

**DATED**

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**REPAYMENT AGREEMENT**

**between**

**MAIDSTONE BOROUGH COUNCIL**

**And**

**Cobtree Manor Estate Trust**

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THIS DEED is made between

**PARTIES**

- (1) **Maidstone Borough Council** whose principal address is at Maidstone House, King Street, Maidstone, ME15 6JQ (**the Authority**).
- (2) **Cobtree Manor Estate Trust** a registered charity with registration number 283617 whose principal address is [ ] (the Trust)

**WHEREAS:**

- (A) Maidstone Borough Council is the corporate trustee of the Cobtree Manor Estate Charity and has provided financial support to the Trust for the improvements and ancillary works ("the Project") to the Cobtree Manor Park car park described in Schedule 1 and the accompanying attached [ plans/drawings].
- (B) At the Committee meeting of the 18<sup>th</sup> December, 2018, between the Trust and the Authority, it was resolved and agreed that the Authority would assist the Trust in the execution of the Project by underwriting the the sum of £[323,000 ] 00.00 ([ ] pounds) representing costs of the Project(Project Costs).
- (D) It was also agreed at the Committee Meeting of the 18<sup>th</sup> December, 2018, that the Trust would reimburse the Authority the underwritten costs of £323,000 over a period of 5 years, including interest at 3% (Public Works Loan Board rate 2% plus 1%) as per the agreed repayment schedule herein.
- (E) This Agreement sets out the terms and conditions on which the said Project Costs would be reimbursed by the Trust.

**AGREED TERMS**

**1. DEFINITIONS**

In this Agreement the following terms shall have the following meanings:

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Governing Body:** the governing body of the Trust including its directors or trustees.

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Interest Rate:** the Public Works Loan Board rate (2%) plus [ 1] %

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) entering into this Agreement or any other contract with the Authority where a commission has been paid or has been agreed to be paid by the Trust or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority.

**Project:** the project described in 0 and the accompanying plan /drawing of the area.

**Project Costs:** the sum of £323,000.00 representing the costs incurred by the Trust during the execution of the Project.

**Project Manager:** the individual who has been nominated to represent the Authority for the purposes of this Agreement.

**Repayment Period:** the term of 5 years on agreed dates further detailed in the Schedule herein by which the Project Costs must be reimbursed to the Authority which and including interest at 3% (Public Works Loan Board rate 2% plus 1%)

## **2. PURPOSE**

- 2.1 The Authority as Corporate Trustees of the Trust has agreed to support the Trust in the execution of the Project and has agreed to underwrite the costs incurred during the execution of the Project upto a maximum sum of £323,000.00. It is agreed that the monies shall be used only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Authority makes no commitment to increase its financial support and it is agreed Project Cost shall not be increased in the event of any overspend by the Trust in its delivery of the Project.
- 2.2 The Trust shall not make any significant change to the Project without the Authority's prior written agreement.
- 2.3 Where the Trust intends to apply to a third party for other funding for the Project, it will notify the Authority in advance of its intention to do so and, where such funding is obtained, it will provide the Authority with details of the amount and purpose of that funding. The Trust agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Authority is funding in full under this Agreement.
- 2.4 The Trust shall promptly repay the Authority the Project Costs. Repayment of the Project Costs shall be made by the Trust quarterly in arrears, in the sums and on the dates detailed in the attached Repayment Schedule. The payments shall be by BACCs transfer from the Trusts to the Authority's nominated accounts. The interest rate to be applied to the Project Costs is the Public Works Loans Board Rate (2%) plus one percent (1%) and this will be calculated on a daily basis.

## **3. ACCOUNTS AND RECORDS**

- 3.1 All monies expended by the Trust in execution of the Project shall be shown in the Trust's accounts as a restricted fund and shall not be included under general funds.
- 3.2 The Trust shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the monies applied towards the execution of the Project.
- 3.3 The Trust shall keep all invoices, receipts, and accounts and any other relevant documents relating to the Project for a period of at least six years following receipt of any Loan monies to which they relate. The Authority shall have the right to review, at the Authority's reasonable

request, the Trust's accounts and records that relate to the Project and shall have the right to take copies of such accounts and records.

3.4 The Trust shall provide the Authority with a copy of its annual accounts within six months (or such lesser period as the Authority may reasonably require) of the end of the relevant financial year in respect of each year in which the Project Costs is reimbursed. .

3.5 The Trust shall comply and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Authority.

#### **4. MONITORING AND REPORTING**

4.1 The Trust shall closely monitor the delivery and success of the Project to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

4.2 The Trust shall provide the Authority with a financial report and an operational report on delivery of the Project every quarter and in such formats as the Authority may reasonably require. The Trust shall provide the Authority with each report within three months of the last day of the quarter to which it relates.

4.3 Where the Trust has obtained funding from a third party for its delivery of part of the Project, the Trust shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

4.4 Along with its first quarterly financial report, the Trust shall provide the Authority with a risk register and insurance review in the format provided by the Authority. The Trust shall address the health and safety of its staff in the risk register.

4.5 The Trust shall on request provide the Authority with such further information, explanations and documents as the Authority may reasonably require in order for it to establish that the Loan has been used properly in accordance with this Agreement.

4.6 The Trust shall permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the

Trust's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

4.7 The Trust shall permit any person authorised by the Authority for the purpose to visit the Trust once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Authority considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf. The Trust shall provide local transport and accommodation for such visits, the cost of which may be charged to the Authority for payment.

4.8 The Trust shall provide the Authority with a final report on completion of the reimbursement which shall confirm whether the Project has been successfully and properly completed.

## **5. ACKNOWLEDGMENT AND PUBLICITY**

5.1 The Trust shall acknowledge the Authority's support in its annual report and accounts.

5.2 The Trust shall not publish any material referring to the Project or the Authority without the prior written agreement of the Authority. The Trust shall acknowledge the support of the Authority in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Authority) shall include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.

5.3 In using the Authority's name and logo, the Trust shall comply with all reasonable branding guidelines issued by the Authority from time to time.

5.4 The Trust agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Authority.

5.5 The Authority may acknowledge the Trust's involvement in the Project as appropriate without prior notice.

5.6 The Trust shall comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Project.

**6. INTELLECTUAL PROPERTY RIGHTS – NOT USED**

**7. CONFIDENTIALITY**

7.1 Subject to clause 8 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

**8. FREEDOM OF INFORMATION**

8.1 The Trust acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

8.2 The Trust shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the Authority with a copy of all information belonging to the Authority requested in the request for information which is in its possession or control in the form that the Authority requires within 5 working days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the Authority.

8.3 The Trust acknowledges that the Authority may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Trust. The Authority shall take reasonable steps to promptly notify the Trust of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any



information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**9. DATA PROTECTION**

The Trust shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

**10. WITHHOLDING, SUSPENDING AND REPAYMENT OF LOAN**

10.1 The Trust shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

10.2 Should the Trust be subject to financial or other difficulties which are capable of having a material impact on its ability to reimburse the Project Costs it will notify the Authority as soon as possible so that, if possible, and without creating any legal obligation, the Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Authority and the Project Costs.

**11. ANTI-DISCRIMINATION**

11.1 The Trust shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

11.2 The Trust shall take all reasonable steps to secure the observance of clause 11.1 by all servants, employees or agents of the Trust and all suppliers and sub-contractors engaged on the Project.

**12. HUMAN RIGHTS**

12.1 The Trust shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Trust were a public body (as defined in the Human Rights Act 1998).

12.2 The Trust shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

### **13. LIMITATION OF LIABILITY**

13.1 The Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Trust running the Project, the use of the Loan or from withdrawal of the Loan. The Trust shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Trust in relation to the Project, the non-fulfilment of obligations of the Trust under this Agreement or its obligations to third parties.

### **14. WARRANTIES**

The Trust warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Authority immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Trust which has been disclosed to the Authority is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Loan;

- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Authority or any of the Authority's advisers, which might reasonably have influenced the decision of the Authority to make the Loan on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

## 15. **INSURANCE**

15.1 The Trust shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Trust, arising out of the Trust's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

15.2 The Required Insurances referred to above include (but are not limited to):

- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.

The Trust shall (on request) supply to the Authority a copy of such insurance policies and evidence that the relevant premiums have been paid.

## 16. **DURATION**

16.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Repayment Period .

16.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

**17. TERMINATION**

The Authority may terminate this Agreement a on giving the Trust three months' written notice should it be required to do so by financial restraints or for any other reason.

**18. ASSIGNMENT**

The Trust may not, without the prior written consent of the Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Loan.

**19. WAIVER**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

**20. NOTICES**

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered (or if e-mailed) all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

**21. DISPUTE RESOLUTION**

21.1 In the event of any complaint or dispute (which does not relate to the Authority's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by the Authority from time to time.

21.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Chief Executive of the Authority and the Chair of the Trust Committee

with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Authority and the Trust.

- 21.3 In the absence of agreement under clause 21.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

**22. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Authority and the Trust, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**23. JOINT AND SEVERAL LIABILITY**

Where the Trust is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Trust shall be jointly and severally liable for the Trust's obligations and liabilities arising under this Agreement.

**24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

**25. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**Schedule 1:****The refurbishment of the Cobtree Manor Park Car Park**

- To upgrade the existing main and lower car parks to provide 172 parking spaces in total, 10 of which will be disabled bays. This includes creating a tarmac circulation road and installing adequate drainage and surface water run-off.

**Drawing / Plan of Area**

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**Schedule 2**

**Repayment Schedule. (Attached)**

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This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**THE COMMON SEAL** of )  
**MAIDSTONE BOROUGH COUNCIL** )  
Was hereunto affixed in the presence of )

Authorised Signatory

**EXECUTED** as a **DEED** by  
**Cobtree Manor Estates** acting by

Authorised Signatory

Chairman

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