



Registration of a Charge

Company name: **BRIGHTON COLLEGE**

Company number: **00007663**



X5Y8JW82

Received for Electronic Filing: **16/01/2017**

Details of Charge

Date of creation: **13/01/2017**

Charge code: **0000 7663 0016**

Persons entitled: **TRUSTEES OF THE INSTITUTE OF OUR LADY OF MERCY**

Brief description: **THE FREEHOLD PROPERTY AT THE FORMER ST JOSEPH'S REST HOME, BRISTOL ROAD, BRIGHTON, BN2 1AP REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER ESX330209**

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: **GEMMA COLES**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7663

Charge code: 0000 7663 0016

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th January 2017 and created by BRIGHTON COLLEGE was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th January 2017 .

Given at Companies House, Cardiff on 17th January 2017

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

13 January

2018

TRUSTEES OF THE INSTITUTE OF OUR LADY OF MERCY

and

BRIGHTON COLLEGE

Legal Charge

Relating to

The Former St Joseph's Rest Home, Bristol Road, Brighton, BN2 1AP

IBB solicitors

IBB Solicitors
Capital Court
30 Windsor Street
Uxbridge UB8 1AB

Tel: 08456 381381
Fax: 08456 381351

THIS LEGAL CHARGE dated

13 January

2017

PARTIES

- (1) **BRIGHTON COLLEGE** incorporated and registered in England and Wales with company number 00007663 and a registered charity registered with number 307061 of Eastern Road, Brighton, East Sussex BN2 0AL (the **Chargor**); and
- (2) **TRUSTEES OF THE INSTITUTE OF OUR LADY OF MERCY** a body corporate under Part 12 of the Charities Act 2011 at The Generalate, Convent of Mercy, Cemetery Road, Yeadon, Leeds, LS19 7UR (the **Chargee**).

NOW THIS DEED WITNESSES as follows:

1 Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

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

"**Agreement**" means an agreement for the sale of the Property dated the 6th day of January 2017 and made between the Chargee (1) and the Chargor (2).

"**Chargee**" where the context so admits includes its successors in title and the assigns of the Chargee.

"**Chargor**" includes the Chargor's successors in title.

"**Competent Authority**" means any statutory public local or other authority or any court of law of any Government department or any of them or any of their duly authorised officers.

"**Deferred Consideration**" means the amount of £1,666,666.67 (one million six hundred and sixty six thousand, six hundred and sixty six pounds, sixty seven pence) (exclusive of VAT).

"**Enforcement Event**" means the event referred to in clause 8.1.

"**Interest Rate**" means 6% per annum, compounded annually, above the base rate from time to time of National Westminster Bank plc.

"**Property**" means the freehold property at The Former St Joseph's Rest Home, Bristol Road, Brighton, BN2 1AP registered at HM Land Registry with absolute title under title number ESX330209 and transferred to by the Chargee to the Chargor on

even date.

"Receiver" means a receiver or manager of the whole or any part of the Property (being a person who under the Insolvency Act 1986 is qualified to act as a receiver of the Property or any part of it).

"VAT" means Value Added Tax and any similar tax substituted for it or in addition to it.

- 1.2 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 or consolidated and all statutory instruments or orders made pursuant to it.
- 1.3 Words denoting the singular number only include the plural and vice versa.
- 1.4 Words denoting any gender include all the genders and words denoting persons include firms and corporations and vice versa.
- 1.5 Unless the context otherwise requires reference to a clause is to a clause of this deed.
- 1.6 The clause headings do not form part of this deed and are for convenience only and are not to be taken into account in its construction or interpretation.

2 Background:

- 2.1 Pursuant to the Agreement the Chargee agreed to sell to the Chargor the Property at a price of Two Million Five Hundred Thousand Pounds (£2,500,000), exclusive of VAT.
- 2.2 It is provided in the Agreement that payment of the Deferred Consideration mentioned in clauses 2.2 to 2.4 of the Agreement is to be secured by a legal charge (namely this deed) of the Property.
- 2.3 The sale and purchase of the Property having been completed this day by transfer between the Chargee and the Chargor in accordance with the provisions of the Agreement the parties to this deed enter into this deed.

