1) CDPF is a validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act and no action has been taken to terminate or wind up CDPF (whether under Chapter 5C of the Corporations Act or otherwise) nor has the date or any event occurred for the vesting of the assets of CDPF;
 - (2) CDPF RE is the only responsible entity of CDPF;
 - (3) CDPF RE has been validly appointed as responsible entity of CDPF and it has not given any notice of resignation and no action has been taken or proposed to remove it as responsible entity of CDPF or appoint an additional responsible entity of CDPF;



- (4) the CDPF Constitution is in full force and effect and there are no other documents that modify or supplement the CDPF Constitution; and
 - (5) CDPF RE has a right to be fully indemnified out of the assets of CDPF in relation to this deed poll and all of its obligations and liabilities under this deed poll (other than in the case of its fraud, negligence or breach of trust), and there is nothing that would prevent it from being fully indemnified out of the assets of CDPF for any obligations under this deed poll or in connection with this deed poll or any of the transactions contemplated by this deed poll that it incurs in its capacity as responsible entity of the CDPF;
- (c) **authority:** the execution and delivery of this deed poll has been properly authorised by all necessary corporate action of CDPF RE, and CDPF RE has taken or will take all necessary corporate action to authorise the performance of this deed poll and the transactions contemplated by this deed poll;
 - (d) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed poll; and
 - (e) **deed poll binding:** this deed poll constitutes legal, valid and binding obligations of CDPF RE, enforceable in accordance with its terms, and does not result in a breach of or default under the constituent documents of CDPF RE or CDPF or under any other agreement or deed, writ, order or injunction, rule or regulation to which CDPF RE or CDPF is a party or to which they are bound.

5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) CDPF RE has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

6 Liability of responsible entity

- (a) CDPF RE enters into this deed poll in its capacity as responsible entity of CDPF and in no other capacity.
- (b) A liability of CDPF RE arising under or in connection with this deed poll is limited to the amount CDPF RE actually receives in the exercise of its right of indemnity from the property of the CDPF. This limitation of liability applies despite any other provision of this deed poll and extends to all liabilities and obligations of CDPF RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed poll.
- (c) No party may sue CDPF RE in any capacity other than as the responsible entity of the CDPF including seeking the appointment of a receiver (except in relation to property of the CDPF), a liquidator, an administrator or any similar person to CDPF RE or prove in any liquidation, administration or arrangement of or affecting CDPF RE (except in relation to property of the CDPF).
- (d) The provisions of this clause will not apply to any obligation or liability of CDPF RE to the extent that it is not satisfied because under the constitution of the CDPF or by operation of law there is a reduction in the extent of CDPF RE's



indemnification out of the assets of the CDPF as a result of CDPF RE's fraud, negligence or breach of trust.

- (e) CDPF RE is not obliged to do or refrain from doing anything under this deed poll (including incur any liability) unless CDPF RE's liability is limited in the same manner as set out in paragraphs above.

7 Notices

7.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to CDPF RE in accordance with the details set out below (or any alternative details nominated by CDPF RE by Notice).

Attention	Andrew Murray, Chief Legal & Commercial Officer
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Address	Level 19, 200 Mary Street, Brisbane QLD 4000
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Email address	andrew.murray@cromwell.com.au With a copy (which does not constitute Notice) to: CCondoleon@gtlaw.com.au and KKo@gtlaw.com.au
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7.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	When the party sending the email receives notification that the email was successfully transmitted and read by the receiving party, or if no such notification is received, four hours after the email was sent, unless the party sending the email receives notification that the email was not successfully transmitted.



7.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 7.2).

8 General

8.1 Stamp duty

CDPF RE:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Trust Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Trust Scheme and this deed poll; and
- (b) indemnifies each Trust Scheme Unitholder against any liability arising from failure to comply with clause 8.1(a).

8.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales.
- (b) CDPF RE irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. CDPF RE irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

8.3 Waiver

- (a) CDPF RE may not rely on the words or conduct of any Trust Scheme Unitholder as a waiver of any right unless the waiver is in writing and signed by the Trust Scheme Unitholder granting the waiver.
- (b) No Trust Scheme Unitholder may rely on words or conduct of CDPF RE as a waiver of any right unless the waiver is in writing and signed by CDPF RE.
- (c) The meanings of the terms used in this clause 8.3 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed poll and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.



8.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by AUDPF RE in which event CDPF RE will enter into a further deed poll in favour of the Trust Scheme Unitholders giving effect to the variation.

8.5 Cumulative rights

The rights, powers and remedies of CDPF RE and the Trust Scheme Unitholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

8.6 Assignment

- (a) The rights created by this deed poll are personal to CDPF RE and each Trust Scheme Unitholder and must not be dealt with at law or in equity without the prior written consent of CDPF RE.
- (b) Any purported dealing in contravention of clause 8.6(a) is invalid.

8.7 Further action

CDPF RE must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



Signing page

Executed as a deed poll

CDPF RE

Signed sealed and delivered by
**Cromwell Funds Management
Limited as responsible entity for
Cromwell Direct Property Fund**
by

sign here ► _____
Company Secretary/Director

sign here ► _____
Director

print name _____

print name _____