

**DATED 7 June 2024**

**CONFIDENTIALITY AGREEMENT**

**between**

**BALANCED COMMERCIAL PROPERTY TRUST LIMITED**

**and**

**STARWOOD CAPITAL EUROPEAN OPERATIONS LIMITED**

**THIS AGREEMENT** is made on the 7th day of June 2024 between:

## **PARTIES**

- (1) **BALANCED COMMERCIAL PROPERTY TRUST LIMITED**, a non-cellular company limited by shares (registered number CMP50402) incorporated and registered in Guernsey whose registered office is at PO Box 255, Trafalgar Court, Les Banques, St Peter Port, GY1 3QL Guernsey (the "**Company**"); and
- (2) **STARWOOD CAPITAL EUROPEAN OPERATIONS LIMITED**, a private company limited by shares (company number 10565172) incorporated and registered in England whose registered office is at One Berkeley Street, London, United Kingdom, W1J 8DJ (the "**Respondent**").

## **BACKGROUND**

The Parties intend to enter into discussions relating to the Purpose which will involve the exchange of Confidential Information between them. The Parties have agreed to comply with this Agreement in connection with the disclosure and use of Confidential Information.

## **IT IS AGREED AS FOLLOWS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. The following capitalised words have the meanings set out opposite them when used in this Agreement.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England or Guernsey when banks in London and Guernsey are open for business.

"**Confidential Information**" has the meaning given in clause 2.

"**Derivative Information**" has the meaning given in clause 2.

"**Discloser**" means a Party to this Agreement when it discloses its Confidential Information, directly or indirectly (whether through a Group Entity, Representative or otherwise), to the other Party to this Agreement.

"**EUWA**" means the European Union (Withdrawal) Act 2018, as amended.

"**Group**" means in relation to (a) a company, that company, any subsidiary or any holding company from time to time of that company, any subsidiary from time to time of a holding company of that company and any special purpose vehicle advised or managed by that company; and (b) a limited liability partnership, that limited liability partnership, any entity owned by such limited liability partnership or any corporate member from time to time of that limited liability partnership and any entity owned from time to time by such corporate member (but, in the case of the Respondent, excluding any portfolio company or investee company in which the Respondent, any affiliate of the Respondent or any funds managed or advised by the Respondent or any affiliate of the Respondent have an equity interest) and "**Group Entity**" means any member of a Group.

**"Investment Manager"** means the Company's investment manager being Columbia Threadneedle Investment Business Limited.

**"Market Abuse Regulation"** means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and/or the UK version of Regulation (EU) No 596/2014 of the European Parliament and of the Council on 16 April 2014 on market abuse, which is part of UK law by virtue of the EUWA as the context may require or permit.

**"Parties"** means the parties to this Agreement and **"Party"** means either or both of such persons as the context shall admit.

**"Prospective Finance Provider"** means a provider or prospective provider of debt finance to the Respondent in connection with the Purpose in respect of whom the Company, or Barclays Bank PLC or Dickson Minto Advisers LLP (in each case acting on behalf of the Company), has given prior consent in writing (email being sufficient) to the disclosure of Confidential Information.

**"Purpose"** means the consideration and evaluation of the Company's and the Respondent's respective businesses (including the respective material contracts and investment portfolio of each Party) in relation to a possible transaction between the Parties pursuant to the Strategic Review (including, without limitation, a merger between the Parties or the acquisition, by the Respondent, of all or a material part of the assets or undertaking of the Company or any transaction having substantially equivalent effect to the same).

**"Recipient"** means a Party to this Agreement when it receives Confidential Information, directly or indirectly (whether through a Group Entity, Representative or otherwise), from the other Party to this Agreement.

**"Representative(s)"** means, in relation to each Party (in each case only to the extent that they receive Confidential Information):

- (a) its Group Entities;
- (b) its and its Group Entities' directors, officers, partners and employees (as the case may be);
- (c) the current lenders of such Party and any of its Group Entities that need to know the Confidential Information for the Purpose (and, in the case of the Respondent, any Prospective Finance Provider);
- (d) its and its Group Entities' professional advisers, agents or consultants who are engaged to advise that Party in connection with the Purpose (including, in relation to the Company and for the avoidance of doubt, the Investment Manager); and
- (e) any other person to whom the other Party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

"**Strategic Review**" means the strategic review and formal sale process being carried out by the Company announced on 15 April 2024.

"**Takeover Code**" means the City Code on Takeovers and Mergers.

"**Takeover Panel**" means the Panel on Takeovers and Mergers.

1.2. The following rules of interpretation apply to this Agreement.

1.2.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3. A reference to writing or written does not include fax but does include email.

1.2.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.2.5. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

## 2. **CONFIDENTIAL INFORMATION**

2.1. For the purposes of this Agreement, "**Confidential Information**" means all information in whatever form relating to the Parties, their respective Group Entities and otherwise in relation to the Purpose which the Discloser or its Representatives discloses and/or has disclosed to the Recipient or its Representatives on or after the date on which discussions in respect of the Purpose first commenced (including, without limitation, all copies of any such information and all Derivative Information) and, notwithstanding the generality of the foregoing, includes:

2.1.1. the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;

2.1.2. the existence and terms of this Agreement;

2.1.3. all confidential or proprietary information relating to the business, affairs, finances, investments, assets, liabilities, plans, intentions or market opportunities of the Discloser or any of its Group Entities;

2.1.4. any information, findings, data or analysis derived or developed from any Confidential Information; and

2.1.5. any other information that is identified by the Discloser (immediately prior to disclosure) as comprising confidential information,

but, save in respect of information within the scope of clause 2.1.1, excludes any information referred to in clause 2.2.

2.2. Information is not "**Confidential Information**" if:

2.2.1. it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this Agreement;

2.2.2. it was, is or becomes available to the Recipient or its Representatives on a non-confidential basis from a person who, to the Recipient's knowledge having made due and reasonable enquires, is not under any confidentiality obligation in respect of that information;

2.2.3. it is independently developed by or for the Recipient or its Representatives without use of, reference to or reliance upon the information disclosed by the Discloser; or

2.2.4. the Parties agree in writing that the information is not confidential information.

2.3. For the purposes of this Agreement, "**Derivative Information**" means all documents, disks or other media created by a Recipient, or by its Representative or on such Recipient's or Representative's behalf, including, without limitation, any analyses, compilations, notes, studies or accountants' or other third party reports which contain or reflect or are generated from the Confidential Information.

### **3. CONFIDENTIALITY AND OTHER OBLIGATIONS**

3.1. In consideration of the Discloser making Confidential Information available to the Recipient, and of the Recipient incurring time and cost in evaluating such Confidential Information and the Purpose, the Parties agree in the terms of this Agreement.

3.2. The Recipient undertakes to the Discloser that it shall:

3.2.1. keep the Confidential Information secure, secret and confidential;

3.2.2. not use or exploit the Confidential Information in any way except in connection with the Purpose;

3.2.3. not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person except as expressly permitted by, and in accordance with, this Agreement; and

3.2.4. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose.

3.3. The Recipient shall maintain appropriate security measures to safeguard the Confidential Information and protect it from unauthorised access or use which shall be no less stringent than those which the Recipient applies to protect its own confidential information.

- 3.4. The Recipient shall promptly notify the Discloser (email being sufficient), and provide reasonable details, if any Confidential Information is subject to any actual or threatened (including accidental) disclosure or loss otherwise than in accordance with the terms of this Agreement.

#### **4. PERMITTED DISCLOSURE**

- 4.1. The Recipient may disclose the Confidential Information to its Representatives on the basis that (a) it informs those Representatives of the confidential nature of the Confidential Information and the terms of this Agreement before the Confidential Information is disclosed; and (b) the Recipient shall be liable for the actions or omissions of its Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient (as judicially determined by a court of competent jurisdiction).
- 4.2. Subject to applicable law and the requirements of the Takeover Code, the Company shall be entitled to discuss the fact that discussions and negotiations are taking place concerning the Purpose (which the Parties acknowledge and agree is Confidential Information within the meaning of clause 2.2.1) with the Company's shareholders provided that if any such discussions take place prior to the Respondent being identified in any announcement in connection with the Purpose, each such shareholder will be appropriately wall-crossed in accordance with applicable law.
- 4.3. For the avoidance of doubt, nothing in this Agreement shall restrict the board of the Company from making an announcement that relates to the Purpose or that publicly identifies the Respondent in each case in accordance with Rule 2.3(d) of the Takeover Code.

#### **5. MANDATORY DISCLOSURE**

- 5.1. Subject to the provisions of this clause 5, a Recipient or its Representative may disclose Confidential Information to the minimum extent required by:
- 5.1.1. an order of any court of competent jurisdiction or any determination of any regulatory, judicial, governmental or similar body (including the Takeover Panel) or any taxation authority of competent jurisdiction;
  - 5.1.2. the rules of any listing authority or stock exchange on which its shares or those of any of its Group Entities are listed or traded or any regulatory body (including the Takeover Panel) to which the Recipient is subject; and
  - 5.1.3. the laws or regulations of any country to which its affairs or those of any of its Group Entities are subject (whether or not the relevant Party has submitted to such laws or regulations voluntarily).
- 5.2. Before a Party (or its Representative) discloses any Confidential Information pursuant to clause 5.1 it shall, to the extent permitted by law and regulation and to the extent reasonably practicable in the period required for such disclosure, use its reasonable endeavours to give the other Party as much notice of this disclosure as possible (email being sufficient). Where notice of such disclosure is not prohibited and is given in accordance with this clause 5.2, that

Party shall, unless the disclosure under clause 5.1 applies in the context of a routine regulatory examination, audit or inquiry that is not specifically targeted at the Company, the Confidential Information, the Purpose or this Agreement, take into account (or, if applicable, procure that its Representative takes into account) the reasonable requests of the other Party in relation to the timing and content of such disclosure.

