



Registration of a Charge

Company name: **GRAIL LTD**

Company number: **12481922**



X93FHA7K

Received for Electronic Filing: **21/04/2020**

Details of Charge

Date of creation: **08/04/2020**

Charge code: **1248 1922 0001**

Persons entitled: **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)**

Brief description: **THE LAND AT STEAM MILLS, CINDERFORD AS SHOWN EDGED RED ON THE PLAN ANNEXED TO THE SECURITY.**

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: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12481922

Charge code: 1248 1922 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th April 2020 and created by GRAIL LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st April 2020 .

Given at Companies House, Cardiff on 22nd April 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

DATED 8 April **2020**

(1) HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)

(2) GRAIL LTD

DEED OF CLAWBACK AND CHARGE
relating to
Land known as Steam Mills, Cinderford

THIS DEED is made on

8 April

2020

BETWEEN:-

- (1) **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)** whose registered office is at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the "**Agency**").
- (2) **GRAIL LTD** (Company Number 12481922) whose registered office is at Gorse Bank, High Street, Drybrook, United Kingdom, GL17 9EU (the "**Buyer**").

IT IS AGREED as follows:-

1. DEFINITIONS

Act the Town and Country Planning Act 1990 and any act or instrument or order altering amending or replacing that Act

Act of Circumvention any act or omission of the Buyer or transaction or series of transactions entered into by Buyer or its successors in title with any person or persons the principal purpose or effect of which is to avoid or depress or reduce the size of any Additional Sum which might otherwise fall due to the Agency or to avoid or delay the recoverability or potential receipt in whole or part by the Agency of any Additional Sum

Additional Sum a sum in pounds sterling (exclusive of VAT) equal to 50% of the amount by which the Open Market Value of the Relevant Property exceeds its Current Use Value

Buyer's Successor for the purposes of clauses 3.2 10 11 and 12 of this Deed any person or persons to whom or in whose favour the Buyer or any mortgagee administrator receiver trustee in bankruptcy personal representative or liquidator of the Buyer shall have made a Disposal of the Property or any part or parts thereof but subject to the following exclusions:

- (a) any person acquiring an interest in any part of the Property following the completion of the development of the Property for the Current Use
- (b) any statutory undertaker acquiring an interest in the

Property or any part of it for their operational purposes

Charge the charge created by clause 2 of this Deed

Current Use

- (a) use for the purposes of use classes B1, B2 and B8 as detailed within the Town and Country Planning (Use Classes) Order 1987 (as amended) together with parking ancillary thereto; or
- (b) use for any purposes constituting or permitted by any Specified Event which occurred before the Latest Specified Event as the case may be; or
- (c) use for temporary parking pending Development until the third anniversary of this Deed.

Current Value **Use** the price which the Relevant Property might reasonably be expected to realise on the Valuation Date upon an unconditional sale for cash in the open market at arm's length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession without the benefit of the Latest Specified Event and upon the assumptions that:

- (a) the Relevant Property may be used for the Current Use
- (b) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date
- (c) the Relevant Property is to be sold together with the rights granted by but subject to the covenants exceptions reservations and other matters contained or referred to in a transfer of the Property made on the same date as this Deed between the Agency and the Buyer or in the entries on the register of the title relating to (or including) the Relevant Property with the exception of the provisions of this Deed and any entries on the register of the title relating to them insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from onerous restrictions encumbrances covenants and

conditions (including the Charge and any restrictions encumbrances covenants and conditions created by the Buyer or the Buyer's Successor)

but disregarding

- (a) any existing or prospective planning consent for any use other than for the Current Use and
- (b) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

Develop and Development shall have the meanings respectively assigned to them by the Act and shall be deemed to include in addition any development or change of use or intensification of use for which planning permission is not required (for the avoidance of doubt use of the Property for the purposes of temporary portacabins and/or temporary parking ancillary to construction works will not of itself be deemed to be Development).

Disposal any disposal or dealing with the Property or part of it including:

- (a) the transfer or grant of any interest or licence over the Property or part of it; and
- (b) the variation of any interest or licence in the Property or part of it so as to permit a use other than the Current Use but subject to the following exclusions:

- (i) the bona fide grant or renewal of a lease or licence at arm's length for a term of less than 21 years at a rack rent without taking or receiving a premium on terms which do not permit any use of the Property other than the Current Use
- (ii) a bona fide mortgage on normal commercial terms

(iii) a grant of a lease or licence to (*)

Expert the chartered surveyor appointed pursuant to clause 8.1 of this Deed

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(*) Jm Gail (General Engineers) Limited for a term of no more than 5 years at a rack rent without taking or receiving a premium on terms which do not permit the use of the Property other than for the Current Use provided that if a lease (rather than licence) is to be entered into the Buyer excludes the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 and the Buyer prior to the lease being entered into evidence of the contracting out notice and tenants statutory declaration shall be provided

Implementation	in relation to any planning permission or Development constituting a Specified Event the first date upon which any works constituting or in contemplation of the proposed Development are commenced or (in relation to change of use only) the date upon which the Relevant Property is first used for the relevant purpose
Interest Rate	3% above the annual base lending rate from time to time of Barclays Bank plc
Judicial Proceedings	any form of judicial proceedings or legal challenge including any application or appeal to the Court or any other tribunal or forum in respect of the decision act or omission of the local planning authority the Secretary of State for Communities and Local Government the Court or any other tribunal or forum including without limitation an application for judicial review
Lapse Date	in relation to any planning permission constituting a Specified Event the earlier of (i) the final date (whether expressed or implied) by which the Development thereby permitted must be commenced; and (ii) the final day of the Relevant Period
Latest Specified Event	the planning permission or change of use or Development which constitutes the Latest Specified Event relating to the Relevant Property to occur on or prior to the Valuation Date
Open Market Value	the price which the Relevant Property might reasonably be expected to realise as at the Valuation Date upon an unconditional sale for cash in the open market at arms' length by a willing seller to a willing buyer for an estate in fee simple absolute in possession with vacant possession with the benefit of the Latest Specified Event and upon the assumptions that:

- (a) the Relevant Property may be used either for the Current Use or the use or Development permitted or constituted by the Latest Specified Event;
- (b) the Latest Specified Event is capable of immediate Implementation;
- (c) there has been a reasonable period for the proper marketing of the interest prior to the Valuation Date;
- (d) the Relevant Property is fully accessible and serviced so as to be capable of being immediately used or Developed for the use or Development permitted or constituted by the Latest Specified Event (but taking account of any Servicing Costs) and
- (v) the Relevant Property is to be sold together with the rights granted by but subject to the exceptions and reservations contained or referred to in transfer of the Property made on the same date as this Deed between the Agency and the Buyer and the entries on the register of the title relating to (or including) the Relevant Property with the exception of the provisions of this Deed and this Deed and any entries on the register of the title relating to them insofar as they are still subsisting and relate to or affect the Relevant Property but otherwise free from any onerous restrictions encumbrances covenants and conditions (including the Charge and any restrictions encumbrances covenants and conditions created by the Buyer or the Buyer's Successor) but disregarding
 - (i) any existing or prospective planning consent for a use other than the Current Use and that permitted by the Latest Specified Event; and
 - (ii) any other factor or event which might enhance the value of the Relevant Property or any part thereof at the Valuation Date

Price	the sum of £150,000 (exclusive of VAT)
Property	the land at Steam Mills, Cinderford as shown edged red on the plan annexed to this Deed
Relevant Period	the period of 5 years commencing on the date of this Deed
Relevant Property	the Property as a whole (in the event of a Specified Event occurring in respect of the whole of the Property) or the part of the Property in respect of which a Specified Event has occurred (in the event of a Specified Event occurring in respect of part of the Property only) (as the case may be)
Servicing Costs	<p>the reasonable and proper costs (if any) which have been or would be necessarily incurred to provide up to the boundaries of the Relevant Property (insofar as they do not exist at the Valuation Date);</p> <p>(a) additional services or connections to existing services for the provision of water electricity and foul and surface water drainage and where necessary gas; and</p> <p>(b) access roads connecting to the nearest existing adopted highway or private road over which private rights are enjoyed giving access to the Relevant Property</p> <p>so as to render the Relevant Property capable of being used or Developed for the use or Development permitted or constituted by the relevant Specified Event Provided that such costs shall be properly evidenced to the reasonable satisfaction of the Agency or the person determining the Open Market Value for the purposes of this Deed by estimates specifications vouchers receipts invoices or other appropriate documentation</p>
Specified	any of the following events:

- Event**
- (a) the Implementation of a planning permission granted to any person other than the Agency in accordance with the provisions of the Act (whether in outline or in detail) for Development of the Property or any part thereof whether alone or as part of a wider development for any purpose other than the Current Use
 - (b) the change of use or Development by any person of the Property or any part thereof whether in isolation or as part of a wider development
 - (c) the completion of any Disposal of the Property or any part thereof following the grant of a planning permission in accordance with the provisions of the Act (whether in outline or in detail) for Development of the Property or any part thereof whether alone or as part of a wider development for any purpose other than the Current Use

- Valuation Date** in relation to any Specified Event the earliest of:
- (a) the date of Implementation of the relevant planning permission
 - (b) the date of commencement of any Development or change of use otherwise than pursuant to a planning permission granted in accordance with the Act
 - (c) the date of completion of any Disposal of the Relevant Property or part of it following the grant of a planning permission in accordance with the provisions of the Act (whether in outline or in detail) for Development of the Property or any part thereof
 - (d) (unless the relevant planning permission was granted pursuant to an application by a third party other than (and not on behalf of or in collusion with) the Buyer or a person deriving title under the Buyer) the Lapse Date in relation to the planning permission constituting the Latest Specified Event

2. **CREATION OF LEGAL CHARGE TO SECURE THE CLAWBACK**

- 2.1 The Buyer acknowledges the existence of a debt to the Agency of the sum of One Pound (£1) ("**the Debt**") and hereby covenants to pay the Debt to the Agency upon demand.
- 2.2 The Buyer hereby charges the Property in favour of the Agency by way of first legal mortgage with payment of the Debt and of all such sums (together with interest) as may from time to time become due under the provisions of this Deed.
- 2.3 It is hereby agreed and declared that whilst the charge created by clause 2.2 remains in force the powers of leasing or agreeing to lease and of accepting surrenders of leases conferred by statute on a mortgagor in possession shall not apply and neither the Buyer nor its successors in title to the Property or any part thereof shall grant or agree to grant any lease thereof (other than a mortgage term or a lease excluded from a definition of Disposal) nor accept any surrender thereof without the consent of the Agency.

3. **THE PRICE AND ADDITIONAL SUM**

The parties hereby acknowledge and agree that:

- 3.1 the Price has been agreed between them on the basis that neither the Property nor any part thereof shall at any time be used for any purposes other than the Current Use;
- 3.2 if and on each occasion during the Relevant Period a Specified Event occurs in relation to the whole or part of the Property then the Buyer (whether or not it shall at such time have any legal or equitable interest in the Property or the relevant part thereof) shall on each and every occasion unless such sums are paid by the Buyer's Successor pay to the Agency an Additional Sum calculated pursuant to the provisions of clauses 3 and 4 of this Deed.

4. **DETERMINATION OF THE ADDITIONAL SUM**

- 4.1 During the period of one month commencing on the relevant Valuation Date the parties shall consult together and endeavour to agree the Open Market Value and the Current Use Value and any Additional Sum payable.
- 4.2 If the parties fail to agree within the period specified in clause 4.1 then the Open Market Value or the Current Use Value or both of them (as the case may be) and any Additional Sum payable shall be determined by a chartered surveyor in accordance with the provisions of Clause 8 of this Deed at the request of either party by service of written notice upon the other at any time after the expiration of such period.
- 4.3 The Additional Sum (together with interest thereon at the Interest Rate for the period commencing on the Valuation Date and ending on the date of actual payment calculated on a daily basis but compounded with quarterly rests on the usual quarter days) shall become payable on a date being seven days

from the date of agreement or determination of the Additional Sum pursuant to clauses 4.1 and 4.2 above.

5. NOTIFICATION OF DEVOLUTION OF INTERESTS

The Buyer covenants with the Agency that it will give notice to the Agency of any devolution of or other dealing with its interest in the Property or any part or parts thereof within 14 days of the occurrence of such devolution or other dealing.

6. BUYER'S CONSEQUENTIAL OBLIGATIONS

The Buyer shall:

- 6.1 (Subject to clause 12 below) not make any Disposal without the prior written consent of the Agency;
- 6.2 Give notice to the Agency of any oral arrangement contract for or document or deed giving effect to any Disposal of the Property or any part thereof forthwith after the occurrence of any such event together with a certified copy of any such contract or document or deed or reasonable evidence of the terms of any oral arrangement;
- 6.3 Supply to the Agency copies of all applications for planning permission relating to the Property or any part of it and all material information relating to any Judicial Proceedings in relation thereto immediately they are submitted to the local planning authority the Secretary of State for Communities and Local Government Court or any other tribunal or forum as appropriate or notified to the Buyer and will from time to time supply such further information as to the progress of any such application or of any such Judicial Proceedings as the Agency may reasonably require
- 6.4 Notify the Agency forthwith upon the occurrence of any Specified Event in relation to the Property or any part thereof and supply copies of all consents permissions or approvals or notices in relation thereto forthwith upon receipt of the same by the Buyer
- 6.5 Not enter into any Act of Circumvention and not assist cause or permit any other party to enter into any Act of Circumvention

7. ASSIGNMENT BY THE AGENCY

The Agency shall have full right and power to assign compromise and otherwise deal with all of its interests rights and entitlement under this Deed and in respect of any Additional Sum payable thereunder.

8. DISPUTE RESOLUTION

- 8.1 All disputes differences and questions which arise between the Agency and the Buyer concerning arising out of or connected with this Deed shall if such

dispute difference or question relates to the value of any interest in property be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request made (subject to clauses 4.1 and 4.2 above) at any time of either of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors (the "**RICS President**").

- 8.2 Any reference to such a chartered surveyor shall be deemed to be a reference to an expert (and not an arbitrator).
- 8.3 The Expert will allow the parties a reasonable opportunity to make representations and counter representations to him and take reasonable account of any representations which are made and if required by either party give written reasons for his decision which shall be final and binding.
- 8.4 The fees and expenses of the determination of the Expert (including the costs of his appointment) will be borne as he may direct or in the absence of such a direction shall be borne by the parties in equal shares.
- 8.5 If a party fails to pay any fees and expenses the Expert directs be paid by it within a reasonable time and the other party pays them the defaulting party will reimburse the amount paid for it on demand from the paying party.
- 8.6 If the Expert dies or becomes unwilling to act or incapable of acting or his determination is not made within a reasonable time after his appointment the RICS President may on the application of either party or both parties discharge him and appoint another chartered surveyor in his place.
- 8.7 Any person so appointed to determine a dispute shall be of at least 10 year's professional qualification and shall be experienced in relation to property of a similar nature to the Relevant Property and in the case of a dispute arising under clause 4.2 above shall have knowledge of the values of property used for the Current Use and the use proposed by virtue of the Latest Specified Event.

9. **COSTS**

The Buyer shall pay to the Agency upon demand all reasonably incurred and proper costs and disbursements (including legal costs and disbursements) of the Agency (together with all VAT thereon) in relation to the agreement or determination of any Additional Sum and the drafting negotiation and approval of any deed or document required to be given or executed by the Agency in connection with this Deed (including any required pursuant to clause 10).

10. **SUCCESSOR'S COVENANT**

The Buyer hereby covenants with the Agency that if and when during the Relevant Period the Buyer shall make a Disposal in favour of the Buyer's Successor the Buyer shall procure that the Buyer's Successor shall charge the property the subject of any Disposal to the Agency in the terms of clause 2.2 of this Deed and enter into a deed of covenant with the Agency or to whom it shall direct so as to bind himself or themselves and his or their successors in

title (jointly and severally in the case of a covenant by more than one person) and for the benefit of and so as to be enforceable by the Agency and its statutory successors and assigns in terms identical to this Deed but under which the Buyer's Successor is "the Buyer" (including a covenant in identical terms to this covenant) such deed of covenant to be in the form annexed with such amendments as the parties may reasonably agree to the intent that the covenants and obligations of the Buyer under this Deed may be enforced directly against the Buyer's Successor or any subsequent successor or estate owner by the Agency or its statutory successors and assigns.

11. REGISTRATION AGAINST TITLE

The Agency and the Buyer hereby apply to the Chief Land Registrar to enter upon the Register of Title to the Property a restriction in the following terms:

"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 certificate signed by Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or its conveyancer that the provisions of clause 10 of a Deed dated [] and made between (1) Homes and Communities Agency (trading as Homes England) and (2) J.M. Grail (General Engineers) Limited have been complied with or that they do not apply to the disposition"

12. CONSENT TO DISPOSAL

The Agency hereby covenants with the Buyer and the Buyer's Successor that the Agency will not unreasonably withhold its consent to any Disposal or the registration of any Disposal if the Buyer and the Buyer's Successor shall on or before such disposal have complied with the provisions and requirements of this Deed (including clause 10) **PROVIDED ALWAYS** that it shall not be deemed to be unreasonable for the Agency to withhold its consent so long as any monies due and payable to the Agency under the provisions of this Deed are outstanding

13. SERVICE OF NOTICES

The provisions of the Law of Property Act 1925 (as amended) as to the service of notices shall apply to any notice or other document required or authorised to be given or served under this Deed

14. GOVERNING LAW AND JURISDICTION

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

14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in

connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this Deed has been executed the day and year first before written

The Common Seal of **HOMES AND COMMUNITIES**
AGENCY was hereunto affixed in the presence of
acting by

Authorised Signatory

Executed as a deed by
GRAIL LTD
acting by a director
in the presence of:

.....
Signature

.....
Director

Signature of witness

.....
Name (in BLOCK CAPITALS) *ANDREW BENDALL*

Address .

MANAGING DIRECTOR

ANNEXURE
FORM OF SUCCESSOR'S COVENANT

FORM OF DEED OF COVENANT

THIS DEED IS MADE ON []

BY [] (No []) of/whose registered office is at [] (the "New Owner")

IN FAVOUR OF:

HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND) having its principal place of business at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the "Covenantee").

BACKGROUND:-

- (A) This Deed is entered into pursuant to the obligations contained in the Clawback Deed.
- (B) The New Owner has purchased the Property from [J.M. Grail (General Engineers) Limited] / [the Outgoing Owner]

IT IS AGREED as follows:-

1. DEFINITIONS

1.1 In this Deed:-

- "Original Covenantor" means J.M. Grail (General Engineers) Limited
- "Outgoing Owner"¹ means [insert details of seller of Property if not J.M. Grail (General Engineers) Limited]
- "Clawback Deed" means the clawback deed dated [] and made between (1) the Covenantee and (2) the Original Covenantor
- "Property" means the freehold property at [] [registered at the Land Registry under Title Number [] transferred by the [Original Covenantor]/[Outgoing Owner] to the New Owner by a transfer dated the same date as this Deed]

2. COVENANT

The New Owner [jointly and severally] covenants with the Covenantee to:-

- 2.1 observe and perform the obligations and covenants on the part of the Original Covenantor contained in the Clawback Deed so far as they relate to the Property as though references to the "Buyer" were to the New Owner; and
- 2.2 apply to the Land Registry for the entry of a restriction against its title to the Property in Land Registry Form RX1 as set out below:-

"Up to and including [5 years from date of Clawback Deed] no disposition of the Registered Land (other than a charge) by the Proprietor of the registered estate or by

¹ Definition only required if seller of Property is not the Original Covenantor.

the proprietor of any registered charge is to be registered without a certificate signed by the conveyancer acting for the Homes and Communities Agency (trading as Homes England) confirming that the provisions of Clause 10 of a Deed dated the [] day of [] 2020 have been complied with or confirming that they do not apply to the disposition".

3. GOVERNING LAW AND JURISDICTION

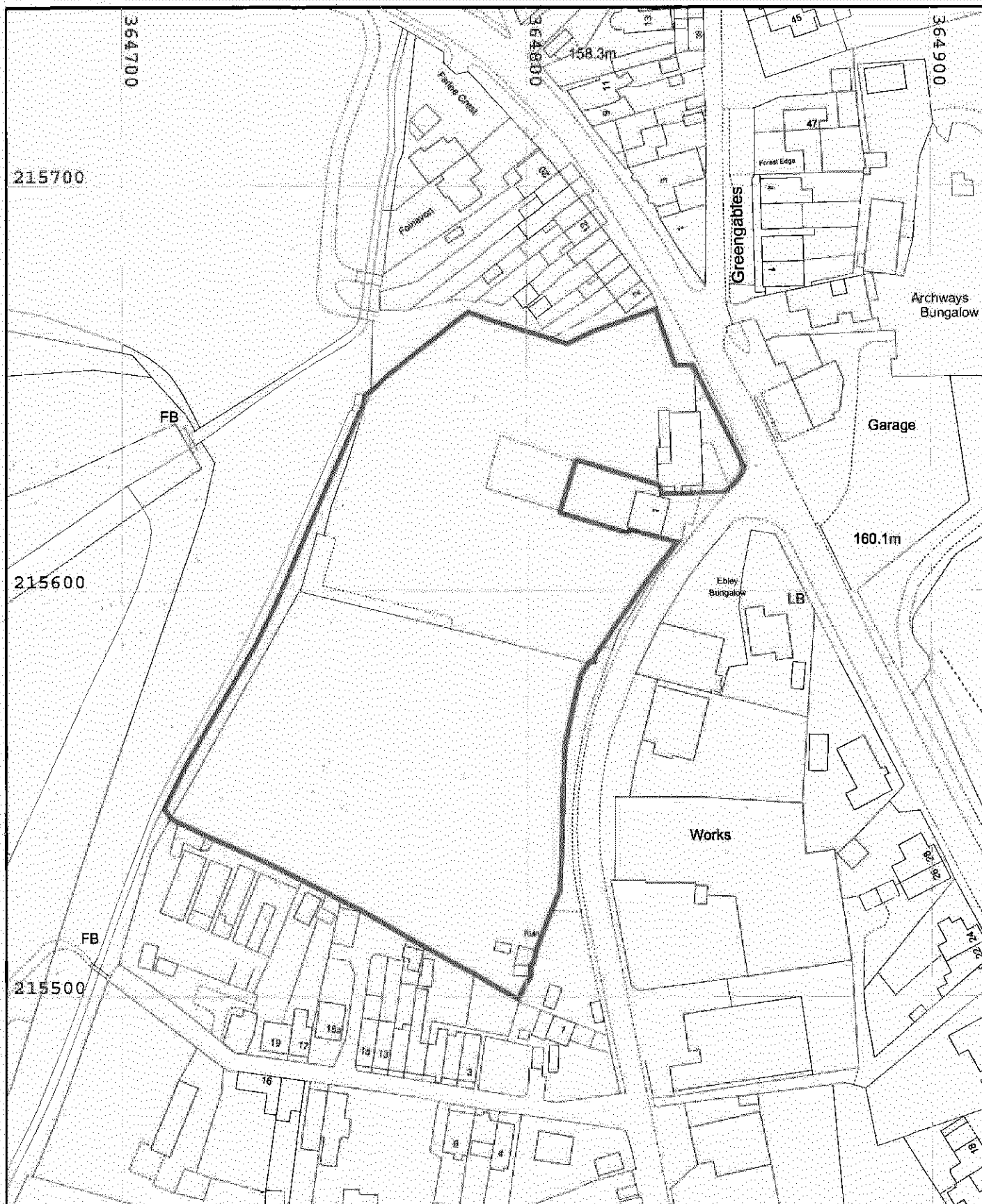
- 3.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales.
- 3.2 Subject to Clause 10 of the Clawback Deed, the parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

EXECUTED AS A DEED by the New Owner on the date which first appears in this Deed.

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
[])
acting by a director and its secretary)
or two directors)

Director

Director/Secretary



<div>TITLE</div> <div>Red Line Plan Disposal Land at Newtown Rd, Steam Mills Cinderford</div> <div><div>Legend</div><div><div><div></div></div>Site Boundary</div></div> <div><div><div><div></div><div></div><div></div></div><div>N</div><div></div></div><div><div><div></div><div></div><div></div></div><div>Homes England</div></div></div>		<div>Tel. 0300 1234500</div>	
<div>Instruction ID: LEGP-DSP-320</div>			
<div>TMS ID: 42776030-0282-4ade-9b21-af4fc35a92aa</div>	<div>DATE 20-03-2020</div>	<div>SCALE 1:1250</div>	<div>SIZE A4</div>
<div>Information shown is correct to the best of Homes England's knowledge at date of issue. This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. © Crown copyright and database right 2019 OS. GD100024393 Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.</div>			

Disposal

(b)

(iii) a grant of a lease or licence to J M Grail (General Engineers) Limited for a term of no more than 5 years at a rack rent without taking or receiving a premium on terms which do not permit the use of the Property other than for the Current Use provided that if a lease (rather than licence) is to be entered into the Buyer excludes the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 and evidence of the contracting out notice and tenant's statutory declaration shall be provided to the Buyer prior to the lease being entered into.

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