

Dated

2016

- (1) Watford Borough Council
- (2) Kier Project Investment Limited
- (3) Watford Health Campus Partnership LLP

Deed of Variation of Members' Agreement  
relating to Watford Health Campus Partnership LLP

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**Date:**

**Between**

- (1) **Watford Borough Council** of Town Hall, Watford, Hertfordshire, WD17 3EX (the **"Council"**);
  - (2) **Kier Project Investment Limited** (incorporated and registered in England and Wales under registration number 02127111), the registered office of which is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the **"PSP"**); and
  - (3) **Watford Health Campus Partnership LLP** (a limited liability partnership registered in England and Wales under company registration number OC384954), the registered office of which is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the **"LABV"**),
- together the **"Parties"**.

**Recitals**

- A The Council and the PSP agreed to incorporate the LABV to deliver regeneration through the Campus Development and other regeneration in the Area.
- B In order to facilitate such regeneration, the LABV may (amongst other things) (directly or through subsidiaries or other joint venture entities) enter into agreements for the purchase of land, purchase, develop and/or sell land, enter into leases with third parties, establish subsidiaries to deliver development, enter into arrangements with third parties and do all such activities in pursuance of the Objectives.
- C On 18<sup>th</sup> June 2013, the Parties entered into a members' agreement relating to the Watford Health Campus Partnership LLP (the **"Members' Agreement"**) to regulate their respective responsibilities and the dealings between them in relation to the objectives, management and affairs of the LABV. The Development Agreement and the Campus Agreement were also entered into on the same date.
- D Under the Members' Agreement, the LABV may fund developments by inter alia loans provided on arms length commercial terms by institutional investors or other third parties, made to Development Subsidiaries on terms as may be agreed by the LABV on behalf of the relevant Development Subsidiaries from time to time.
- E The Council, having satisfied itself that it has sufficient statutory powers to do so, may wish to provide a loan or loans to the LABV or individual Development Subsidiaries on arms length commercial terms as third party funder to facilitate the pursuance of the Objectives (the **"Members' Agreement"**).
- F Consequently, and in order to facilitate such loans, the Council wishes to vary the Members' Agreement as set out in this deed with effect from the date of this deed (the **"Variation Date"**).
- G Subsequent to the Parties entering into the Members' Agreement, and in addition to the Growing Places Tranche 1 Loan, a further interest free repayable loan of £3,000,000 was provided to the Council by the Hertfordshire Growing Places Fund, as a second tranche. Consequently, and as is also set out in this deed, the Council also wishes to vary the Members' Agreement, with effect from the Variation Date,

to govern the treatment of this second tranche and any additional tranches of Growing Places funding.

- H The PSP and the LABV have agreed to join in this deed to record their consent to the variations to the Members' Agreement.

## **Agreed terms**

### **1 Terms defined in the Agreement**

In this deed, expressions defined in the Members' Agreement and used in this deed have the meaning set out in the Members' Agreement. The rules of interpretation set out in the Members' Agreement apply to this deed.

### **2 Incorporation of the Members' Agreement and Variation**

- 2.1 The terms of the Members' Agreement are incorporated into this deed subject to the variations set out in this deed.
- 2.2 With effect from the Variation Date the Parties agree the following amendments to the Members' Agreement:

(a)	Definition of "Council Conflict Matter"	Sub-section (a) is amended to read as follows:  "any decision by the LABV to enforce any of the rights of the LABV in relation to the Council Loan and/or the Council Loan Notes and/or a loan by the Council under clause 6.5.3;"
(b)	Definition of "GP Repayment Date"	This definition is amended to read as follows:  "means the relevant date for repayment of any sum drawn down as part of the Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan, being on or before 31 March 2020 (unless in each case otherwise extended in writing);"
(c)	Definition of "Growing Places Tranche 2 Loan"	A new definition is inserted to read as follows:  "means a £3,000,000 interest free repayable loan to be provided to the Council in accordance with the terms set out in Schedule 14;"
(d)	Definition of "Project Agreements"	This definition is amended to read as follows:  "means each and any of the contract(s) to be entered into by the LABV relating to the Business including but not limited to this Agreement, the Development Agreement, the Campus Agreement, the Loan Note Instruments, the Deed of Priority, the PSP Security Agreement, the Council Security Agreement, the Development Management Agreement and Supply Chain Contracts and any loan by the Council under clause 6.5.3;"

(e)	Definition of "Site-Wide Works"	<p>This definition is amended to read as follows:</p> <p>"means any works, operations, services and other matters in relation to the Site which are either:</p> <ul style="list-style-type: none"> <li>(a) not necessarily attributable to or in connection with any specific Zone or Additional Site; or</li> <li>(b) which can be attributed to a specific Zone or Additional Site but are of such an abnormal nature that the parties agree (acting reasonably) that the cost of such works, operations or services should not be attributed to a specific Zone or Additional Site." </li></ul>
(f)	Clause 6.5.3	<p>This clause is amended to read as follows:</p> <p>"further loans provided on arms length commercial terms from an institutional lender or other third party or the Council ("<b>Third Party Funder</b>") to the LABV or individual Development Subsidiaries on terms as may be agreed by the LABV for itself or on behalf of the relevant Development Subsidiaries from time to time ("<b>Third Party Funding</b>"; and"</p>
(g)	Clause 6.8	<p>Insert new clause 6.8 to read as follows:</p> <p>"In the event that the Council provides Third Party Funding to the LABV as a Third Party Funder pursuant to clause 6.5.3, its rights as a Third Party Funder (particularly in relation to the operation of clause 29.3(a)) shall not be prejudiced by its participation in the LABV as a Member under this Agreement."</p>
(h)	Clause 7.1.11	<p>This clause is amended to read as follows:</p> <p>"No loan notes shall be issued in respect of the Additional Council Contribution, the Growing Places Tranche 1 Loan, the Growing Places Tranche 2 Loan or any Third Party Funding provided by the Council"</p>
(i)	Clause 7.7	<p>The title of this clause is amended to read as follows:</p> <p>"Repayment of Growing Places Tranche 1 Loan and Growing Places Tranche 2 Loan"</p> <p>This clause is amended to read as follows:</p> <p>"In the event that:</p> <p>7.7.1 any amount of the Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan has not been repaid by 20 Business Days before the GP Repayment Date; and</p> <p>7.7.2 the LABV has insufficient distributable reserves in</p>

		<p>order to repay such amount,</p> <p>the Members each undertake to repay 50% of the outstanding amount no later than the GP Repayment Date.”</p> <p>7.7.3 In circumstances where the Members agree that additional tranches of Growing Places funding should be provided to the LABV (in addition to Growing Places Tranche 1 and 2 Loans), the current intention of the Members is that, where the LABV has insufficient resources to repay such finance by the appropriate agreed repayment date, the 50:50 repayment principle shall extend to such future Growing Places funding.”</p>
(j)	Clause 24.2	<p>This clause is amended to read as follows:</p> <p>“Subject to clause 24.3, in the event that Third Party Funding is required in order to fund the development of a Zone or Additional Site, any such funding shall be provided to separate subsidiary vehicles set up for the purpose of developing each particular Zone or Additional Site (“<b>Development Subsidiaries</b>” and each one a “<b>Development Subsidiary</b>”).”</p>
(k)	Clause 24.3	<p>Insert new clause 24.3 and the subsequent re-numbering of the current clause 24.3 to 24.4:</p> <p>“In the event that Third Party Funding is obtained from the Council (as opposed to institutional lender or other third party) in order to fund the development of a Zone or Additional Site, any such funding shall be provided solely to the LABV and the requirement to set up a Development Subsidiary shall not apply.”</p>
(l)	Clause 29.3(b)	<p>A new clause 29.3(b) be added, and the subsequent renumbering of succeeding paragraphs, to read as follows:</p> <p>“repayment of any Third Party Funding provided to the LABV by the Council;”</p>
(m)	Current Clause 29.3(b) now Clause 29.3 (c) as a result of paragraph (l) above	<p>This clause is amended to read as follows:</p> <p>“any repayment of the Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan when due to be repaid on the relevant GP Repayment Date as well as any repayment of any additional tranches of Growing Places funding, which the Members have agreed to, when due to be repaid on the agreed repayment date;”</p>
(n)	Clause 29.4	<p>This clause is amended to read as follows:</p> <p>“The Parties agree that, as and when any payments are</p>

		made by the LABV to the Members in pursuance of this clause 29 (or otherwise), they shall take into account the proximity of the relevant GP Repayment Date and shall not make such payments or distribute Operating Profit unless satisfied that the relevant Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan can be paid when due, based on their prudent assumptions with regard to the likely revenues and profits of the LABV and with the objective of the Members not being required to fund any amount of the repayment of the Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan under clause 7.7.”
(o)	Schedule 14	The title of this Schedule is amended to read as follows:  “Growing Places Funding Terms”
(p)	Schedule 14, paragraph 1	This paragraph is amended to read as follows:  “The LABV shall procure compliance with the following conditions of the Growing Places Tranche 1 Loan and/or the Growing Places Tranche 2 Loan (in each case where relevant):”
(q)	Schedule 14, paragraph 1.2	This paragraph is amended to read as follows:  “LABV to ensure that all invoices, receipts, accounts and other documents relating to expenditure of the Growing Places Tranche 1 Loan and the Growing Places Tranche 2 Loan are retained for at least six years”.
(r)	Schedule 14, paragraph 1.5	This paragraph is amended to read as follows:  “Publicity: LABV will acknowledge support from Local Enterprise Partnership (LEP) in all written material, press releases and public presentations when marketing the delivery of the Infrastructure Business Plan. LABV will acknowledge receipt of the Growing Places Tranche 1 Loan and the Growing Places Tranche 2 Loan from HCC/LEP to enable HCC/LEP to publicise involvement.”
(s)	Schedule 15	The title of this schedule will be amended to read as follows:  “Schedule of Drawdown of Additional Council Contribution and Growing Places Funding and Member Equity Contributions”  The first table in Schedule 15 will be amended to read as follows:

		Additional Council Contribution - interest free, non-repayable - first part	
		Additional Council Contribution - interest free, non-repayable - second part	
		Growing Places Tranche 1 Loan	
		Growing Places Tranche 2 Loan	
		PSP equity contributions	
		Council equity contributions	
		Total	<b>[NOTE: PRINCIPLE IS AGREED BUT FIGURES REMAIN SUBJECT TO THE FINALISING OF INDUSTRIAL ZONE SOUTH BUSINESS PLAN]</b>

2.3 Except as set out in clause 2.2, the Members' Agreement shall continue in full force and effect.

2.4 All, if any, references to time periods and dates under the Members' Agreement as incorporated into this deed shall (except as stated in this deed) continue to be calculated and applied on the same basis as they were to be calculated and applied under the Members' Agreement immediately before this deed.

### 3 Governing law

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

### 4 Jurisdiction

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

This agreement has been entered into as a deed on the date stated at the beginning of it.



**EXECUTED** under the Common Seal of  
**WATFORD BOROUGH COUNCIL**

in the presence of:

.....  
Head of Democracy and Governance

**EXECUTED** as a deed by  
**KIER PROJECT INVESTMENT LIMITED**

.....  
Director

.....  
Director

**EXECUTED** as a deed by  
**WATFORD HEALTH CAMPUS PARTNERSHIP  
LLP**

acting by duly authorised representatives  
of its JV Partners

.....  
Duly authorised for and on behalf of  
**Watford Borough Council (JV Partner)**

.....  
Duly authorised for and on behalf of  
**Kier Project Investment Limited**  
(JV Partner)