- 5.3. If a Party is unable to give notice to the other Party in accordance with clause 5.2 before disclosure is made pursuant to clause 5.1, the Party that has made the disclosure (or whose Representative has made the disclosure) shall, to the extent permitted by law and regulation, inform the other Party (email being sufficient) of the circumstances of the disclosure (including the timing, form and content of such disclosure) as soon as reasonably practicable after such disclosure is made.

## **6. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 6.1. If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall, as soon as reasonably practicable following receipt of such notice:

6.1.1. destroy or return (or procure the destruction or return) to the Discloser (at the sole option of the Recipient) all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;

6.1.2. to the extent technically possible, take commercially reasonable steps to erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and

6.1.3. confirm in writing (email being sufficient) to the Discloser that it has complied with the requirements of this clause 6.1.

- 6.2. Nothing in clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Discloser's Confidential Information that:

6.2.1. the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction (including the Takeover Panel), or the rules of any listing authority or stock exchange to which it is subject, or to comply with its *bona fide* internal compliance or audit policies; and/or

6.2.2. are contained in any electronic file created pursuant to any routine backup or archiving procedure so long as such file is not generally accessible beyond the need for disaster recovery or similar operations.

- 6.3. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to clause 6.2 for a period of six years from the date of this Agreement.

## **7. STANDSTILL OBLIGATIONS**

- 7.1. For a period of 6 months from the date of this Agreement, the Respondent shall not and shall procure that no member of the Respondent's Group which has received Confidential

Information, and none of its Representatives (but excluding Representatives in paragraphs (c), (d) and (e) as defined above) who have received Confidential Information, shall either alone or with other persons, directly or indirectly:

- 7.1.1. acquire or procure any other person to acquire any interest in the securities (as defined in the Takeover Code) of the Company or enter into any agreement, arrangement or understanding or do or omit to do any act as a result of which it or any other person may acquire such an interest in such securities which triggers an obligation to make any offer as set out in the Takeover Code ("**Offer**");
- 7.1.2. make or procure any other person to make any Offer for all or any of the securities of the Company or enter into any agreement, arrangement or understanding or do or omit to do any act as a result of which it or any other person may become obliged to make such an Offer; or
- 7.1.3. announce or procure any other person to announce any such Offer or enter into any agreement, arrangement or understanding or do or omit to do any act as a result of which it or any other person may become obliged to announce such an Offer.

7.2. The restrictions in clause 7.1 shall not apply:

- 7.2.1. to prevent any of the Respondent's Representatives from taking any action in the ordinary course of its business provided that such action is not taken pursuant to the instructions of the Respondent (or on its behalf) or anyone else to whom Confidential Information has been provided; and
- 7.2.2. from the time any Offer by the Respondent for all or part of the share capital or other securities of the Company is publicly announced provided that such Offer is recommended by the directors of the Company at the time of such Offer.

7.3. References in this clause 7 to an "**Offer**" include a scheme of arrangement under Part VIII of the Companies (Guernsey) Law, 2008 (as amended).

## **8. INSIDE INFORMATION**

8.1. The Recipient acknowledges that some or all of the Confidential Information may constitute inside information for the purposes of Part V of the Criminal Justice Act 1993 or the Market Abuse Regulation, and it consents to being an insider within the meaning of such laws and confirms that it is aware of its obligations under the Market Abuse Regulation and applicable laws relating to unpublished price sensitive information including its obligation to maintain an insider list.

8.2. Nothing in this Agreement shall limit the ordinary course activities of a Recipient's Group, provided that such activities are conducted in compliance with standard practices and procedures (including those known as "information barriers") restricting the flow of information between personnel of a Recipient's Group who have access to Confidential Information and other personnel of the Recipient's Group.



## **9. AUTHORISED CONTACT**

- 9.1. All communications with the Company about the Purpose shall be addressed only to [REDACTED] of Dickson Minto Advisers LLP ([REDACTED]); [REDACTED] of Barclays Bank PLC ([REDACTED]); and/or to such other persons to whom the Company has consented that communications may be made.
- 9.2. All communications with the Respondent about the Purpose should be addressed only to [REDACTED] of Starwood Capital European Operations Limited ([REDACTED]) or to such other persons to whom the Respondent has consented that communications may be made.
- 9.3. Neither Party should, directly or indirectly (through a Group Entity, Representative or otherwise) contact or communicate with any person known by such Party, having made due and careful enquiry, to be a(n) officer, partner, employee, consultant, member or Representative of the other Party or its Group in connection with the Purpose other than as permitted by this clause 9 without the other Party's written consent.

## **10. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

- 10.1. Each Party reserves all rights in its Confidential Information. The disclosure of Confidential Information by one Party does not give the other Party or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
- 10.2. Except as expressly stated in this Agreement, neither Party makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
- 10.3. The disclosure of Confidential Information by the Parties shall not form any offer by, or representation or warranty on the part of, that Party to enter into any further agreement with the other Party in relation to the Purpose.
- 10.4. The Parties have agreed that the Respondent and its Representatives shall not, and the Respondent shall procure that the Respondent's Representatives do not, without the prior written approval of (i) the Company or (ii) Barclays Bank PLC or Dickson Minto Advisers LLP (in each case acting on behalf of the Company):
- 10.4.1. have any contact in relation to the Purpose with any person known, after due and careful enquiry, to be an employee of the Investment Manager that is directly involved in the day-to-day management of the Company;
  - 10.4.2. discuss with the Investment Manager the details of any third party approaches or offers (or potential approaches or offers) to acquire the Company or a material part of the assets or undertaking of the Company or any of its Group Entities; or
  - 10.4.3. discuss with the Investment Manager the details of any approach or offer (or potential approach or offer) by the Respondent to the Company in relation to the Purpose.

- 10.5. Subject and without prejudice to this clause 10, nothing in this Agreement shall prevent the Respondent or its Representatives from communicating with the Company's Investment Manager and sharing information (that is not Confidential Information) in the ordinary course provided that such communications and information are unrelated to the Purpose.

#### **11. INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that each Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the terms of this Agreement by the other Party. Accordingly, each Party shall be entitled to seek the remedies of injunctions, specific performance or other equitable relief (or any combination of these remedies) for any threatened or actual breach of this Agreement.

#### **12. NO OBLIGATION TO CONTINUE DISCUSSIONS**

Nothing in this Agreement shall impose an obligation on either Party to continue discussions or negotiations in connection with the Purpose, or an obligation on either Party to disclose any information (whether Confidential Information or otherwise) to the other Party.

#### **13. ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS**

- 13.1. If either Party decides not to continue to be involved in the Purpose with the other Party, it shall notify that other Party in writing as soon as reasonably practicable following such decision being made.
- 13.2. Either Party may end discussions relating to the Purpose without incurring any liability to the other Party or any of its Representatives for doing so (including any liability for reimbursement of costs or otherwise). The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either Party is entitled under this Agreement.
- 13.3. Without prejudice to the accrued rights of any Party under this Agreement, the obligations contained in this Agreement (other than the obligations contained in clauses 7 and 8) shall terminate and cease to have effect on the earlier of (a) completion of any transaction within the meaning of the Purpose; and (b) 24 months from the date of this Agreement provided always that such termination is without prejudice to any right or remedy of any Party with respect to any breach of this Agreement occurring before such termination and the obligations contained in clauses 6.3 and 8.

#### **14. NO PARTNERSHIP OR AGENCY**

- 14.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 14.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **15. GENERAL**

### **15.1. Assignment and other dealings**

Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other Party.

### **15.2. Entire agreement**

15.2.1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

15.2.3. Nothing in this clause 15 operates to limit or exclude any liability for, or any remedy in respect of, fraud.

### **15.3. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

### **15.4. Waiver**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **15.5. Severance**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

## **15.6. Notices**

15.6.1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to that Party at its registered office or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier, or sent by email (to the relevant email address(es) set out in clause 9).

15.6.2. A notice or other communication shall be deemed to have been received:

- (a) if delivered personally, when left at the address referred to in clause 15.6.1;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 a.m. on the second Business Day after posting;
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; and
- (d) if sent by email, one Business Day after transmission,

save where such deemed date and time of delivery is not between the hours of 9.00 a.m. and 5.00 p.m. (UK time) on a Business Day, in which case the notice or communication shall be deemed to have been received at 9.00 a.m. (UK time) on the next Business Day.

15.6.3. The provisions of this clause 15.6 shall not apply to the service of any proceedings or other documents in any legal action.

## **15.7. Third party rights**

No one other than a Party to this Agreement shall have any right to enforce any of its terms.

## **15.8. Counterparts**

This Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email attachment shall be an effective mode of delivery.

## **15.9. Costs**

Except as expressly provided in this Agreement (or otherwise agreed in writing by the Parties), each Party will be responsible for its own costs and expenses incurred in connection with the Purpose, any transaction within the meaning of the Purpose (whether or not it proceeds) and in complying with the terms of this Agreement.

**15.10. Governing law and jurisdiction**

15.10.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15.10.2. Each Party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.



Authorised signatory for and on behalf of Balanced Commercial Property Trust Limited



Authorised signatory for and on behalf of Starwood Capital European Operations Limited