



Registration of a Charge

Company name: **SURGERY DEVELOPMENTS LIMITED**

Company number: **03902791**



X9H2D2YY

Received for Electronic Filing: **03/11/2020**

Details of Charge

Date of creation: **06/10/2020**

Charge code: **0390 2791 0013**

Persons entitled: **GB PARTNERSHIPS (STOURPORT) LIMITED**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS LAND ON THE SOUTH EAST SIDE OF DUNLEY ROAD, STOURPORT-ON-SEVERN, WORCESTERSHIRE (FORMERLY PART OF THE LAND REGISTERED UNDER TITLE NUMBER WR106067) AND WHICH IS MORE PARTICULARLY DESCRIBED IN A TRANSFER DEED DATED 14 MAY 2020 BETWEEN (1) THE DEVELOPER AND (2) THE CHARGOR.**

Contains fixed charge(s).

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

GATELEY PLC



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3902791

Charge code: 0390 2791 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th October 2020 and created by SURGERY DEVELOPMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd November 2020 .

Given at Companies House, Cardiff on 4th November 2020

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

DATE 6 October 2020

LEGAL MORTGAGE OVER LAND

Between

SURGERY DEVELOPMENTS LIMITED

(as Chargor)

and

GB PARTNERSHIPS (STOURPORT) LIMITED

(as Developer)

CMS Cameron McKenna Nabarro Olswang LLP
1, The Avenue
Spinningfields
Manchester M3 3AP
T +44 161 393 4700
cms.law

TABLE OF CONTENTS

1.	Definitions and Interpretation.....	1
	Definitions	1
	Construction	3
	Third Party Rights	5
2.	Covenant to Pay	5
	Covenant to Pay	5
3.	Grant of Security	5
	Fixed Charges	5
4.	Perfection of Security.....	5
	Registration at HM Land Registry.....	5
5.	Further Assurance.....	6
	Further Assurance.....	6
	Necessary Action	6
	Implied Covenants for Title	6
6.	Representations	6
	General	6
	Status	6
	Binding Obligations	6
	Power and Authority.....	7
	Non-conflict with Other Obligations	7
7.	General Undertakings.....	7
	General	7
	Negative Pledge	7
	Restriction on Disposals.....	7
	Compliance with Laws and Regulations	7
	Notices relating to Charged Property	8
	Not Jeopardise Security	8
8.	The Mortgaged Property, Premises and Fixtures.....	8
	Payment of Outgoings in relation to Mortgaged Property	8
	Performance of Obligations	8
	Remedying Mortgaged Property Defaults	9
9.	Enforcement of Security	9
	When Security becomes Enforceable	9
	Redemption of Prior Mortgages	9
10.	Extension and Variation of the LPA.....	9
	General	9
	Privileges	10
11.	Appointment of Receiver.....	10
	Appointment.....	10
	Removal.....	10
	Statutory Powers of Appointment	10
	Capacity of Receiver.....	10

	Remuneration of Receiver	11
12.	Powers of Receiver	11
	General	11
	Specific Powers	11
	Developer's Powers	12
13.	Discretions and Delegation	13
	Discretion	13
	Delegation	13
14.	Power of Attorney	13
	Appointment and Powers	13
	Ratification	13
15.	Protection of Purchasers	13
	Consideration	13
	Protection of Third Parties	14
16.	Application of Proceeds	14
	Order of Application	14
	New Accounts	14
17.	No Liability as Mortgagee in Possession	14
18.	Set-Off	15
19.	Effectiveness of Security	15
	Continuing Security	15
	Cumulative Rights	15
	Reinstatement	15
20.	Payments	16
	Manner of Payments	16
	No Set-off by Chargor	16
21.	Expenses, Stamp Taxes and Indemnities	16
	Expenses	16
	Stamp Taxes	16
	General Indemnity	16
	Value Added Tax	17
22.	Certificates and Determinations	17
23.	Partial Invalidity	17
24.	Remedies and Waivers	17
25.	Notices	17
26.	Counterparts	17
27.	Assignment	17
28.	Release	17
29.	Governing Law	18
	Schedule Real Property	19

THIS DEED is made on the 6 day of October 2020

BETWEEN:

- (1) **SURGERY DEVELOPMENTS LIMITED**, registered in England and Wales with company number 03902791, whose registered office is situate at The Brew House, Greenalls Avenue, Warrington, England WA4 6HL (the "**Chargor**"); and
- (2) **GB PARTNERSHIPS (STOURPORT) LIMITED**, registered in England and Wales with company number 12244029, the registered office of which is at 9th Floor, Cobalt Square, 83-85 Hagley Road, Birmingham B16 8QG (the "**Developer**").

WHEREAS:

- (A) The Chargor enters into this Deed in connection with a development funding agreement for the development of a medical centre (the "**DFA**") dated on or around the date of this Deed between (1) the Chargor and (2) the Developer.
- (B) The Board of Directors of the Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Chargor and has passed a resolution to that effect.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 Terms defined in the DFA shall, unless otherwise defined in this Deed, have the same meanings when used in this Deed and in addition in this Deed:

"Business Day": means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Charged Property": means all the assets of the Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Developer by or pursuant to this Deed.

"Delegate": means any person appointed by the Developer or any Receiver pursuant to clauses 13.2 to 13.4 (*Delegation*) and any person appointed as attorney of the Developer and/or any Receiver or Delegate.

"Event of Default": means:

- (a) the Chargor fails to pay the Secured Liabilities when due and such non-payment is not remedied within 3 Business Days of the relevant due date;
- (b) the occurrence of an Insolvency Event; or
- (c) the Developer terminates the DFA as a consequence of the occurrence of a Relevant Terminating Event by the Chargor.

"Expenses": means all costs (including legal fees), charges, expenses and damages sustained or incurred by the Developer or any Receiver or Delegate in protecting, preserving, defending or enforcing the security constituted by this Deed or in exercising any rights, powers or remedies provided by or pursuant to this Deed (including any right or power to make payments on behalf of the Chargor under the terms of this Deed) or by law in each case on a full indemnity basis.

"Fixtures": means any and all fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery from time to time in or on any Mortgaged Property.

"Insolvency Event": means the Chargor:

- (a) resolving, or its directors resolving, to appoint an administrator of it, or to petition or apply to court for an administration order in respect of it, or a petition or an application for an administration order being made in respect of it, or an administration order being made in respect of it, or any step under the Insolvency Act 1986 being taken to appoint an administrator of it out of court, or it entering administration;
- (b) requesting or suffering the appointment of a Law of Property Act 1925, court appointed or other receiver or receiver and manager, or similar officer over or in relation to the whole or any part of its undertaking, property, revenue or assets, or any person holding security over all or any part of its undertaking, property, revenue or assets taking possession of all or any part of them or requesting that such a person does so;
- (c) resolving, or its directors resolving, to wind it up, whether as a voluntary liquidation or a compulsory liquidation, or its directors taking any step under the Insolvency Act 1986 to wind it up voluntarily or to petition the court for a winding-up order, or a winding-up petition being presented against it, or a provisional liquidator being appointed to it, or it going into liquidation within the meaning of section 247 of the Insolvency Act 1986 (except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies); or
- (d) being dissolved, or being removed from the Register of Companies, or ceasing to exist (whether or not being capable of reinstatement or reconstitution) or threatening to cease to exist, or its directors applying for it to be struck-off the Register of Companies.

"Interest Rate" means the interest rate specified in clause 24.10 of the DFA.

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

"Mortgaged Property": means the freehold property the subject of the security constituted by this Deed and references to any **"Mortgaged Property"** shall include references to the whole or any part or parts of it.

"Premises": means all buildings and erections from time to time situated on or forming part of any Mortgaged Property.

"Prior Charge": means the legal charge dated 14 May 2020 between (1) NHS Commissioning Board (known as NHS England) and (2) the Chargor relating to the Scheduled Property.

"Receiver": means a receiver or receiver and manager of the whole or any part or parts of the Charged Property.

"Release Event": means.

- (a) the Chargor making payment of all amounts due to the Developer under clauses 18.2 and 18.3 the DFA;
- (b) termination of the DFA as a result of
 - (i) the occurrence of a Terminating Event under clause 29.3(a) (*insolvency*) of the DFA in respect of the Developer;

- (ii) the occurrence of a Relevant Terminating Event as a result of a material breach or failure to comply by the Developer (in its capacity as the Developer under the DFA);
- (iii) the occurrence of a Terminating Event under clause 29.4 (*end of Lease Contract*) of the DFA; or
- (iv) the occurrence of a Terminating Event under clause 29.5 (*Practical Completion delay*) of the DFA.

"Relevant Terminating Event": means a Terminating Event occurring under clause 29.3(b)(i) (*material breach*) or clause 29.3 (b)(ii) (*failure to remedy*) of the DFA.

"Scheduled Property": means the freehold property more particularly described in the schedule to this Deed (*Details of Real Property*)

"Secured Liabilities": means all sums due from the Chargor to the Developer under the DFA together with any sums due under this Deed including all Expenses.

"Security": means a mortgage (whether fixed or floating, legal or equitable), charge, pledge, trust, assignment, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Tax": means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"VAT": means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

Construction

1.2 Any reference in this Deed to:

- 1.2.1 the **"Developer"**, the **"Chargor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.2 **"assets"** includes present and future properties, revenues and rights of every description;
- 1.2.3 **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.4 a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.5 a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.2.6 a provision of law is a reference to that provision as amended or re-enacted.

1.3 Clause and schedule headings are for ease of reference only.

1.4 Any reference in this Deed to a mortgage, charge or assignment of any asset shall be construed so as to include:

- 1.4.1 all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
 - 1.4.2 the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that asset and all other rights, benefits, claims, contracts, warranties, remedies; security or indemnities in respect of that asset; and
 - 1.4.3 the proceeds of sale of any part of that asset and any other moneys paid or payable in respect of or in connection with that asset.
- 1.5 Each term in the DFA is, to the extent not set out in or otherwise incorporated into this Deed, deemed to be incorporated into this Deed insofar as is necessary to comply with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 but, except where stated otherwise, if there is any conflict between that incorporated term and any other term of this Deed that other term shall prevail.
- 1.6 Any reference in this Deed to the DFA or any other agreement or other document shall be construed as a reference to the DFA or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, extended, substituted, novated or assigned, whether or not as a result of any of the same:
 - 1.6.1 there is an increase or decrease in any facility made available under the DFA or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
 - 1.6.2 any additional, further or substituted facility to or for such facility is provided;
 - 1.6.3 any rate of interest, commission or fees or relevant purpose is changed;
 - 1.6.4 the identity of the parties is changed;
 - 1.6.5 the identity of the providers of any security is changed;
 - 1.6.6 there is an increased or additional liability on the part of any person; or
 - 1.6.7 a new agreement is effectively created or deemed to be created.
- 1.7 Any reference in this Deed to "**this Deed**" shall be deemed to be a reference to this Deed as a whole and not limited to the particular clause, schedule or provision in which the relevant reference appears and to this Deed as amended, novated, assigned, supplemented, extended, substituted or restated from time to time and any reference in this Deed to a "**clause**" or a "**schedule**" is, unless otherwise provided, a reference to a clause or a schedule of this Deed.
- 1.8 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.9 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.10 It is intended that this document shall take effect as and be a deed of the Chargor notwithstanding the fact that the Developer may not execute this document as a deed.
- 1.11 Any change in the constitution of the Developer or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Deed.

Third Party Rights

- 1.12 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2. COVENANT TO PAY

Covenant to Pay

- 2.1 The Chargor covenants with the Developer that it shall pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with the terms of the DFA or this Deed (as applicable).

3. GRANT OF SECURITY

Fixed Charges

- 3.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Developer by way of a legal mortgage all of its right, title and interest in and to:

3.1.1 the Scheduled Property; and

3.1.2 all Premises and Fixtures now or from time to time in or on that property.

- 3.2 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Developer by way of fixed charge all of its right, title and interest in and to the following assets, both present and future:

3.2.1 all estates or interests in the Scheduled Property; and

3.2.2 all Premises and Fixtures in or on that property

(in each case, to the extent that such property, Premises and Fixtures are not effectively mortgaged under clause 3.1 above).

4. PERFECTION OF SECURITY

Registration at HM Land Registry

- 4.1 For the purposes of panel 8 of each Form RX1 that may be required to be completed by the Developer in relation to any Mortgaged Property registered or required to be registered at HM Land Registry, the Chargor hereby consents to an application being made by the Developer to the Chief Land Registrar to enter the following restriction in Form P against its title to such Mortgaged 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 6 October 2020 in favour of GB Partnerships (Stourport) Limited referred to in the charges register or its conveyancer".

- 4.2 Whether or not the title to any of the Mortgaged Property is registered at HM Land Registry, in the event that any caution against first registration or any notice (whether agreed or unilateral) is registered against the Chargor's title to any Mortgaged Property, the Chargor shall immediately provide the Developer with full particulars of the circumstances relating to such registration or notice and, if such caution or notice shall have been registered in order to protect a purported

interest the creation of which is not permitted under this Deed, the Chargor shall immediately and at its own expense take such steps as the Developer may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

5. FURTHER ASSURANCE

Further Assurance

5.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Developer or any Receiver may reasonably specify (and in such form as the Developer or any Receiver may reasonably require in favour of the Developer or its nominee(s)) to:

5.1.1 perfect the security created or intended to be created in respect of the Charged Property (which may include the execution by the Chargor of a mortgage, charge, assignment or other Security over all or any of the assets forming part of, or which are intended to form part of, the Charged Property);

5.1.2 facilitate the exercise of any rights, powers and remedies of the Developer or any Receiver or Delegate provided by or pursuant to this Deed or by law; and/or

5.1.3 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

Necessary Action

5.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Developer by or pursuant to this Deed.

Implied Covenants for Title

5.3 Each of the mortgages and charges granted by the Chargor under this Deed are granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in section 2(1)(a), section 3 and section 4 of that Act shall extend to the Chargor without, in each case, the benefit of section 6(2) of that Act.

6. REPRESENTATIONS

General

6.1 The Chargor makes the representations and warranties set out in this clause 6 to the Developer on the date of this Deed.

Status

6.2 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted.

Binding Obligations

6.3 Subject to the principle that equitable remedies may be granted or refused at the discretion of a court, and the limitations on enforcement imposed by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors or pursuant to the Limitation Act 1980, the obligations expressed to be assumed by it in this Deed are legal, valid, binding and

enforceable obligations and (without limiting the generality of the foregoing and subject to the Prior Charge) this Deed creates the security which it purports to create and that security is valid and effective.

Power and Authority

- 6.4 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 6.5 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed.

Non-conflict with Other Obligations

- 6.6 The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security under this Deed do not and will not conflict with:
- 6.6.1 any law or regulation applicable to it;
- 6.6.2 its constitutional documents; or
- 6.6.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,
- nor (except as provided in this Deed) result in the existence or imposition of, or oblige it to create, any Security in favour of any person over all or any of its assets.

7. GENERAL UNDERTAKINGS

General

- 7.1 The undertakings in this clause 7 and in clause 8 (*The Mortgaged Property, Premises and Fixtures*) remain in force from the date of this Deed for so long as any amount is outstanding under this Deed.

Negative Pledge

- 7.2 The Chargor shall not create, purport to create or extend or permit to arise or subsist any Security (other than any Security constituted by this Deed) over the whole or any part of the Charged Property, other than the Prior Charge or as otherwise permitted under the DFA or with the prior written consent of the Developer.

Restriction on Disposals

- 7.3 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Property, other than as permitted under the DFA or with the prior consent of the Developer.

Compliance with Laws and Regulations

- 7.4 The Chargor shall comply in all respects with all laws and regulations to which it or any Charged Property may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Deed.

Notices relating to Charged Property

- 7.5 The Chargor shall, within 10 Business Days after the receipt by it of any application, requirement, order or notice served or given by any public or local or any other authority with respect to the whole or any part of the Charged Property:
- 7.5.1 deliver a copy to the Developer;
 - 7.5.2 inform the Developer of the steps taken or proposed to be taken by it to comply with the relevant application, requirement, order or notice; and
 - 7.5.3 comply with any reasonable request by the Developer to take such action as the Developer may reasonably believe necessary to preserve or protect the Charged Property or the security constituted or intended to be constituted by this Deed.

Not Jeopardise Security

- 7.6 The Chargor shall not do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the value to the Developer of the security constituted or intended to be constituted by this Deed.

8. THE MORTGAGED PROPERTY, PREMISES AND FIXTURES

Payment of Outgoings in relation to Mortgaged Property

- 8.1 The Chargor shall punctually pay or cause to be paid (except when contested on reasonable grounds) and shall indemnify the Developer and any Receiver or Delegate on demand against all present and future rents, rates, Taxes, assessments and outgoings of whatsoever nature imposed upon or payable in respect of the Mortgaged Property or by the owner or occupier of the Mortgaged Property upon the same becoming due and payable or within any applicable grace period. If any of the foregoing shall be paid by the Developer or any Receiver or Delegate they shall be reimbursed by the Chargor to the Developer or such Receiver or Delegate on demand and shall carry interest at the Interest Rate from the date of payment by the Developer or such Receiver or Delegate until reimbursed (after as well as before any judgment).

Performance of Obligations

- 8.2 The Chargor shall:
- 8.2.1 observe and perform all restrictive and other covenants, stipulations and obligations now or at any time affecting any Mortgaged Property or the mode of user or the enjoyment of the same and shall not enter into any onerous or restrictive obligations affecting any Mortgaged Property;
 - 8.2.2 diligently enforce all restrictive and other covenants, stipulations and obligations benefiting any Mortgaged Property and shall not (and shall not agree to) waive, release or vary any of the same; and
 - 8.2.3 obtain and maintain for the benefit of the Mortgaged Property and the owner and occupier thereof for the time being all party wall awards or agreements, rights of light agreements, and rights of access and supply of services, over and in respect of any adjoining or neighbouring property which in each case are necessary or expedient for the use, occupation and/or enjoyment of the Mortgaged Property.

Remedying Mortgaged Property Defaults

- 8.3 In case of any default which is outstanding by the Chargor in performing or complying with any covenant, undertaking, restriction or applicable law or regulation affecting any Mortgaged Property, the Chargor shall permit the Developer, its agents and their respective officers, agents and employees to:
- 8.3.1 enter on that Mortgaged Property;
 - 8.3.2 comply with or object to any notice served on it in respect of that Mortgaged Property; and
 - 8.3.3 take any action as the Developer may reasonably consider necessary or desirable to prevent or remedy any breach of any such covenant, undertaking, restriction, applicable law or regulation or to comply with or object to any such notice.
- 8.4 All moneys expended by the Developer in taking any steps referred to in clause 8.3 above shall be reimbursed by the Chargor to the Developer on demand and until so reimbursed shall carry interest at the Interest Rate from the date of payment by the Developer until reimbursed (after as well as before any judgment).

9. ENFORCEMENT OF SECURITY

When Security becomes Enforceable

- 9.1 The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the LPA, as varied or extended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of an Event of Default which is continuing unwaived or unremedied.
- 9.2 After the security constituted by this Deed has become enforceable, the Developer 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.

Redemption of Prior Mortgages

- 9.3 At any time after the security constituted by this Deed has become enforceable, the Developer or any Receiver may:
- 9.3.1 redeem any prior Security over any Charged Property; or
 - 9.3.2 procure the transfer of that Security to the Developer; or
 - 9.3.3 settle and pass the accounts of the person or persons entitled to such Security (and any accounts so settled and passed shall be conclusive and binding on the Chargor).
- 9.4 All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption or transfer shall be paid by the Chargor to the Developer and every Receiver on demand and shall be secured by this Deed.

10. EXTENSION AND VARIATION OF THE LPA

General

- 10.1 For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed.

- 10.2 Section 103 of the LPA (restricting the power of sale) and section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.
- 10.3 The statutory powers of leasing conferred on the Developer are extended so as to authorise the Developer and any Receiver at any time after the security constituted by this Deed has become enforceable to make any lease or agreement for lease, accept surrenders of leases and/or grant options on such terms as it or he shall think fit, without the need to comply with any restrictions imposed by sections 99 and 100 of the LPA.

Privileges

- 10.4 Each Receiver and the Developer is entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers.

11. APPOINTMENT OF RECEIVER

Appointment

- 11.1 At any time after the security constituted by this Deed has become enforceable or if the Chargor so requests the Developer in writing (in which case the security constituted by this Deed shall become immediately enforceable), the Developer may without prior notice to the Chargor appoint, free from the restrictions imposed by section 109(1) of the LPA, either under seal or in writing under its hand any one or more persons to be a Receiver of the whole or any part or parts of the Charged Property in like manner in every respect as if the Developer had become entitled under the LPA to exercise the power of sale conferred under the LPA.

Removal

- 11.2 The Developer may by writing under its hand (or by an application to the court where required by law):
- 11.2.1 remove any Receiver appointed by it; and
- 11.2.2 appoint, whenever it deems it expedient, any one or more persons to be a new Receiver in the place of or in addition to any Receiver.

Statutory Powers of Appointment

- 11.3 The powers of appointment of a Receiver conferred by this Deed shall be in addition to all statutory and other powers of appointment of the Developer under the LPA (as extended by this Deed) or otherwise and such powers shall be and remain exercisable from time to time by the Developer in respect of any part or parts of the Charged Property.

