



Registration of a Charge

Company name: **FAIRFAX ACQUISITIONS LIMITED**

Company number: **05322193**



X7GFXL4

Received for Electronic Filing: **12/10/2018**

Details of Charge

Date of creation: **10/10/2018**

Charge code: **0532 2193 0020**

Persons entitled: **COTHILL TRUST**

Brief description: **FREEHOLD LAND KNOWN AS ST AUBYN'S SCHOOL, HIGH STREET, ROTTINGDEAN, BRIGHTON BN2 7JN REGISTERED AT THE LAND REGISTRY UNDER TITLE NUMBERS SX128193, ESX228337 AND ESX47192.**

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: **DEAN WILSON LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5322193

Charge code: 0532 2193 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th October 2018 and created by FAIRFAX ACQUISITIONS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th October 2018 .

Given at Companies House, Cardiff on 16th October 2018

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Dated

10th Oct 2018

2018

FAIRFAX AQUISITIONS LIMITED

and

COTHILL TRUST (previously known as COTHILL EDUCATIONAL TRUST)

LEGAL CHARGE

of freehold property known as St Aubyns School, High Street, Rottingdean, East Sussex

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THIS DEED is dated

10th October

2018

BETWEEN

- (1) **FAIRFAX ACQUISITIONS LIMITED** (Company No. 05322193) whose registered office is at Buncton Barn, Buncton Lane, Bolney, Haywards Heath, West Sussex RH17 5RE (the "**Fairfax**"); and
- (2) **COTHILL TRUST** (previously known as **COTHILL EDUCATIONAL TRUST**) (Company No. 00961616) whose registered office is at 7 Cothill, Abingdon, Oxon, OX13 6JL (the "**Cothill**").

RECITALS

- (A) By the Agreement (as defined below) Fairfax agreed to purchase the Property (as defined below) from Cothill subject to the obligation to make a further payment (if applicable) to Cothill once an Acceptable Permission is obtained as provided in the Agreement.
- (B) Fairfax now owns the Property.
- (C) This legal charge provides security which Fairfax has agreed to give Cothill for the sum (if any) remaining payable by Fairfax to Cothill under the terms of the Agreement.

IT IS HEREBY AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed:

"**Agreement**" means the sale agreement dated 16 December 2016 and made between (1) Cothill and (2) Fairfax and varied by a deed of variation entered into by the same parties dated 10th October 2018 ¹

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Charged Property**" means all the assets, property and undertaking for the time being subject to any Encumbrance created by this deed (and references to the Charged Property shall include references to any part of it).

"**Deferred Payment**" shall have the meaning prescribed to it by the Agreement;

"**Encumbrance**" means any charge, or charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect (save for (i) any debentures or other security entered or to be entered into by Fairfax in favour of any UK clearing bank or other entity which only create a floating charge over the Charged Property as part of the general assets of Fairfax and which is not registered against the title to the Property at the Land

¹ Drafting Note: Date to be inserted.

Registry and (ii) any security or bond in respect of the Charged Property which secures any section agreement obligations for the delivery of roads and sewers and associated infrastructure, any s106 obligations or any affordable development agreement obligations provided that any such encumbrance ranks behind this legal charge in priority).

"Environment" means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

"Environmental Law" means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

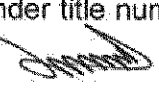
"Environmental Licence" means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.

"Event of Default" means any failure to pay or discharge the Secured Liability within 5 Business Days of when it falls due provided that an Event of Default shall not be deemed to have occurred where there is a bona fide dispute in relation to the Secured Liability under the Agreement.

"Insurance Policy" means each contract or policy of insurance effected or maintained by Fairfax from time to time in respect of the Property.

"LPA 1925" means the Law of Property Act 1925.

"Plan" means the plan attached to the Agreement.

"Property" means the freehold land known as St Aubyns School, High Street, Rottingdean, Brighton BN2 7JN registered at the Land Registry under title numbers SX128193, ESX228337 and ESX47192 ~~as edged red on the Plan.~~ 

"Receiver" means a receiver or a receiver and manager of any or all of the Charged Property.

"Secured Liability" means the obligation to pay the Deferred Payment in accordance with clause 5.2 of the Agreement.

"Security Period" means the period starting on the date of this deed and ending on the date on which the Secured Liability has been unconditionally and irrevocably paid and discharged in full.

"VAT" means value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons,

- government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax but not email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 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;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and

1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 Clawback

If Cothill considers that an amount paid by Fairfax in respect of the Secured Liability is capable of being avoided or otherwise set aside on the liquidation or administration of Fairfax or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Agreement and of any side letters between any parties in relation to the Agreement are incorporated into this deed.

1.5 Perpetuity period

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

1.6 Schedules

The Schedules (if any) form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

1.7 Joint and Several Liability

In this legal charge any covenants and obligations expressed to be made or assumed by a party comprising more than one person are made and are to be construed as made by all such persons jointly and severally.

2. COVENANT TO PAY

Fairfax shall pay to Cothill and discharge the Secured Liability when it becomes due pursuant to clause 5.2 of the Agreement.

3. GRANT OF SECURITY

Legal charge and fixed charges

As a continuing security for the payment and discharge of the Secured Liability, Fairfax with full title guarantee charges the Property to Cothill by way of first legal charge.

4. PERFECTION OF SECURITY

Registration of legal charge at the Land Registry

Fairfax consents to an application being made by Cothill to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the

entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [*being the date of this deed*] in favour of Cothill Educational Trust referred to in the charges register or their conveyancer."

5. LIABILITY OF FAIRFAX

5.1 Liability not discharged

Fairfax's liability under this deed in respect of the Secured Liability shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, Cothill that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 Cothill renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of Fairfax.

5.2 Immediate recourse

Except as expressly provided by the terms of this legal charge (and in particular the requirements of the proviso to the definition of "Event of Default" in clause 1.1) or any other deed or document, Fairfax waives any right it may have to require Cothill to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against Fairfax.

6. REPRESENTATIONS AND WARRANTIES

Fairfax makes the representations and warranties set out in this clause 6 to Cothill on the date of this deed.

6.1 No Encumbrances

The Charged Property is free from any Encumbrances other than the Encumbrance created by this deed.

6.2 No Prohibitions or Breaches

The entry into this legal charge by Fairfax does not and will not constitute a breach of any agreement, document or instrument binding on Fairfax or its assets.

6.3 No Conflicts

Neither the execution of this legal charge by Fairfax nor compliance with its terms will conflict with or result in any breach of any law or enactment or any deed agreement or other obligation or duty to which Fairfax is bound.

6.4 Consents obtained

All consents required by Fairfax for the execution delivery issue validity or enforceability of this legal charge have been obtained and have not been withdrawn.

6.5 Other security

No person having any charge or other form of security over any assets of Fairfax has enforced or given notice of its intention to enforce such security.

6.6 No Event of Default

No Event of Default has occurred or is continuing.

7. GENERAL COVENANTS

7.1 Negative pledge and disposal restrictions

Fairfax shall not at any time, except with the prior written consent of Cothill (such consent not to be unreasonably withheld or delayed):

7.1.1 create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Charged Property other than the legal charge created by this deed;

7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or

7.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

7.2 Preservation of Charged Property

Fairfax shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by Cothill or materially diminish the value of any of the Charged Property or the effectiveness of the legal charge created by this deed. For the avoidance of any doubt the development of the Property in accordance with any Permission shall not be a breach of the provisions of this paragraph.

7.3 Compliance with laws and regulations

Fairfax shall comply in all material respects with all laws and regulations for the time being in force relating to or affecting the Charged Property or any part of it or the use of the Charged Property or any part of it and shall obtain and promptly renew from time to time and comply in all material respects with the terms of all authorisations that are necessary in connection with the Charged Property or its use and which may be necessary to enable it to preserve, maintain or renew the Charged Property or any part of it.

7.4 Enforcement of rights

Fairfax shall use reasonable endeavours to:

- 7.4.1 procure (to the extent required by good estate management) the prompt observance and performance by the relevant counterparty to any agreement or arrangement with Fairfax and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that Cothill may require from time to time.

7.5 Notice of misrepresentations and breaches

Fairfax shall, promptly on becoming aware of any of the same, give Cothill notice in writing of:

- 7.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this deed.

7.6 Notification of default

Fairfax shall within five days of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

8. PROPERTY COVENANTS

8.1 Repair and maintenance

Subject to the right of Fairfax to carry out the development of the Property in accordance with any Permission Fairfax shall keep any buildings and fixtures and fittings on the Property in good and substantial repair and condition.

8.2 No alterations

Fairfax shall not, without the prior written consent of Cothill (such consent not to be unreasonably withheld or delayed):

- 8.2.1 pull down or remove the whole or any part of any building forming part of the Property nor permit the same to occur; or
- 8.2.2 make or permit to be made any material alterations to the Property (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1),

provided that the development of the Property in accordance with any planning permission and any approval of reserved matters thereunder shall not be a breach of this clause.

8.3 Insurance

Fairfax shall insure and keep the Charged Property and all buildings and works thereon (whether completed or in course of construction) insured under the Insurance Policy.

8.4 Insurance premiums

Fairfax shall promptly pay all premiums in respect of the Insurance Policy and do all other things necessary to keep that policy in full force and effect and shall on Cothill's reasonable request provide written evidence that such insurance premiums have been paid.

8.5 No invalidation of insurance

Fairfax shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

8.6 Proceeds from Insurance Policies

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall;

8.6.1 if they are not paid directly to Cothill by the insurers, be held by Fairfax as trustee of the same for the benefit of Cothill (and Fairfax shall account for them to Cothill); and

8.6.2 at the option of Cothill, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this legal charge has become enforceable and if Cothill so directs, in or towards, discharge or reduction of the Secured Liability.

8.7 Leases and licences affecting the Property

Fairfax shall not without the prior written consent of Cothill (which consent is not to be unreasonably withheld or delayed in circumstances):

8.7.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925); or

8.7.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property).

8.8 No restrictive obligations

Fairfax shall not, without the prior written consent of Cothill, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

8.9 Proprietary rights

Fairfax shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of Cothill.

8.10 Notices or claims relating to the Property

8.10.1 Fairfax shall:

- (a) give full particulars to Cothill of any material notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within five Business Days after becoming aware of the relevant Notice; and
- (b) if Cothill (acting reasonably) so requires, as soon as reasonably practicable and at the cost of Fairfax, take all reasonable and necessary steps to comply with any Notice, and make, or join with Cothill in making, any objections or representations in respect of that Notice that Cothill thinks fit.

8.10.2 Fairfax shall give full particulars to Cothill of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

8.11 Payment of outgoings

Fairfax shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

8.12 Conduct of business on Property

Fairfax shall carry on its trade and business on those parts (if any) of the Property as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business.

8.13 Inspection

Fairfax shall permit Cothill, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice and at reasonable times subject to all health and safety instructions issued by Fairfax.

9. POWERS OF COTHILL

9.1 Power to remedy

- 9.1.1 Cothill shall be entitled (but shall not be obliged) to remedy, at any time, a breach by Fairfax of any of its obligations contained in this deed and Fairfax irrevocably authorises Cothill and its agents to do all things that are necessary or desirable for that purpose.
- 9.1.2 In remedying any breach in accordance with this clause 9.1, Cothill, its agents and their respective officers, agents and employees shall be

entitled to enter onto the Property and to take any action as Cothill may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

9.2 Exercise of rights

The rights of Cothill under clause 9.1 are without prejudice to any other rights of Cothill under this deed. The exercise of any rights of Cothill under this deed shall not make Cothill liable to account as a chargee in possession.

9.3 Cothill has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by Cothill in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

9.4 Indulgence

Cothill may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with Fairfax) in respect of the Secured Liability or of any other security for them without prejudice either to this deed or to the liability of Fairfax for the Secured Liability.

10. WHEN SECURITY BECOMES ENFORCEABLE

10.1 Security becomes enforceable on Event of Default

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

10.2 Discretion

After the security constituted by this deed has become enforceable, Cothill may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

11. ENFORCEMENT OF SECURITY

11.1 Enforcement powers

11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between Cothill and a purchaser from Cothill, arise on and be exercisable at any time after the execution of this deed, but Cothill shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on chargees under the LPA 1925 and by any other statute are extended so as to authorise Cothill and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of Fairfax, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of Fairfax and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as Cothill or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

11.3 Privileges

Each Receiver and Cothill is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on chargees and receivers.

11.4 No liability as chargee in possession

Neither Cothill nor any Receiver shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account as chargee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Charged Property for which a chargee in possession might be liable as such.

11.5 Relinquishing possession

If Cothill or any Receiver enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

12. RECEIVERS

12.1 Appointment and removal

At any time after the security constituted by this deed has become enforceable, or at the request of Fairfax, Cothill may, without further notice:

12.1.1 appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property; and

12.1.2 (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

12.2 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of Cothill under the Insolvency Act 1986, the LPA 1925

or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

12.3 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by Cothill despite any prior appointment in respect of all or any part of the Charged Property.

12.4 Remuneration of Receiver

Cothill may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA and the remuneration of the Receiver shall be a debt secured by this legal charge which shall be due and payable immediately upon its being paid by Cothill.

13. POWERS OF RECEIVER

13.1 Powers additional to statutory powers

13.1.1 Any Receiver appointed by Cothill under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 13.2 to clause 13.20.

13.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.3 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of Fairfax, the directors of Fairfax or himself.

13.2 Receiver is agent of Fairfax

Any Receiver appointed by Cothill under this legal charge shall be the agent of Fairfax and Fairfax shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him. The agency of each Receiver shall continue until Fairfax goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of Cothill.

13.3 Repair and develop the Property

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

13.4 Grant or accept surrenders of leases

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he thinks fit.

13.5 Employ personnel and advisers

A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers

on any terms and subject to any conditions that he thinks fit. A Receiver may discharge any such person or any such person appointed by Fairfax.

13.6 Make and revoke VAT options to tax

A Receiver may make, exercise or revoke any VAT option to tax that he thinks fit.

13.7 Charge for remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that Cothill may prescribe or agree with him.

13.8 Realise Charged Property

A Receiver may collect and get in the Charged Property or any part of it in respect of which he is appointed and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

13.9 Manage or reconstruct Fairfax's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of Fairfax carried out at the Property.

13.10 Dispose of Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

13.11 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of Fairfax.

13.12 Give valid receipts

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

13.13 Make settlements

A Receiver may make any arrangement, settlement or compromise between Fairfax and any other person that he may think expedient.

13.14 Bring proceedings

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he thinks fit.

13.15 Insure

A Receiver may, if he thinks fit, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by Fairfax under this deed.

13.16 Powers under LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

13.17 Borrow

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from Cothill (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if Cothill consents, terms under which that security ranks in priority to legal charge contained in this deed).

13.18 Redeem prior Encumbrance

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on Fairfax, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

13.19 Absolute beneficial owner

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Property.

13.20 Incidental powers

A Receiver may do any other acts and things that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or lawfully may or can do as agent for Fairfax.

14. APPLICATION OF PROCEEDS

14.1 Order of application of proceeds

All monies received by Cothill or a Receiver under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- 14.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of Cothill (and any Receiver, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;
- 14.1.2 in or towards payment of or provision for the Secured Liability in any order and manner that Cothill determines; and

14.1.3 in payment of the surplus (if any) to Fairfax or other person entitled to it.

14.2 Appropriation

Neither Cothill nor any Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal.

14.3 Suspense account

All monies received by Cothill or a Receiver under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liability):

14.3.1 may, at the discretion of Cothill or the Receiver, be credited to any suspense or securities realised account;

14.3.2 shall bear interest, if any, at the rate agreed in writing between Cothill and Fairfax; and

14.3.3 may be held in that account for so long as Cothill or the Receiver thinks fit.

15. POWER OF ATTORNEY

15.1 Appointment of attorneys

By way of security, Fairfax irrevocably appoints Cothill, and every Receiver separately to be the attorney of Fairfax and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

15.1.1 Fairfax is required to execute and do under this deed; or

15.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on Cothill and any Receiver.

15.2 Ratification of acts of attorneys

Fairfax ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 15.1.

16. RELEASE

16.1 Release

Subject to clause 22.3, on the expiry of the Security Period, Cothill shall at the request and reasonable cost of Fairfax take whatever action is necessary to release the Charged Property from the security constituted by this deed.

17. ASSIGNMENT AND TRANSFER

17.1 Assignment by Cothill

Cothill shall be entitled at any time assign or transfer any or all of its rights and obligations under this deed to any corporate body incorporated in England and

Wales (whose business does not include residential development) provided that it is a pre-condition to any such assignment or transfer that:

- 17.1.1 the benefit of the legal charge contained in this deed is only assigned to any such person who also has assigned to them the benefit of the rights and entitlements of Fairfax under the Agreement;
- 17.1.2 Fairfax has received a deed of covenant from the assignee in a form previously approved by Fairfax (such approval not to be unreasonably withheld or delayed) to observe and perform the obligations on the part of Cothill contained in this deed,

and in the event that all these conditions have not been complied with then such assignment shall be deemed not to be valid.

17.2 Assignment by Borrower

Fairfax may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

18. AMENDMENTS, WAIVERS AND CONSENTS

18.1 Amendments

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

18.2 Waivers and consents

18.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

18.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by Cothill shall be effective unless it is in writing.

18.3 Rights and remedies

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

19. SEVERANCE

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification

to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

20. COUNTERPARTS

20.1 Counterparts

20.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

20.1.2 Transmission of an executed signature page of a counterpart of this deed by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

20.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

21. THIRD PARTY RIGHTS

21.1 Third party rights

21.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

21.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

22. FURTHER PROVISIONS

22.1 Independent security

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that Cothill may hold for the Secured Liability at any time. No prior security held by Cothill over the whole or any part of the Charged Property shall merge in the security created by this deed.

22.2 Continuing security

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liability, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until Cothill discharges this deed in writing.

22.3 Discharge conditional

Any release, discharge or settlement between Fairfax and Cothill shall be deemed conditional on no payment or security received by Cothill in respect of the Secured Liability being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

22.3.1 Cothill or its nominee (acting reasonably) may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that Cothill (acting reasonably) deems necessary to provide Cothill with security against any such avoidance, reduction or order for refund; and

22.3.2 Cothill may recover the value or amount of such security or payment from Fairfax subsequently as if the release, discharge or settlement had not occurred.

22.4 Certificates

A certificate or determination by Cothill as to any amount for the time being due to it from Fairfax under this deed and the Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

22.5 Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

23. NOTICES

23.1 Delivery

Any notice or other communication given to a party under or in connection with this deed shall be:

23.1.1 in writing;

23.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

23.1.3 sent to:

(a) Fairfax at:

Bunton Barn, Bunton Lane, Bolney, Haywards Heath, West Sussex RH17 5RE

Attention: Jon Ball

With a copy to Fairfax's solicitors: Dean Wilson LLP of Ridgeland House, 165 Dyke Road, Brighton BN3 1TL (Ref: 20679.62/DNH)

(b) Cothill at:

7 Cothill, Abingdon, Oxon, OX13 6JL

Attention: Trust Bursar

With a copy to Cothill's solicitors: Gowling WLG (UK) LLP of Two Snowhill, Birmingham B4 6WR (Ref: 2623621/DWL1)

or to any other address or fax number as is notified in writing by one party to the other from time to time.

23.2 Receipt by Fairfax

Any notice or other communication that Cothill gives to Fairfax shall be deemed to have been received:

23.2.1 if delivered by hand, at the time it is left at the relevant address;

23.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

23.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 23.2.1 or clause 23.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

23.3 Receipt by Cothill

Any notice or other communication given to Cothill shall be deemed to have been received only on actual receipt.

23.4 Service of proceedings

This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. GOVERNING LAW AND JURISDICTION

24.1 Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

24.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of Cothill to take proceedings against Fairfax in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

24.3 Other service

Fairfax irrevocably consents to any process in any legal action or proceedings under clause 24.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.


IN WITNESS WHEREOF this document has been executed and delivered as a deed on the date first stated above.

Executed as a deed by
FAIRFAX ACQUISITIONS LIMITED
acting by
director,
in the presence of:



[SIGNATURE OF DIRECTOR]

Director


[SIGNATURE OF WITNESS]

NAME: THOMAS MCNANE
ADDRESS: 18 DONGAR ROAD,
LONDON, SW18 1ST
OCCUPATION: DIRECTOR

Executed as a deed by
COTHILL TRUST (previously known as
COTHILL EDUCATIONAL TRUST) acting
by two directors each in the presence of a
witness:

.....
[SIGNATURE OF DIRECTOR]

Director

.....
[SIGNATURE OF WITNESS]

NAME:

ADDRESS:

OCCUPATION:

.....
[SIGNATURE OF DIRECTOR]

Director

.....
[SIGNATURE OF WITNESS]

NAME:

ADDRESS:

OCCUPATION: