

Draft 2: 20/01/2020

DATED

2020

- (1) WATFORD BOROUGH COUNCIL**
- (2) HERTSMERE BOROUGH COUNCIL**
- (3) ST ALBANS CITY & DISTRICT COUNCIL**
- (4) THREE RIVERS DISTRICT COUNCIL**

as Borrowers

and

- (5) DACORUM BOROUGH COUNCIL**

as Lender

LOAN FACILITY AGREEMENT

in relation to the West Hertfordshire Crematorium

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BETWEEN

- (1) **WATFORD BOROUGH COUNCIL** of Town Hall, Hempstead Road, Watford, WD17 3EX ("**Watford**"); and
- (2) **ST. ALBANS CITY AND DISTRICT COUNCIL** of Civic Centre, St Peters Street, St Albans, Hertfordshire, AL1 3JE ("**St Albans**"); and
- (3) **THREE RIVERS DISTRICT COUNCIL** of Three Rivers House, Northway, Rickmansworth, Hertfordshire, WD3 1RL ("**Three Rivers**"); and
- (4) **HERTSMERE BOROUGH COUNCIL** of Elstree Way, Borehamwood, Hertfordshire, WD6 1WA ("**Hertsmere**").
- (5) **DACORUM BOROUGH COUNCIL** of The Forum, Marlowes, Hemel Hempstead, Hertfordshire, HP1 1DN (the "**Lender**");

RECITALS

- (a) The Borrowers are local authorities which are part of the West Hertfordshire Crematorium Joint Committee through an agreement entered into on 24 June 2002 (the "**Joint Committee**").
- (b) The Lender is a local authority who is also a party of the Joint Committee.
- (c) The Parties are entering into this Deed for the funding of the construction of a crematorium and associated facilities for the use and benefit of the constituents of the Borrowers and Lender

IT IS AGREED as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Finance Documents the following terms have the meanings given to them in this Clause 1.1.

Advance means an advance made or to be made by the Lender pursuant to the terms hereof;

Advance Date means the date on which an Advance is made;

Advance Request means a notice given to the Lender pursuant to Clause 3.1 (*Delivery of Advance Request*) substantially in the form set out in Schedule 2 (*Advance Request*);

Anniversary means an anniversary of the date of this Deed;

Authorisation	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
Available Commitment	means the Total Commitment less the Loan;
Borrowers	means Watford, St. Albans, Three Rivers and Hertsmere (and each a “ Borrower ”);
Business Plan	means the latest business plan of the Development and the Crematorium (and is in form and substance satisfactory to the Lender (including the assumptions contained within it)) which shall include a cashflow forecast and budget for the following five year period, provided that if the Lender does not approve any revised business case, the last approved business case shall remain the “ Business Case ” for the purposes of this Deed;
Crematorium	means the crematorium developed by the Joint Committee at [insert address] ¹
CSI	means information of a commercially sensitive nature comprising trade secrets or intellectual property of the relevant Borrower and information whose disclosure the relevant Borrower has indicated to the Lender that, if disclosed by the Lender, would cause the relevant Borrower significant commercial disadvantage or material financial loss;
Dangerous Substance	means any natural or artificial substance (whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health or welfare, including but not limited to any controlled, hazardous, toxic or dangerous

¹ insert address of crematorium

waste, and "**Dangerous Substances**" shall be construed accordingly;

Development	the development of a Crematorium and associated facilities
Development Document	means any contracts entered into by the Borrowers in relation to the Development;
EIR	means Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
Environmental Law	means all applicable laws, regulations, codes of practice, circulars, guidance notices and the like binding upon or applicable to the Borrowers and the Crematoriums concerning the protection of human health or the environment or the conditions of the work place or the generation, transportation, storage, use, treatment or disposal of Dangerous Substances;
Environmental Licence	means any permit, licence, authorisation, consent or other approval required by any Environmental Law;
Event of Default	means any circumstances described as such in Clause 13 (<i>Events of Default</i>)
Exempt Information	means information to which one of the exemptions to disclosure under FOIA and/or EIR applies;
Facility	means the sterling term loan facility granted to each Borrower by the Lender pursuant to clause 2.1 of this Deed;
Finance Documents	means this Deed and any other documents designated in writing as such by the Borrowers and the Lender and " Finance Document " means each of them;

Fixed Rate	5 per cent per annum; ²
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
Interest Period	means any of those periods determined in accordance with Clause 5 (<i>Interest Periods</i>);
Loan	means the principal amount of the Advance to the relevant Borrower for the time being outstanding hereunder;
Party	means a party to this Deed;
Potential Event of Default	means any event that might in the opinion of the Lender become (with the passage of time, the giving of notice, the making of any determination hereunder or any combination thereof) an Event of Default;
Request for Information/RFI	has the meaning set out in the FOIA or any request for information under EIR which may relate to any Finance Document.
State Aid Regulations	means any European Union State Aid laws (including without limitation under Articles 107 to 109 inclusive of the Treaty on the Functioning of the European Union (as amended or replaced from time to time) and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision as incorporated in to English law including without limitation to replace the European Union State Aid laws following the United Kingdom leaving the European Union.

² subject to board approval and confirmation of any state aid implications.

Total Commitment	means the maximum principal amount of the Facility referred to in Clause 2.1;
Termination Date	means the 20 th Anniversary (or any later date agreed by the Borrowers and the Lender in writing in the Lender's absolute discretion) or any date on which the Facility is cancelled under Clause 13.11 (<i>Acceleration and Cancellation</i>);
UK	means the United Kingdom of Great Britain and Northern Ireland;

1.2 Interpretation

Any reference in this Deed to:

- 1.2.1 the "**Lender**" shall be construed so as to include its and any subsequent successors and assigns in accordance with their respective interests;
- 1.2.2 a "**business day**" means a day (excluding Saturdays, Sundays and public holidays in England) on which banks in London are ordinarily open;
- 1.2.3 a "**Clause**" shall be construed as a reference to a clause hereof;
- 1.2.4 a "**month**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that, where any such period would otherwise end on a day which is not a business day, it shall end on the next succeeding business day, unless that day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the immediately preceding business day **provided that**, if a period starts on the last business day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last business day in that later month (and references to "**months**" shall be construed accordingly);
- 1.2.5 a "**person**" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- 1.2.6 a "**Schedule**" shall be construed as a reference to a schedule hereto;

1.2.7 "tax" shall be construed so as to include any tax, levy, impost, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

1.2.8 "VAT" shall be construed as a reference to value added tax including any similar tax which may be imposed in place thereof from time to time.

1.3 Currency Symbols

"£" and "sterling" denote lawful currency for the time being of the UK;

1.4 Agreements and Statutes

Any reference in this Deed to:

1.4.1 this Deed or any other agreement or document shall be construed as a reference to this Deed or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented; and

1.4.2 a statute shall be construed as a reference to such statute as the same may have been, or may from time to time be, amended or re-enacted.

1.5 Headings

Clause and Schedule headings are for ease of reference only.

1.6 Third Parties

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

1.7 Override

Provided no Event of Default or Potential Event of Default has occurred and is continuing:

1.7.1 for any matter where the consent or approval of the Lender is required under this Deed, the Lender shall be deemed to consent or approve any such matter if it has been approved, agreed or recommended by the Joint Committee (a "Relevant Person");

1.7.2 for any document or information which is requested to be provided to the Lender under this Deed, the Lender shall be deemed to have received such document if it has been prepared or approved by or on behalf of any Relevant Person, and the Borrowers shall not be required to deliver such document or information to the Lender;

1.7.3 any documents, application, requirement, order or notice received by a Relevant Person which the Lender is entitled to receive, request or inspect under this Deed shall be deemed to have been made available to the Lender.

2. The Facility

2.1 Grant of the Facility

The Lender grants to each Borrower, upon the terms and subject to the conditions hereof, a term loan facility in an amount of £1,500,000 which is an aggregate term loan facility of £6,000,000 to the Borrowers.

2.2 Purpose and Application

2.2.1 The Facility shall be applied by each Borrower in accordance with the Business Plan for the financing of the Development.

2.2.2 It remains the responsibility of the Borrowers to ensure that the State Aid Regulations are adhered to if the Borrowers receives any other public funding. Failure to comply with State Aid Regulations could result in recovery of some or all of any public funding paid to the Borrowers.

2.3 General Condition Precedent Documents

A Borrower may not deliver any Advance Request unless the Lender has confirmed to the relevant Borrower that it has received all of the documents listed in Schedule 1 (*General Condition Precedent Documents*) and that each is, in form and substance, satisfactory to it.

3. Utilisation of the Facility

3.1 Delivery of Advance Request

3.1.1 Each Borrower may utilise the Facility by delivering to the Lender by no later than 11 a.m. 5 business days before the proposed Advance Date a duly completed Advance Request.

3.1.2 Only one Advance is permitted for each Borrower.

3.2 Advance Details

The Advance Request delivered to the Lender pursuant to Clause 3.1 (*Delivery of Advance Request*) shall be irrevocable and shall:

3.2.1 specify the proposed Advance Date, which shall be [the date specified in the Advance Request];

3.2.2 specify the amount requested which shall be an amount which does not exceed the Available Commitment at such time;

4. Making of an Advance

4.1 If a Borrower requests the Lender in accordance with Clauses 3.1 and 3.2 to make an Advance and if on the proposed Advance Date relating to the Advance:

4.1.1 the Lender is satisfied that no Event of Default or Potential Event of Default has occurred and is continuing and the representations set out in Clause 10 (*Representations and Warranties*) are true on and as of such Advance Date;

4.1.2 the Lender is satisfied that:

- (a) it has sufficient funds available to lend to the Borrowers;
- (b) the Borrowers have obtained Planning Permission for the Development and confirmations from the Borrower that all pre-start conditions have been satisfied;
- (c) it has received a certified copy of the building contract in a form and substance satisfactory to the Lender, in relation to the Development;
- (d) it has received a certified copy of the latest Business Plan;
- (e) it has received the Advance Requests for the same amount for the same Advance Date from all Borrowers; and
- (f) the making of the Advance would not breach State Aid Regulations;

then, on such Advance Date, the Lender shall, save as otherwise provided herein, make such Advance to the Borrowers.

4.2 Only one Loan may be requested in each Advance Request.

4.3 The currency specified in an Advance Request must be sterling.

5. Interest Periods

5.1 Interest Periods

The period for which an Advance is outstanding shall be divided into successive periods each of which (other than the first) shall start on the last day of the preceding such period.

5.2 Duration

The duration of each Interest Period shall be of twelve months. Each Interest Period shall end on the last business day of that month.

6. Payment and Calculation of Interest

6.1 Payment of Interest

Interest shall be calculated on a daily basis and each Borrower will pay accrued interest on the Advance which that Borrower has requested, in arrears on the last business day of the Interest Period.

6.2 Calculation of Interest

The rate of interest applicable to an Advance during an Interest Period relating thereto shall be the Fixed Rate for such Advance.

7. Repayment, Cancellation and Prepayment

7.1 Repayment of the Loan

7.1.1 Each Borrower shall repay each Advance which it has requested on the Termination Date.

7.1.2 Subject to the other terms of this Deed, any Advance repaid under Clause 7.1.1 may not be re-borrowed.

7.1.3 Without prejudice to this Clause 7.1.1 and subject to Clause 13.12 (*Acceleration and Cancellation*), each Borrower shall repay the Loan and all accrued interest and other outstanding costs and expenses due to the Lender on the Termination Date.

7.1.4 If any payment becomes due on a day which is not a business day, the due date of such payment will be extended to the next succeeding business day, or if that business day falls in the following calendar month, such due date shall be the immediately preceding business day.

7.2 Prepayment

Each Borrower may, if it has given to the Lender not less than thirty business days' prior notice to that effect, prepay the whole or part of any Advance, on the last day of an Interest Period relating thereto. Any prepayment so made shall satisfy the Borrowers' obligations under Clause 7.1 (*Repayment of the Loan*) to the extent of such prepayment and shall be subject to the Lender being satisfied that each Borrower has sufficient loan facilities to meet all of its obligations in relation to the Development.

7.3 Notice of Prepayment

Any notice of cancellation or prepayment given by a Borrower pursuant to Clause 7.2 (*Prepayment*) shall be irrevocable and shall specify the date upon which such prepayment is to be made and the amount of such prepayment and shall oblige the relevant Borrower to make such prepayment on such date.

7.4 Restrictions

7.4.1 Any prepayment under this Deed shall be made together with:

- (a) accrued interest on the amount prepaid;
 - (b) any amount demanded by the Lender under Clauses 15.2 (Broken Periods);
 - (c) any amount of interest which would have become payable on the Advance up until the Termination Date, unless otherwise agreed by the Lender;
 - (d) any fines or costs incurred or to be incurred by the Lender to the Public Works Loan Board as a result of the relevant Borrower's prepayment;
-
- (i) a sum equal to the premium (if any) payable by the Lender to the Public Works Loan Board calculated by applying the Public Works Loan Board's 'premature repayment' set of rates in force when the Borrowers makes the relevant prepayment to the Lender for a notional loan of the same amount as, for a period equal to the remaining term of, and repayable by the same method as, the principal amount being prepaid;
 - (ii) less a sum equal to fifty per cent (50%) of the discount (if any) allowed to the Lender by the Public Works Loan Board calculated by applying the Public Works Loan Board's 'premature repayment' set of rates in force when the relevant Borrower makes the

relevant prepayment to the Lender for a notional loan of the same amount as, for a period equal to the remaining term of, and repayable by the same method as, the principal amount being prepaid.³

7.4.2 A Borrower shall not repay or prepay all or any part of the Loans except at the times and in the manner expressly provided for in this Deed.

7.4.3 Any amount repaid or prepaid in respect of an Advance may not be re-borrowed.

8. Taxes

8.1 Tax Gross-up

All payments to be made by each Borrower to the Lender hereunder shall be made free and clear of, and without deduction for or on account of, tax unless a Borrower is required to make such a payment to the Lender subject to the deduction or withholding of tax, in which case the sum payable by the relevant Borrowers in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

8.2 Tax Indemnity

Without prejudice to the provisions of Clause 8.1 (*Tax Gross-up*), if the Lender is required to make any payment on account of tax or otherwise on or in relation to any sum received or receivable hereunder by it (including any sum received or receivable under this Clause 8) or any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, each Borrower shall, upon demand of the Lender, promptly indemnify the Lender against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.

8.3 Tax Credits

If a Borrower pays any additional amount under Clause 8.1 (*Tax Gross-up*) or Clause 8.2 (*Tax Indemnity*) (a "**Tax Payment**") and the Lender obtains a refund of tax or credit against tax by reason of that Tax Payment (a "**Tax Credit**") and the Lender is able to identify the Tax Credit as being attributable to the Tax Payment, then the Lender will promptly reimburse to the relevant Borrower such proportion of the Tax Credit as the

³ Please confirm that these provisions have been checked by Dacorum's finance team.

Lender shall determine to be the proportion of the Tax Credit as will leave the Lender (after that reimbursement) in no better or worse position than it would have been in if the Tax Payment had not been required. Nothing in this Clause 8.3 shall interfere with the right of the Lender to arrange its tax affairs in whatever manner it thinks fit and the Lender shall be under no obligation to claim a Tax Credit in priority to any other claims, relief, credit or deduction available to it. The Lender shall not be obliged to disclose any information regarding its tax affairs or computations to the relevant Borrower.

8.4 Qualifying Loan

Each Borrower shall complete promptly all such statements and certificates as may be required in order that HMRC (or such successor organisation) treat the Facility as a qualifying loan.

9. Changes in Circumstances

9.1 Illegality

If, at any time, it is unlawful for the Lender to make, fund or allow to remain outstanding all or any of the Advances made or to be made by it hereunder then the Lender shall, promptly after becoming aware of the same, deliver to the Borrowers a notice to that effect and:

9.1.1 the Lender shall not thereafter be obliged to make any Advances and the amount of its Available Commitment shall be immediately (or at the end of the period allowed by the relevant law) reduced to zero; and

9.1.2 if the Lender so requires, each Borrower shall on such date as the Lender shall have specified repay each outstanding Advance together with accrued interest thereon and all other amounts owing to the Lender.

9.2 Mitigation

9.2.1 The Lender shall, in consultation with the Borrowers and at the cost of the Borrowers, take such steps as in its discretion it considers appropriate to mitigate any circumstances which arise and which would result in any amount becoming payable under, or cancelled pursuant to Clause 8.1 (*Tax Gross Up*), Clause 8.2 (*Tax Indemnity*) or Clause 9.1 (*Illegality*).

9.2.2 Sub-clause 9.2.1 does not in any way limit the obligations of the Borrowers under the Finance Documents.

9.3 State Aid Regulations

9.3.1 The parties believe the Loan is on a commercial basis and does not involve any element of State aid. If, however the Loan is found to constitute unlawful

State Aid (or is under investigation or subject to judicial proceedings in relation to State aid compliance) then:

- (a) the parties acting in good faith will seek to restructure the arrangements surrounding the Loan and the terms of this Deed to the extent necessary to ensure State aid compliance; and/or
- (b) the parties shall promptly cooperate in good faith to provide evidence that the Loan (or the restructured Loan) is or will be State aid compliant.

9.3.2 If the Loan is found to constitute unlawful State aid and/or is not capable of being restructured so as to be compliant then each Borrower must repay any sum of unlawful State aid plus such interest as is prescribed by State aid Regulations within thirty (30) Business Days of the Lender issuing it with a written demand for payment.

9.3.3 The Lender may vary or withhold payment and/or require repayment of an Advance if:

- (a) repayment or recovery is required under State aid Regulations; and/or
- (b) the Lender is otherwise required to repay or recover such payments in whole or in part by the European Commission (or the Competition and Markets Authority or any other regulator of State aid in England) or any court or tribunal of competent jurisdiction.

9.3.4 If the Loan is found to constitute unlawful State aid, it may be considered an Event of Default or Potential Event of Default and the provisions of Clause 13 shall apply.

10. Representations and Warranties

Each Borrower makes the representations and warranties set out in this Clause 10 to and for the benefit of the Lender.

10.1 Validity and Admissibility in Evidence

All acts, authorisations, consents, conditions and things required to be done, fulfilled and performed in order to (a) enable it lawfully to enter into, exercise its rights under, and perform and comply with, the obligations expressed to be assumed by it in each of the Finance Documents, (b) ensure that the obligations expressed to be assumed by it in each of the Finance Documents are legal, valid and binding and (c) make each Finance Document admissible in evidence in England, have been (or will be, subject to due registration within applicable registration periods) done, fulfilled and performed.

10.2 No Filing or Stamp Taxes

It is not necessary that any of the Finance Documents be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to any of the Finance Documents.

10.3 Binding Obligations

The obligations expressed to be assumed by it in the Finance Documents are (or when executed will be) legal and valid obligations, binding on it in accordance with the terms thereof.

10.4 No Defaults

Save as disclosed to and approved by the Lender in writing, it is not in breach of, or in default under, any agreement to which it is a party, or which is binding on it or any of its assets, and no Event of Default or Potential Event of Default is outstanding or might result from the making of any Advance.

10.5 No Material Proceedings

No action or administrative proceeding of or before any court or agency relating to it and involving amounts which could exceed £1,000,000 or which could materially and adversely affect the business, assets or financial condition of it has been started or threatened and which has not been disclosed in writing to the Lender by specific notice and approved by the Lender.

10.6 Most Recent Financial Statements

The most recent annual financial statements of it were prepared in accordance with statutory requirements and relevant accounting and other regulations relating to bodies such as it and (save as disclosed therein) were consistently applied and give (in conjunction with the notes thereto) a true and fair view of the financial condition of it at the date as of which they were prepared and the results of its operations during the financial year then ended.

10.7 No Material Adverse Change

Since the publication of the latest financial statements of it, there has been (in each case) no material adverse change in the assets or financial condition of it or in the ability of it to perform or comply with its obligations under the Finance Documents.

10.8 Execution of the Finance Documents

Its execution and delivery of the Finance Documents and its exercise of its rights and performance of its obligations thereunder do not and will not:

10.8.1 conflict with any agreement or other instrument or treaty to which it is a party or which is binding upon it or any of its assets;

10.8.2 conflict with its constitutive documents and rules and regulations; or

10.8.3 conflict with any applicable law, regulation or official or judicial order.

10.9 Repetition of Representations

The representations contained in this Clause 10 shall be deemed to be repeated by each Borrower on the first day of each Interest Period by reference to the facts and circumstances then existing.

11. Financial Information⁴

11.1 Annual Statements

At the request of the Lender, each Borrower shall provide a copy its financial statement for that financial year, within 30 days of such request.

11.2 Quarterly Statements

At the request of the Lender, the Borrowers shall provide a copy the quarterly management accounts for the Joint Committee, within 30 days of such request.

11.3 Business Plan

The Borrowers shall deliver to the Lender an update to the Business Plan at least 30 days prior to the end of each of the financial years of the Joint Committee for approval by the Lender in writing and which is subject to such assumptions as are approved by the Lender. Until the Lender approves the draft update to the Business Plan, the Borrowers shall continue to operate in accordance with the last approved Business Plan and budget approved by it.

11.4 Other Financial Information

11.4.1 The Borrowers shall from time to time on the request of the Lender, promptly furnish the Lender with such other information about its financial condition, operations and the progress of the Development and the Crematorium as the Lender may require.

11.4.2 The Joint Committee shall provide the Lender with quarterly updates on the progress of the Development once the Development has commenced.

11.4.3 The Joint Committee shall provide quarterly and annual updates of the management accounts for the Crematorium

⁴ To be confirmed what information will be available.

11.5 Requirements as to Financial Statements

The Borrowers shall ensure that each set of financial statements delivered by it pursuant to Clause 11.1 (*Annual Statements*) is certified by a duly authorised officer of each Borrower as giving a true and fair view of the financial condition of the relevant Borrower as at the end of the period to which those financial statements relate and the quarterly management accounts are certified as providing a fair view.

12. Covenants

12.1 Maintenance of Legal Validity

Each Borrower shall obtain, comply with the terms of, and do all that is necessary to maintain in full force and effect, all authorisations, approvals, licenses and consents required in or by the laws and regulations of England to enable it lawfully to enter into and perform its obligations under each of the Finance Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in England of each of the Finance Documents to which it is a party.

12.2 Notification of Events of Default

Each Borrowers shall promptly inform the Lender of the occurrence of any Event of Default or Potential Event of Default and, upon receipt of a written request to that effect from the Lender, confirm to the Lender that, save as previously notified to the Lender or as notified in such confirmation, no Event of Default or Potential Event of Default has occurred.

12.3 Insurance

The Borrowers shall maintain insurances on and in relation to the Development and the Crematorium with reputable underwriters or insurance companies against such risks and to such extent as are normally maintained for similar properties and activities.

12.4 Business

12.4.1 The Borrowers shall carry on the Crematorium in accordance with the latest Business Plan.

12.4.2 The Borrowers shall not acquire any asset or carry on any activity in relation to the Crematorium (a) which is not specifically identified in its latest Business Plan and/or (b) which has not been approved in accordance with the Lender's usual approval processes.

12.4.3 The Borrowers shall not on-lend all or any part of the Facility.

12.4.4 The Borrowers shall not use the Loans other than for a purpose which complies with Clause 2.2 (*Purpose and Application*).

12.5 Disposal of Assets

12.5.1 The Borrowers shall not, either in a single transaction or in a series of transactions, whether related or not, sell, transfer, grant, lease or accept a surrender of, or otherwise dispose of, all or any part of the assets of the Crematorium without the prior written consent of the Lender.

12.5.2 Sub-clause 12.5.1 does not apply to:

- (a) Disposals pursuant to any arrangement specifically approved by the Lender; or
- (b) the disposal of assets specifically identified in the Business Plan so long as this is in accordance with the terms and assumptions contained in the Business Plan.

12.6 Environmental Matters

12.6.1 The Borrowers shall comply with, and procure the compliance with, the terms and conditions of all Environmental Licences and all other Environmental Law applicable in relation to the Crematorium and the Development.

12.6.2 The Borrowers shall promptly upon receipt of the same, notify the Lender of any claim, notice or other communication served on it in respect of:

- (a) any modification, suspension or revocation of any Environmental Licence applicable to the Crematorium and the Development; or
- (b) any breach or alleged breach of any Environmental Law in relation to the Crematorium and the Development.

12.6.3 The Borrowers shall indemnify the Lender and each receiver appointed under this Deed and their respective officers, employees, agents and delegates (each an "**Indemnified Party**") against any cost or expense suffered or incurred by them which:

- (a) arises by virtue of any actual or alleged breach of Environmental Law (whether by any the Borrowers, an Indemnified Party or any other person) in relation to the Development or the Crematorium;
- (b) would not have been incurred by an Indemnified Party if this Deed had not been executed; and
- (c) was not caused by the negligence or wilful default of the relevant Indemnified Party.

12.7 Compliance with Laws

The Borrowers shall comply at all times with all laws and regulations applicable to it.

13. Events of Default

Each of the events and circumstances set out in Clause 13.1 (*Failure to Pay*) to 13.8 (*Lender Related Defaults*) is an Event of Default for the purposes of this Agreement. Clause 13.9 (*Acceleration and Cancellation*) deals with the rights of the Lender after the occurrence of an Event of Default.

13.1 Failure to Pay

Any Borrower fails to pay any sum due from it under any Finance Document at the time and in the manner specified therein.

13.2 Misrepresentation

Any representation or statement made or deemed to be made by any Borrower in this Deed or in any notice or other document, certificate or statement delivered by it pursuant hereto or in connection herewith is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

13.3 Other Obligations

Any Borrower fails duly to perform or comply with any other obligation expressed to be assumed by it in any Finance Document to which it is a party and such failure, if the Lender believes it is capable of remedy, is not remedied within 10 business days.

13.4 Debts and Restructuring

13.4.1 Any Borrower admits in writing its inability to pay its debts as they fall due, or becomes unable to pay its debts as they fall due, or is unable or is deemed unable to pay its debts.

13.4.2 A Borrower ceases to be a party to the Joint Committee.

13.4.3 The Lender ceases to be a party to the Joint Committee.

13.4.4 The Joint Committee expires or is terminated for any reason.

13.5 Development

A Borrower has failed to use the Facility for the purposes of the Development.

13.6 Repudiation

Any Borrower repudiates any Finance Document to which it is a party or does or causes to be done any act or thing evidencing an intention to repudiate any Finance Document to which it is a party.

13.7 Illegality

At any time it is or becomes unlawful for any Borrower to perform or comply with any or all of its obligations under any of the Finance Documents to which it is a party or

any of the obligations of any Borrower under any of the Finance Documents to which it is a party are not or cease to be legal, valid and binding.

13.8 Lender Related Defaults

13.8.1 The Lender incurs any increased cost, tax or expense as a result of its entry into this Deed and the Finance Documents and is not satisfied as to any arrangement for compensation of the Lender for the same within thirty days of the Borrowers becoming aware of the event.

13.8.2 The Lender believes that it would not be complying with State Aid Regulations by permitting the Facility to remain in place.

13.9 Acceleration and Cancellation

Following the occurrence of an Event of Default which is continuing, and without prejudice to the Lender's right to demand repayment of the Loan at any time, the Lender may by notice to the Borrowers:

13.9.1 declare the Loan to be immediately due and payable on demand (whereupon the same shall become so payable together with accrued interest thereon and any other sums then owed by the Borrowers hereunder); and/or

13.9.2 declare that the Facility shall be cancelled, whereupon the same shall be cancelled and the Available Commitment of the Lender shall be reduced to zero.

14. Default Interest and Indemnities

14.1 Default Interest

If any of the Borrowers fails to pay any amount payable by it under any Finance Document to which it is a party on the due date it shall pay the Lender interest on the overdue amount from the due date up to the date of actual payment at a rate (the "**Default Rate**") determined by the Lender to be 2% per annum above the Fixed Rate provided always that any such amount owing may at the Lender's discretion be compounded with the principal amount of the drawn Facility at such dates as the Lender shall determine and shall then bear interest in accordance with the provisions of this Clause 14.1 thereafter.

14.2 Broken Periods

14.2.1 If the Lender receives or recovers all or any part of an Advance made by the Lender otherwise than on the last day of an Interest Period relating to that Advance, the relevant Borrower shall pay to the Lender on demand an amount equal to the amount (if any) by which (a) the additional interest which would have been payable on the amount so received or recovered, had it

been received or recovered on the last day of that Interest Period exceeds (b) the amount of interest which in the opinion of the Lender would have been payable to the Lender on the last day of that Interest Period in respect of a deposit in the currency of the amount so received or recovered equal to the amount so received or recovered placed by it with a prime bank in London for a period starting on the third business day following the date of such receipt or recovery and ending on the last day of that Interest Period.

14.2.2 If any swap agreement or other form of fixed rate funding arrangement entered into by the Lender in connection with funding an Advance (or any part) is terminated early and the Lender certifies in writing that it is obliged to pay to any other party to such agreement or arrangement any amount as a consequence of the termination, the relevant Borrower will on demand reimburse the Lender the certified amount.

14.2.3 Sub-clause 14.2.2 does not apply to early termination arising:

- (a) by reason of a default by the Lender, unless arising as a result of any Event of Default or Potential Event of Default; or
- (b) by reason of a voluntary termination by the Lender unless that voluntary termination has been made following any event or circumstance outside the control of the Lender.

14.3 General Indemnity

Each Borrower undertakes to indemnify the Lender against:

14.3.1 any cost, claim, loss, expense (including legal fees) or liability together with any VAT thereon, which it may sustain or incur as a consequence of the occurrence of any Event of Default or Potential Event of Default or any default by the relevant Borrower or the Lender in the performance of any of the obligations expressed to be assumed by it in any of the Finance Documents;

14.3.2 any loss it may suffer or incur as a result of its funding or making arrangements to fund an Advance requested by any Borrower hereunder but not made by reason of the operation of one or more of the provisions hereof.

15. Payments

15.1 Payments to the Lender

On each date on which any Finance Document requires an amount to be paid by a Borrower to the Lender, the relevant Borrower shall make the same available to the Lender by payment in sterling and in immediately available, freely transferable, cleared funds by standing order, CHAPS or BACS to such account as the Lender may have specified for this purpose.

15.2 No Set-off (Borrowers)

All payments required to be made by any of the Borrowers under any Finance Document shall be calculated without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

16. Set-Off (Lender)

The Lender may set-off any matured obligation due from any Borrower under any Finance Document (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to that Borrower, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

17. Costs and Expenses

17.1 Transaction Expenses

Each Borrower shall, from time to time on demand of the Lender, reimburse the Lender for their proportion of all proper and reasonable costs and expenses (including legal fees) together with any VAT thereon incurred by it in connection with the negotiation, preparation and execution of each of the Finance Documents and the completion of the transactions therein contemplated.

17.2 Preservation and Enforcement of Rights

The Borrowers shall, from time to time on demand of the Lender, reimburse the Lender on a full indemnity basis for all costs and expenses (including legal fees) together with any VAT thereon incurred in or in connection with the preservation and/or enforcement of any of the rights of the Lender under any of the Finance Documents and/or investigating any Event of Default or Potential Event of Default.

17.3 Stamp Taxes

The Borrowers shall pay all stamp, registration and other taxes to which any of the Finance Documents or any judgment given in connection therewith is, or at any time may be, subject and shall, from time to time on demand of the Lender, indemnify the Lender against any liabilities, costs, claims and expenses resulting from any failure to pay or any delay in paying any such tax.

18. Assignments and Transfers

18.1 Binding Agreement

This Deed shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors, transferees and assigns.

18.2 Assignments or Transfers

Neither Party shall not be entitled to assign or transfer all or any of its rights, benefits and obligations under the Finance Documents without the prior written consent of the other Party.

18.3 Disclosure of Information

18.3.1 The Lender may disclose any information such information about the Borrowers as the Lender shall consider appropriate to:

- (a) any other competent body and any actual or potential assignee, transferee or to any person who may otherwise enter into contractual relations with the Lender in relation to this Deed; or
- (b) any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation (including without limitation the Freedom of Information Act 2000 and other relevant statutory requirements, and the Environmental Information Regulations 2004 and other relevant Environmental Laws).

18.3.2 The Borrowers may not disclose any matter relating to this Deed and any Finance Document except as required by law or binding regulation and then only through the Lender or in a manner agreed by the Lender.

19. Calculations and Evidence of Debt

19.1 Basis of Interest Accrual

Interest and commitment commission shall accrue from day to day and shall be calculated on the basis of a year of 365 days (or on such other day count basis as the Lender considers is consistent with the then applicable market practice for facilities of this kind).

19.2 Evidence of Debt

The Lender shall maintain in accordance with its usual practice accounts evidencing the amounts from time to time lent by and owing to it hereunder.

19.3 Prima Facie Evidence

In any legal action or proceeding arising out of or in connection with this Deed, the entries made in the accounts maintained pursuant to Clause 19.2 (*Evidence of Debt*) shall be *prima facie* evidence of the existence and amounts of the specified obligations of the each Borrower.

19.4 Certificates of the Lender

A certificate of the Lender as to any amount shall, in the absence of manifest error, be *prima facie* evidence of the existence and amounts of the specified obligations of the Borrowers.

20. Remedies and Waivers, Partial Invalidity

20.1 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the other party, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

20.2 Partial Invalidity

If, at any time, any provision of any Finance Document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Finance Documents nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

21. Notices

21.1 Communications in Writing

Each communication to be made hereunder shall be made in writing and shall be made by letter.

21.2 Delivery by Letter

Any communication or document to be made or delivered by one person to another pursuant to this Deed shall (unless that other person has by 15 days' written notice to the other specified another address) be made or delivered to that other person by letter at the address identified with its signature below and shall be deemed to have been made or delivered when left at that address or (as the case may be) two days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

22. Freedom of Information

22.1 Freedom of Information

22.1.1 Each Borrower acknowledges that the Lender is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Lender may be under an obligation to provide information relating to the Loan which is the subject to a Request for Information.

- 22.1.2 The Lender shall be responsible for determining in its absolute discretion whether:
- (a) any information is Exempted Information or remains Exempted Information; or
 - (b) any information is to be disclosed in response to a Request for Information,
- and in no event shall the Borrowers respond directly to a Request for Information to which the Lender is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Lender unless otherwise expressly authorised to do so by the Lender.
- 22.1.3 Subject to clause 22.1.4 below, the Borrowers acknowledge that the Lender may be obliged under FOIA or EIR to disclose Information:
- (a) without consulting any of the Borrowers; or
 - (b) following consultation with the Borrowers and having taken (or not taken, as the case may be) their views into account.
- 22.1.4 Without in any way limiting clauses 22.1.2 and 22.1.3, in the event that the Lender receives a Request for Information, the Lender will as soon as reasonably practicable notify and consult with the Borrowers and where a Request for Information is for CSI the Lender will have regard to the views of the Borrowers and they will act reasonably in applying any exemptions/determining whether the CSI is Exempted Information.
- 22.1.5 The Borrowers will assist and co-operate with the Lender to enable the Lender to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and provide all such assistance as may be required from time to time by the Lender and supply such data or information relating to the Loan as may be reasonably requested by the Lender within ten (10) Business Days of the Lender's request.
- 22.1.6 The obligations in this Clause 22 (Freedom of Information) will survive the expiry or termination of this Deed for a period of two (2) years.
- 22.1.7 The Borrowers acknowledges that the National Audit Office has the right to publish details of the Loan and this Deed in its relevant reports to Parliament.

23. Counterparts

This Deed may be executed in any number of counterparts, and by the parties on separate counterparts, each of which shall constitute an original but all of which taken together shall be deemed to constitute one and the same instrument.

24. Guarantee and indemnity

24.1 Guarantee and indemnity

24.1.1 Each Borrower irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Borrower shall immediately on demand pay that amount as if it was the principal borrower; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Borrower under this indemnity will not exceed the amount it would have had to pay under this Clause 24 if the amount claimed had been recoverable on the basis of a guarantee.

24.2 Continuing guarantee

This guarantee is a continuing guarantee (whether in respect of the obligations of any Borrower or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Borrower under this clause 24 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

24.3 Waiver of defences

24.3.1 The obligations of each Borrower under this clause 24 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this clause 24 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Borrower or other person;
- (b) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any part of that Borrower;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
or
- (g) any insolvency or similar proceedings.

24.4 Immediate Recourse

Each Borrower waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Borrower under this clause 24. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

24.5 Appropriations

24.5.1 Until all amounts which may be or become payable by any of the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by Lender (or any trustee or agent on its behalf) in

respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Borrower shall be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from any Borrower or on account of any Borrower's liability under this clause 24.

24.6 Deferral of Borrowers' rights

24.6.1 Until all amounts which may be or become payable by any of the Borrowers under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Borrower will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 24:

- (a) to be indemnified by a Borrower;
- (b) to claim any contribution from any other guarantor of any Borrower's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Borrower's to make any payment, or perform any obligation, in respect of which any Borrower's has given a guarantee, undertaking or indemnity under clause 24.1 (Guarantee and indemnity);
- (e) to exercise any right of set-off against any Borrower; and/or
- (f) to claim or prove as a creditor of any Borrower in competition with the Lender.

If a Borrower receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrowers under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with clause 7 (*Repayment, cancellation and prepayment*).

24.7 Additional Security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

25. Governing Law and Jurisdictions

25.1 This Deed, and any non-contractual obligations or matters arising from or in connection with it, shall be governed by, and construed in accordance with, the laws of England.

25.2 Each Party agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed and accordingly submit to the exclusive jurisdiction of the courts of England.

IN WITNESS of which this Deed has been duly executed and delivered by the parties hereto as a deed on the date first given above.

Schedule 1

General Condition Precedent Documents

1. A copy of the approvals obtained by each Borrower
 - 1.1 approving the terms of, and the transactions contemplated by, the Finance Documents and resolving that it executes the Finance Documents;
 - 1.2 authorising a specified person or persons to execute each Finance Document on its behalf;
 - 1.3 authorising its seal to be affixed to those Finance Documents to be executed by it under seal; and
 - 1.4 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under, or in connection with, the Finance Documents.
2. This Deed duly executed by the Borrowers.
3. A Business Plan which is in form and substance (including the assumptions contained within it) satisfactory to the Lender.
4. No State Aid issues with the lending.
5. Such other documents as the Lender may require.

Schedule 2
Advance Request

From: XXX⁵

To: Dacorum Borough Council

Dated:

Dear Sirs,

We refer to the agreement (the "**Facility Agreement**") dated [] 2020 and made between Watford Borough Council, St. Albans City and District Council, Three Rivers District Council and Hertsmere Borough Council as Borrowers and Dacorum Borough Council as Lender. Terms defined in the Facility Agreement shall have the same meaning in this notice.

1. We hereby give you notice that, pursuant to the Facility Agreement, we wish the Lender to make an Advance as follows:
 - 1.1 Amount: []
 - 1.2 Advance Date: []
2. We confirm that, at the date hereof, the representations set out in Clause 10 (*Representations and Warranties*) of the Facility Agreement are true and no Event of Default or Potential Event of Default has occurred or might occur.
3. We confirm that at, the date of this Advance, a building contract in relation to the Development is in place to the satisfaction of the Lender.
4. We confirm that appropriate planning permission has been obtained for the Development.
5. We confirm that, at the date of this Advance, the Business Plan is to the satisfaction of the Lender
6. [The proceeds of this Advance should be credited to [insert account details]].
7. The purpose of this Advance is to fund the Development

Yours faithfully

.....

⁵ To be confirmed.

for and on behalf of

XXXXXXX

*Delete as appropriate

Execution Page

The Borrowers

The **COMMON SEAL** of
WATFORD BOROUGH COUNCIL
was hereunto affixed in the presence of:

Authorised signatory:

Authorised signatory:

Address:

Town Hall, Hempstead Road, Watford, WD17 3EX

Attention: []⁶

The **COMMON SEAL** of
ST. ALBANS CITY AND DISTRICT COUNCIL
was hereunto affixed in the presence of:

Authorised signatory:

Authorised signatory:

Address:

Civic Centre, St Peters Street, St Albans, Hertfordshire, AL1 3JE

Attention: []⁷

⁶ To be confirmed

⁷ To be confirmed

The **COMMON SEAL** of
THREE RIVERS DISTRICT COUNCIL
was hereunto affixed in the presence of:

Authorised signatory:

Authorised signatory:

Address:

Three Rivers House, Northway, Rickmansworth, Hertfordshire, WD3 1RL

Attention: []⁸

The **COMMON SEAL** of
HERTSMERE BOROUGH COUNCIL
was hereunto affixed in the presence of:

Authorised signatory:

Authorised signatory:

Address:

Elstree Way, Borehamwood, Hertfordshire, WD6 1WA

Attention: []⁹

⁸ To be confirmed

⁹ To be confirmed

The Lender

The **COMMON SEAL** of
DACORUM BOROUGH COUNCIL
was hereunto affixed in the presence of:

Authorised signatory:

Authorised signatory:

Address:

The Forum, Marlowes, Hemel Hempstead, Hertfordshire, HP1 1DN

Attention: []¹⁰

¹⁰ To be confirmed