



**Registration of a Charge**

Company name: **PERFORMANCES BIRMINGHAM LIMITED**

Company number: **03169600**

Received for Electronic Filing: **15/08/2019**



X8BXF35C

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**Details of Charge**

Date of creation: **13/08/2019**

Charge code: **0316 9600 0001**

Persons entitled: **THE ARTS COUNCIL OF ENGLAND**

Brief description: **SYMPHONY HALL, INTERNATIONAL CONVENTION CENTRE, BIRMINGHAM AS MORE PARTICULARLY DESCRIBED IN AND DEMISED BY THE FOLLOWING LEASES: 1 A LEASE DATED 14 JANUARY 2005 AND MADE BETWEEN (1) THE NATIONAL EXHIBITION CENTRE LIMITED AND (2) SYMPHONY HALL (BIRMINGHAM) LIMITED AS THE SAME IS COMPRISED IN TITLE NUMBER WM849198; 2 A SUPPLEMENTAL SUB-UNDERLEASE DATED 13 AUGUST 2019 AND MADE BETWEEN (1) BIRMINGHAM CITY COUNCIL AND (2) PERFORMANCES BIRMINGHAM LIMITED; AND 3 A REVERSIONARY SUB-UNDERLEASE DATED 13 AUGUST 2019 AND MADE BETWEEN (1) BIRMINGHAM CITY COUNCIL AND (2) PERFORMANCES BIRMINGHAM LIMITED**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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## 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: **BROWNE JACOBSON LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 3169600

Charge code: 0316 9600 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th August 2019 and created by PERFORMANCES BIRMINGHAM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th August 2019 .

Given at Companies House, Cardiff on 16th August 2019

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

**Browne Jacobson LLP**

Victoria Square House  
Victoria Square, Birmingham B2 4BU  
DX: 727740 Birmingham 62

15.08.19 *Browne Jacobson LLP*

DATED **13 August 2019**

## **PARTIES**

1. **THE ARTS COUNCIL OF ENGLAND** of 21 Bloomsbury Street, London WC1B 3HF ('the Arts Council'); and
2. **PERFORMANCES BIRMINGHAM LIMITED** (registered company number 03169600 and registered charity number 1053937) whose registered office is at 8 Centenary Square, Birmingham B1 2EA ('the Funded Organisation')

## **RECITALS**

- A The Funded Organisation is the legal and beneficial owner of the Property, referred to in Schedule 2, and otherwise free from encumbrances.
- 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 Liabilities.

## **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 England including its successors in title and assigns;
<i>Capital Funding Agreement</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 building works for which the Arts Council is providing grant monies to the Funded Organisation pursuant to the Capital Funding Agreement;
<i>Charged Assets</i>	all the assets, Property, rights and other interests charged by this Deed both present and future;

<i>Environment</i>	all of the air, water and land including air within buildings and other natural or man-made structures above or below ground
<i>Environmental Legislation</i>	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;
<i>Funded Organisation</i>	the party identified as the Funded Organisation above including the Funded Organisation's successors in title and assigns;
<i>Insurances</i>	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;
<i>Liabilities</i>	the aggregate of all the monies and liabilities covenanted to be paid and discharged under this Deed and outstanding from time to time;
<i>Movables</i>	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) the security constituted by this Deed;
- (b) liens arising by operation of law in the ordinary course of business;
- (c) any Security Interest in favour of the Arts Council;
- (d) the legal mortgage over the Charged Assets granted by the Funded Organisation to Birmingham City Council on or about the date of this Deed and any other Security Interest created with the prior written consent of the Arts Council;
- (e) any Security Interest arising out of retention of title provisions in a supplier's standard conditions of supply of goods;
- (f) 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;
- (g) rights of set off arising under standard form contracts to which the Funded Organisation is a party arising in the ordinary course of trade;
- (h) 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;

*Security Interest*

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;

*Trust Property*

(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





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 A reference to this Deed (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (In each case, other than in breach of the provisions of this Deed) from time to time;

1.11 **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.

1.12 **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 on demand in writing pay to the Arts Council and discharge all monies and Liabilities which shall for the time being and from time to time (and whether on or at any time after such

demand or judgment) 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.

### **3 Security**

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

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

3.1.2 assigns and charges to the Arts Council by way of first 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.

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 Liabilities 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:

- 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 maintain insurance of or in connection with the Property (including all buildings, structures, plant machinery and equipment included in or on the Property) (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) against such risks and losses in such respective amounts with such insurers and generally on such terms as the Arts Council shall from time to time require;
- 5.6 apply or cause the application of all monies that become payable and are received by it 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 Liabilities;
- 5.7 use the Property only as performance, workshop, rehearsal, office and meeting spaces and for the sale of food and beverages;
- 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 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;
- 5.12 save as contemplated by the development referred to in Capital Funding Agreement, 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;
- 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 (except for obsolete or redundant assets which do not comprise real estate) 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 Movables 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 Liabilities 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 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 Liabilities 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 Liabilities 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 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 Movable 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 Liabilities 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 Movable 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 Movable against any part of the Liabilities (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 Liabilities 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 Liabilities;

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, 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 1% 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 trusts of the Funded Organisation 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 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"

- 13.2 Neither the whole or any part of the Liabilities 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 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 Liabilities but shall constitute and be a continuing security to the Arts Council notwithstanding any settlement of account, the contingent nature of the Liabilities 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 Liabilities.

- 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 may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.
- 13.12 This deed shall be governed by English Law and the parties submit to the jurisdiction of the English Courts.

**SCHEDULE 1**  
**The Capital Funding Agreement**

## **SCHEDULE 2**

### **The Property**

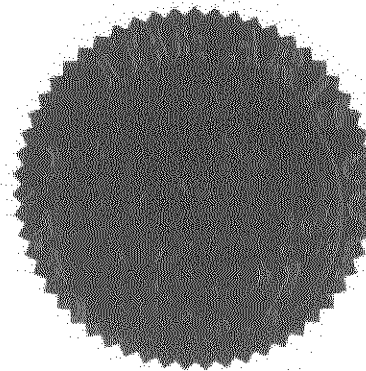
Symphony Hall, International Convention Centre, Birmingham as more particularly described in and demised by the following leases:

1 a Lease dated 14 January 2005 and made between (1) The National Exhibition Centre Limited and (2) Symphony Hall (Birmingham) Limited as the same is comprised in title number WM849198;

2 a Supplemental Sub-Underlease dated 13 August 2019 and made between (1) Birmingham City Council and (2) Performances Birmingham Limited; and

3 a Reversionary Sub-Underlease dated 13 August 2019 and made between (1) Birmingham City Council and (2) Performances Birmingham Limited

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



.....  
Signature

[Redacted Signature]

..... DARREN HENLEY .....

Name of authorised officer

..... Chief Executive .....

Title of authorised officer

Executed as a deed on behalf of )

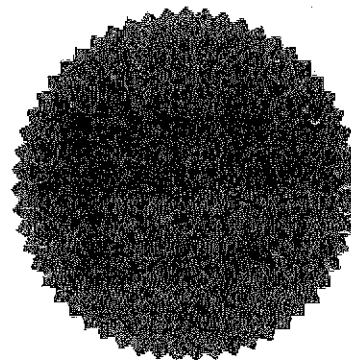
)  
PERFORMANCES BIRMINGHAM LIMITED )

acting by a director and its secretary or two  
directors

.....  
Director

.....  
Director/Secretary

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



.....  
Signature

*DARREN HONEY*  
.....

Name of authorised officer

*Chief Executive*  
.....

Title of authorised officer

Executed as a deed on behalf of )

**PERFORMANCES BIRMINGHAM LIMITED** )

acting by a director and its secretary or two  
directors

.....  
Director

.....  
Director/Secretary

