



Registration of a Charge

Company name: **ENGLISH NATIONAL BALLET**
Company number: **00735040**

Received for Electronic Filing: **05/01/2021**



X9VK407E

Details of Charge

Date of creation: **04/01/2021**
Charge code: **0073 5040 0010**
Persons entitled: **THE ARTS COUNCIL OF ENGLAND**
Brief description: **THE BUILDING KNOWN AS 41 HOPEWELL SQUARE (FORMERLY KNOWN AS BUILDING F), LEAMOUTH PENINSULA DEVELOPMENT SITE, LEAMOUTH PENINSULA, LONDON, BEING DEMISED PURSUANT TO A LEASE DATED 7 JANUARY 2019 BETWEEN (1) ECO WORLD - BALLYMORE LONDON CITY ISLAND COMPANY LIMITED AND (2) ENGLISH NATIONAL BALLET (AS VARIED BY A DEED OF VARIATION DATED 10 OCTOBER 2019 AND A FURTHER DEED OF VARIATION DATED 21 MAY 2020), UNDER TITLE NUMBER AGL466102.**
Contains fixed charge(s).
Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **MEGAN DAKERS, SLAUGHTER AND MAY**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 735040

Charge code: 0073 5040 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th January 2021 and created by ENGLISH NATIONAL BALLET was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th January 2021 .

Given at Companies House, Cardiff on 6th January 2021

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 4 January 2021

PARTIES

1. **The Arts Council of England** of 21 Bloomsbury Street, London WC1B 3HF ('the Arts Council'); and
2. **English National Ballet** (registered company number 00735040 and charity number 214005) whose registered office is at 41 Hopewell Square, London E14 0SY ('the Funded Organisation')

RECITALS

- A The Funded Organisation is the legal and beneficial owner of the Property referred to in Schedule 2.
- B The Arts Council, at the request of the Funded Organisation, has agreed to grant monies to the Funded Organisation upon the terms and subject to the conditions contained in the Capital Funding Agreement.
- C It is a condition contained in the Capital Funding Agreement that the Funded Organisation provide fixed security over its assets forthwith on request by the Arts Council.
- D This Deed is security for the payment and discharge of the Secured Obligations.

OPERATIVE PROVISIONS

1 Definitions and interpretations

1.1 Definitions

Unless the contrary intention appears, terms defined shall mean as follows:

<i>Act</i>	Law of Property Act 1925;
<i>Administrator</i>	any one or more administrators appointed by the Arts Council pursuant to this Deed;
<i>Arts Council</i>	the Arts Council of England including its successors in title and assigns;
<i>Capital Agreement</i>	<i>Funding</i> all funding agreements with the Funded Organisation for the Capital Project, whether they presently exist or will be executed after the date of this agreement, including but not necessarily limited to the documents listed in Schedule 1, any deeds or documents varying, supplementing or novating any of them, any implied amendments arising from supplementary funds awarded for the Capital Project, and any other documents considered to be part of the Capital Funding Agreement by the parties to this Deed;
<i>Capital Project</i>	the purchase cost of the Lease for which the Arts Council is providing grant monies to the Funded Organisation

pursuant to the Capital Funding Agreement;

Charged Assets all the assets, Property, rights and other interests charged by this Deed both present and future;

Environment all of the air, water and land including air within buildings and other natural or man-made structures above or below ground

Environmental Legislation all applicable statutes, statutory instruments, common law, treaties, regulations, directives and binding statutory guidance notes, orders, notices, demands and other measures imposed by any relevant authority which relate to the pollution or protection of the Environment or the protection of the health of any living organism or the protection of human health;

Funded Organisation the party identified as the Funded Organisation above including the Funded Organisation's successors in title and assigns;

Insurances all insurances from time to time taken out by the Funded Organisation in respect of the interest in the Property held by the Funded Organisation and all buildings, structures, plant, machinery and equipment included in or on the Property and all monies from time to time payable in respect of them;

Lease the lease brief particulars of which are set out in Schedule 2;

Movables any fittings, furnishings, decorations, materials, furniture, plant, machinery, equipment, apparatus and any other chattels or movable items now or in future on the Property;

Permitted Interest *Security* (a) any Senior Security;
(b) the security constituted by this Deed;
(c) liens arising by operation of law in the ordinary course of business;
(d) any Security Interest in favour of the Arts Council;
(e) any Security Interest created with the prior written consent of the Arts Council;
(f) any Security Interest arising out of retention of title provisions in a supplier's standard conditions of supply of goods;
(g) any Security Interest created in favour of a party to any action or in favour of a court as security for costs and expenses in connection with litigation;
(h) rights of set off arising under contracts to which the Funded Organisation is a party arising in the ordinary course of trade;
(i) any rights of set off in favour of banks which are contained in their standard terms of business;

Planning Acts "the Consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from

time to time and all orders regulations and instruments under them or otherwise relating to the use and/or occupation of the Property;

Property

the land and premises referred to in Schedule 2 and any part or parts of them and all buildings or other structures now or from time to time erected on the land and also all easements and rights attaching to them;

Receiver

any one or more receivers appointed by the Arts Council pursuant to this Deed (whether sole, joint and/or several including any substitute);

Recoveries

subject to the rights of any prior or preferential Security Interests or creditors, the proceeds of enforcement of the any security created under this Deed;

Retail Lease

the lease of Ground Floor Retail Units F1 and F2, Building F, Leamouth Peninsula Development Site, Leamouth Peninsula, London dated 10 October 2019 and made between (1) English National Ballet and (2) Eco World – Ballymore London City Island Company Limited;

<i>Security Interest</i>	any mortgage, charge, assignment, pledge, lien, right of set-off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) or any arrangement which has substantially the same commercial or substantive effect as the creation of security;
<i>Secured Obligations</i>	the aggregate of all the monies and liabilities covenanted to be paid and discharged under this Deed which are outstanding from time to time;
<i>Senior Creditor</i>	Barclays Bank plc
<i>Senior Security</i>	any Security Interest in favour of the Senior Creditor, whether created before or after the date of this Deed;
<i>Trust Property</i>	(a) all rights and interests of the Arts Council under or in connection with this Deed and any other document specified by the parties to this Deed; and (b) all Recoveries and any money or property which accrues or derives from any Recoveries;
<i>Undertenant</i>	means English National Ballet School Limited (registered in England number 02319478) of Carlyle Building, Hotensia Road, London SW10 0QS; and
<i>VAT</i>	value added tax or any modification or

replacement of it.

- 1.2 The clause and paragraph headings in this Deed are for reference only and not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.3 Unless the contrary intention appears reference to numbered clauses are references to the relevant clause in this Deed;
- 1.4 Words in this Deed denoting the singular include the plural meaning and vice versa.
- 1.5 Words in this Deed importing one gender include the other gender and may be used interchangeably, and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.6 References in this Deed to any statutes or statutory instruments include and refer to any statute or statutory instrument amending, consolidating or replacing them respectively from time to time and for the time being in force, and references to a statute include statutory instruments and regulations made pursuant to them.
- 1.7 When at any time the party of the second part to this Deed are two or more persons, the expression the Funded Organisation includes the plural number and obligations in this Deed expressed or implied to be made with the Funded Organisation or by the Funded Organisation shall be deemed to be made with or by such individuals jointly and severally.
- 1.8 Any obligation of the Funded Organisation to do something shall include an obligation to procure that it is done and any obligation not to permit, suffer or allow it to be done.
- 1.9 The terms “including” and “in particular” shall be construed as not limiting any general words and expressions in connection with which it is used.

1.10 **Law of Property (Miscellaneous Provisions) Act 1989**

The terms of any other agreement, document or side letter between the parties to this Deed are incorporated to the extent required for the purported disposition of the Property contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.11 **Continuing security**

Without prejudice to the generality of the security hereby constituted it is hereby declared that the security hereby created shall not be satisfied by any partial or intermediate payment but shall constitute a continuing security for the payment of all sums which shall on the execution hereof or at any time hereafter be or become owing by the Funded Organisation to the Arts Council in any manner.

2 **Covenant for Payment**

The Funded Organisation covenants with the Arts Council that the Funded Organisation will pay to the Arts Council and discharge all monies and Secured Obligations which shall for the time being and from time to time be due, owing or payable or expressed to be due, owing or payable by the Funded Organisation to the Arts Council under or pursuant to the Capital Funding Agreement, this Deed or any other agreement, in each case when such monies and Secured Obligations fall due (or, if there is no due date specified, on receipt of written demand from the Arts Council).

3 **Security**

3.1 As continuing security for the payment and discharge of the Secured Obligations the Funded Organisation with full title guarantee:

3.1.1 charges the Property to the Arts Council by way of second ranking legal mortgage;

3.1.2 assigns and charges to the Arts Council by way of second fixed equitable charge each and all of:

3.1.2.1 the Insurances;

3.1.2.2 agreements, contracts, deeds, licences, undertakings, guarantees, covenants, warranties, representations and other documents entered into by or given to the Funded Organisation in respect of the Property; and

3.1.2.3 all future easements and other rights at any time vested in or conferred on the Funded Organisation in connection with or otherwise for the benefit of the Property,

in each case, subject to and insofar as the Funded Organisation is capable of doing so pursuant to, the Senior Security.

3.2 None of the provisions of this clause 3 shall be deemed to impose on the Arts Council or imply on its part any obligation or other liability in relation to the Charged Assets.

4 **Negative Pledge**

The Funded Organisation shall not (without the prior written consent in writing of the Arts Council) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Assets except for any Permitted Security Interest.

5 **Funded Organisation's covenants**

The Funded Organisation covenants with the Arts Council that until all the Secured Obligations shall have been fully repaid, satisfied and discharged the Funded Organisation will duly and promptly observe and perform all the obligations on its part under or pursuant to the

Capital Funding Agreement and in addition will (subject always to the terms of the Lease):

- 5.1 (in the event that the Capital Project includes construction works) as soon as reasonably practicable and in any event no later than the agreed commencement date procure the commencement and thereafter with all due expedition diligently the carrying out and completion of the Capital Project in a good and workmanlike manner, with good quality materials and substances of their respective kinds reasonably obtainable at the time, in accordance with the Capital Funding Agreement and also with all planning consents, building regulation approvals and other necessary approvals and consents (under statute, any lease or contract or otherwise) and all other relevant statutory or regulatory requirements, and with due monitoring by it of progress, and following completion take all reasonable steps to procure the remedy as soon as reasonably practicable of all material defects in workmanship and materials which may then be found;
- 5.2 keep the Property in good and substantial repair and condition and when necessary rebuilt and renewed;
- 5.3 permit the Arts Council and any surveyor, valuer or other person authorised by the Arts Council to enter and view the Property at all reasonable times in the daytime, and if the Arts Council then serves any notice of defect or want of repair, without delay well and substantially make them good;
- 5.4 pay and discharge or procure the payment and discharge of all existing and future rates, taxes, charges, assessments, impositions and outgoings now or at any time payable, charged or assessed on or in respect of the Property or its owner or occupier;
- 5.5 at all times procure that insurance is maintained of or in connection with the Property (including all buildings, structures, plant machinery

and equipment included in or on the Property) in accordance with the terms of the Lease;

- 5.6 apply or cause the application of all monies becoming payable under any Insurances in making good the loss or damage in respect of which such monies are payable or at the request of the Arts Council towards the discharge of the Secured Obligations;
- 5.7 use the Property only as performance, workshop, rehearsal, office and meeting spaces or otherwise in accordance with the terms of the Lease;
- 5.8 observe, perform, and comply with and cause observance performance and compliance in all respects with, the provisions and requirements of all statutes for the time being in force and/or imposed by any competent authority relating to the Property and, in particular, the Planning Acts and Environmental Legislation and obtain or cause to be obtained any development or other consent and serve all notices in each case which may be requisite by reason of any development or any other activity or works on, or use of, the Property;
- 5.9 give full particulars to the Arts Council of any notice, order or proposal for a notice or order made, given or issued under or by virtue of the Planning Acts or Environmental Legislation within seven days of receipt and if required by the Arts Council to produce it to the Arts Council or its agents and also without delay to take all reasonable and necessary steps to comply with it or (if required by the Arts Council) at the cost of the Funded Organisation make such representations or appeals as the Arts Council may reasonably require;
- 5.10 observe and perform all restrictive and other covenants and stipulations (if any) for the time being affecting the Property;
- 5.11 not without the prior written consent of the Arts Council to exercise the powers of leasing, agreeing to lease or accepting surrenders of

leases conferred on a mortgagee or by statute or otherwise or vary any lease or tenancy and not to enter into or permit any parting with possession or sharing arrangement whatever in respect of the Property, save for the avoidance of doubt that the Arts Council hereby consents to:

5.11.1 the grant of the Retail Lease; and

5.11.2 the underletting of part of the Property to the Undertenant;

5.12 not do, permit or suffer to be done in or on the Property any waste, spoil or destruction, nor undertake any development on, or otherwise make or permit any alteration or addition to, the Property without the prior written consent of the Arts Council and, if the Arts Council gives consent, to commence carry out and complete the relevant works without delay in accordance with any conditions of such consent and to the satisfaction of the Arts Council, provided that this clause shall not apply to any works carried out in accordance with the Capital Project;

5.13 procure that no conveyance, assignment, transfer, sale, grant of a lease, charge or other disposal or realisation of the whole of, or any interest in, the Charged Assets shall take place, nor any agreement to effect all or any of them, shall be entered into without the prior written consent of the Arts Council;

5.14 where any of the Charged Assets are held by the Funded Organisation under the terms of a lease, duly and promptly pay all rents and other sums from time to time payable by the Funded Organisation as lessee and to observe and perform all other covenants on its part as lessee and all conditions contained in that lease;

- 5.15 not do, cause or permit to be done anything which may in any way depreciate jeopardise or otherwise prejudice the value of the security created by this Deed;
- 5.16 on demand give to the Arts Council or its agents such information as it or they reasonably require relating to the Charged Assets; and
- 5.17 indemnify and keep the Arts Council indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any covenants or other obligations of the Funded Organisation to the Arts Council and/or the removal, storage, sale or other dealing with the Movable pursuant to clause 8.1.14.

6 **Representations and Warranties**

The Funded Organisation represents and warrants to the Arts Council, by its execution of this Deed, to the intent that they continue and are deemed to be repeated until the Secured Obligations have been fully repaid, satisfied and discharged as follows:

- 6.1 it has all necessary corporate power, has complied with all relevant legislation (including the Charities Act 2011), has formed all necessary resolutions and obtained all necessary authorities and consents and satisfied all conditions attaching to them, to enable it to enter into and give effect to its obligations and liabilities under or pursuant to or in connection with this Deed and/or the Capital Funding Agreement;
- 6.2 no law, regulation, order or direction binding on it and no term of any other contract, mortgage, instrument or other undertaking will be violated or breached by it accepting and giving full effect to all the provisions of this Deed and no other debt incurred or owed by it or security created by it will become enforceable by virtue of the provisions of this Deed or the implementation of it, provided that the

creation or existence of a Permitted Security Interest shall not be a breach of this clause; and

- 6.3 no litigation, arbitration or administrative proceeding before or of any court, arbitration, tribunal or governmental authority is current or, to the best of its knowledge, threatened against it or any of its assets, which might prevent it from accepting and performing any of its obligations under or pursuant to this Deed.

7 **Rights of enforcement**

- 7.1 The Secured Obligations shall be deemed to have become due within the meaning of section 101 of the Act immediately upon a demand being served by the Arts Council on the Funded Organisation under clause 2 and in addition to all other protection afforded by statute every purchaser (as defined by section 205 of the Act) or other party dealing with the Arts Council or the Receiver or the Administrator shall be entitled to assume without enquiry that such a demand has been duly made and that the Secured Obligations are outstanding and have become due.

- 7.2 The restrictions imposed by section 103 of the Act shall not apply to this security.

- 7.3 The enforcement powers of the Arts Council (in addition to the powers from time to time conferred by the Act or any other statute or otherwise under the law in force from time to time) shall be immediately exercisable upon any demand being served by the Arts Council under clause 2 this Deed and shall be as follows:

- 7.3.1 for the Arts Council itself, without becoming liable as mortgagee in possession, to exercise all or any of the powers and rights specified in this Deed as the Arts Council in its sole and absolute discretion shall think fit; and

7.3.2 to appoint a Receiver or an Administrator of the whole or any part or parts of the Charged Assets (and to remove and substitute any such appointee as and when the Arts Council in its sole and absolute discretion shall think fit) with all the powers and rights specified in this Deed as well as any additional powers and rights which he may exercise under statute or general law all of which powers and rights the Receiver may exercise either in his own name or in the name of the Funded Organisation and in his sole and absolute discretion as he shall think fit.

7.4 So far as the law allows the Receiver and/or the Administrator shall be the agent of the Funded Organisation, who shall be solely liable for his acts, defaults and remuneration but the Arts Council shall be entitled to agree the fees and expenses and the mode of payment to the Receiver and/or the Administrator as the Arts Council in its sole and absolute discretion shall think fit.

7.5 The Funded Organisation irrevocably appoints the Arts Council and the Receiver and the Administrator jointly and/or severally as the Funded Organisation's attorney in the Funded Organisation's name and on the Funded Organisation's behalf to execute all deeds and documents and carry out all and any such acts or matters as are mentioned or referred to in this clause or otherwise as the Arts Council and/or the Receiver and/or the Administrator shall consider necessary to give effect to and perform any said deed document act or matter.

8 **Arts Council's and Receiver's/Administrators powers and rights**

8.1 The Arts Council and/or the Receiver and/or the Administrator shall have all statutory and other powers and rights and in addition to (and not substitution for) the following powers and rights and may exercise them in the name of the Funded Organisation and in such manner

and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate:

- 8.1.1 to enter upon and take possession of the Property and undertake any works of demolition, building, reconstruction, improvement, repair or decoration on it including the commencement, carrying out and completion of any development, utilising for any such purpose any Movables then on or in the Property or otherwise attributable to any such works or which the Funded Organisation is otherwise entitled to use and any plans drawings and specifications of the Funded Organisation or which the Funded Organisation is otherwise entitled to use and whether or not in accordance with any obligations imposed by the Capital Funding Agreement;
- 8.1.2 to pay any rent or other outgoings and payments charged on or otherwise relating to the Charged Assets or the ownership, occupation or use;
- 8.1.3 to collect all and any rent or other income or due receipts in respect of or arising from the Property, negotiate and conclude reviews of rent and otherwise deal in relation to any leases and the tenants' and guarantors' respective obligations under or pursuant to them;
- 8.1.4 to sell, convert into money or otherwise realise and deal with and transfer title to the Charged Assets (including the Property) and realisation by surrender of a leasehold estate, upon such terms including the amount and nature of the consideration and whether or not in accordance with the obligations imposed on the Funded Organisation by the Capital Funding Agreement, and on terms which bind any subsequent mortgagee;

- 8.1.5 to grant or create any lease, tenancy or licence or enter into any other agreement or contract relating to the disposal of or other dealing with the Charged Assets (including the Property) at any or no rent, with or without reviews of rents and with or without any fine or premium and whether absolutely or for such term or period and generally on such other terms as it shall think fit and accept the surrender of any lease tenancy or other such agreement or contract upon such terms as it shall agree and whether or not in any such respect in a manner consistent with the obligations imposed on the Funded Organisation by the Capital Funding Agreement, and on terms which bind any subsequent mortgagee;
- 8.1.6 to compromise any claim or claims of, against, arising out of or otherwise relating to the Charged Assets;
- 8.1.7 to effect insurances and obtain and/or enter into bonds, covenants, commitments, engagements, guarantees and indemnities or other like matters in any way relating to the Charged Assets and from time to time make all requisite payments to effect, maintain or satisfy them;
- 8.1.8 to borrow, raise or advance money whether or not in priority to the Secured Obligations and whether or not on the security of the Charged Assets, in such manner and for such purposes within or relating to the powers and rights conferred by these enforcement provision;
- 8.1.9 to give receipts and releases for any sums received;
- 8.1.10 to obtain all necessary planning permissions, building regulation approvals and other permissions, consents or licences as may be necessary for any development or use of the Property as it shall think fit;

- 8.1.11 to cancel or otherwise determine any agreements or contracts in anyway relating to the Charged Assets;
 - 8.1.12 to commence, carry out and complete such acts and matters commence and prosecute proceedings execute such contracts deeds or other documents and otherwise deal for the preservation, improvement, enforcement or realisation of all or any of the security created by this Deed in all respects as if it was and remained at all times the sole and absolute beneficial owner of the Charged Assets;
 - 8.1.13 to employ for any of the above purpose solicitors, architects, surveyors, quantity surveyors, estate agents, contractors, builders, workmen, stockbrokers and others and purchase or otherwise acquire any proper materials and other matters;
 - 8.1.14 to remove, store, sell, dispose of, or otherwise deal (in the name of the Funded Organisation in any such manner and on any such terms as the Arts Council and/or the Receiver shall in its sole absolute discretion consider appropriate) any Movables which are on the Property and have not been removed by the Funded Organisation within fourteen (14) days of being requested by the Arts Council to do so and, without limiting the above, and only if the Funded Organisation is a natural person, the Arts Council and/or the Receiver shall not have a right under this Deed to retain or set-off any proceeds of sale of the Movables against any part of the Secured Obligations (except for the costs incurred in relation to their removal, storage, sale or other disposal).
- 8.2 All monies received by any Receiver appointed under this Deed shall (subject to the rights and claims of any person have a security

ranking in priority to the security constituted by or pursuant to this Deed) be applied in the following order:

- 8.2.1 in the payment of the costs, charges and expenses of an incidental to the Receiver's/Administrator's appointment and the payment of their remuneration;
- 8.2.2 in the payment and discharge of any costs, charges or liabilities incurred by the Receiver (whether or not acting as agent of the Funded Organisation in connection with the receivership);
- 8.2.3 in providing for the matters (other than the remuneration of the Receiver) specified in the first 3 paragraphs of Section 109(8) of the Act;
- 8.2.4 in or towards payment of any debts or claims which are by statute payable in preference to the Secured Obligations but only to the extent to which such debts or claims have such preference;
- 8.2.5 in payment to the Arts Council towards the repayment of all Secured Obligations;

and any surplus shall be paid to any other person entitled thereto. The provisions of this clause shall take effect as and by way of variation and extension to the provisions of the said Section 109 which provisions as so varied and extended shall be deemed incorporated herein.

9 **Release of Security**

9.1 Subject to:

- 9.1.1 no demand having been made pursuant to clause 2 and being unsatisfied; and

9.1.2 the Arts Council being satisfied in its absolute discretion that the purpose/s for which the grant monies (and any subsequent grant or other funding secured by this Deed) were awarded have been satisfied,

the Arts Council shall, 20 years after the date of this Deed (or, if earlier, on the date on which the Arts Council is satisfied that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and no further Secured Obligations are capable of being outstanding), at the request and cost of the Funded Organisation release and discharge the security constituted by this Deed and reassign or recover any property assigned or conveyed to the Arts Council pursuant to this Deed.

10 **Payments**

10.1 All payments to be made to the Arts Council must be made immediately available to such accounts in the United Kingdom as it shall from time to time select, free and clear of and without any withholding or deduction for, or on account of, any and all present or future taxes, duties or other charges or otherwise save such (if any) as the Funded Organisation shall be obliged to make by law.

10.2 If any sum due under or pursuant to this Deed is not paid promptly on the due date then, without limiting any other remedy, interest shall accrue on the sum in default until payment at the rate (as well before as after any demand or judgement) of 4% per annum above the base rate from time to time of Lloyds TSB plc, and that interest shall be payable on demand.

11 **Costs**

Without limiting and in addition to any other specific provision of this Deed, the Funded Organisation shall reimburse the Arts Council on demand for all legal, valuation and other professional costs, fees and expenses reasonably incurred by the Arts Council in connection with

the enforcement of the obligations of the Funded Organisation or any other person under or pursuant to this Deed; the creation, maintenance, enforcement and realisation of the security pursuant to this Deed; and any value added tax properly chargeable on these sums.

12 **Section 124 Charities Act 2011**

12.1 The Funded Organisation is a charity. The Property forms or will form part of the Funded Organisation's property and is or will be held on charitable trusts.

12.2 The Property is or will be held by the Funded Organisation, a non-exempt charity, and this mortgage is not one falling within section 124(9) of the Charities Act 2011, so that the restrictions imposed by section 124 of that Act apply.

12.3 The directors of the Funded Organisation, being the persons who have the general control and management of its administration, certify that they have the power under the provisions establishing the charity and regulating its purposes and administration to grant this mortgage of the Property and that they have obtained and considered such advice as is mentioned in Section 124(2) of the said Act.

13 **General provisions**

13.1 By executing this Deed the Funded Organisation applies for the following restriction to be entered in the Proprietorship Register of the title to the Property at the Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated [] in favour of The Arts Council of England referred to in the Charges Register

or without a certificate signed by The Arts Council of England or its conveyancer that the provisions of clauses 5.11 and 5.13 of the said Charge have been complied with or that they do not apply to the disposition.”

- 13.2 Neither the whole or any part of the Secured Obligations and/or the security created by this Deed shall be modified, released, waived or otherwise affected in any way by any grant of time, indulgence, modification, release, variation or waiver granted or allowed to or agreed with the Funded Organisation or any other person or otherwise.
- 13.3 The restriction on the right of consolidating mortgage securities contained in section 93 of the Act shall not apply to this security.
- 13.4 Without limiting any power conferred by this Deed, if the Funded Organisation shall default in the observance and performance of any obligation to the Arts Council which is the subject of the security created by this Deed the Arts Council or its agents may (but shall not be obliged to) enter the Property and carry out and perform any necessary works of repair, reinstatement or otherwise and/or pay all due but unpaid outgoings and/or effect insurance of the Property and otherwise as the Arts Council shall consider necessary to remedy such default.
- 13.5 Any written certificate given by the Arts Council under or pursuant to this Deed shall be conclusive and binding as to the relevant items save in the case of manifest error.
- 13.6 The unenforceability for whatever reason of any provision of this Deed shall in no way affect the enforceability of each and every other provision.
- 13.7 This security shall not be considered as satisfied or discharged by any intermediate payment, repayment, discharge of the whole or any part of the Secured Obligations but shall constitute and be a

continuing security to the Arts Council notwithstanding any settlement of account, the contingent nature of the Secured Obligations or other matter or thing, and shall be in addition to and shall not operate so as in any way to limit or affect any other security which the Arts Council may now or at any time hold for or in respect of the Secured Obligations.

13.8 If any provision of this Deed shall conflict with any term of the Capital Funding Agreement then the relevant term of the Capital Funding Agreement shall prevail as between the Funded Organisation and the Arts Council but without limiting the other provisions of this Deed and in particular the protection for any purchaser or any other person described in clause 8.1.

13.9 All notices served shall be treated as properly served if they comply with the provisions of section 196 of the Act.

13.10 The Arts Council shall be entitled, at its sole and absolute discretion, to assign and/or novate the benefit and burden of its rights and obligations under or pursuant to this Deed either as an individual transaction or as part of a transaction involving the assignment and/or novation of other debts owing or due to the Arts Council, in any such case without the consent of the Funded Organisation.

13.11 This Deed shall be governed by English Law and the parties submit to the jurisdiction of the English Courts.

14 **Counterparts**

14.1 This Deed may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

14.2 Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute but one and the same instrument.

SCHEDULE 1
The Capital Funding Agreement

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

Offer letter

18 December 2020

**Patrick Harrison
English National Ballet
ENGLISH NATIONAL BALLET LTD,41 Hopewell Square
LONDON
E14 0SY**

Dear Patrick Harrison

Offer Letter

**Programme: Cultural Capital Kickstart Fund
Project: Cultural Capital Kickstart Fund
Organisation name: English National Ballet
Reference: ACAP-00309508 (Restricted funds)**

Congratulations on your successful application.

This is to confirm that we will provide you with a restricted grant of up to £3,000,000 to cover capital expenditure for the period from 1 April 2020 until 31/03/2022 ('the Funding Period') towards the costs of the Agreed Project.

If you have any questions about the outcome of your application, please email our Customer Services team at enquiries@artscouncil.org.uk.

Sharing this news with the public

As stated, a public announcement date for this fund has not been confirmed. Therefore, news of this investment is embargoed until a later date.

Until the public announcement date is confirmed, please do not share the outcome of your decision with any external parties.

If you have plans to utilise funds from this grant in December please proceed, however we ask that you do not communicate this publicly.

Updating you on the public announcement

We will write to you again, by at latest Friday 4 December, with more information about the public announcement and our plans to share the news. Until then please do keep this information confidential.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

1. Our offer

1.1 This offer is subject to your acceptance of our Standard Terms and Conditions for the Cultural Capital Kickstart Fund (the Terms and Conditions).

1.2 The Terms and Conditions are attached to the screen called 'Attachments' and your Application is within the 'Submissions' area of your online account. These documents, along with this offer letter, form your Funding Agreement with us. These Terms and Conditions are standard for all grants made under this Programme and are non-negotiable. Terms defined in this offer letter have the meaning given to them in the Terms and Conditions.

1.3 This scheme is funded using money from Restricted funds. It is restricted funding for the sole purpose of delivering the Agreed Project. It should be shown as restricted funding in your accounts in accordance with clause 3.11 of the Terms and Conditions. We reserve the right to review and reduce funding in light of how well you are delivering the objectives of this Grant.

1.4 If you spend less than the whole Grant amount on the Agreed Project, you must return the unspent amount to us promptly. If the Grant part-funds the Agreed Project, you must return the appropriate share of the unspent amount to us.

1.5 As the Grant comes from public funds, you must account to us for any profit that you make from the Agreed Project and we reserve the right to require you to pay back all or part of the Grant in accordance with the Terms & Conditions, in particular clause 10.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

1.6 This Grant comes from public funds and must not be used in a way that constitutes unlawful state aid. We make no representation or undertaking about state aid compliance. If you have any concerns about state aid, you must obtain your own independent legal advice.

2. Agreed Project

2.1 The Agreed Project is to deliver the activities as detailed in your application form and its attachments on which we based our decision and which can be found within the 'Submissions' area of your online account.

2.2 You must tell us immediately if the Agreed Project does not commence by the activity start date stated in your application or before 30/04/2021.

2.3 Success of the relationship relies on effective communication and the sharing of information. You must tell us in advance if you want to make any significant changes to the Agreed Project under this Funding Agreement. We will not unreasonably withhold our consent to any such changes but you must receive our prior written approval. Changes to the Agreed Project are covered in the Terms and Conditions.

3. Additional Conditions

The Grant is subject to the following Additional Conditions:

3.1. In the event that we have paid out to you any part of this Grant and it then becomes apparent that a part or the entire Grant has not been used to purchase qualifying capital expenditure, we reserve the right to recover any such sum from you.

3.2. You must demonstrate that all expenditure presented for payment will be capitalised on your balance sheet during the Funding Period.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

4. Monitoring Schedule and Payment Conditions

4.1 We will monitor the activity in relation to the Agreed Project and how effectively the funding is being used. To enable this, you will send us any information as we may in our sole discretion reasonably request from time to time. We reserve the right to visit projects by appointment and will ensure prior notice is given. Our main monitoring will be through the assessment of payment conditions as detailed below.

4.2 Payments are conditional on us receiving and approving any additional monitoring information (or 'payment conditions') we have asked for. The payment conditions for the Grant are set out below. You must meet each condition to access each of your Grant payments. After you submit a payment request online, and if you meet all of the conditions for that payment, it will normally take 15 working days for us to process and release the funds.

4.3 We will pay the Grant in instalments against actual expenditure. Payment amounts will depend on the amount of expenditure you are able to evidence in the expenditure listing submitted with each payment request.

4.4 Payment requests will be initiated by us once you inform us that you are ready to claim a payment. Each payment request will include an expenditure listing for you to complete alongside any other conditions we have requested for that payment.

4.5 In order for us to release your first (and interim) payments, you must:

- Accept our offer online;**
- Send us your bank details in hardcopy using the bank details form available for download;**
- Let us know when you have incurred eligible capital costs and are ready to claim a payment. We will send you a Capital Payment Request to complete on Grantium. You will be able to view the Capital Payment Request in your 'Submissions' area;and**
- Submit the Capital Payment Request on Grantium, including the expenditure listing and any payment conditions for that payment**

4.6 In the event that you are unable to satisfy us that you have qualifying capital expenditure, we will be unable to pay out the total amount and will only pay any lesser sum you can justify.

4.7 To be eligible for draw down against this restricted Grant, capital expenditure must be incurred between 1 April 2020 and 30 April 2022. The first payment request must be submitted no later than 30/04/2021. The final payment request must be submitted no later than 30/04/2022.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

4.8 To access your final payment, tell your Relationship Manager that you are ready to claim the full balance of your award and they will send you the final Capital Payment Request online. As part of the final payment claim you will need to complete an Activity Report Form. The report will be visible in your 'Submissions' area immediately after accepting the offer. It can only be completed and submitted with your final Capital Payment Request (including information to meet any other final payment conditions we have set), within one month of finishing your activity.

5. Payment schedule for this grant

5.1 First payment will be released on the condition that we have received:

- A completed Expenditure listing submitted on Grantium
- A completed bank details form
- Provision of a second ranking (to the existing secured liabilities in favour of Barclays Bank Plc) fixed legal charge over the leasehold interest of the Project Asset: Building F, Hope Street, London, E14. This legal charge shall be supported by a Legal Opinion and Solicitor's undertaking in Arts Council's standard form to register the legal charge at the Land Registry and Companies House and an addendum to the Certificate of Title provided as a requirement of the Main Capital Funding Agreement (URN:33112272). This legal charge will be for a period of 20 years and will run concurrent with the existing legal charge and for the Agreed Use as set out in the Main Capital Funding Agreement (URN: 33112272). Provision of a varied Deed of Priority or document of equivalent effect with Barclays Bank Plc to acknowledge receipt of the Grant and to regulate the ranking of the existing legal charge and the Grant security.
- You have confirmed that the grant of the 199-lease of the Project Asset in your favour was completed on 7 January 2019. The Grant will be used to meet the purchase costs of the leasehold interest as a shared home for English National Ballet (ENB) and English National Ballet School (ENBS). Prior to the release of the Grant, you are to send to us the following documents:
 - written confirmation of the consideration committed to be paid for the grant of the lease of the Project Asset;
 - legal searches undertaken on the property at the point of purchase of the leasehold interest;
 - an up-to-date copy of the register of title and filed title plan for the property
 - confirmation by way of the addendum to the Certificate of Title by way of a certified report on title from your solicitors that all necessary consents for the use of the property had been obtained and continue to be in place to enable the property to be used in accordance with the Agreed Use; and
 - any other documents or requirements that we may request.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

5.2 Interim payments will be released on the condition that we have received:

- A completed expenditure listing submitted on Grantium.

5.3 We may also request one or more of the following conditions at the time you request your payment:

- An updated timetable for the Agreed Project;
- A copy of your cash flow projection using the template provided;
- A budget for the Agreed Project;
- An updated risk register for the Agreed Project;
- Approach and timeline for raising remaining funds; and/or
- Partnership funding evidence.

5.4 We will keep 10% of the Grant until the conditions of the Final payment have been satisfied. The Final payment will be released on the condition that we have received:

- A completed expenditure listing submitted on Grantium;
- A completed Activity Report Form submitted on Grantium; and
- A statement of income and expenditure for the Agreed Project that has been certified by an independent qualified accountant, including confirmation that all Grant expenditure will be capitalised on your balance sheet.

6. Accepting our Offer

6.1 You must accept your Grant online by working through the 'Offer letter acknowledgement' workflow. At the bottom of this page you are asked to confirm that you have read the offer letter. On the following screens you will be able to view the Terms and Conditions and bank details form. Once you have read this offer letter and attached schedules, please complete the declaration stating whether you accept this offer of Grant. Once you press 'submit' on the final screen, your acceptance will be sent to us to review, and will be your formal acceptance of the Grant and the Terms and Conditions that apply to it. The date of your acceptance of the Grant on our Grantium system will be the date of your Funding Agreement.

6.2 If we do not receive your declaration accepting the Grant within one month of issue, the offer will lapse and will no longer be valid.

6.3 If you accept the Grant, you will complete your bank details form offline. For security reasons we cannot hold bank details on our online system, so you must print and complete the bank details form and send it back to us in hard copy. The submission of this form will also act as a written confirmation of your acceptance of the Grant and the Terms and Conditions that apply to it. The form itself contains full guidance on how to complete it.

Applicant: English National Ballet
Project: Cultural Capital Kickstart Fund

53835072
ACAP-00309508

7. Equality

As part of the Agreed Project you will advance equality of opportunities, including considering participants across the protected characteristics and, if necessary, adjust the Agreed Project to ensure you are not acting in a discriminatory manner.

8. Acknowledging our funding

You are required to download the Grant award logo and read the guidelines on how to acknowledge your funding before you start using the logo. Please visit <http://www.artscouncil.org.uk/grantawardlogo>. See also Term 6.2.3 of the Terms and Conditions.

9. Freedom of information

Any information we receive from you will be subject to the Freedom of Information Act 2000. By law, we may have to provide your information to a member of the public if they ask for it under the Freedom of Information Act. For further details, see the Freedom of Information section of our website.

Please let us know if you consider that any of the information you have provided to us is commercially sensitive or confidential. We will take this into account when processing any requests for information, but any decision to release information is at our absolute discretion in accordance with the Freedom of Information Act legislation.

Please use the reference given at the top of this offer letter when you communicate with us. If you have any questions about accepting this offer, please email our Customer Services team at enquiries@artscouncil.org.uk. A Relationship Manager from your Area office will be in touch once you have accepted this offer.

Yours sincerely,

**Beverley Dawson
Senior Manager, Capital Funding**

For and on behalf of Arts Council England

I have read the offer letter: Yes

Offer letter acknowledgement	Page 7	21/12/2020
------------------------------	--------	------------

SCHEDULE 2

The Property

The building known as 41 Hopewell Square (formerly known as Building F), Leamouth Peninsula Development Site, Leamouth Peninsula, London, being the Property demised to the Funded Organisation pursuant to a lease dated 7 January 2019 made between (1) Eco World – Ballymore London City Island Company Limited and (2) English National Ballet (as varied by a deed of variation dated 10 October 2019 and a further deed of variation dated 21 May 2020) and registered under title number AGL466102 (the “**Lease**”)

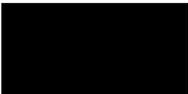
Executed as a deed by affixing the seal of)
THE ARTS COUNCIL OF ENGLAND)
and authenticated by an authorised officer)

.....
Signature

.....
Name of authorised officer

.....
Title of authorised officer

Executed as a deed on behalf of
ENGLISH NATIONAL BALLET
acting by a director and its secretary/two
directors

) 
) Director
) 
) Director/Secretary

Executed as a deed on behalf of the trustees)
by Christopher Marks ,)
one of their number under an authority)
conferred pursuant to section 333 of the)
Charities Act 2011, in the presence of:)


Authorized signatory

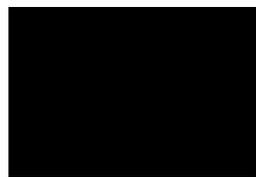
Signature of witness



Name (in BLOCK CAPITALS)

Emma Marks
.....

Address



Executed as a deed on behalf of the trustees)
by Sue Butcher ,)
one of their number under an authority)
conferred pursuant to section 333 of the)
Charities Act 2011, in the presence of:)


Authorized signatory

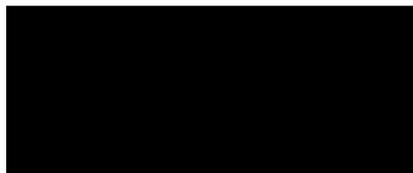
Signature of witness



Name (in BLOCK CAPITALS)

Stephen Gosztony
.....

Address



Executed as a deed by affixing the seal of)
THE ARTS COUNCIL OF ENGLAND)
and authenticated by an authorised officer)



[Redacted signature area]

Signature

..ELIZABETH BUSHELL.....

Name of authorised officer

[Redacted name area]

Title of authorised officer

Executed as a deed on behalf of)
ENGLISH NATIONAL BALLET)
acting by a director and its secretary/two)
directors)

.....
Director
.....
Director/Secretary

Executed as a deed on behalf of the trustees)
by)
and)
two of their number under an authority)
conferred pursuant to section 333 of the)
Charities Act 2011, in the presence of:

.....
Authorised signatory
.....
Authorised signatory

Signature of witness

.....

Name (in BLOCK CAPITALS)

.....

Address

.....

.....