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COMPANIES FORM No. 395

589026/10

Particulars of a mortgage or charge

395

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

Name of company

5039067

* Derbyshire Schools Phase Two Limited for itself and as General Partner of the Borrower (as defined below) (the **Chargor**).

Date of creation of the charge

6 August 2004

Description of the instrument (if any) creating or evidencing the charge (note 2)

Debenture (the **Debenture**) dated 6 August 2004 between the Chargor, Newbold (Derbyshire Schools Phase Two) Limited (the **Property Co-Trustee**), Derbyshire Schools Phase Two Partnership (the **Borrower**) and Sumitomo Mitsui Banking Corporation Europe Limited as Security Trustee for itself and .. CONTINUED ON CONTINUATION SHEET 6785942.1

Amount secured by the mortgage or charge

All monies, obligations and liabilities, due at any time, owing or incurred by the Borrower, the Chargor or the Property Co-Trustee to the Senior Creditors (as defined below) or any of them under or pursuant to any Finance Documents (as defined below) (the Secured Obligations).

Names and addresses of the mortgagees or persons entitled to the charge

Sumitomo Mitsui Banking Corporation Europe Limited, Temple Court, 11 Queen Victoria Street, London (as Security Trustee for itself and on behalf of the Secured Parties).

Postcode EC4N 4TA

Please return

via

CH London Counterference (if any):

Denton Wilde Sapte
1 Fleet Place
London
EC4M 7WS

CDXH/54468.00024/6781650.1

Time critical reference

For official Use
Mortgage Section

Post room



LD4
COMPANIES HOUSE

0451
20/08/04

Short particulars of all the property mortgaged or charged

1. Fixed Charge

The Chargor and the Borrower each, with full title guarantee, charge to the Security Trustee as a continuing security for the payment and discharge of the Secured Obligations:

(A) by way of first legal mortgage all Real Property (as defined below) now vested in the Chargor or the Borrower;

(B) by way of first fixed charge:

(i) except to the extent effectively mortgaged to the Security Trustee under (A) above, all plant and machinery (other than any comprised in the Sites (as defined below), vehicles and other equipment owned by the Chargor or Borrower now or at any time after the date of the Debenture or in which the Chargor or Borrower has an interest and the benefit of all contracts and warranties relating to the same;

CONTINUED ON CONTINUATION SHEET 6785942.1

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

Particulars as to commission allowance or discount (note 3)

Nil

Signed

Denton Wilde

Date

18/08/04

On behalf of [company] [mortgagor/chargee]

A fee of £10 is payable to Companies House in respect of each register entry for a mortgage or charge. (See Note 5)

† delete as appropriate

Notes

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the Registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage" or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his:
 - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
 - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is:-

Companies House, Crown Way, Cardiff CF14 3UZ

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 1

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Description of the instrument creating or evidencing the mortgage or charge (continued)

on behalf of the Secured Parties (as defined below) (the **Security Trustee**).

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 2

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Amount due or owing on the mortgage or charge (continued)

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 3

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Names, addresses and descriptions of the mortgagees or persons entitled to the charge (continued)

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Short particulars of all the property mortgaged or charged (continued)

- (ii) except to the extent effectively mortgaged to the Security Trustee under paragraph (A) above, the Real Property;
- (iii) all Permitted Investments (as defined below) including all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or any other rights related to such Permitted Investments;
- (iv) all book and other debts, revenues and claims, whether actual or contingent, whether arising under contracts or in any other manner, including Hedging Closeout Proceeds (as defined below), owned by the Chargor or the Borrower and now or at any time after the date of the Debenture or in which the Chargor or the Borrower has an interest whether originally owing to the Chargor or the Borrower or purchased or otherwise acquired by the Chargor or Borrower and all things in action which may give rise to any debt, revenue or claim, together with the full benefit of any Encumbrances (as defined below), Collateral Instruments (as defined below) and any other related rights (whether as creditor or beneficiary) including, without limitation, reservations of proprietary rights, rights of tracing and unpaid vendor's liens and associated rights, but excluding any assets the subject of paragraphs (C), (D), (E) or (F) below;
- (v) the Charged Documents (as defined below);
- (C) the Balances (as defined below) (other than the Balances on the Distribution Account and the Insurance Proceeds Account (each as defined below)) and all proceeds derived from them (other than the Distribution Account and the Insurance Proceeds Account);
- (D) all monies (other than Third Party Proceeds (as defined below)) from time to time payable to the Borrower under or pursuant to the Insurances (as defined below) including without limitation the right to the refund of any premiums;
- (E) the goodwill and uncalled capital of the Borrower; and
- (F) all present and future patents, trade marks and service marks (whether registered or not) and applications for the same, trade names, registered designs, design rights, copyrights, computer programmes, know-how and trade secrets and all other industrial or intangible property or rights and all licences, agreements and ancillary and connected rights relating to, intellectual and intangible property, in each case owned by the Chargor or Borrower.

2. Secured Obligations

The Chargor, with full title guarantee hereby charges to the Security Trustee by way of first fixed charge as a continuing security for the payment of the Secured Obligations, all of its rights, title and interest in and to the General Partner Share (as defined below) and the General Partner Loan (as defined below).

3. Floating Charge

The Chargor for itself and as general partner of the Borrower, with full title guarantee, charges to the Security Trustee by way of first floating charge as a continuing security for the payment and discharge of the Secured Obligations, its undertaking and all its property, assets and rights, both present and

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 5

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Short particulars of all the property mortgaged or charged (continued)

future other than any property or assets from time to time effectively charged by way of legal mortgage or fixed charge pursuant to paragraph 1(A) above or otherwise pursuant to the Debenture.

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 6

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Notes

COMPANIES FORM No. 395 (Cont.)

Continuation Sheet No 7

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

Agent means Sumitomo Mitsui Banking Corporation Europe Limited.

Balances means:

- (a) in relation to a particular Project Account or sub-account of a Project Account, all monies standing from time to time to the credit of that Project Account or sub-account (as the case may be); or
- (b) as the context may require, the aggregate of all monies standing from time to time to the credit of the Project Accounts and sub-accounts of the Project Accounts.

Capital Contributions means the amount contributed or to be contributed to the capital of the Partnership (i.e. the partnership established by the Limited Partnership Deed) by the Chargor in accordance with the Limited Partnership Deed.

Charged Documents means:

- (a) each Project Document to which the Borrower and the Chargor is a party;
- (b) each insurance policy and all other documents in connection with each such policy required to be effected by clause 15 of the Project Facility Agreement;
- (c) all other agreements and documents executed from time to time pursuant to any Transaction Documents to which the Chargor or the Borrower is a party or under which the Chargor or the Borrower has or at any time after the date of the Debenture directly or indirectly acquires benefit (not being the Hedging Agreement),

and **Charged Document** means any one of them.

Collateral Instruments means negotiable and non-negotiable instruments, guarantees and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing an Encumbrance.

Disposal means any transfer or other disposal of all or any part of an interest in an asset or the creation of any Right (i.e. any right, privilege, power, immunity or other interest or remedy of any kind) over an asset in favour of another person, but not the creation of an Encumbrance.

Encumbrances means:

- (a) any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, trust, arrangement for the purpose of providing security or other security interest of any kind in any jurisdiction;
- (b) any blocked account or "flawed asset" arrangement which has the commercial effect of creating security for Financial Indebtedness;
- (c) any right of set-off, whether it is created by agreement or by operation of law; and

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

- (d) any other proprietary interest created or arrangement entered into in relation to Financial Indebtedness which has the commercial effect of creating security for it.

Finance Documents means:

- (a) the Accounts Agreement (as defined in the Project Facility Agreement);
- (b) the Project Facility Agreement;
- (c) the Direct Agreements (as defined in the Project Facility Agreement);
- (d) the Hedging Agreement;
- (e) the Intercreditor Agreement;
- (f) the Security Documents (as defined in the Project Facility Agreement);
- (g) the Fee Letters (as defined in the Project Facility Agreement);
- (h) any Transfer Agreement (as defined in the Project Facility Agreement);
- (i) each Drawdown Notice (as defined in the Project Facility Agreement);
- (j) any waivers or consents given under the Finance Documents; and
- (k) any other document which the Agent and the Borrower agree to designate as a Finance Document.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by an acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP (i.e. generally accepted accounting principles and practices in the United Kingdom, which are generally adopted and accepted), be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

General Partner Loan means all right, title and interest of the Chargor as general partner of the Borrower from time to time in and to any partner loan made by it to the Borrower, including all interest and other sums accrued thereon from time to time in respect thereof and rights under the Limited Partnership Deed in connection with such partner loan or any other applicable instrument under which the same is outstanding or is evidenced.

General Partner Share means all right, title and interest of the Chargor as general partner of the Borrower in and to any capital contribution made by it and all rights to Distributions (as defined in the Project Facility Agreement) accrued thereon from time to time and rights and powers under the Limited Partnership Deed (including management and voting rights) and any other entitlement of the Chargor by reason of its status or capital contribution.

Guarantee means any guarantee, indemnity, third party charge or other assurance against financial loss by one person in respect of the obligations of another person.

Hedge Provider means as at the date of the Project Facility Agreement, SMBC Capital Markets Limited (in its capacity as counterparty to the Hedging Agreement) and thereafter any replacement which shall be a Bank (as defined in the Project Facility Agreement) and shall have entered into a deed of accession under the Intercreditor Agreement.

Hedging Agreement means the ISDA Master Agreement (Multi Currency-Cross Border) (1992) as published by the International Swaps and Derivatives Association, Inc. entered into on 6 August 2004 between the Hedge Provider and the Borrower, the schedule thereto and each transaction confirmation entered into thereunder.

Hedging Closeout Proceeds means such amount or amounts (if any) as is or are or may become payable by the Hedge Provider to the Borrower in accordance with section 6(d)(ii) of the Hedging Agreement.

Indebtedness means any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent.

Insurances means the insurances set out in Schedule 9 of the Project Facility Agreement.

Intercreditor Agreement means the agreement dated 6 August 2004 and entered into between (1) the Chargor; (2) the Borrower; (3) Sumitomo Mitsui Banking Corporation Europe Limited (as Arranger, Agent, Security Trustee and Account Bank); (4) the Hedge Provider; (5) Babcock & Brown Properties

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

(Derbyshire Schools Phase Two) Limited; and (6) Long Eaton School Limited.

Junior Debt has the meaning given to it in the Intercreditor Agreement.

Limited Partner means Babcock & Brown Properties (Derbyshire Schools Phase Two) Limited and Long Eaton School Limited and their successors in title or permitted transferees or assigns and any other person who is admitted to the Partnership (meaning the partnership established by the Limited Partnership Deed) as a Limited Partner from time to time in accordance with and as permitted by the Finance Documents and **Limited Partner** shall mean any of them.

Limited Partnership Deed means the deed dated 31 March 2004 and entered into between (1) the Chargor; (2) Babcock & Brown Properties (Derbyshire Schools Phase Two) Limited; and (3) Long Eaton School Limited.

Permitted Encumbrance means:

- (a) any Encumbrances created in respect of any retention of title arrangement or conditional sale carried out at arm's length in the ordinary course of the Borrower's business;
- (b) Encumbrances arising under the Security Documents (as defined in the Project Facility Agreement);
- (c) liens or rights of set-off arising in the normal course of trading of a clearing or custody system holding the Permitted Investment;
- (d) any other Encumbrance approved in writing by the Agent; and
- (e) any blocked account of set-off arrangement under the Project Documents.

Permitted Investments means a debt instrument:

- (a) that has, at the time it is acquired, a remaining maturity of 360 days or less;
- (b) that is denominated in sterling;
- (c) that is not a bearer instrument; and
- (d) issued or guaranteed by (i) the Government of the United Kingdom or (ii) a Zone A OECD Bank whose short-term securities are for the time being rated A-1 by Standard and Poor's Rating Group or P-1 by Moody's Investor Services, Inc.

Project means the design, construction, financing, operation, maintenance and management pursuant to the terms of the Project Agreement of schools and related facilities at Long Eaton Community School and Newbold School, Chesterfield.

Project Agreement means schedule 11 of the project agreement dated 31 March 2001 between Derbyshire Schools LP and Derbyshire County Council as amended by the Amending Agreement (as defined in the Project Facility Agreement) and as transferred in part by the Novation Agreement (as

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

defined in the Project Facility Agreement) and as further amended by a further amending agreement between the Borrower and Derbyshire County Council dated 6 August 2004.

