

DEED OF VARIATION

The Council of the City of Sydney
(ABN 22 636 550 790)

And

Equinix Australia Pty

For the variation of Planning Agreement for 506 Gardeners
Road, Alexandria

Reference: X105245

SECOND DEED OF VARIATION

THIS DEED is made on

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**); and
- (2) **EQUINIX AUSTRALIA PTY LIMITED** ABN 25 092 807 264 of Unit B, 639 Gardeners Road, Mascot NSW 2020 (**Developer**).

BACKGROUND

- A. The City and the Developer entered into the Agreement.
- B. The City and the Developer have agreed to vary the Agreement in the manner set out in this Second Deed of Variation on and from the Effective Date.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS

1.1 In this Second Deed of Variation, unless the context otherwise requires:

Agreement means the planning agreement originally between the City, the Trust Company Limited as custodian for the Goodman Industrial Europe Finance Trust and the Developer dated 24 September 2018 as amended by the Deed of Variation dated 7 June 2021.

Second Deed of Variation means this deed of variation of the planning agreement and all annexures, schedules, attachments and exhibits.

Effective Date means the date of this Deed.

2 INTERPRETATION

2.1 Headings are for convenience only, and do not affect interpretation.

2.2 The following rules apply in interpreting this Second Deed of Variation, except where the context makes it clear that a rule is not intended to apply:

(a) A reference to:

- i. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- ii. a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- iii. a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

- iv. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - v. anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The words subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
 - (g) A reference to dollars or \$ is to an amount in Australian currency.
 - (h) A reference to this document includes the agreement recorded by this document.
 - (i) Words defined in the GST Act have the same meaning in clauses about GST.
 - (j) A reference to a month is to a calendar month.
 - (k) A reference to a term defined in the Agreement has the same meaning when used in this Second Deed of Variation.
- 2.3 This Second Deed of Variation is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

3 VARIATION OF AGREEMENT

The parties agree that on and from the Effective Date, the Agreement is varied as follows:

- 3.2 In Schedule 3 Item 3 of clause 1, delete the wording in Column 4 under the heading "Due date", and replace with the following wording:

"Within 36 months from the date of execution of the Second Deed of Variation"

4 NO OTHER CHANGE

The parties confirm that the Agreement will continue in full force and effect as varied by this Second Deed of Variation. Nothing in this Second Deed of Variation

will be read or construed as implying any form of variation or waiver other than as expressly set out in this Second Deed of Variation.

5 FURTHER ASSURANCE

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Second Deed of Variation.

6 LEGAL COSTS

Each party will bear its own legal costs in relation to the preparation and execution of this Second Deed of Variation.

7 GENERAL

- 7.1 This Second Deed of Variation contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Second Deed of Variation are of no effect.
- 7.2 A right may only be waived in writing, signed by the party giving the waiver, and:
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
 - (c) the exercise of a right does not prevent any further exercise of that right or of any other right.
- 7.3 Nothing in this Second Deed of Variation in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 7.4 The invalidity, illegality or unenforceability of any provisions of this Second Deed of Variation will not affect the validity or enforceability of any other provisions.
- 7.5 This Second Deed of Variation may only be varied in writing by the agreement of the parties.
- 7.6 This Second Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 7.7 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Second Deed of Variation.

EXECUTION

Executed as a deed on

Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY by an Authorised Delegate in accordance with section 377 of the Local Government Act 1993 (NSW) in the presence of:

Witness:

Signature:

Name (printed):

Name of Authorised Officer:

Signed by **EQUINIX AUSTRALIA PTY LIMITED** (ACN 092 807 264) in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary:

Full Name (printed):

Full Name (printed):

