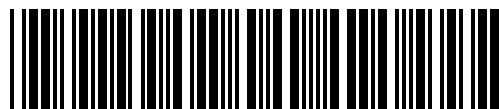




Registration of a Charge

Company Name: **COLCHESTER MERCURY THEATRE LIMITED**

Company Number: **00441035**



XBDKJQEB

Received for filing in Electronic Format on the: **29/09/2022**

Details of Charge

Date of creation: **22/09/2022**

Charge code: **0044 1035 0003**

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

Brief description: **LEASEHOLD PROPERTY KNOWN AS MERCURY THEATRE, BALKERNE GATE, COLCHESTER, ESSEX CO1 1PT WHICH IS TO BE REGISTERED AT HM LAND REGISTRY**

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: **DANIEL CLARKE**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 441035

Charge code: 0044 1035 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd September 2022 and created by COLCHESTER MERCURY THEATRE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th September 2022 .

Given at Companies House, Cardiff on 3rd October 2022

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 Deed is dated the 22 day of September 2022

Between:

- (1) **COLCHESTER MERCURY THEATRE LIMITED** registered in England and Wales Company Number 00441035 whose registered address is situated at The Mercury Theatre, Balmerne Gate, Colchester, Essex CO1 1PT (the "**Obligor**"); and
- (2) **THE ARTS COUNCIL OF ENGLAND** of 2nd Floor, 21 Bloomsbury Street, London, WC1B 3HF ("**ACE**").

NOW THIS DEED WITNESSES AND IT IS AGREED AND DECLARED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

"Charged Property" means the leasehold property charged to ACE by this Deed and includes any part of or interest therein;

"Encumbrance" means any mortgage charge pledge lien assignment hypothecation security interest preferential right or trust arrangement or other encumbrance security agreement or arrangement of any kind or any right conferring a priority of payment;

"Expenses" means all fees and legal and other costs charges and expenses which ACE or any Receiver may charge or incur in relation to the Obligor or this Deed or the Grant Agreements and/or in relation to the Charged Property and/or breach of any provision of and the protection realisation or enforcement of this Deed in each case on a full indemnity basis;

"Full Title Guarantee" has the meaning ascribed by the Law of Property (Miscellaneous Provisions) Act 1994;

"Grant" means the principal sum of £3,521,270.00 advanced or to be advanced to the Recipient pursuant to the Grant Agreements, including, for the avoidance of doubt any such amounts advanced prior to the date of this Deed together with all or any monies and liabilities which are for the time being and from time to time (and whether on or at any time after demand) due, owing or payable, or expressed to be due, owing or payable, to ACE by the Recipient, pursuant to the Grant Agreement or this Deed;

"Grant Agreements" means the Grant Offer Letter dated 24 January 2018 made between the Recipient and ACE and as it is from time to time varied, supplemented or substituted;

"Insolvency Event" means the appointment of an administrator in respect of the Recipient (except for the purposes of a solvent amalgamation or a solvent reconstruction) or an encumbrancer takes possession or an administrator, receiver or manager is appointed of the whole or any material part of the assets of the Obligor;

"LPA" means the Law of Property Act 1925;

"Lease" the Lease dated *22 September* 2021 and made between the Recipient (1) and the Obligor (2);

"Property" means the leasehold property known as the Mercury Theatre, Balkerne Gate, Colchester, Essex CO1 1PT as the same is demised under the Lease and any part or parts of it and including all rights attached or appurtenant to it and all buildings fixtures from time to time situate on it;

"Receiver" means a receiver and/or administrator and/or manager and any substitute for any such person and whether appointed under this Deed or pursuant to any statute or otherwise;

"Recipient" means Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester, Essex CO3 3WG;

"Secured Liabilities" means all or any monies and liabilities which are for the time being and from time to time (and whether on or at any time after demand) due, owing or payable, or expressed to be due, owing or payable, in whatsoever manner to ACE by the Recipient under or in connection with the Grant including, without limitation interest and all other charges or expenses which ACE may charge or incur in respect of any of those matters, as well after as before any demand made or decree or judgment obtained under this Deed; and

"Security" means the security constituted by this Deed and any other security created or constituted by the Obligor pursuant to or in compliance with any requirement made pursuant to this Deed.

1.2 In this Deed, unless the context otherwise requires:

- 1.2.1 the expressions "Obligor " and "ACE" where the context admits include their respective successors in title and assigns;
- 1.2.2 references to the Property include any part of it;
- 1.2.3 references to clauses, sub-clauses and schedules are references to the clauses and sub-clauses of, and schedules to, this Deed; and

- 1.2.4 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

2 SECURITY

- 2.1 The Obligor with Full Title Guarantee charges as continuing security for the payment and discharge of the Secured Liabilities to ACE by way of first legal mortgage the Property.
- 2.2 As further security for the Secured Liabilities, the Obligor assigns and covenants to assign absolutely to ACE all its right title interest and benefit in and to all rents or other amounts present or future and whether payable now or in the future by all lessees sub-lessees licensees or occupiers of the Property provided that nothing in this sub-clause shall constitute ACE as a mortgagee in possession.

3 CERTIFICATE OF OBLIGOR

- 3.1 The land charged by this Deed is held by the Obligor, a non-exempt charity and the Charge is not one falling within Section 124(9) of the Charities Act 2011 so that the restrictions imposed by Section 124 of that Act will apply.
- 3.2 The Directors of the Obligor, being the persons who have the general control and management of its administration, certify that they have power under the provisions establishing the Obligor as a charity and regulating its purposes and administration to effect the Charge and that they have obtained and considered such advice as is mentioned in section 124(2) of the Charities Act 2011.

4 RESTRICTIONS

- 4.1 The Obligor will not without the previous consent of ACE:
- 4.1.1 sell, assign, subcontract, subparticipate or in any other fashion dispose of the Property; or
- 4.1.2 create or permit to subsist or arise any Encumbrance or any right or option on the Property or any part thereof; subject as aforesaid any mortgage of or charge on the Property created by the Obligor (otherwise than in favour of ACE) shall be expressed to be subject to this Deed.

5 COVENANTS BY THE OBLIGOR

- 5.1 The Obligor covenants with ACE at all times during the continuance of this security:
- 5.1.1 to perform and observe all covenants restrictions stipulations provisions laws regulations and conditions affecting the Property, including, without

limitation, the terms of any lease pursuant to which the Obligor occupies the Property or any of it or the use or enjoyment of it;

- 5.1.2 to pay when due all rents rent charges (if any) rates taxes charges duties assessments impositions and other outgoings whatsoever charged assessed levied or imposed upon the Property or upon the owner or occupier thereof or payable in respect of the Property;
- 5.1.3 not to pull down or remove any building or erection erected or to be erected on all or any part of the Property or the fixed plant and machinery and other fixtures or fittings upon it respectively or any of them without the previous written consent of ACE except in the ordinary course of repair and maintenance or improvement or otherwise in the course of and for the bona fide purpose of carrying on the business of the Obligor;
- 5.1.4 to notify ACE in writing immediately upon the Obligor becoming aware that all or any part of the Property is by reason of substances in on or under it in such a condition that significant harm is being caused or there is a significant possibility of such harm being caused to any living organism or to property or that pollution of controlled waters is being or is likely to be caused and not take any action which might result in all or part of the Property being in such a condition;
- 5.1.5 not to make any application for planning permission without the prior consent of ACE and shall not enter into or agree to enter into any agreement under Section 106 of the Town and Country Planning Act 1990 or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or Section 38 of the Highways Act 1980 or any similar Act (the **Planning Acts**);
- 5.1.6 to shall comply with the requirements of any valid enforcement notice or other notice or order (whether issued under the Planning Acts or any other statute) within such time as may be specified therein or if no time is specified within such period as may be reasonably required by ACE and to pay to ACE in reduction of the Secured Liabilities any compensation received as a result of any such notice or order;
- 5.1.7 to permit representatives of ACE with or without workmen or others to enter the Property at all reasonable times upon reasonable prior notice to view the state of repair and condition of the Property;
- 5.1.8 on request the Obligor shall produce to or provide for ACE such documents or information relating to the Property or any part of it or its development as ACE may require;

- 5.1.9 to use the Property only for the purposes specified or permitted by in the Grant Agreement, and where no use is specified in the Grant Agreement, will not make any change to the use or occupation of the Property from the use to which it was put at the date of the Grant Agreement without prior written consent of ACE.
- 5.2 Where the Property is leasehold or subject to any lease agreement for lease or tenancy, the Obligor shall at all times during the continuance of this Security:
 - 5.2.1 perform and observe all covenants and conditions contained in the Lease to be performed and observed by the lessee;
 - 5.2.2 enforce the due observance and performance of all obligations of all other parties to the lease;
 - 5.2.3 not waive, release or vary any of the terms of the lease, or to accept any surrender of any, or exercise any power to determine or extend the same or grant any consent or licence or conclude any rent review under the same without, in each case, the consent of ACE (which consent is not to be unreasonably withheld or delayed in circumstances in which the Obligor may not unreasonably withhold or delay its consent);
 - 5.2.4 if the Obligor shall receive any notice served under section 146 of the LPA or any proceedings shall be commenced for forfeiture of the lease to which the Property is subject or any superior lease or the landlord or any superior landlord shall attempt to re-enter under the provisions of the lease or any superior lease the Obligor shall give immediate notice of such event both orally and in writing to ACE and at the request of ACE and at the expense of the Obligor take such steps as ACE may in its absolute discretion require;

6 POWER TO REMEDY

- 6.1 If the Obligor fails to perform or observe any covenant or condition in its part contained in this Deed it shall be lawful for but not obligatory upon ACE in order to make good such failure in whole or in part and at the Obligor's cost and so that the Obligor shall forthwith upon demand reimburse to ACE any such cost:
 - 6.1.1 to enter upon the Property and effect such repairs and other works thereon as ACE considers necessary; and/or
 - 6.1.2 to take such steps give such notices execute such works and do such things as ACE considers necessary to comply with any requirements of or any notice order direction permission or proposal given served or made under the Planning Acts or otherwise affecting or likely to affect the Property or its value; and/or

6.1.3 to insure and keep insured the Charged Assets in such amount and in such manner as ACE considers necessary; and/or

6.1.4 to admit settle liquidate compound or contest in such manner as ACE thinks fit any claim or liabilities in relation to the Charged Assets whether or not ACE is expressly indemnified in this Deed against the same and to make such payments and expend or debit on account such moneys as ACE considers necessary in that behalf but without thereby becoming a mortgagee in possession.

7 DEEDS SECURITIES AND DEBTS

7.1 The Obligor will from time to time deposit with ACE all insurance policies (or where ACE agrees, copies of them) deeds and documents of title relating to the Charged Assets or any of them.

8 RELEASE OF SECURITY

8.1 Subject to:

8.1.1 No Insolvency Event, or other event entitling ACE to demand payment of some or all of the Secured Liabilities having occurred and being continuing; and

8.1.2 ACE being satisfied in its absolute discretion that the purposes for which the Grant (and any subsequent grant or other funding secured by this Deed) was awarded have been satisfied

ACE shall, on the 20th anniversary of the date of this Deed, at the request and cost of the Obligor release and discharge the Security constituted by this Deed and reassign or reconvey any property assigned or conveyed to ACE pursuant to this Deed

9 ENFORCEMENT

9.1 The Security shall become enforceable and, to the extent not already due and payable, the Secured Liabilities shall become immediately due and payable at any time after:

9.1.1 the occurrence of any Insolvency Event; or

9.1.2 ACE shall have demanded payment of and/or discharge and/or provision for any of the Secured Liabilities pursuant to the provisions of the Grant.

10 S103 LPA

Section 103 LPA shall not apply to this Deed nor to any sale by ACE or a Receiver under that Act and the Secured Liabilities shall be deemed to have become due, and the statutory power of sale and appointing a Receiver under Sections 101 and 109 of the LPA (as varied and extended under this Deed) shall as between ACE or such Receiver and a purchaser from ACE or such Receiver arise and be exercisable at any time after the execution of this Deed provided that ACE shall not exercise this power of sale until ACE shall have demanded payment of any of the Secured Liabilities or after any breach by the Obligor of any of the provisions of this Deed or the occurrence of an Insolvency Event but this proviso shall not affect a purchaser or put him upon enquiry whether such monies have become payable or such appointment has been made.

11 APPOINTMENT AND POWERS OF RECEIVER

11.1 At any time after the occurrence of an event specified in Clause 10, ACE may appoint a Receiver or Receivers of the Charged Property.

11.2 ACE may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in his place.

11.3 The Receiver shall (so far as the law permits) be the agent of the Obligor (who shall alone be personally liable for his acts defaults omissions and remuneration) and shall have and be entitled to exercise all powers conferred by the LPA and the Insolvency Act 1986 in the same way as if the Receiver had been duly appointed thereunder (and without prejudice to any of ACE's powers or the generality of the foregoing) the Receiver shall have power in the name of the Obligor or otherwise to do the following things namely:

11.3.1 to take possession of collect and get in all or any part of the Charged Property and for that purpose to take any proceedings as he shall think fit;

11.3.2 to sell, lease surrender or accept surrenders of leases, charge or otherwise deal with or dispose of the Charged Property without restriction including (without limitation) power to sever, and dispose of any fixtures or chattels separately from the land;

11.3.3 to make and effect all repairs and improvements to the Property;

11.3.4 to effect such insurances of or in connection with the Charged Property as he shall in his absolute discretion think fit;

11.3.5 to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he lawfully may or can do.

11.4 All of the powers of the Receiver under this Deed may be exercised by ACE at any time after the Secured Liabilities have become due, whether as attorney of the Obligor or otherwise, and whether or not a Receiver has been appointed.

11.5 A Receiver shall apply all money he receives first in repayment of all money borrowed by him and his expenses and liabilities and in payment of his fees and secondly towards the remaining matters specified in Section 109(8) of the LPA.

12 ACE's LIABILITY

12.1 In no circumstances shall ACE be liable to account to the Obligor as a mortgagee in possession or otherwise for any moneys not actually received unconditionally and irrevocably by ACE.

13 PROTECTION OF THIRD PARTIES

Any purchaser or any other person dealing with ACE or any Receiver shall not be concerned to enquire whether the Secured Liabilities have become payable or whether any power which it or he is purporting to exercise has become exercisable or whether any money is due under this Deed or as to the application of any money paid raised or borrowed or as to the propriety or regularity of any sale by or other dealing with ACE or such Receiver. All the protection to purchasers contained in Sections 104 and 107 of the LPA shall apply to any person purchasing from or dealing with ACE or any Receiver.

14 FURTHER ASSURANCE

14.1 The Obligor shall from time to time execute and do all such assurances and things as ACE may reasonably require for perfecting this Security and after the monies secured by this Deed shall have become payable for facilitating the realisation of all or any part of the Charged Property and for exercising all powers, authorities and discretions conferred by this Deed or by law on ACE or any Receiver appointed by it.

15 ACE's RIGHTS

15.1 All powers of the Receiver may be exercised by ACE whether as attorney of the Obligor or otherwise.

16 POWER OF ATTORNEY

16.1 The Obligor, by way of security for the payment of the Secured Liabilities and the performance by the Obligor of its obligations under this Deed, irrevocably appoints ACE (whether or not a Receiver has been appointed) and also (as a separate appointment) the Receiver severally as the Attorney or Attorneys of the Obligor (with full power of substitution and delegation) in the Obligor's name and on the

Obligor's behalf and as the Obligor's act and deed to sign or execute all deeds instruments and documents or take continue or defend any proceedings which may be required by ACE or any Receiver pursuant to this Deed or the exercise of any of their powers.

17 PRESERVATION OF OTHER SECURITY AND RIGHTS AND FURTHER ASSURANCE

- 17.1 The Security shall be a continuing security to ACE notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not prejudice or affect or be prejudiced or affected by any security relating to the Charged Property or to any other property or any other security which ACE may now or at any time in the future hold in respect of the Secured Liabilities or any of them and shall continue in full force and effect as a continuing security until discharged.
- 17.2 Section 93 of the LPA shall not apply to this Deed or the Security.
- 17.3 All costs charges and expenses incurred hereunder by ACE shall be borne by the Obligor.
- 17.4 No delay or omission on the part of ACE in exercising any right or remedy under this Deed shall impair that right or remedy or operate as or be taken to be a waiver of it; nor shall any single partial or defective exercise of any such right or remedy preclude any other or further exercise under this Deed of that or any other right or remedy.

18 NOTICES

Every notice demand or other communication under this Deed shall be in writing and may be delivered personally or by letter or facsimile or email to the address for such party contained in this Deed, or such address and/or facsimile number and/or email address as may be notified in accordance with this Clause 18 by the relevant party to the other party for such purpose.

19 MISCELLANEOUS

- 19.1 No delay or omission on the part of ACE in exercising any right or remedy under this Deed shall impair that right or remedy or operate as or be taken to be a waiver of it; nor shall any single partial or defective exercise of any such right or remedy preclude any other or further exercise under this Deed of that or any other right or remedy.
- 19.2 ACE's rights under this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as ACE deems expedient.

- 19.3 All costs charges and expenses incurred hereunder by ACE shall be borne by the Obligor.

20 REGISTERED LAND

- 20.1 The Obligor consents to the entry of the following restriction against the Obligor's title to the Property at HM Land Registry and shall provide ACE with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated 22 September 2022 in favour of Arts Council England referred to in the Charges Register or, if appropriate, signed on such proprietor's behalf by its solicitor or conveyancer or secretary."

21 OBLIGOR'S LIABILITY

For the avoidance of any doubt it is agreed between the Obligor and ACE that the liability of the Obligor pursuant to the terms of this Deed shall not exceed the amounts which may or could be recovered by ACE or any Receiver on the enforcement of the security given by this Deed.

22 LAW AND JURISDICTION

This Deed is governed by and shall be construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

23 COUNTERPARTS

- 23.1. This Deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of which taken together shall be deemed one and the same document.
- 23.2. Transmission of the executed counterpart of this Deed (not necessarily including the schedules but not just the signature page) by e-mail (in PDF or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If such method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

IN WITNESS whereof this Deed has been duly executed and delivered the day and year first before written.

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 by)

COLCHESTER MERCURY THEATRE LIMITED)

acting by [a director and its secretary] [two directors]

.....
Kathleen Hamilton

Director

KATHLEEN HAMILTON

.....
Hazel Sulzmann

Director/Secretary

HAZEL SULZMANN



Executed as a deed by affixing the seal of)

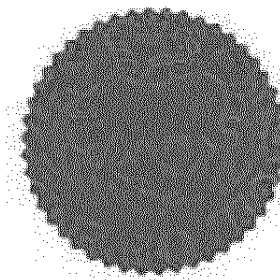
THE ARTS COUNCIL OF ENGLAND)

and authenticated by an authorised officer)

Simon Wilson
.....
Signature

Simon Wilson
.....
Name of authorised officer

Deputy Chief Executive
.....
Title of authorised officer



Executed as a deed by)

COLCHESTER MERCURY THEATRE LIMITED)

acting by [a director and its secretary] [two directors]

.....
Director

.....
Director/Secretary