Project Accounts means:

- (a) the Revenue Account (as defined in the Project Facility Agreement);
- (b) the Compensation Proceeds Account (as defined in the Project Facility Agreement);
- (c) the Distribution Account (as defined in the Project Facility Agreement);
- (d) the Proceeds Account (as defined in the Project Facility Agreement);
- (e) the Operating Account (as defined in the Project Facility Agreement);
- (f) the Maintenance Reserve Account (as defined in the Project Facility Agreement);
- (g) the Insurance Proceeds Account (as defined in the Project Facility Agreement), and

each sub-account that any of these accounts may be divided into.

Project Assets means all assets required for the purposes of, or in connection with, the Project (including plant, machinery, buildings and intellectual property rights) wherever they are situated and whether or not they are owned by the Borrower.

Project Documents means:

- (a) each of the Key Project Documents (as defined in the Project Facility Agreement);
- (b) the Limited Partnership Deed;
- (c) the Management Deed (as defined in the Project Facility Agreement);
- (d) the Building Contractor's Collateral Warranty (as defined in the Project Facility Agreement);
- (e) each Professional Team Collateral Warranty (as defined in the Project Facility Agreement);
- (f) the Employer's Agent Deed of Appointment (as defined in the Project Facility Agreement);
- (g) each of the Bonds (as defined in the Project Facility Agreement);
- (h) the Declaration of Trust (as defined in the Project Facility Agreement); and
- (i) any other document the Agent and the Borrower (each acting reasonably) agree to designate as a Project Document.

Project Facility Agreement means the agreement dated 6 August 2004 and entered into by (1) the Borrower; (2) the Chargor; (3) Sumitomo Mitsui Banking Corporation Europe Limited (as Arranger, Account Bank, Agent and Security Trustee); (4) the Hedge Provider; and (5) the Financial Institutions

Company Number

5039067

Name of company

Derbyshire Schools Phase Two Limited (the **Chargor**)

Definitions

(as defined therein).

Real Property means all estates and other interests in freehold, leasehold and other immovable property and each part thereof wheresoever situate now or hereafter belonging to the Borrower (including the estates and interests specified in Schedule 1 of the Debenture), including:

- (a) all buildings and Fixtures (i.e. all fixtures and fittings (including trade fixtures and fittings), fixed plant and machinery and other items attached to that property, whether or not constituting a fixture at law) from time to time on or in such property;
- (b) all rights, easements and privileges appurtenant to, or benefiting such property;
- (c) the benefit of any covenants given in favour of the Borrower in respect of such property and any moneys paid or payable to the Borrower in respect of those covenants;
- (d) all proceeds of sale of such property and of the items referred to in paragraphs (a) to (c) above (inclusive); and
- (e) all other rights and claims to which the Borrower is now or may hereafter become entitled in relation to such property and to the items referred to in paragraph (a) above, including those against any manufacturer, supplier or installer thereof, any builder, contractor or professional adviser engaged in relation thereto and any lessee, sub-lessee or licensee thereof and any guarantor or surety for the obligations of such person.

Secured Parties and Senior Creditors means the Finance Parties, the Hedge Providers and each Additional Obligor (each as defined in the Project Facility Agreement) and **Secured Party and Senior Creditor** means any of them.

Sites means, in relation to the provision of the Phase Two Works (as defined in the Project Agreement), the land on which the Phase Two Works are being or are due to be carried out in accordance with the Project Agreement.

Third Party Proceeds means all proceeds of insurance payable to (or to the order of) or receivable by the Borrower under third party liability policies which are paid by the Insurers (as defined in the Project Facility Agreement) directly to third party claimants in accordance with the endorsement referred to in Schedule 9 of the Project Facility Agreement or to reimburse the Borrower for the previous payment of any third party liability.

Transaction Documents means all Finance Documents and all Project Documents.

FILE COPY



CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 05039067

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 6th AUGUST 2004 AND CREATED BY DERBYSHIRE SCHOOLS PHASE TWO LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE BORROWER, THE COMPANY OR THE PROPERTY CO-TRUSTEE TO THE SENIOR CREDITORS OR ANY OF THEM UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 20th AUGUST 2004.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 24th AUGUST 2004.

DP-L-L



Companies House
— for the record —



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES