

DATED

2020

(1) DACORUM BOROUGH COUNCIL

and

(2) WATFORD BOROUGH COUNCIL

and

(3) ST. ALBANS CITY AND DISTRICT COUNCIL

and

(4) THREE RIVERS DISTRICT COUNCIL

and

(5) HERTSMERE BOROUGH COUNCIL

DEED OF CONTRIBUTION AND INDEMNITY

in relation to the West Hertfordshire Crematorium

Anthony Collins
solicitors

134 Edmund Street
Birmingham
B3 2ES

THIS DEED is dated

2020

BETWEEN:

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

WHEREAS:

- (A) The Lender Council and the Borrower Councils are each a local authority.
- (B) For the purpose of the West Hertfordshire Crematorium the Lender Council and the Borrower Councils are together the Joint Committee.
- (C) The Lender Council and the Borrower Councils have or will enter into a loan facility agreement (the **Loan Agreement**) between them dated on or about the date of this Deed (as from time to time amended, novated, replaced, restated, supplemented or varied).
- (D) The Loan Agreement contains a joint and several guarantee by each of the Borrower Councils in favour of the Lender Council to guarantee the payment and performance of the obligations and liabilities of each of the Borrower Councils under the Loan Agreement.
- (E) As the Lender Council is also a member of the Joint Committee, it is also responsible for a share of the costs of the Development which is being funded by the Loan Agreement and therefore is responsible for a proportion of the costs of the Development equal to the other Councils.
- (F) Each of the Council have agreed to enter into this Deed to govern their respective undertakings and obligations as between themselves in relation to the Loan Agreement and the Development.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

Borrower Councils means Watford, St. Albans, Three Rivers and Hertsmere (and each a **Borrower Council**);

Constitutional Documents means the constitutive documents of each Council;

Councils means the Borrower Councils and the Lender Council (each a **Council**);

Guarantee means the joint and several guarantee and indemnity given by the Council Borrowers pursuant to the terms of the Loan Agreement;

Lender Council means Dacorum;

Payment means any payment or repayment by a Borrower Council under the Loan Agreement, including all costs, liabilities, expenses and interest in connection with such payment;

Percentage Share means, in relation to each Council and any Payment, twenty per cent;

1.2 Construction

1.2.1 In this Deed, unless the contrary intention appears, a reference to:

- (a) a Clause is a reference to a Clause of this Deed;
- (b) a person includes its successors and permitted assigns;
- (c) a law is a reference to that law as re-enacted, amended or replaced and any regulation made under it. For these purposes, regulations shall include any subordinate legislation, rule, official directive, notice, guideline or order (whether or not having the force of law) of any government, government body, agency, department, court, tribunal or regulatory authority or organisation; and
- (d) a document is a reference to that document as amended, restated, novated or supplemented.

1.2.2 Capitalised terms defined in the Loan Agreement (or in each case incorporated by reference to that document) have, unless expressly defined in this Deed, the same meaning in this Deed.

1.2.3 Headings in this Deed are for convenience only and are to be ignored in construing this Deed.

2. RIGHT OF CONTRIBUTION AND INDEMNITY BETWEEN THE PARTIES

- 2.1 Each Council shall be liable for its Percentage Share of any Payment.
- 2.2 Following the making by a Council of a Payment, the relevant Council shall notify each other Council of the details of that Payment and the circumstances which gave rise to the Payment that was made under the Loan Agreement.
- 2.3 To the extent that the amount of a Payment made by any Council under the Loan Agreement is more than the Percentage Share attributable to that Council in relation to that Payment, then any Council which has paid less than its Percentage Share of that Payment shall indemnify and reimburse the Council that made that Payment in such amount to ensure that the payment contribution of each Council in respect of that Payment reflects its Percentage Share.
- 2.4 No Council shall be liable to contribute more than its Percentage Share liability under this Deed, except in the circumstance set out in Clause 2.7 below.
- 2.5 If any Council becomes insolvent or otherwise becomes unable to satisfy its share of liability under this Deed in full (the **Insolvent Entity**), then the amount of contribution which that Council should have paid shall be borne by the other Councils in the same proportions as they would have borne a claim under this Clause 2, except that no regard shall be had to the Insolvent Entity, and the respective Percentage Shares of the other Councils shall be adjusted to take account of the failure by the Insolvent Entity to make the relevant payment.
- 2.6 Each payment to be made by a Council (the **Contributing Council**) to another Council (a **Receiving Council**) pursuant to this Clause 2 must be made for value directly to that Receiving Council to the account of that Receiving Council at such office or bank as it may notify to the Contributing Council.

3. LOAN AGREEMENT UNDERTAKINGS

Each Borrower Council hereby undertakes to each other Council that:

- 3.1 it shall use the proceeds of the loan that it receives under the Loan Agreement in accordance with the terms of the Loan Agreement;
- 3.2 in no circumstances shall it apply the proceeds of the loan that it receives under the Loan Agreement for any purpose other than to fund the Development.

4. OTHER UNDERTAKINGS

- 4.1 Each Council undertakes to each other Council that it:
 - 4.1.1 has complied with its Constitutional Documents and its procedures in entering into the Loan Agreement and this Deed;

- 4.1.2 they will not amend their or Constitutional Documents in a way that adversely affects their ability to provide any Guarantee or their obligations under this Deed; and
- 4.1.3 they will promptly on request provide to any other Council copies of their Constitutional Documents, reports, decisions and authorisations and, subject to the terms of this Deed, any amendments to them.

5. DURATION

5.1 This Deed shall continue to operate as between the Councils until either:

- 5.1.1 the obligations of each of the Council under the Loan Agreement have ceased to be continuing; or
- 5.1.2 the Councils are satisfied that there has been a change in law such that the Guarantee then in force will remain in full force and effect and in accordance with their respective Constitutional Documents notwithstanding that a Borrower Council is discharged from its obligations under this Deed.

6. COSTS

Each Council shall bear its own costs, expenses and other charges properly incurred in implementing the provisions of this Deed.

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

8. 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.

9. GOVERNING LAW AND JURISDICTIONS

- 9.1 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.
- 9.2 Each Council 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.

[Execution blocks to be confirmed]

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

Authorised signatory:

Authorised signatory:

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

Authorised signatory:

Authorised signatory:

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

Authorised signatory:

Authorised signatory:

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

Authorised signatory:

Authorised signatory:

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

Authorised signatory:

Authorised signatory: