

DATED

2010

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HASTINGS BOROUGH COUNCIL

and

GALLERIUM ESTABLISHMENT

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DEED OF COVENANT

relating to The Jerwood Gallery and Land at The Stade,  
Rock-a-Nore, Hastings, East Sussex

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## DEED OF COVENANT

DATE

2010

### PARTIES

- (1) **HASTINGS BOROUGH COUNCIL** of Town Hall, Queens Road, Hastings, East Sussex TN34 1QR ("**the Council**"); and
- (2) **GALLERIUM ESTABLISHMENT** an independent legal entity registered in Liechtenstein of Heiligkreuz 6, P O Box 129, FL-9490 Vaduz, Liechtenstein and whose address for service in the United Kingdom is 22 Fitzroy Square, London W1T 6EN ("**Gallerium**").

### RECITALS

- (A) The Council has granted the Lease to Gallerium of land at The Stade, Rock-a-Nore, Hastings on which Gallerium will construct the Gallery for the operation under the terms of the Lease for the Permitted Use.
- (B) The Council is the legal and beneficial owner of the freehold of part of the Open Space and acts as the custodian trustee for the Foreshore Trust which is the beneficial owner of the remainder of the freehold of the Open Space.
- (C) The Council has agreed to grant Gallerium, and those persons deriving title from it, who are the Rateable Occupiers an indemnity from Business Rates on the terms of this Deed.
- (D) The Council so far as it is able as legal and beneficial owner of the freehold of the Open Space has agreed with Gallerium to restrict the use of the Open Space to the purposes as set out in this Deed.

### IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed and the schedules to this Deed (unless the context otherwise requires), the following expressions shall have the meanings ascribed to them:

**“Affordable Fee”**

means subject to the approval of HM Revenue & Customs an admission fee or fees chargeable to the public at large for access to the facilities and/or exhibitions within the Gallery and which shall be set at a level:-

1.1.1 which encourages visitor numbers to the Gallery; and

1.1.2 following comparison with any admission fees charged for and by similar exhibitions and facilities within the United Kingdom which are open to the public at large; and

1.1.3 which enables the Tenant to meet its aims and objectives of enhancing the reputation of the facilities and exhibitions within the Gallery; and

1.1.4 which promotes the Landlord and Tenant’s joint aim of promoting the prosperity and well-being of Hastings as a whole; and

1.1.5 which shall initially be set at a level between £2.00 being the initial admission charge for the inhabitants of the Borough of Hastings and an upper level of £5.00 for general admission.

**“Business Rates”**

means the non-domestic or business rates assessed and charged on the Gallery by the local authority or the equivalent charge from time to time replacing such charge;

**“The Foreshore Trust”**

means the Hastings and St Leonard’s Foreshore Charitable Trust registered charity under charity number 1105643;

**“Gallery”**

means the building and ancillary facilities constructed on the land shown edged red on the Plan;

**“Lease”**

means the Lease of the Gallery entered into on the date hereof and made between (1) the Council and (2) Gallerium for a term of 99 years commencing on the date hereof;

**“Open Space”**

means the area of public open space adjoining the Gallery the extent of which is as shown edged green on the Plan;

**“Rateable Occupier”**

means the person or organisation in actual occupation of the Gallery under the Lease or any sub-lease of the whole of the Gallery and liable to pay the Business Rates;

**"Permitted Use"**

means the use of the Gallery as

(a) an art gallery or art and education centre; or

(b) use of the Gallery for a charitable purpose which could be provided or supported by Hastings Borough Council

and which is open at no more than the Affordable Fee to the inhabitants of the Borough of Hastings and to the public at large PROVIDED THAT if the Permitted Use falls within sub paragraph (a) of the Lease, and subject to clause 4.25.2 of the Lease, Gallerium may hold events exclusively for private invitees.

**"Parties"**

mean the Council and Gallerium and "Party" shall mean either of them;

**"Plan"**

means the plan annexed to this Deed;

**"Termination Date"**

means termination of the Lease whether by effluxion of time or otherwise.

- 1.2 For the purposes of this Deed unless the context otherwise requires and without prejudice to the operation of Sections 78 and 79 of the Law of Property Act 1925 the expressions "the Council" and "Gallerium" shall be deemed to include their respective successors in title and the persons claiming through or under them.
- 1.3 Unless the context otherwise requires references to a clause by number in this Deed or in a schedule to this Deed are to a numbered clause in this Deed or to that schedule, (as the case may be), and references to a schedule are to a schedule of this Deed.
- 1.4 Words importing the singular meaning, where the context so allows, include the plural meaning and vice versa.
- 1.5 The headings in this Deed, together with the index and information on the front cover page, are for convenience only and do not affect its interpretation.
- 1.6 References to a statute or a provision of a statute include any statute or provision of a statute amending, consolidating or replacing it for the time being in force.

**2. COUNCIL'S COVENANTS**

- 2.1 The Council with the intent to bind the Open Space and each and every part thereof (in so far as it is able as legal and beneficial owner of the freehold of the Open Space

and not as custodian trustee for the Foreshore Trust but not further or otherwise) until the Termination Date hereby covenants with Gallerium for the benefit of the Gallery as set out in **Schedule 1**.

- 2.2 The Council hereby covenants with Gallerium that in the event that the Rateable Occupier is not entitled to discretionary relief from Business Rates then the Council shall pay to Gallerium a sum equal to any Business Rates that the Rateable Occupier is liable for from time to time upon demand and shall indemnify and keep indemnified the Rateable Occupier and Gallerium in respect of any Business Rates which may be payable by the Rateable Occupier but only for so long as all the following conditions are satisfied:-
- 2.2.1 the Premises are occupied by the Rateable Occupier; and
  - 2.2.2 the Rateable Occupier is an organisation or person whose main objects are charitable or philanthropic or religious or concerned with education, social welfare, science, literature or the arts; and
  - 2.2.3 the Rateable Occupier has actually applied to the local authority for discretionary relief from Business Rates; and
  - 2.2.4 the Gallery is only used for the Permitted Use.

### **3. REGISTRATION AT THE LAND REGISTRY AND DEALING RESTRICTIONS**

#### **3.1 Registration at the Land Registry**

The Council agrees with Gallerium to apply to the Land Registry to have a notice of this Deed entered upon its title to the Open Space and Gallerium agrees with the Council to apply to the Land Registry to have notice of this Deed entered upon its title to the Gallery.

- 3.2 The Council shall not transfer the Open Space without procuring delivery to Gallerium of a deed containing a covenant to observe and perform the covenant contained in Schedule 1 and a further covenant not to transfer the Open Space without procuring a further deed of covenant to Gallerium to observe and perform the covenant contained in Schedule 1.

**IN WITNESS** whereof the Parties have executed this Deed as a deed the day and year first before written.

## **SCHEDULE 1**

### The Council's Covenant

To keep use and maintain the Open Space only as an open space for the use of the public and not to use the Open Space other than as open space for the use of the public but this covenant shall not prevent the exercise by the Council of its powers under the Local Government Act 1972 Sections 144 or 145 in respect of the Open Space.

EXECUTED as a DEED by affixing )  
THE COMMON SEAL OF )  
**HASTINGS BOROUGH COUNCIL** )  
in the presence of:- )

Authorised Signatory

SIGNED as a DEED on behalf of )  
**GALLERIUM ESTABLISHMENT** )  
a company incorporated in Liechtenstein )  
by )  
being a person who, in accordance with the )  
laws of that territory, is acting under the )  
authority of the company )

Authorised Signatory