Capacity of Receiver

- 11.4 Each Receiver shall be deemed to be the agent of the Chargor for all purposes. The Chargor alone shall be responsible for a Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him.
- 11.5 The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Developer.
- 11.6 If there is more than one Receiver holding office at the same time, each Receiver shall (unless the document appointing him states otherwise) be entitled to act (and to exercise all of the powers conferred on a Receiver under this Deed) individually or together with any other person appointed or substituted as Receiver.

Remuneration of Receiver

- 11.7 The Developer may fix the remuneration of any Receiver appointed by it without any restriction imposed by section 109(6) of the LPA and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately upon its being paid by the Developer.

12. POWERS OF RECEIVER

General

- 12.1 Each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out below in this clause 12 in addition to those conferred by law.
- 12.2 Without prejudice to the generality of this clause 12, each Receiver shall have all the rights, powers and discretions of an administrative receiver under schedule 1 to the Insolvency Act 1986 whether he falls within the statutory definition of an administrative receiver or not.

Specific Powers

- 12.3 Each Receiver shall have the following powers (and every reference in this clause 12.3 to the "**Charged Property**" shall be read as a reference to that part or parts of the Charged Property in respect of which that Receiver was appointed):
- 12.3.1 power to purchase or acquire land and purchase, acquire or grant any interest in or right over land as he thinks fit;
 - 12.3.2 power to take immediate possession of, get in and collect any Charged Property;
 - 12.3.3 power to carry on the business of the Chargor as he thinks fit;
 - 12.3.4 power (but without any obligation to do so) to:
 - (a) make and effect all repairs, alterations, additions and insurances and do all other acts which the Chargor might do in the ordinary conduct of its business as well for the protection as for the improvement of the Charged Property;
 - (b) commence or complete any building operations on the Charged Property;
 - (c) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence in respect of the Charged Property; and
 - (d) negotiate for compensation with any authority which may intend to acquire or be in the process of acquiring all or any part of the Charged Property and make objections to any order for the acquisition of all or any part of the Charged Property and represent the Chargor at any enquiry to be held to consider such objections or otherwise relating to any such acquisition,in each case as he thinks fit;
 - 12.3.5 power to appoint and discharge managers, officers, agents, advisers, accountants, servants, workmen, contractors, surveyors, architects, lawyers and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit and power to discharge any such persons appointed by the Chargor (and the costs incurred by any Receiver in carrying out such acts or doing such things shall be reimbursed to that Receiver by the Chargor on demand and until so reimbursed shall

- carry interest at the Interest Rate from the date of payment by the Receiver until reimbursed (after as well as before any judgment));
- 12.3.6 power to raise and borrow money either unsecured or (with the prior consent of the Developer) on the security of any Charged Property either in priority to the security constituted by this Deed or otherwise and generally on any terms and for whatever purpose he thinks fit;
 - 12.3.7 power to sell, exchange, convert into money and realise any Charged Property by public auction or private contract and generally in any manner and on any terms as he thinks fit;
 - 12.3.8 power to sever and sell separately any fixtures from the property containing them without the consent of the Chargor;
 - 12.3.9 power to let any Charged Property for any term and at any rent (with or without a premium) as he thinks fit and power to accept a surrender of any lease or tenancy of any Charged Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);
 - 12.3.10 power to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Charged Property;
 - 12.3.11 power to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Charged Property or in relation to the Chargor which may seem to him to be expedient;
 - 12.3.12 power to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising any Charged Property;
 - 12.3.13 power to form a subsidiary of the Chargor and transfer to that subsidiary any Charged Property;
 - 12.3.14 power to do all such acts as may seem to him to be necessary or desirable in order to initiate or continue any development of any Charged Property and for these purposes to appoint and to enter into such contracts with such building and engineering contractors or other contractors and professional advisers as he may think fit;
 - 12.3.15 power to call any meeting of the members or directors of the Chargor in order to consider such resolutions or other business as he thinks fit;
 - 12.3.16 power to exercise in relation to any Charged Property all the powers and rights which he would be capable of exercising if he were the absolute beneficial owner of the same;
 - 12.3.17 power to do all other acts and things which he may consider desirable or necessary for realising any Charged Property or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
 - 12.3.18 power to exercise any of the above powers in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor.

Developer's Powers

- 12.4 To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) upon a Receiver may after the security constituted by this Deed has become enforceable be exercised by the Developer in relation to any Charged Property,

irrespective of whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

13. DISCRETIONS AND DELEGATION

Discretion

- 13.1 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Developer or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

Delegation

- 13.2 Each of the Developer and any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney).
- 13.3 Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Developer or any Receiver (as the case may be) shall think fit.
- 13.4 Neither the Developer nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

14. POWER OF ATTORNEY

Appointment and Powers

- 14.1 The Chargor, by way of security, irrevocably appoints the Developer, every Receiver and every Delegate severally and independently to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney reasonably considers necessary for:
- 14.1.1 carrying out any obligation imposed on the Chargor by this Deed; and/or
- 14.1.2 enabling the Developer or any Receiver or Delegate to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on it or him by or pursuant to this Deed or by law (including the exercise of any right of an absolute legal or beneficial owner of the Charged Property).

Ratification

- 14.2 The Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under clause 14.1 (*Appointment and Powers*).

15. PROTECTION OF PURCHASERS

Consideration

- 15.1 The receipt of the Developer or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property (including a disposal by a Receiver or Delegate to any subsidiary of the Chargor) or in making any acquisition in the exercise of their respective powers, the Developer, every Receiver and every Delegate may do so for such consideration, in such manner and on such terms as it or he thinks fit.

Protection of Third Parties

- 15.2 No person (including a purchaser) dealing with the Developer, any Receiver or any Delegate shall be bound to enquire:
- 15.2.1 whether the Secured Liabilities have become payable; or
 - 15.2.2 whether any power which the Developer or any Receiver or Delegate is purporting to exercise has arisen or become exercisable; or
 - 15.2.3 whether any money remains due under the DFA or this Deed; or
 - 15.2.4 how any money paid to the Developer or to any Receiver or Delegate is to be applied, or shall be concerned with any propriety, regularity or purpose on the part of the Developer or any Receiver or Delegate in such dealings or in the exercise of any such power.

16. APPLICATION OF PROCEEDS

Order of Application

- 16.1 All moneys received or recovered by the Developer, any Receiver or any Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the LPA) be applied in the following order:
- 16.1.1 in or towards payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights and powers, including his remuneration, and all outgoings paid by him;
 - 16.1.2 in or towards payment of all other Expenses;
 - 16.1.3 in or towards payment of all other Secured Liabilities or such part of them as is then due and payable to the Developer in such order of application as the Developer shall determine in its absolute discretion; and
 - 16.1.4 in payment of the surplus (if any) to the Chargor or other person entitled to it.
- 16.2 Clause 16.1 (*Order of Application*) will override any appropriation made by the Chargor.

New Accounts

- 16.3 If the Developer at any time receives, or is deemed to have received, notice of any subsequent Security or other interest affecting any Charged Property, the Developer may open a new account with the Chargor.
- 16.4 If the Developer does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, such notice. As from that time all payments made by or on behalf of the Chargor to the Developer shall be credited or be treated as having been credited to the new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

17. NO LIABILITY AS MORTGAGEE IN POSSESSION

- 17.1 Neither the Developer nor any Receiver or Delegate shall in any circumstances (either by reason of entering into or taking possession of any Charged Property or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to the Chargor for anything, except actual receipts, or be liable to the Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default

or omission of the Developer, any Receiver, any Delegate or any of their respective officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Developer or any Receiver or Delegate of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever in connection with the Charged Property or the DFA.

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

18. SET-OFF

- 18.1 Without limiting any other rights conferred on the Developer by law or by any other agreements entered into with the Chargor, the Developer may (but shall not be obliged to) set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by the Developer) against any obligation (whether matured or not) owed by the Developer to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Developer may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If the obligation owed by the Developer is unliquidated or unascertained, the Developer may set off in an amount estimated by it in good faith to be the amount of that obligation.

19. EFFECTIVENESS OF SECURITY

Continuing Security

- 19.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Developer, and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 19.2 The security constituted by this Deed and all rights, powers and remedies of the Developer provided by or pursuant to this Deed or by law shall be cumulative and in addition to, and independent of, any other guarantee or Security now or subsequently held by the Developer for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Developer over the whole or any part of the Charged Property shall be superseded by, or supersede or merge into, the security constituted by this Deed.

Reinstatement

- 19.3 If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is made by the Developer in whole or in part on the faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under the security constituted by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 19.4 The Developer may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

20. PAYMENTS

Manner of Payments

- 20.1 The Chargor shall make all payments required to be made by it under this Deed available to the Developer (unless a contrary indication appears in this Deed) for value on the due date at the time and in such funds specified by the Developer as being customary at the time for settlement of transactions in the relevant currency in the place of payment. Payment shall be made in the currency in which the relevant indebtedness is denominated or, if different, is expressed to be payable and to such account in the principal financial centre of the country of that currency with such bank as the Developer specifies.

No Set-off by Chargor

- 20.2 All payments to be made by the Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

21. EXPENSES, STAMP TAXES AND INDEMNITIES

Expenses

- 21.1 The Chargor shall promptly on demand pay to the Developer and each Receiver or Delegate the amount of all costs and expenses (including legal fees) reasonably and properly incurred by any of them in responding to, evaluating, negotiating or complying with any request for an amendment, waiver or consent made by the Chargor in relation to this Deed.
- 21.2 The Chargor shall, within three business days of demand, pay to the Developer and each Receiver or Delegate the amount of all costs and expenses (including legal fees) incurred by any of them in connection with the enforcement of, or the defence, protection and/or preservation of, any rights, remedies and powers under this Deed or the security constituted, or intended to be constituted, by this Deed and any proceedings instituted by or against the Developer as a consequence of taking or holding the security constituted, or intended to be constituted, by this Deed or enforcing any such rights, powers and remedies.

Stamp Taxes

- 21.3 The Chargor shall pay, and shall promptly on demand indemnify the Developer and every Receiver or Delegate against any cost, loss or liability any of them incurs in relation to, all stamp duty, registration and similar Taxes payable in connection with the entry into, performance or enforcement, of this Deed, the security constituted by this Deed or any judgment given in connection with this Deed.

General Indemnity

- 21.4 The Chargor shall, notwithstanding the release or discharge of all or any part of the security constituted by this Deed, promptly indemnify the Developer and every Receiver and Delegate against any cost, loss, liability or damage incurred by any of them as a result of:
- 21.4.1 any default or delay by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed;
 - 21.4.2 the taking, holding, protection or enforcement of the security constituted by this Deed; and
 - 21.4.3 the exercise of any of the rights, powers, discretions and remedies vested in the Developer and each Receiver and Delegate by this Deed or by law in respect of the Charged Property.

Value Added Tax

- 21.5 Any cost or expense referred to in this clause 21 is exclusive of any VAT that might be chargeable in connection with that cost or expense. If any VAT is so chargeable, it shall be paid by the Chargor at the same time as it pays the relevant cost or expense.

22. CERTIFICATES AND DETERMINATIONS

- 22.1 Any certificate or determination by the Developer of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

23. PARTIAL INVALIDITY

- 23.1 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

24. REMEDIES AND WAIVERS

- 24.1 No failure to exercise, nor any delay in exercising, on the part of the Developer, any right, remedy or power under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 24.2 Any amendment, waiver or consent by the Developer under this Deed must be in writing and may be given subject to any conditions thought fit by the Developer. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

25. NOTICES

- 25.1 Any communication to be made under or in connection with this Deed shall be made in accordance with clause 36 (*Notices*) of the DFA.

26. COUNTERPARTS

- 26.1 This Deed may be executed in any number of counterparts and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

27. ASSIGNMENT

- 27.1 Neither the Chargor nor the Developer may assign, charge or transfer all or any of their rights or obligations under this Deed without the consent of the other.

28. RELEASE

- 28.1 The Developer shall, upon the occurrence of a Release Event and at the cost of the Chargor, take whatever action is necessary to release the Charged Property from the security constituted by this Deed.

29. GOVERNING LAW

- 29.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

IN WITNESS of which this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

**SCHEDULE
REAL PROPERTY**

Property Description
The freehold property known as land on the south east side of Dunley Road, Stourport-on-Severn, Worcestershire (formerly <u>part</u> of the land registered under Title Number WR106067) and which is more particularly described in a transfer deed dated <u>14 May 2020</u> between (1) the Developer and (2) the Chargor.

EXECUTION PAGE

THE CHARGOR

Executed as a deed by

SURGERY DEVELOPMENTS LIMITED

on being signed by a director

in the presence of:

)

)

)

)

Director

Simon Gould

Signature of witness:

Name:

MARCOY GOULD

Address:

Occupation:

THE DEVELOPER

Executed as a deed by)
GB PARTNERSHIPS)
(STOURPORT) LIMITED)
on being signed by a director)
in the presence of:) Director

Signature of witness:

Name:

Address:

.....

Occupation: