



Registration of a Charge

Company name: **ROYAL OPERA HOUSE COVENT GARDEN FOUNDATION**

Company number: **00480523**



X47X3P1K

Received for Electronic Filing: **22/05/2015**

Details of Charge

Date of creation: **20/05/2015**

Charge code: **0048 0523 0020**

Persons entitled: **THURROCK BOROUGH COUNCIL**

Brief description: **THE COMPANY CHARGED BY WAY OF FIRST LEGAL MORTGAGE THE LEASEHOLD PROPERTY KNOWN AS ROYAL OPERA HOUSE COSTUME CENTRE, HIGH HOUSE PRODUCTION PARK, PURFLEET, ESSEX AND ANY PART OR PARTS THEREOF INCLUDING ALL RIGHTS, AUTHORITIES, DISCRETIONS, REMEDIES, LIBERTIES, POWERS, EASEMENTS, QUASI-EASEMENTS AND APPURTENANCES (IN EACH CASE, OF ANY NATURE WHATSOEVER) FROM TIME TO TIME ATTACHED OR APPURTENANT THERETO AND ALL BUILDINGS AND FIXTURES, FITTINGS (INCLUDING TRADE FIXTURES AND FITTINGS) AND FIXED PLANT, MACHINERY AND APPARATUS OF ANY KIND FROM TIME TO TIME THEREIN OR THEREON.**

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 THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CHARLOTTE FREEMAN, SOLICITOR, FARRER & CO LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 480523

Charge code: 0048 0523 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th May 2015 and created by ROYAL OPERA HOUSE COVENT GARDEN FOUNDATION was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd May 2015 .

Given at Companies House, Cardiff on 26th May 2015

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

This Mortgage Deed is made on 20 May 2015

between:

(1) ROYAL OPERA HOUSE COVENT GARDEN FOUNDATION (formerly, Royal Opera House, Covent Garden Limited) a charitable company limited by guarantee incorporated in England and Wales (registration number: 00480523) whose registered office is at Covent Garden, London, WC2E 9DD trading at Royal Opera House, High House Production Park, Vellacott Close, Purfleet, Essex, RM19 1AF (**Borrower**).

(2) THURROCK BOROUGH COUNCIL of Civic Offices, New Road, Grays, Essex, RM17 6SL (**Lender**).

(1) Now this Deed witnesses and it is agreed as follows:

1 Interpretation

1.1 Definitions

In this Deed, except to the extent that the context requires otherwise:

"**Administration**" means administration under Part II of the Insolvency Act as amended from time to time;

"**Charged Assets**" means all assets, property and undertaking for the time being subject to the Charge created by this Deed;

"**Charge**" means all or any of the security created by or pursuant to this Deed;

"**Delegate**" has the meaning given in Clause 8.2;

"**Encumbrance**" means any mortgage, charge, pledge, lien, hypothecation or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security, other than liens arising by operation of law in the ordinary course of the Borrower's business;

"**Enforcement Event**" has the meaning given to it in Clause 6.2;

"**Loan Agreement**" means the Loan Agreement entered into by the Lender (as lender) and the Borrower (as borrower) on the 17th October 2013;

"**Finance Documents**" means the Loan Agreement, this Deed and any other debenture, guarantee or security document entered into by any Person and at any time in respect of the Borrower's obligations under any Finance Document in favour of the Lender and "**Finance Document**" shall mean any of them;

"**Fixtures**" means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus of any kind;

"**Head Lease**" means the head lease pursuant to which title to the Property is vested in the Borrower;

"**Insolvency Act**" means the Insolvency Act 1986;

"**LPA**" means the Law of Property Act 1925;

"Person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case whether or not having separate legal personality);

"Perfection Requirements" means the making of the appropriate registrations of this Deed with the Registrar of Companies (if applicable) and the Financial Services Authority (if applicable);

"Property" means the property described in Schedule 1 and any part or parts thereof including all Rights from time to time attached or appurtenant thereto and all buildings and Fixtures from time to time therein or thereon;

"Receiver" means any receiver appointed under this Deed in respect of all or any of the Charged Assets and where more than one receiver has been appointed each of them;

"Rents" means any sum payable to the Borrower (and any right to recover any such sum):

- (i) by way of rent, service charge or otherwise under any lease of the Property or part thereof, or as mesne profits, licence fee, or otherwise howsoever for the use or occupation of or trespass upon the Property, or other income arising from the Property; and
- (ii) by way of rent or otherwise for or in connection with the possession or use of, or in respect of any trespass to or conversion of, any chattel except in so far as the same is effectively charged under the legal mortgage at Clause 3.1.1 below;

"Rights" means rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever);

"SEC Underlease" means the Underlease of the Property to be granted by the Borrower to South Essex College of Further and Higher Education ('SEC') in the form of the draft annexed to the Agreement for Underlease between the Borrower and SEC dated 10 April 2014;

"Secured Liabilities" means all money, liabilities and obligations now or in the future owed or incurred by the Borrower to the Lender of any kind, arising from the Loan Agreement and in any currency, whether or not immediately payable, whether certain or contingent, whether sole or joint, whether as principal or as surety, whether or not the Lender was the original creditor in respect thereof, and including (without limitation) interest, commission, costs, charges and expenses charged by the Lender at rates agreed between it and the Borrower or, in the absence of express agreement, in accordance with the Lender's normal practice for the time being; and

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Other Interpretation

In this Deed unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa, and reference to any gender includes the other genders;
- 1.2.2 words and phrases defined in the Companies Act 1985 have the same meanings in this Agreement but the word "company" includes any body corporate;

- 1.2.3 references to any rate of interest shall be construed as meaning that rate as from time to time in force, calculated from day to day, and compounded on the last day of every month, both before and after judgment;
- 1.2.4 any reference to any statute or statutory instrument or any section or part thereof includes any enactment (present or future) replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced;
- 1.2.5 references to the "**Borrower**" and the "**Lender**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.6 reference to "**winding-up**" of a Person also includes the amalgamation, reconstruction, reorganisation, dissolution, liquidation, merger or consolidation of that Person, and any equivalent or analogous procedure under the law of any jurisdiction (and references to the commencement of any of the foregoing include a reference to the presentation of a petition to a court of competent jurisdiction or the passing of a valid resolution for or with a view to any of the foregoing);
- 1.2.7 any reference to "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.8 a "**working day**" is a day (other than a Saturday or a Sunday) on which the banks are open for general business in London;
- 1.2.9 general words shall not be given a restrictive meaning by reason of the fact they are followed by particular examples intended to be embraced by the general words; and
- 1.2.10 headings are for reference purposes only and shall not affect the construction of anything in this Deed.

1.3 Third Party Rights

A Person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

2 Borrower's obligations

2.1 Secured Liabilities

The Borrower shall pay or discharge the Secured Liabilities to the Lender when due in accordance with the terms of the Finance Documents or, if no time is specified for payment, immediately on demand.

2.2 Default Interest

- 2.2.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up until the date of actual payment (both before and after judgment) at the rate defined in the Loan Agreement or, in the absence of such a definition in the Loan Agreement, at a rate equal to the sum of 5

per cent above the Public Works Loan Board rate then published by the Lender as its base rate for advances in the relevant currency calculated for successive interest periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 2.2.1 shall be immediately payable by the Borrower on demand by the Lender.

- 2.2.2 Default interest under Clause 2.2.1 arising on an overdue amount will (if unpaid) be compounded with the overdue amount at the end of each interest period applicable to that overdue amount but will remain immediately due and payable.

3 Security

3.1 Charges

The Borrower with full title guarantee and as security for the payment and discharge of all Secured Liabilities hereby charges in favour of the Lender:

- 3.1.1 by way of first legal mortgage, the Property; and

- 3.1.2 by way of first fixed charge:

- (i) all its present and future plant and machinery on or serving the Property (except that mortgaged by Clause 3.1.1 above); and
- (ii) the Rents (if any).

3.2 Assignment

The Borrower with full title guarantee and as security for the payment and discharge of all Secured Liabilities hereby assigns to the Lender the benefit of all Rights (save to the extent mortgaged by Clause 3.1.1 above) to which the Borrower is now or may hereafter become entitled in relation to the Property and/or any buildings now or hereafter standing thereon including in particular (but without prejudice to the generality of the foregoing) the benefit of all insurances in relation thereto and all Rights against all past present and future tenants and undertenants of the whole or any part or parts of the Property and their respective guarantors or sureties subject to the provision for re-assignment hereinafter contained.

3.3 Further Advances

The Charge is made for securing further advances.

4 Borrower Covenants and Restrictions

4.1 Encumbrances

The Borrower covenants not, without the prior written consent of the Lender, to create (otherwise than in favour of the Lender) any Encumbrance, or to allow any Encumbrance to arise or continue, on or over the whole or any part of the Charged Assets.

4.2 Disposal

Save for the SEC Underlease the Borrower shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of its interest in or grant any Rights over the Charged Assets or part thereof without the prior written consent of the Lender.

4.3 Documents of title

The Borrower shall deposit with the Lender and during the continuance of the Charge the Lender shall be entitled to hold all deeds and documents of title relating to the Property.

4.4 Registered Land

Where the Property is registered at the Land Registry, the Borrower shall:

- 4.4.1 promptly apply to the Land Registry to register the first legal mortgage created by Clause 3.1.1;
- 4.4.2 promptly submit to the Land Registry the duly completed Form RX1 requesting a restriction be entered on the register of the title of the Property in standard Form P in Schedule 4 to the Land Registration Rules 2003; and
- 4.4.3 promptly pay all appropriate registration fees,

or, if the Lender gives notice to the Borrower that the Lender will submit the relevant forms to the Land Registry, the Borrower shall promptly provide the Lender with all duly completed forms reasonably requested by the Lender and all appropriate registration fees.

4.5 Unregistered Property

Where the Property is not already registered at the Land Registry and, as a result of this Deed, becomes liable to be registered at the Land Registry, the Borrower shall:

- 4.5.1 promptly apply to the Land Registry for first registration of the Property and registration of the Borrower as proprietor of the Property;
- 4.5.2 promptly apply to the Land Registry to register the first legal mortgage created by Clause 3.1.1;

promptly submit to the Land Registry the duly completed Form RX1 requesting a restriction be entered on the register of the title of the Property in standard Form P in Schedule 4 to the Land Registration Rules 2003; and
- 4.5.3 promptly pay all appropriate registration fees,

or, if the Lender gives notice to the Borrower that the Lender will submit the relevant forms to the Land Registry, the Borrower shall promptly provide the Lender with all duly completed forms reasonably requested by the Lender and all appropriate registration fees

4.6 Title Information Document

On completion of the registration of the first legal mortgage pursuant to this Clause 4, the Borrower shall promptly supply to the Lender a certified copy of the relevant Title Information Document issued by the Land Registry.

4.7 Insurance

- 4.7.1 The Borrower shall maintain (or procure the maintenance of) insurances to full reinstatement value in respect of the Property and to full replacement value in respect of the other Charged Assets with an insurance office or underwriters to be approved by the Lender in writing from time to time, either in the name of the Borrower with the interest of the Lender noted or, at the option of the Lender, in the joint names of the Borrower and the Lender, against loss or damage by fire and such other risks as required by the Lender (on terms that the insurer shall not

avoid, cancel or fail to renew any such policy for non-payment of premium without first giving not less than 21 days' prior notice to the Lender, and on such other terms as the Lender may from time to time require).

- 4.7.2 The Borrower shall pay all premiums and other moneys necessary to effect and keep up such insurances in Clause 4.7.1 within one week of the same becoming due, on demand produce to the Lender the policy or policies of such insurance and the receipt for every such payment, comply at all times with all the requirements of any such insurance policy, and not do or omit to do anything, or allow anything to occur or continue, which will or may in the sole opinion of the Lender cause any such insurance policy to become void or voidable, or allow the insurer to refuse any indemnity under it.

4.8 Condition of Charged Assets

The Borrower shall keep the Property in good and substantial repair and all other Charged Assets in good working order and condition.

4.9 Compliance with Covenants

The Borrower shall:

- 4.9.1 at all times observe and perform (and ensure that any other Person at any time occupying any part of the Property also observes and performs) all restrictive and other covenants to which the Property or any part of it may from time to time be subject, all obligations on the part of the Borrower in any lease or tenancy agreement, and all building regulations and all restrictions, conditions and stipulations for the time being affecting the Property or any part of it or the use or enjoyment of the Property;
- 4.9.2 within 7 days deliver to the Lender a copy of any notice or proceedings served on the Borrower and relating to any alleged breach of any of the matters in Clause 4.9.1;
- 4.9.3 at all times keep the Property in a safe condition for all Persons foreseeably likely to be present on any part of it, and, where necessary or desirable for such purposes, erect and maintain fencing, barriers, covers and other security measures;
- 4.9.4 not without the consent of the Lender apply for or carry out any improvements or alterations to the Property;
- 4.9.5 pay all rents, rates, Taxes and outgoings payable by virtue of its ownership or occupation of the Property;
- 4.9.6 permit the Lender at any reasonable time to enter on the Property, inspect it and any assets on it and take copies of any documents there and belonging to the Borrower;
- 4.9.7 not without the consent of the Lender apply for or implement any planning permission under the Town and Country Planning Act 1990 or change or permit or suffer to be changed the present use of the Property or carry out any operation or institute or continue any use of the Property for which planning permission is required; and

- 4.9.8 not without the consent of the Lender enter into any negotiations with any competent authorities with regard to the compulsory acquisition of the Property or consent to the compulsory acquisition of the Property and, if so requested by the Lender, it will permit the Lender or its representatives to conduct such negotiations or give such consent on its behalf.

4.10 Head Lease

The Borrower shall:

- (a) observe and perform all covenants, stipulations and obligations binding upon it as lessee under any Head Lease;
- (b) diligently enforce all covenants, stipulations and obligations benefiting it as lessee under any Head Lease;
- (c) not amend, waive, release or vary any provision of, or exercise any option or power to break, terminate or extend (or agree to do any of the foregoing) any Head Lease;
- (d) not do or permit to be done anything under any Head Lease which may result in its forfeiture;
- (e) not agree to any change in the rent payable under any Head Lease; and
- (f) promptly notify the Lender of anything which may result in the forfeiture or termination of any Head Lease.

4.11 Information

The Borrower shall:

- 4.11.1 notify the Lender of the occurrence of any Enforcement Event or any event or circumstance which would (with the expiry of any applicable grace period or the giving of notice) be an Enforcement Event (and of the steps, if any, being taken to remedy it) promptly upon becoming aware of it; and
- 4.11.2 promptly deliver to the Lender such further information regarding the financial condition, business and operations of the Borrower as the Lender may reasonably request.

4.12 Authorisations

The Borrower shall promptly:

- 4.12.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and
- 4.12.2 supply certified copies to the Lender of,
- any authorisation required by applicable law to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence of the Finance Documents in any relevant jurisdiction.

4.13 Perfection requirements

The Borrower shall promptly comply with the Perfection Requirements.

4.14 No other prejudicial conduct

The Borrower shall not do, or permit to be done, anything which could prejudice the Charge.

5 Further Assurance

5.1 The Borrower shall promptly do whatever the Lender requires:

5.1.1 to perfect or protect the Charge or the priority of the Charge; or

5.1.2 to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the Lender,

including executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Lender or its nominees or otherwise), making any registration and giving any notice, order or direction.

6 Enforcement

6.1 Exercise of Rights

The statutory power of sale and of appointing a Receiver conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall be deemed to arise on the date hereof and shall in favour of any purchaser (as defined in Section 205 of the LPA) or any Person dealing in good faith with the Lender or any Receiver or Delegate be deemed to be exercisable on and from the date of this Deed but as between the Borrower and the Lender (but not so as to affect or concern such purchaser, Person, Receiver or Delegate as aforesaid) shall be exercisable after the occurrence of an Enforcement Event (whether or not the Enforcement Event is continuing at the relevant time). Section 103 of the LPA shall not apply to this Deed.

6.2 Enforcement Events

The occurrence at any time and for any reason, whether within or beyond the control of any party to this Deed, of any of the following events shall constitute an “**Enforcement Event**”:

6.2.1 the Borrower does not pay any of the Secured Liabilities immediately upon it becoming due at the place and in the currency in which it is expressed to be payable;

6.2.2 the Borrower fails to observe or perform any of the covenants and restrictions in Clause 4 where either (a) the failure is not capable of being remedied or (b) the failure is not remedied within 10 working days of the Lender serving notice on the Borrower requiring the same or the Borrower becoming aware of the failure;

6.2.3 the Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

6.2.4 the value of the assets of the Borrower is less than its liabilities;

6.2.5 any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, Administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
- (ii) a composition, assignment or arrangement with any creditor of the Borrower; or
- (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Borrower or any of its assets;

or any analogous procedure or step is taken in any jurisdiction;

6.2.6 the Borrower, being an individual, is adjudicated bankrupt or a petition or similar proceedings for bankruptcy are brought against the Borrower;

6.2.7 the Borrower, being an individual, dies;

6.2.8 any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower;

6.2.9 another creditor takes possession of the Property or exercises (or attempts to exercise) any power of sale over the Property;

6.2.10 this Deed becomes void, voidable or unenforceable or any guarantee or other security for the obligations of the Borrower ceases to apply with full force and effect.

7 Appointment and Rights of Receivers

7.1 Appointment of Receivers

Where entitled under Clause 6.1, or if otherwise requested by the Borrower, the Lender may appoint any Person to be a Receiver. The Lender may similarly remove any Receiver and appoint any Person instead of any Receiver. If the Lender appoints more than one Person as Receiver of the Charged Assets, the Lender may give the relevant Persons power to act either jointly or severally. The appointment of a Receiver shall be in writing and may be signed by any director or employee on behalf of the Lender.

7.2 Scope of appointment

Any Receiver may be appointed as Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment.

7.3 Rights of Receivers

The Receiver shall be the agent of the Borrower (which shall be solely liable for his acts, defaults and remuneration) unless and until the Borrower goes into liquidation, whereafter he shall act as principal and shall not become the agent of the Lender. The Receiver shall have and be entitled to exercise in relation to the Borrower all the powers set out in the Insolvency Act 1986 Schedule 1 (whether or not he is an administrative receiver) and in applying that Schedule:

7.3.1 the words "he" and "him" refer to the Receiver; and

7.3.2 references to the "property of the company" are to the Charged Assets over which the Receiver is appointed;

and, in particular, by way of addition to but without limiting such powers (and without prejudice to the Lender's powers), the Receiver shall have power to do the following things, namely:

7.3.3 power to carry on or join with any Person in carrying on any business (whether or not carried on by the Borrower prior to his appointment); and

7.3.4 power to maintain, repair, make safe, improve and develop the Charged Assets, and to do all such other things as may in his opinion be necessary or desirable for maintaining or enhancing the value or marketability of any Charged Asset.

7.4 Remuneration

The Lender may from time to time determine the remuneration of any Receiver and direct payment of such remuneration out of moneys accruing to him as Receiver but the Borrower alone shall be liable for the payment of such remuneration and for all other costs, charges and expenses of the Receiver.

8 The Lender's Rights

8.1 Rights of Receiver

Any Rights conferred by this Deed (either expressly or impliedly) upon a Receiver may be exercised by the Lender (after such Rights have become exercisable as provided in Clause 6.1) irrespective of whether the Lender shall have taken possession or appointed a Receiver of the Charged Assets.

8.2 Delegation

The Lender may delegate in any manner to any Person any of the Rights which are for the time being exercisable by the Lender under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Lender may think fit. Any delegate or sub-delegate shall each be referred to as a "**Delegate**" for the purposes of this Deed.

8.3 Insurance

If the Borrower fails on demand to produce copies of insurance policies, premium receipts and such other evidence as the Lender may require which prove to the satisfaction of the Lender that the Borrower is complying with Clause 4.7, the Lender shall be entitled to effect such insurances of the Charged Assets as it thinks fit.

8.4 Continuation of Accounts

At any time following the Lender receiving notice (either actual or otherwise) of any subsequent Encumbrance affecting the Charged Assets, the Lender may open a new account in the name of the Borrower with the Lender (whether or not it permits any existing account to continue). If the Lender does not open such a new account, it shall nevertheless be treated as if it had done so at the time when the notice was received or was deemed to have been received of the subsequent Encumbrance. No moneys thereafter paid into any account, whether new or continuing, shall discharge or reduce the amount recoverable pursuant to the Charge.

8.5 Set-off

The Borrower authorises the Lender to apply (without prior notice) any credit balance (whether or not then due) to which the Borrower is at any time beneficially entitled on any account at any office of the Lender in or towards satisfaction of all or any part of the Secured Liabilities which are due and unpaid and, for that purpose, to convert one currency into another. The Lender shall not be obliged to exercise any of its Rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

8.6 Extension of Statutory Powers of Leasing

The statutory powers of leasing and accepting surrenders are extended so as to authorise the Lender, any Receiver or Delegate, at any time after an Enforcement Event has arisen (whether or not continuing), whether in its own name or in that of the Borrower, to make any lease or agreement for lease, accept surrenders of leases or grant any option of the whole or part of the Property with whatever rights relating to other parts of it, containing whatever covenants on the part of the Borrower, generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium, as the Lender, Receiver or Delegate thinks fit without the need to comply with any restriction imposed by sections 99 and 100 of the LPA.

9 No Liability of the Lender, Receivers and Delegates

9.1 Possession

If the Lender, any Receiver or any Delegate shall take possession of the Charged Assets, he may at any time relinquish such possession. The Lender shall not become liable as a mortgagee in possession by reason of viewing the state of repair of, or repairing the Charged Assets.

9.2 No Liability to Account

None of the Lender, any Receiver or Delegate or any officer, employee or agent of the Lender, any Receiver or Delegate shall in any circumstances (either by reason of taking possession of the Charged Assets or for any other reason whatsoever and whether as mortgagee in possession or on any other basis whatsoever):

- 9.2.1 be liable to account to the Borrower or any other Person for anything except the Lender's own actual receipts which have not been distributed or paid to the Borrower or the Persons entitled or at the time of payment honestly and reasonably believed by the Lender to be entitled thereto;
- 9.2.2 be liable to the Borrower or any other Person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation of the Charged Assets or from any act, default, omission or misconduct of the Lender, its officers, employees or agents in relation to the Charged Assets or in connection with this Deed except to the extent that they shall be caused by the Lender's own fraud, negligence or wilful misconduct or that of its officers or employees or agents; or
- 9.2.3 by virtue of this Clause 9.2 owe any duty of care or other duty to any Person which it would not owe in the absence of this Clause 9.2.

9.3 Indemnity from the Borrower

The Borrower shall indemnify and keep indemnified the Lender, every Receiver, and any Person who acts as the servant, agent, delegate or attorney of any of them, against all claims, costs, expenses and liabilities which any of them may suffer or incur arising in any way out of the taking or holding of this Deed, the exercise or purported exercise of any Right, power, authority or discretion given by it, or any other act or omission in relation to this Deed or the Charged Assets. The provisions of this Clause 9 shall continue in full force and effect notwithstanding any release or discharge of this Deed, or the discharge of any Receiver from office.

10 Power of Attorney

10.1 Appointment

The Borrower by way of security irrevocably appoints the Lender, every Receiver and every Delegate severally its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time after the Rights conferred by this Deed have become exercisable as provided in Clause 6.1 and in such manner as the attorney may think fit:

10.1.1 to do anything which the Borrower is obliged to do (but has not done) under this Deed including, without limitation, to execute charges over, transfers or assignments of, and other instruments relating to, the Charged Assets; and

10.1.2 generally to exercise all or any of the rights conferred on the Lender, any Receiver or any Delegate in relation to the Charged Assets or under this Deed, the LPA or the Insolvency Act.

10.2 Ratification

The Borrower hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney in Clause 10.1.

11 Protection of Third Parties

No Person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire whether any event has happened upon which any of the Rights conferred by or pursuant to this Deed are or may be exercisable, whether any consents, regulations, restrictions or directions relating to such Rights have been obtained or complied with or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such Rights or as to the application of any money borrowed or raised. All the protection to purchasers contained in Sections 104 and 107 of the LPA, Section 42(3) of the Insolvency Act or in any other legislation for the time being in force shall apply to any Person purchasing from or dealing with the Lender, any Receiver or any Delegate.

12 Payments

All amounts from time to time received or recovered by the Lender or any Receiver or Delegate under or in respect of this Deed shall, subject to the discharge of any liabilities having priority to the Secured Liabilities, be applied as follows:

- 12.1.1 in or towards the payment of all costs, charges, losses, liabilities and expenses of and incidental to the appointment of any Receiver and the exercise of any of his Rights including his remuneration and all outgoings paid by him;
- 12.1.2 in or towards the payment of such of the Secured Liabilities in such order as the Lender in its absolute discretion may from time to time determine (save that the Lender may credit the same to, and require the same to be paid to it for crediting to, a suspense account for so long and in such manner as the Lender may determine and save that the Receiver may retain the same for so long and in such manner as he and the Lender may determine); and
- 12.1.3 in payment of any surplus to the Borrower or other Person entitled to it.

13 Discharge of Security

13.1 Continuing Security

Subject to Clause 13.4, the Charge is continuing security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part, and shall be in addition to any other security, guarantee or indemnity now or hereafter held by the Lender or any other Person in respect of the Secured Liabilities.

13.2 Waiver of defences

Neither the obligations of the Borrower under this Deed nor the Charge will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Finance Document or the Charge (without limitation and whether or not known to it or the Lender) including:

- 13.2.1 any time, waiver or consent granted to, or composition with, the Borrower or any other Person;
- 13.2.2 the release of the Borrower or any other Person under the terms of any composition or arrangement with any creditor of the Borrower or any such Person;
- 13.2.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Borrower or any other Person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 13.2.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other Person;
- 13.2.5 any amendment or replacement of a Finance Document or any other document or security;
- 13.2.6 any unenforceability, illegality or invalidity of any obligation of any Person under any Finance Document or any other document or security; or
- 13.2.7 any insolvency or similar proceedings.

13.3 Immediate recourse

The Borrower waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any Person before claiming from the Borrower under this Deed.

13.4 Final Redemption

Subject to Clause 13.5 (*Retention of security*), if the Lender is satisfied that all the Secured Liabilities have been irrevocably paid in full, the Lender shall at the request and cost of the Borrower release, reassign or discharge (as appropriate) the Charged Assets from the Charge.

13.5 Retention of security

If the Lender considers that any amount paid or credited to it under any Finance Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

13.6 Consolidation

Section 93 of the LPA dealing with consolidation of mortgages shall not apply to the Charge.

13.7 Reinstatement

If any payment by the Borrower or any discharge given by the Lender (whether in respect of the obligations of any Person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

13.7.1 the liability of the Borrower and the Charge shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

13.7.2 the Lender shall be entitled to recover the value or amount of that security or payment from the Borrower, as if the payment, discharge, avoidance or reduction had not occurred.

14 Communications

Any demand for payment, and any other notice to be given by the Lender under this Deed, shall be in writing and may be signed by any official of the Lender, and may be served on any place of business of the Borrower or at its registered office:

14.1 by delivering it to any such place; or

14.2 by sending it by first class post to any such place (in which case it shall be deemed received at noon on the next working day after posting, and proof of posting shall be proof of delivery); or

by sending it by fax to any of the Borrower's fax numbers (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

15 Declarations

15.1 Non-exempt charity granting a non-excluded mortgage (s39(1) and 39(1A))

15.1.1 The Property subject to the Charge created by this Deed is held by (or in trust for) ^{Foundation} Royal Opera House, Covent Garden Limited, a non-exempt charity and the Charge created by this Deed is not one falling within s38(5) of the Charities Act 1993, so that the restrictions imposed by s38 of that Act apply to the Property. F & Co LP

15.1.2 The restrictions on disposition imposed by s36 of the Charities Act 1993 apply to the Property (subject to subsection (9) of that section).

15.1.3 The trustees of the Royal Opera House, Covent Garden ^{Foundation} ~~Limited~~ certify that they ^{FF Co Ltd} have power under the trusts of the said charity to effect the Charge created by this Deed and that they have obtained and considered such advice as is mentioned in s38(2) of the Charities Act 1993

16 Rights, amendments and waivers

16.1 Ambiguity

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.

16.2 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, Receiver or Delegate any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are additional to any rights or remedies provided by law.

16.3 Amendments and waivers

Any term of this Deed may be amended or waived only with the consent in writing of the Lender and the Borrower.

16.4 Assignment

16.4.1 The Lender may assign or transfer the whole or any part of the Lender's rights under this Deed to any Person at any time.

16.4.2 The Borrower may not assign any of its rights or transfer any of its obligations under this Deed or enter into any transaction which would result in any of those rights or obligations passing to another Person.

17 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

18 Counterparts

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.

19 Governing Law

This Deed shall be governed by and construed in accordance with the laws of England.