3 Covenant to pay:

The Chargor covenants with the Chargee to pay and discharge:

- (a) the Deferred Consideration when payable pursuant to clause 2.2 and clause 2.3 of the Agreement in the manner provided for in that clause together with any VAT lawfully payable in respect of the Deferred Consideration (subject to the Chargor's receipt of a valid VAT invoice in respect of the same); and
- (b) interest at the Interest Rate on any amount of the Deferred Consideration that remains unpaid within one working day of the date of payment. Such interest being payable on demand and for the period commencing on and including the date payment was due and expiring on and including the date that payment is actually made in cleared funds; and

- (c) any costs and expenses reasonably and properly incurred from time to time by the Chargee under this deed or by any Receiver appointed under it payable by the Chargor on demand.

4 Charge and assignment and further assurances:

- 4.1 As security for the payment and discharge of all sums covenanted to be paid to the Chargee under this deed the Chargor with full title guarantee hereby in favour of the Chargee as a continuing security charges by way of first legal mortgage the Property with all buildings fixtures (including trade fixtures) and fixed plant and machinery from time to time thereon.
- 4.2 the Chargor agrees and covenants with the Chargee to sign execute and do all documents and all other acts and things as are in the reasonable opinion of the Chargee necessary desirable or appropriate in connection with the execution performance and enforcement of this deed and the Chargee's rights under it.

5 Power of sale:

The Chargee's power of sale and all other powers of a Chargee for all purposes is deemed to arise under this deed on the date one month from and including the date of this deed.

6 Restrictions affecting the Property:

As regards the Property it is agreed and declared as follows during the continuance of this security:

- 6.1 the Chargor must at all times observe and perform all obligations on its part relating to or in connection with the payment of the Deferred Consideration; and
- 6.3 without the prior written consent of the Chargee the Chargor must not at any time lessen or allow any third party to lessen the value of the Property.

7 Powers and rights of the Chargee:

- 7.1 The security created by this deed is in addition to any collateral or other security which the Chargee may now or from time to time hold or take from or on account of the Chargor or any lien to which the Chargee may be entitled; and
- 7.2 This security is not to be considered as satisfied or discharged by any intermediate payment or satisfaction of part only of the monies and liabilities secured by it but is to extend to the ultimate balance of them.

8 Event of default:

- 8.1 The monies and liabilities secured by this deed are to become immediately payable and the security hereby created is to become immediately enforceable and without prejudice to the foregoing a statutory power of sale in relation to the Property and each and every part of it is to become immediately exercisable notwithstanding the provisions of the Act section 103 (which section is not to apply to this security or any

sale made by virtue of it) on demand being made on the Chargor by the Chargee for repayment of any of the monies secured by this deed at any time after the Deferred Consideration has become payable;

- 8.3 Upon any sale made in exercise of the power by this deed or any statute in that behalf conferred upon the Chargee the Chargee may sever and sell any fixtures apart from the premises to which they may be affixed and the Chargee may make such arrangements as they think fit for the apportionment of any rent affecting the Property sold or for charging the rent wholly upon part of the Property and for the reservation of any new rent and for the indemnity of any purchaser or purchasers against the whole or any part of the rent or the performance or observance of any of the covenants and agreements affecting the Property sold and for the reservation of any powers of entry and distress and entry and taking the income from it and otherwise; and
- 8.4 On entering into possession of the Property or any part of it the Chargee shall (but only in respect of the matters mentioned in this sub-clause) become and be the agent of the Chargor with authority at the expense of the Chargor to remove store sell or otherwise deal with in such manner as the Chargee may determine any furniture goods materials or apparatus of the Chargor or of any other person which the Chargor has refused or omitted to remove or caused to be removed from the Property and the Chargor must keep the Chargee indemnified against all costs claims or demands in respect of the removal storage sale or other dealing with any furniture goods materials or apparatus of any such other person.

9 Appointment of receiver:

- 9.1 At any time after the occurrence of an Enforcement Event or if requested by the Chargor the Chargee may in writing under their hand appoint one or more qualified persons jointly severally or jointly and severally to be a Receiver; and
- 9.2 The Chargee may from time to time by writing under their hand remove any Receiver appointed by them and may whenever they deem it expedient appoint another qualified person as a new Receiver in the place of any Receiver whose appointment may for any reason have terminated and may from time to time determine the remuneration of any Receiver appointed by it.

10 Powers of Receiver:

- 10.1 The Receiver will be the agent of the Chargor (save that on the liquidation of the Chargor where as a matter of law the Receiver ceases to be the agent for the Chargor) and subject to any applicable statutory provisions the Chargor shall alone be personally liable for his acts defaults and remuneration. The Receiver shall have and be entitled to exercise all the powers conferred on a Receiver by the Act and in addition to and without limiting those powers (and without prejudice to the Chargee's power of sale) the Receiver is notwithstanding any winding up or dissolution of the Chargor to have the following powers:

- (a) to take possession of collect and get in the property in respect of which he is appointed or any part of it and for that purpose to take any proceedings in the name of the Chargor or otherwise as may seem

- expedient;
- (b) to sell or concur in selling let or concur in letting and to accept surrenders of leases of any part of the Property in such manner and generally on such terms and conditions as he thinks fit and to carry any such sale letting or surrender into effect by conveying transferring leasing letting or accepting surrenders in the name of or on behalf of the Chargor or otherwise and any such sale may be for cash debentures or other obligations shares stocks or other valuable consideration and may be payable in a lump sum or by instalments spread over such period as the Chargee think fit and so that any consideration or part of it received in a form other than cash is ipso facto immediately on receipt to be and become charged with the payment of all monies due under this deed as though it had been included in the charge created by clause 4 and formed part of the Property hereby charged and (where applicable) any plant machinery and other fixtures may be severed and sold separately from the premises containing them without the consent of the Chargee being obtained thereto;
 - (c) to take any indemnity from the Chargor from and against all actions claims expenses demands and liabilities whether arising out of contract or out of tort or out of breach of statutory obligation or in any other way incurred by him or by any manager agent officer employee or workmen for whose debt default or miscarriage he may be answerable for any done or omitted to be done in the exercise or purported exercise of his powers under this security or under any appointments duly made under the provisions of this deed and if he thinks fit but without prejudice to the foregoing to effect with any insurance company or office or underwriters any policy or policies of insurance either in lieu or in satisfaction of or in addition to such indemnity from the Chargor;
 - (d) to make any arrangements or compromise which he thinks expedient in the interest of the Chargee;
 - (e) to make and effect all such repairs improvements or other works and insurances as he thinks fit and renew such of the plant machinery and any other effects of the Chargor whatsoever as are worn out lost or otherwise become unserviceable;
 - (f) to appoint managers accountants employees workmen and agents for the foregoing purposes upon such terms as to remuneration or otherwise as he may determine;
 - (g) to do all such other acts and things as may be considered to be incidental or conducive to any of the foregoing matters and powers which he may or can lawfully do as agent for the Chargor;
 - (h) to borrow money from the Chargee or from such other source as he may deem desirable and the Chargee may approve on the security of the Property either in priority to the security created by this deed or subject thereto as he may deem fit and the Chargee may agree;
 - (i) to obtain all planning permissions building regulation approvals and other permissions consents or licences for the development of the

Property and any other property which it may in the opinion of the Chargee or the Receiver be necessary or desirable to develop in conjunction with the Property and to effect and/or carry out any development building or other works as in his absolute discretion he thinks fit;

- (j) to employ for the purpose for the foregoing purposes solicitors architects surveyors quantity surveyors estate agents contractors builders and workmen and others and purchase all proper materials as in his absolute discretion he thinks fit;
- (k) to deal without restriction with the Property as if the Receiver were a sole and absolute unencumbered owner beneficially entitled to it and all monies costs and expenses expended and incurred in relation to the same shall be added to and form part of the monies hereby secured;
- (l) to bring or defend legal proceedings in the name of the Chargor including proceedings for the winding up of the Chargor and proceedings for directions under the Insolvency Act 1986 section 35; and
- (m) to sell the Property subject to the payment of Deferred Consideration at the date when the same fall due for payment;

10.2 In addition to the rights and liberties set out in clause 10.1 the Receiver is to have power:

- (a) if when the power of sale becomes exercisable in accordance with the provisions of this deed there shall be any building works or other development on the Property which in the opinion of the Chargee remain unfinished it is to be lawful for the Chargee or any Receiver appointed by the Chargee to enter upon and take possession of the Property and of all buildings erected and fixtures whatsoever in them and to complete the development in such manner as the Chargee or the Receiver think fit. For the foregoing purposes the Chargee or such Receiver are to be at liberty to employ contractors builders workmen and purchase all proper materials as the Chargee or the Receiver may think fit;
- (b) the Chargee or such Receiver are to be entitled but not bound to give instructions to contractors architects quantity surveyors and all other persons who in respect of such development shall have entered into contracts for personal services to be rendered to the Chargor or to any of those persons requiring them (as the case may be) to complete or to supervise the completion of such development in accordance with their obligations to the Chargor; and
- (c) the Chargee or such Receiver are to be entitled to require the Chargor's solicitors upon payment of their proper charges to hand over all deeds documents and papers in their possession which the Chargee or such Receiver may require to enable the Chargee or the Receiver to complete such development;

10.3 All monies received by the Chargee or by the Receiver in exercise of any powers conferred by this deed are to be applied for the following purposes subject to the claims of secured or unsecured creditors (if any) ranking in priority to the security

created by this deed in the following order:

- (a) in payment of all costs charges and expenses of and incidental to the appointment of the Receiver and the exercise of all or any of the foregoing powers and of all payments properly made by him;
- (b) in payment of remuneration to the Receiver at such rate as may have been agreed between him and the Chargee;
- (c) in payment and discharge of any liabilities incurred by the Receiver on the Chargor's behalf in the exercise of any of the powers of the Receiver;
- (d) in providing for the matters (other than the remuneration of the Receiver) specified in the first three paragraphs of the Act section 109(8);
- (e) in or towards payments of any debts or claims which are by statute payable in preference to the monies hereby secured but only to the extent to which such debts or claims have such preference;
- (f) in payment to the Chargee of all monies and liabilities hereby secured to be applied in such manner as the Chargee in their absolute discretion decide; and
- (g) any surplus is to be paid to the Chargor or other person entitled thereto;

10.4 The foregoing powers of appointment of and powers of a Receiver are to be in addition to and not to the prejudice to statutory and other powers or the Chargee under the Act or otherwise if so that such powers are to be and remain exercisable by the Chargee in respect of any part of the Property in respect of which no appointment of a Receiver by the Chargee shall from time to time be subsisting and that notwithstanding them an appointment under the powers of clause 9 or have subsisted and been withdrawn in respect of that part of the Property or shall be subsisting in respect of any other part of the Property.

11 Delegation by the Chargee:

The Chargee may at any time and from time to time delegate by power of attorney or any other means to any other person or persons all or any of the powers authorities and discretions which are for the time being exercisable by the Chargee under this deed in relation to the Property or any part of it. Any such delegation may be made upon such terms (including power to sub-delegate) as the Chargee may think fit. The Chargee is not in any way to be liable or responsible to the Chargor for any loss or damage arising from any acts defaults omissions or misconduct on the part of any such delegate or sub-delegate.

12 Expenses:

All expenditure costs charges and expenses reasonably and properly incurred by the Chargee and all expenditure costs charges and expenses properly incurred by any Receiver appointed under this deed in the enforcement of this deed and in exercising any of their or his powers expressly or impliedly conferred by this deed are to be recoverable from the Chargor as a debt payable within 7 days of demand

together with interest at the rate of 5% per annum above the base rate of National Westminster Bank plc or such other bank in the United Kingdom as is nominated from time to time in writing by the Chargee on each such item of expenditure and each such cost charge and expense from the time when it is first incurred by the Chargee or the Receiver (as the case may be) such interest to be deemed to accrue from day to day and to be payable as well after as before any judgment or demand.

13 Consolidation:

The restriction on the right of consolidating mortgages contained in the Act section 93 is not to apply to this security.

14 Protection of third parties:

No purchaser mortgagee or other person or company dealing with the Chargee or any Receiver appointed under this deed or their or his agents are to be concerned to enquire whether the liabilities hereby secured have become payable or whether the power which the Chargee or any said Receivers purporting to exercise has become exercisable or whether any money remains due on this deed or to see the application of any money paid to the Chargee or to such Receiver.

15 Notices:

The provisions of clause 17 of the Agreement shall apply to any notices or correspondence served relating to any matters contained within this deed.

16 Grant of waiver etc:

16.1 The Chargee may at any time or times without discharging or in any way affecting the security created by this deed or any remedy of the Chargee in respect of such security grant to the Chargor time or indulgence or abstain from asserting calling exercising or enforcing any remedies securities guarantees or other rights which they may now or hereafter have from or against the Chargor; and

16.2 No failure to exercise and no delay in exercising on the part of the Chargee any right power or privilege hereunder it to operate as a waiver of the same nor is any single or partial exercise of any right or privilege to preclude any other or further exercise of it or the exercise of any other right power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

17 No liability as mortgagee in possession:

The Chargee is not nor shall any Receiver by reason of their or the Receiver entering into possession of the Property or any part of it be liable to account as mortgagee in possession or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable. Every Receiver is to be deemed to be the agent of the Chargor for all purposes and to be deemed to be in the same position as a receiver duly appointed by a mortgagee under the Act. The Chargor

alone is to be responsible for its contracts engagements acts omissions defaults and losses and for liabilities incurred by it and the Chargee is not to incur any liability therefore (either to the Chargor or to any other person whatsoever) by reason of their making his appointment as Receiver or for any other reason whatsoever other than the liability incurred as a result of the negligence or wilful default of the Chargee. Every Receiver and the Chargee is to be entitled to all the rights powers privileges and immunities by the Act conferred on mortgagees and receivers when such receivers have been duly appointed under the Act.

18 Further assurance:

The Chargor must at its own expense execute and do all such assurances acts and things as the Chargee may require for perfecting or protecting security over the Property or any part of it or facilitating the realisation of the Property or any such part and in the exercise of all powers authorities and discretions vested in the Chargee or in any Receiver of the Property or any part of it or in any such delegate or sub-delegate as mentioned above. The Chargor must in particular execute all transfers conveyances assignments and assurances of the Property whether to the Chargee or to their nominees and give all notices orders and directions which the Chargee may think expedient.

19 Assignment:

- 19.1 The Chargee may assign all or any of their rights under this deed. Any successor to or assignee of the Chargee is to be entitled to the full benefits of this deed; and
- 19.2 In the event of assignment pursuant to clause 19.1 the Chargor consents to the Chargee amending the Restriction to be registered against the Property pursuant to clause 21 so that the Restriction benefits the assignee.

20 Contracts (Rights of Third Parties) Act 1999:

None of the provisions of this deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this deed.

21 Restriction:

The Chargor hereby applies (and at its own cost) to the Chief Land Registrar for the registration against the registered title of the Property of the following 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 the day of 2016 in favour of the Trustees of The Institute of Our Lady of Mercy referred to in the charges register or its conveyancer."

23 Release:

Within one month of the later of:

- (a) the date of payment of the Deferred Consideration;
- (b) the date of payment of all other sums secured by this deed;

the Chargor shall be released from all of its obligations contained in this deed and the Chargee shall, at the expense of the Chargor, within 10 working days of the later date, provided that all outstanding sums due to the Chargor pursuant to this deed have been paid, take such steps as shall be reasonably necessary (and sign such Land Registry forms as shall be appropriate) to cancel the restrictions entered on the title to the Property pursuant to Clause 21 of this deed.

24 Charities Act 2011:

- 24.1 The land charged is held by Brighton College (a charity registered with number 307061 and a company limited by guarantee registered with number 00007663), a non-exempt charity, and this 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 apply.
- 24.2 The Trustees of Brighton College certify that they have power under its trusts to effect this charge and that they have obtained and considered such advice as is mentioned in Section 124(2) of the Charities Act 2011.

EXECUTED as a deed by
BRIGHTON COLLEGE acting by

[Signature], a
director, in the presence of: JOHN MORGER

[Signature]
Witness signature

PAUL WESTBROOK
Name

27 ROMAN ROAD, HOVE BN2 4LS
Address

SURDAR
Occupation

THE COMMON SEAL of the TRUSTEES OF
THE INSTITUTE OF OUR LADY OF MERCY
was hereto affixed in the presence of:

Trustee:

Trustee: