

# Deed of variation of planning agreement

The Council of the City of Sydney ABN 22 636 550 790,  
Toplace Pty Limited ABN 63 135 918 491 and  
Jolyn Place Pty Limited ACN 164 981 711

Reference: X034176



## DEED OF VARIATION

THIS DEED is made on

2021

### 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**);
- (2) **TOPPLACE PTY LIMITED** ABN 63 135 918 491 of 121 Majors Bay Road, Concord NSW 2137 (**Developer**); and
- (3) **JOLYN PLACE PTY LIMITED** ACN 164 981 711 121 Majors Bay Road, Concord NSW 2137 (**Owner**).

### BACKGROUND

- A. The City, the Developer and the Owner entered into the Agreement.
- B. The City, the Developer and the Owner have agreed to vary the Agreement in the manner set out in this Deed of Variation.

### THE PARTIES AGREE AS FOLLOWS:

#### 1 INTERPRETATION

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

**Agreement** means the voluntary planning agreement between City and the Developer dated 21 December 2020.

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

#### 1.2 Rules for interpreting this Deed of Variation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this 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.
- 1.3 A reference to a term defined in the Agreement has the same meaning when used in this Deed of Variation.
- 1.4 This 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.

## **2 VARIATION OF AGREEMENT**

The Agreement is varied as follows:

- 2.1 Item 3(c) of Schedule 3 is varied by deleting "16 months" and replacing with "22 months".

## **3 NO OTHER CHANGE**

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed of Variation. Nothing in this Deed of Variation will be read or construed as implying any form of variation or waiver other than as expressly set out in this Agreement.

## **4 FURTHER ASSURANCE**

Subject to clause 5.2, each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed of Variation.

## **5 LEGAL COSTS**

- 5.1 Subject to clause 5.2, each party will bear its own legal costs in relation to the preparation and execution of this Deed of Variation.
- 5.2 The Developer must pay the reasonable costs incurred by the City (including any legal costs and costs arising from the public notice and inspection process) arising from or in connection with this Deed of Variation.

## **6 GENERAL**

- 6.1 This 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 Deed of Variation are of no effect.
- 6.2 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.
- 6.3 Nothing in this Deed of Variation in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 6.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 6.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 6.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 6.7 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 Deed of Variation.

**EXECUTION**

**Executed** as a deed on

2021

**Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY**  
by its duly authorised officer in the presence of:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Name (printed):

\_\_\_\_\_  
Name of Authorised Officer:

**EXECUTED by Jolyn Place Pty Limited ACN 164 981 711** in accordance with s127(1) of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of sole director/secretary

\_\_\_\_\_  
Name  
\_\_\_\_\_

**EXECUTED by Toplace Pty Limited ABN 63 135 918 491** in accordance with s127(1) of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of sole director/secretary

\_\_\_\_\_  
Name  
\_\_\_\_\_