

**Dated**

**2023**

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**Loan Agreement**

between

**Malvern Hills Conservators**

**(Borrower)**

and

**Malvern Hills Conservators, acting in its capacity as trustee of the Land  
Purchase Fund**

**(Lender)**

This Agreement is dated

2023

## Parties

- (1) **Malvern Hills Conservators**, a charity constituted by the Malvern Hills Acts 1884, 1909, 1924, 1930 and 1995 and registered with the Charity Commission for England and Wales under number 515804 whose principal office is at Manor House, Grange Road, Malvern, Worcestershire WR14 3EY (**MHC**); and
- (2) **MHC**, acting in its capacity of the charitable trust known as the "Land Purchase Fund" (**LPF**);  
(together the **Parties** and each a **Party**).

## Background

- (A) MHC is established as far as possible to preserve the natural aspect of the Malvern Hills, to protect the timber and other trees pollards shrubs underwood heather gorse turf and herbage growing on the Malvern Hills, to prevent unlawful digging or removing any stone gravel clay loam coil or turf forming part of the Malvern Hills, except as in the Malvern Hills Acts otherwise provided at all times to keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public and to prevent resist and abate all enclosures and encroachments.
- (B) The LPF was established in 1992 pursuant to section 8 of the Malvern Hills Act 1930, which requires that the LPF should be applied in the purchase of land on or adjacent to the Malvern Hills to become part of the Malvern Hills.
- (C) MHC wishes to obtain a Private Bill to update its governing Acts and for its better governance and administration.
- (D) MHC has obtained consent from the Charity Commission under s74 Charities Act 2011 for the purpose set out in C above subject to the conditions set out in a letter from the Charity Commission dated 8 August 2023.
- (E) MHC wishes to obtain a loan from the LPF to meet the costs of preparing and promoting a Bill in Parliament.
- (F) MHC (acting in its capacity as trustee of the LPF) wishes to make available to MHC (acting in its corporate capacity) an unsecured term loan facility of up to £306,000.
- (G) In order to make the loan facility available, MHC (acting in its capacity as trustee of the LPF) has taken steps to change its policy as regards investment arrangements in respect of assets within the LPF and MHC (acting in its corporate capacity) wishes to compensate the LPF in respect of any reduced investment return as a consequence of that change in policy.

## Agreed terms

### 1 Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Availability Period:** the period from and including the date of this Agreement to and including the fifth anniversary of the date of this Agreement (or such longer period of time as the Lender and the Borrower may from time to time agree in writing).

**Borrower:** MHC acting in its corporate capacity.

**Business Day:** a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.

**Drawdown Date:** the date on which a Loan is to be made.

**Drawdown Request:** a drawdown request, substantially in the form set out in Schedule 2.

**Event of Default:** any event or circumstance listed in Schedule 1.

**Facility:** the term loan facility made available under this Agreement.

**Final Repayment Date:** the 25th anniversary of the date of this Agreement.

**Indebtedness:** any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint.

**Interest Instalment:** has the meaning given in clause 7.2.

**Interest Repayment Date:** has the meaning given in clause 7.2.

**Lender:** MHC acting in its capacity as trustee of the LPF.

**Loan:** the principal amount of a loan made or to be made by the Lender to the Borrower under this Agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

**Notice of Default:** a notice served by the Lender pursuant to clause 12.1 of this Agreement.

**Principal Instalment:** has the meaning given in clause 7.1.

**Principal Repayment Date:** has the meaning given in clause 7.1.

**Sterling and £:** the lawful currency of the United Kingdom.

**Total Facility Amount:** the maximum principal amount of the Facility referred to in clause 2.1.

**Total Interest:** has the meaning given in clause 7.2.

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to **this Agreement** (or any provision of it) or any other document shall be construed as a reference to this Agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.4 A reference to a **person** shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of that person.
- 1.5 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or extension, or re-enactment and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.6 A reference to **writing** or **written** includes email.
- 1.7 A reference to a document **in the agreed form** means in a form agreed by the Parties.

- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.10 A reference to **continuing** in relation to an Event of Default means an Event of Default which has not been remedied or waived.

## 2 **The Facility**

- 2.1 The Lender grants to the Borrower an unsecured sterling term loan facility of a total principal amount not exceeding £306,000 (three hundred and six thousand pounds sterling) on the terms, and subject to the conditions, of this Agreement.

## 3 **Security**

- 3.1 The Facility shall be unsecured.

## 4 **Purpose**

- 4.1 The Borrower shall use all money borrowed under this Agreement to meet the costs and expenses incurred in preparing and promoting a Bill in Parliament.

## 5 **Drawing**

- 5.1 Subject to the provisions of this Agreement, the Borrower may, on any Business Day during the Availability Period draw down a Loan by completing (no later than 11.00 a.m. (London time) on the Business Day before the proposed Drawdown Date) a Drawdown Request.
- 5.2 Each Drawdown Request will be irrevocable and, subject to the provisions of this Agreement, the Borrower will draw down each Loan on the Drawdown Date specified in the relevant Drawdown Request.
- 5.3 The aggregate amount of the Loans shall not exceed the Total Facility Amount.
- 5.4 Any amount of the Facility not drawn down during the Availability Period will automatically be cancelled.

## 6 **Representations**

- 6.1 The Borrower has the power and authority to execute, deliver and perform its obligations under this Agreement and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the borrowing contemplated by this Agreement.

## 7 **Principal and interest**

- 7.1 The Borrower shall repay the principal of each Loan in instalments (each a **Principal Instalment**) on every anniversary of the date of this Agreement (each a **Principal Repayment Date**). The number of Principal Instalments and the amount of each Principal Instalment shall be calculated by dividing the total amount of the Loan by the number of periods of 12 months falling between the Drawdown Date for the Loan and Final Repayment Date provided that the last Principal Instalment will be paid on the Final Repayment Date and will be equal to the balance of the outstanding Loan as at the Final Repayment Date.
- 7.2 The Borrower shall pay simple interest on each Loan at the rate of 6% per annum in arrears in instalments (each an **Interest Instalment**) on every anniversary of the date of this Agreement (each an **Interest Repayment Date**). The number of Interest Instalments and the

amount of each Interest Instalment shall be calculated by dividing the total amount of interest due in respect of the Loan between the Drawdown Date for the Loan and Final Repayment Date (the **Total Interest**) by the number of periods of 12 months falling between the Drawdown Date for the Loan and Final Repayment Date provided that the last Interest Instalment will be paid on the Final Repayment Date and will be equal to the balance of the outstanding Total Interest as at the Final Repayment Date.

- 7.3 For the avoidance of doubt, each Interest Instalment shall be added to and paid with each Principal Instalment on each Principal Repayment Date or, as the case may be, the Final Repayment Date.
- 7.4 The provisions of this clause 7 shall be subject to any prepayment by the Borrower pursuant to clause 9.

## 8 Fees and costs

- 8.1 The Borrower shall pay, on demand and on a full indemnity basis, all costs and expenses (together with any value added tax on them) that the Lender incurs in connection with the negotiation and preparation, amendment, extension, alteration, and enforcement of any Loan and/or this Agreement.
- 8.2 Subject to clause 8.1, no arrangement or commitment fee shall be payable by the Borrower in connection with the Facility.

## 9 Prepayment

- 9.1 The Borrower may prepay part or all of a Loan by notifying the Lender 3 Business Days in advance. The Borrower may only do this if:
- 9.1.1 the notice specifies the Loan or Loans to be prepaid [and the amount of the prepayment which, if it is less than the outstanding Loans, must be a whole multiple of £1,000; and
- 9.1.2 the prepayment does not result in an Event of Default.
- 9.2 The Borrower may not re-borrow any part of the Facility which has been prepaid under this Agreement.
- 9.3 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid but shall be without premium or penalty.

## 10 Compensation

- 10.1 The Borrower and the Lender hereby acknowledge that, in order to enable the Lender to provide the funds required by the Borrower in relation to a Drawdown (each a **Drawdown Amount**) the Lender will:
- 10.1.1 instruct the Investment Manager to reallocate Investment Assets of a value equal to the relevant Drawdown Amount from Risk Category 6 to Risk Category 4 (the **Reallocated Assets**); and
- 10.1.2 subsequently liquidate those Reallocated Assets in order to provide the Drawdown Amount to the Borrower on the relevant Drawdown Date. <sup>[SS1]</sup>
- 10.2 The Borrower shall prepare a written and dated statement (a **Compensation Statement**) of each Compensation Payment within 10 Business Days of the relevant Compensation Date, which Compensation Statement shall identify the Actual Return, the Risk Return and the difference (if any) between them.

- 10.3 The Borrower shall make a Compensation Payment (if any) to the Lender within 5 Business Days of the date of a Compensation Statement.
- 10.4 In this Agreement:
- 10.4.1 the **Actual Return** means the Investment Return received (or receivable) by the Lender in respect the Reallocated Assets between the Reallocation Date and the Compensation Date;
  - 10.4.2 the **Compensation Date** means the Drawdown Date in respect of a Drawdown Amount;
  - 10.4.3 the **Compensation Payment** means a sum equal to the amount (if any) by which the Risk Return exceeds the Actual Return;
  - 10.4.4 the **Investment Assets** means the assets of the Lender which are invested on the Lender's behalf by the Investment Manager;
  - 10.4.5 the **Investment Manager** means RBC Brewin Dolphin, being the investment manager of the LPF's assets as at the date of this Agreement, and any successor or replacement investment manager appointed by MHC as trustee of the LPF from time to time;
  - 10.4.6 the **Investment Return** means the return on investment by way of income and/or capital appreciation (including any interest payable on the Reallocated Assets following their liquidation in accordance with clause 10.1.2);
  - 10.4.7 the **Reallocation Date** means the date on which Investment Assets are reallocated in accordance with clause 10.1.1;
  - 10.4.8 **Risk Category 4** means the asset risk category identified as "risk category 4" applied by the Investment Manager to the Investment Assets (and shall include any other asset risk category which the Investment Manager confirms to the Borrower in writing from time to time shall have replaced such risk category);
  - 10.4.9 **Risk Category 6** means the asset risk category identified as "risk category 6" applied by the Investment Manager to the Investment Assets (and shall include any other asset risk category which the Investment Manager confirms to the Borrower in writing from time to time shall have replaced such risk category);
  - 10.4.10 the **Risk Return** means the Investment Return which would have been received (or receivable) by the Lender in respect the Reallocated Assets between the Reallocation Date and the Compensation Date had the Reallocated Assets remained invested in Risk Category 6 assets during that period (and for the avoidance of doubt excluding any interest receivable pursuant to this Agreement in respect of the Loan under the Facility).
- 10.5 For the avoidance of doubt, no Compensation Payment shall be payable by the Borrower if the Actual Return exceeds the Risk Return.

## 11 Payments

- 11.1 All payments made by the Borrower under this Agreement shall be in sterling:
- 11.1.1 in full, without any deduction, set-off or counterclaim; and
  - 11.1.2 in immediately available cleared funds on the due date to the account maintained by MHC for the LPF.

11.2 If any payment becomes due on a day that 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.

## **12 Event of Default**

12.1 At any time after an Event of Default has occurred and is continuing, the Lender may give notice to the Borrower stating that the Loan (and all accrued interest and all other amounts accrued or outstanding under this agreement) is immediately due and payable or payable on demand.

12.2 On receiving a notice in accordance with clause 12.1, the Borrower shall immediately repay the Loan, the accrued interest and all those other amounts.

## **13 Calculations, accounts and certificates**

13.1 Any interest payable under this agreement shall accrue on a daily basis, calculated according to the number of actual days elapsed and a year of 365 days.

13.2 The Borrower shall maintain accounts evidencing the amount owed to the Lender. Entries in those accounts shall be prima facie evidence of the existence and amount of the Borrower's obligations as recorded in them.

13.3 If the Lender issues any certificate, determination or notification of a rate or any amount payable under this Agreement, it shall (in the absence of manifest error) be conclusive evidence of the matter to which it relates and shall contain reasonable details of the basis of determination.

## **14 Remedies, waivers, amendments and consents**

14.1 Any amendment to this Agreement shall be in writing and signed by, or on behalf of, each Party.

14.2 Any waiver of any right or consent given under this Agreement is only effective if it is in writing and signed by the waiving or consenting Party. It shall apply only in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.

14.3 No delay or failure to exercise any right under this Agreement shall operate as a waiver of that right.

14.4 No single or partial exercise of any right under this Agreement shall prevent any further exercise of that right (or any other right under this Agreement).

14.5 Rights and remedies under this Agreement are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

## **15 Severance**

15.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the Parties.

## 16 Counterparts

16.1 This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

## 17 Third party rights

17.1 A person who is not a party to this Agreement cannot enforce, or enjoy the benefit of, any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.

## 18 Notices

18.1 Each notice or other communication required to be given under, or in connection with, this Agreement (other than a Drawdown Request) shall be:

18.1.1 in writing, delivered personally or sent by pre-paid first-class letter or fax; and

18.1.2 sent:

(a) to the Borrower at:

Address: Manor House Grange Road Malvern WR14 3EY

Attention: [• name of contact]

(b) to the Lender at:

Address: Manor House Grange Road Malvern WR14 3EY

Attention: [• name of contact]

or to any other addresses or email that are agreed in writing by one Party to the other from time to time.

18.2 Any notice or other communication given by the Lender shall be deemed to have been received:

18.2.1 if given by hand, at the time of actual delivery; and

18.2.2 if posted, on the second Business Day following the day on which it was despatched by pre-paid first-class post.

18.3 A notice or other communication given as described in clause 18.2.1 on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.

18.4 Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt by the Lender.

## 19 Governing law and jurisdiction

19.1 This Agreement 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 and Wales.

19.2 The parties to this Agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection



with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

19.3 This Agreement has been entered into on the date stated at the beginning of it.

## **Schedule 1 Events of default**

### **1 Non-payment**

- 1.1 The Borrower fails to pay any sum payable under this Agreement when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within 3 Business Days of its due date.

### **2 Non-compliance**

- 2.1 The Borrower fails, (other than by failing to pay), to comply with any provision of this Agreement and (if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within 14 days of the earlier of:
- (a) the Lender notifying the Borrower of the default and the remedy required; and
  - (b) the Borrower becoming aware of the default.

### **3 Insolvency**

- 3.1 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due.
- 3.2 The Borrower commences negotiations, or enters into any composition or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties).
- 3.3 A moratorium is declared over any of the Borrower's indebtedness.
- 3.4 Any action, proceedings, procedure or step is taken for:
- (a) the suspension of payments, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower; or
  - (b) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets.
- 3.5 Any event occurs in relation to the Borrower similar to those set out in this paragraph 3.
- 3.6 An event or circumstance referred to in paragraphs 3.1 to 3.5 inclusive shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised.

### **4 Repudiation**

- 4.1 The Borrower repudiates (or shows an intention to repudiate) this Agreement.

## **Schedule 2**

### **Drawdown Request**

To: Malvern Hills Conservators (acting in its capacity as trustee of the Land Purchase Fund)

Date: [DATE]

**£[AMOUNT] Facility Agreement [DATE] between [PARTIES] (Facility Agreement)**

We refer to the Facility Agreement. This is a Drawdown Request. Words and expressions defined in the Facility Agreement have the same meaning in this Drawdown Request.

This Drawdown Request confirms that we will draw down the following Loan on [DATE]:

Amount: [AMOUNT]

Drawdown Date: [DATE]

The Loan is to be made available by credit to the bank account maintained by Malvern Hills Conservators with [BANK] numbered [NUMBER].

For and on behalf of

**Malvern Hills Conservators**

.....

Authorised signatory

Signed by [NAME]

.....

for and on behalf of **Malvern Hills  
Conservators** (acting in its corporate  
capacity)

Authorised signatory

Signed by [NAME]

.....

for and on behalf of **Malvern Hills  
Conservators** (acting in its capacity as trustee  
of the Land Purchase Fund)

Authorised signatory

.....

Authorised signatory