



**Registration of a Charge**

Company name: **GFL DAIRY LIMITED**

Company number: **09538234**

Received for Electronic Filing: **12/09/2018**



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**Details of Charge**

Date of creation: **07/09/2018**

Charge code: **0953 8234 0001**

Persons entitled: **ESF LOANS LIMITED**

Brief description: **ALL LAND, BUILDINGS, PLANT AND MACHINERY, CASH, SHARES, PATENTS AND TRADEMARKS OWNED BY THE COMPANY.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**CLAIRE THATCHER**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 9538234

Charge code: 0953 8234 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th September 2018 and created by GFL DAIRY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th September 2018 .

Given at Companies House, Cardiff on 14th September 2018

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



**Companies House**



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

Dated 7 September 2018

**(1) GFL DAIRY LIMITED**

**-and-**

**(2) ESF LOANS LIMITED**

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**DEBENTURE**

**(in support of guarantee)**

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**To be presented for registration at Companies House against the Company  
within 21 days of dating**

v.2.0

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THIS DEED is made on

7 September

2018

## BETWEEN

- (1) The party specified in Schedule 1 (the **Company**); and
- (2) **ESF LOANS LIMITED** a company incorporated in England and Wales with registration number 10725890 whose registered office is situate at 40 Berners Street, London W1T 3NA acting as security trustee for the Lender Members (the **Security Trustee**).

## BACKGROUND

- (A) This Deed provides security which the Company has agreed to give to the Security Trustee as security for the Secured Liabilities.
- (B) The Security Trustee and the Lender Members have agreed that the Security Trustee will hold the benefit of the Security created under this Deed on trust for itself and the Lender Members.

## NOW THIS DEED WITNESSES as follows:

### 1. INTERPRETATION

#### 1.1 In this Deed and the Background to it above:

**Act:** means the Law of Property Act 1925;

**Administrator:** means an administrator appointed under Schedule B1 to the Insolvency Act 1986;

**Borrower:** means the party specified in Schedule 3;

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

**Charged Assets:** means the undertaking, property, rights and assets from time to time subject to the Security created by this Deed and includes any part thereof and interest therein;

**Default:** if the Company fails to pay any or all of the Secured Liabilities in accordance with clause 2;

**Default Rate:** means the rate of interest payable in accordance with the terms of any agreement or letters setting out or constituting the Secured Liabilities in relation to any amount which is not paid on the due date for payment;

**ESF:** means ESF Capital Limited a company incorporated in England and Wales with company number 09707863.

**Facility Documents:** means the Guarantee, the Loan Agreement, this Deed and all other agreements (whether oral or in writing), letters, documents or security made between any of the Secured Parties and the Company and / or the Borrower whether or not any other person is also a party to any of them and whether made before or after the date of this Deed;

**Guarantee:** means any guarantee and / or indemnity that relates to or is connected with any liabilities owed by the Borrower to the Secured Parties made at any time between the Company and the Security Trustee (in its capacity as the agent of the Lender Members) as the same may from time to time be reviewed, replaced varied or extended;

**Land:** means any freehold or leasehold property, any licence and any other estate or interest in any immovable property and in each case all buildings and structures upon and all things affixed to such property (including trade, tenant's and other fixtures and fittings) from time to time;

**Lender Members:** means any members from time to time of the lending platform operated by ESF who have participated in providing any loan or other credit facility that is made available to the Borrower whether as an original party to the Loan Agreement or by way of taking an assignment or novation of the Loan Agreement;

**Loan Agreement:** means any loan agreement made at any time between the Borrower and the Security Trustee (in its capacity as the agent of the Lender Members) as the same may from time to time be reviewed, replaced varied or extended;

**Mortgaged Land:** means the Land from time to time mortgaged or charged by the Company under clauses 3.1(a) or 3.1(b)(i) and includes any part thereof;

**Receiver:** means each person appointed by the Security Trustee as an administrative receiver, a receiver and manager or a receiver of any Charged Assets;

**Secured Liabilities:** means all and any moneys, obligations and liabilities which may now or at any time in the future be due, owing or incurred by the Company to any of the Secured Parties whether actual or contingent and whether alone, severally or jointly with any other person as principal, guarantor, surety or in any other capacity whatsoever and in whatever name or style, together with interest,



commissions, fees and all legal and other costs, charges and other expenses which the Secured Parties may charge the Company or incur;

**Secured Parties:** means the Security Trustee, the Lender Members and / or any delegate, Receiver, agent, attorney or co-trustee appointed by the Security Trustee (including where applicable ESF);

**Security:** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Security Period:** means the period beginning on the date of this Deed and continuing until the Security Trustee is satisfied that all of the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and no further Secured Liabilities are capable of being incurred or arising; and

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

1.2 Unless a contrary intention appears, in this Deed:

- (a) the expressions **Company, Borrower, Lender Member and Security Trustee** where the context admits, include their respective successors in title, permitted assigns and permitted transferees;
- (b) the **Security Trustee or a Receiver** (except for the references in clause 17), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates;
- (c) clause headings are for ease of reference only and are not to affect the interpretation of this Deed;
- (d) words importing the singular are to include the plural and vice versa;
- (e) a reference to **include, including, in particular and otherwise** shall not be construed as limiting the generality of the words preceding it;
- (f) a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this Deed;
- (g) the terms of the other documents under which the Secured Liabilities arise and any side letters between any parties in relation to them are incorporated in this Deed to the extent required to ensure that any purported disposition of any Charged Asset contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;

- (h) any grant of rights with full title guarantee shall be deemed to contain all of the covenants and warranties implied in respect of any conveyance with full title guarantee under section 1(2) of the Law of Property (Miscellaneous Provisions) Act 1994;
- (i) unless the context requires otherwise, references to clauses are references to clauses of this Deed;
- (j) the schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed and any reference to this agreement includes the schedules;
- (k) unless the context otherwise requires, a reference to a Charged Asset includes the proceeds of sale of that Charged Asset; and
- (l) any reference to this Deed or any other document includes references to this Deed or such other document as varied, novated, extended, supplemented or restated in any manner from time to time.

## 2. COVENANT TO PAY

- 2.1 The Company, as primary obligor and not merely as surety, covenants with the Security Trustee that it will, on the Security Trustee's written demand, pay and discharge all Secured Liabilities when the same shall be or become due.
- 2.2 The making of one demand shall not preclude the Security Trustee from making any further demands.
- 2.3 The Company shall pay on demand to the Security Trustee at the Default Rate interest on any amount not paid in accordance with this Deed when due from the due date to the date of payment or discharge (as well after as before judgment and notwithstanding the liquidation or administration of the Company or any arrangement or composition with any creditors by the Company).

## 3. CHARGE

- 3.1 As a continuing security for the payment and/or discharge of the Secured Liabilities, the Company:
  - (a) charges to the Security Trustee by way of legal mortgage all Land described in Schedule 2 (**Mortgaged Land**);
  - (b) charges to the Security Trustee by way of fixed charge:
    - (i) (to the extent they are not the subject of an effective legal mortgage under clause 3.1(a) above) all Land now or in the future

belonging to it, whether or not title to that Land is registered at the Land Registry;

- (ii) all buildings, structures, trade, tenant's and other fixtures and fittings now or in the future belonging to it or on or annexed to any Land now or in the future belonging to it;
  - (iii) all plant and machinery now or in the future owned by it and its interest in any plant or machinery now or in the future in its possession or on or annexed to any Land now or in the future belonging to it;
  - (iv) all cash at bank, all book debts, other debts and monetary claims now or in the future due or owing to it and the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item mentioned above;
  - (v) all stocks, shares and other securities now or in the future belonging to it together with all dividends and other rights deriving from them or pertaining to them and any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
  - (vi) all its goodwill, all its uncalled capital from time to time and any beneficial interest, claim or entitlement it has in any pension fund;
  - (vii) all patents, trade marks, trade names, service marks, designs and other intellectual property rights, choses in action and claims and all fees, royalties and other rights of every kind deriving from them now or in the future belonging to it;
  - (viii) all its rights, title and interests not effectively assigned under clause 3.1(c) below:
- (c) assigns absolutely to the Security Trustee all its rights, title and interest from time to time in and to:
- (i) all present and future insurance policies to which the Company is entitled and any payments paid or payable and claims or return of premium in relation thereto;
  - (ii) all amounts paid or payable to or for the account of the Company in connection with the letting licence or grant or other rights of use or occupation of any part of any all Land now or in the future belonging to it;

provided that (without prejudice to clause 3.1(b)(viii) above) to the extent that any rights, titles or interests assigned under this clause 3.1(c) are not assignable, such assignment will operate as an assignment of all proceeds received by the Company in connection therewith; and

- (d) charges to the Security Trustee by way of floating charge its undertaking and all its property, rights, assets and income not effectively mortgaged, charged by way of fixed charge or assigned under clauses 3.1(a) to 3.1(c) above both present and future (including without limitation its stock in trade and its heritable and other property, assets and rights in Scotland).
- 3.2 The Security created by this Deed ranks as first charges, mortgages and assignments (as applicable) and is given with full title guarantee.
- 3.3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies so that the floating charge created under clause 3.1(d) is a qualifying floating charge for the purposes of that paragraph 14.
- 3.4 The Company shall not create or permit to subsist or arise any Security over any of its rights, assets, property, undertaking and revenue other than that created by this Deed or with the Security Trustee's prior written consent.
- 3.5 The Company shall not sell, transfer, assign, licence, lease, hire out, grant, lend, discount, factor, exchange, compound, set-off, grant any interest in, part with possession or ownership of, grant time or indulgence in respect of or otherwise dispose of any Charged Asset or the equity of redemption therein or permit any person to do any such thing.
- 3.6 Clause 3.5 shall not apply to any dealing made with the prior written consent of the Security Trustee or made in the ordinary course of trade (as carried on at the date of this Deed but excluding unprecedented and exceptional dealings or transactions) in respect of any Charged Asset that is subject only to the floating charge created by clause 3.1(d).
- 3.7 Subject to clause 3.9, the Security Trustee may from time to time by notice in writing to the Company convert the floating charge created by clause 3.1(d) into a fixed charge with immediate effect. Such conversion shall take effect in respect of each Charged Asset specified in such notice and if no Charged Assets are specified it shall take effect in respect of all Charged Assets.
- 3.8 Subject to clause 3.9, if (without the prior written consent of the Security Trustee):

- (a) the Company creates any Security over or otherwise encumbers any Charged Asset or attempts to do so;
- (b) any person levies or attempts to levy any distress, execution, sequestration, expropriation, attachment or other process against any Charged Asset;
- (c) a resolution is passed or a petition is presented for the winding up, dissolution, administration or re-organisation of the Company;
- (d) a receiver, an administrative receiver or a receiver and manager is appointed over any Charged Asset or any person entitled to do so gives notice of its intention to appoint a receiver, an administrative receiver or a receiver and manager over any Charged Asset or files such a notice with the court; or
- (e) an Administrator is appointed (or the Security Trustee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of the Company,

the floating charge created by clause 3.1(d) shall with immediate effect and without notice automatically convert into a fixed charge over the relevant Charged Assets (or, in the case of clauses 3.8(c), 3.8(d) or 3.8(e) above, over all of the Charged Assets).

- 3.9 The floating charge created by clause 3.1(d) shall not be converted into a fixed charge solely by reason of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.
- 3.10 The Company shall on the date of this Deed or, if later, upon becoming entitled to them, deposit (or procure the deposit) with the Security Trustee and the Security Trustee shall be entitled to hold all original deeds and documents of title in the Company's control or possession relating to any Charged Asset together with, in the case of the stocks, shares and other securities referred to in clause 3.1(b)(v), stamped stock transfer forms in respect of the same executed in blank (except for the number and class of shares and the name of the transferor) and left undated. The Security Trustee may at any time after the date of this Deed complete the instruments of transfer on behalf of the Company in favour of itself, its nominee or such other person as it shall select.
- 3.11 If, for any reason, the Security Trustee ceases to hold any such deeds or documents, it may by notice to the Company require that such deeds or documents be redelivered to it and the Company shall immediately comply with that requirement or procure that it is complied with. In respect of any Mortgaged Land, if any such deeds or documents are at the relevant time held at the Land Registry,

the Company shall promptly following a demand by the Security Trustee provide or procure the provision to the Security Trustee of such undertakings and such letters addressed to the Land Registry as the Security Trustee may require.

- 3.12 Subject to clause 20, upon the irrevocable and unconditional discharge in full of the Secured Liabilities the Security Trustee shall, at the cost and request of the Company, release the Charged Assets from the Security constituted by this Deed and reassign or retransfer the Charged Assets to the Company.

#### **4. RESTRICTIONS ON DEALING**

- 4.1 The Company shall not without the prior written consent of the Security Trustee:

- (a) part with possession of any freehold or leasehold property or any part or parts of it (otherwise than on the determination of any lease, tenancy or licence), grant or agree to grant any option or any lease, licence, tenancy or other right of occupation to any person or exercise the powers of leasing or agreeing to lease or of accepting or agreeing to accept surrenders conferred by sections 99 and 100 of the Act or otherwise. Such restrictions shall not be construed as limitations on the powers of any Receiver nor of the Security Trustee, any of whom may, after the Security created under this Deed becomes enforceable, grant or accept surrenders of leases without restriction;
- (b) pull down or remove or redevelop or make any material alteration to the whole or any part of any buildings or sever unfix or remove any fixtures or remove any plant or machinery belonging to or in use by the Company except for the purpose of effecting repairs or replacing the same;
- (c) make or allow to be made any application for planning permission in respect of any part of the Mortgaged Land;
- (d) vary, surrender, cancel or dispose of, or permit to be forfeit, any leasehold interest in any of its leasehold properties; or
- (e) do or cause or permit or suffer to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Assets.

#### **5. COVENANTS BY THE COMPANY**

- 5.1 The Company shall:

- (a) keep all buildings in good and substantial repair and condition and adequately and properly painted and decorated and all plant, machinery,

fixtures and fittings, roads, pipes, wires, cables, drains and structures in a good state of repair and in good working order and condition and permit any person or persons nominated by the Security Trustee free access at all times to view the state and condition of them and for that purpose to enter upon any land or buildings occupied or owned by the Company without being deemed to have gone into possession of them;

- (b) insure and keep insured such of its Charged Assets as is insurable with such reputable insurer and against such risks and in such amounts and otherwise in such terms as the Security Trustee may require and shall maintain such other insurances as are normally maintained by prudent companies carrying on similar businesses, (such insurances to contain such provisions for the protection of the Security Trustee as the Security Trustee may require and to be, if the Security Trustee shall require, in the composite names of the Company and the Security Trustee and with the Security Trustee named as first loss payee) and will produce or deposit with the Security Trustee all such policies and receipts for all premium and other payments necessary for effecting and maintaining such insurances;
- (c) pay all money received by it on any policy of insurance (other than in respect of employer's or public liability) to the Security Trustee and such money shall be applied towards making good the loss or damage in respect of which the money was received or, if the loss or damage has already been made good, in refinancing money expended in that connection or, subject to any obligation to do otherwise under any insurance policy, at the option of the Security Trustee, towards the discharge of the Secured Liabilities. If any money payable under any policy of insurance is paid to the Company, it shall hold the money on trust for the Security Trustee and shall account to the Security Trustee accordingly;
- (d) punctually pay or cause to be paid (and indemnify the Security Trustee and any Receiver against) all rents, taxes, duties, assessments and other outgoings and observe and perform all restrictive and other covenants under which any of the Charged Assets is held;
- (e) collect and realise its book or other debts and all licence fees, royalties and other moneys deriving from its intellectual property (together **Book Debts**) and pay all moneys which it may receive in respect of them into such account in the Company's name as the Security Trustee may specify and until such payment will hold all such moneys on trust for the Security Trustee and the Company shall not:
  - (i) at any time after the Security created by this Deed becomes enforceable withdraw any amounts standing to the credit of any

account in the name of the Company without the prior written consent of the Security Trustee; or

- (ii) release, factor, sell at discount, charge, assign or otherwise deal with any Book Debts, licence fees, royalties or other moneys otherwise than by getting in and paying the same into an account in the Company's name without the prior written consent of the Trustee;
- (f) execute a legal assignment of the Book Debts to the Security Trustee on such terms as the Security Trustee may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred;
- (g) take all necessary action to safeguard and maintain present and future rights in or relating to any intellectual property rights including, without limitation, observing all covenants and obligations relating to such rights, paying all applicable renewal or licence fees, using reasonable efforts to register any intellectual property and not permitting any intellectual property to be abandoned, cancelled or to lapse;
- (h) comply with the provisions of all present or future statutes, licences, regulations, consents and directives and every notice, order or direction made under any of the foregoing; and
- (i) provide the Security Trustee with all financial and other information with respect to the assets, liabilities and affairs of the Company and its subsidiaries and associated companies (if any) that the Security Trustee may from time to time require.

5.2 If the Company shall fail to satisfy the Security Trustee that it has performed any of its obligations under clause 5.1 or otherwise, then the Security Trustee may (but shall not be obliged to) take such steps as it considers appropriate to procure the performance of such obligation and/or remedy the failure and shall not by any step be deemed to be a mortgagee in possession and the moneys expended by the Security Trustee shall be reimbursed by the Company on demand and until so reimbursed shall carry interest as mentioned in clause 2.3 from the date of payment to the date of reimbursement.

5.3 The Company undertakes:

- (a) promptly to serve all such notices of the Security Trustee's interest in the Charged Assets as the Security Trustee may reasonably require from time to time and in such form as the Security Trustee may reasonably require; and



- (b) to use its reasonable endeavours to procure that each notice served under clause 5.3(a) above is acknowledged by the recipient thereof to the satisfaction of the Security Trustee.

## **6. REPRESENTATIONS AND WARRANTIES**

**6.1** The Company makes the representations and warranties set out in this clause 6.1 to the Security Trustee on the date of this Deed and in accordance with clause 6.2:

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its original jurisdiction of incorporation.
- (b) It has the power to enter into, and perform its obligations and grant Security under, this Deed. Its entry into, and its performance of its obligations under, this Deed will not conflict with its constitutional documents or any law, regulation or other obligation binding on it.
- (c) The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable against it.
- (d) This Deed creates the Security it purports to create and that Security is not liable to be avoided or otherwise set aside on its liquidation or administration or otherwise.
- (e) It has taken all necessary action to authorise the execution, delivery and performance of its obligations under this Deed.
- (f) No authorisation or permit of or with any government, judicial or other authority or other third party is required or desirable in connection with the execution, performance, validity or enforceability of this Deed or the creation of Security as contemplated under it other than the registration of this Deed with the Registrar of Companies for England and Wales and at the Land Registry.
- (g) No action, proceeding or procedure relating to the enforcement of any Security over it or any of its assets, or any attachment or execution in respect of any of its assets, or any moratorium, winding-up, dissolution, administration, receivership or reorganisation of it has been taken or threatened. No liquidator, receiver, administrative receiver, administrator, custodian or similar officer has been appointed in any jurisdiction in respect of the Company or any of its assets and no step has been taken in relation to any such appointment. It is not insolvent, and is not and has not been deemed to be insolvent, under any applicable law.
- (h) For the purposes of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

(Recast), its "centre of main interest" (as used in Article 3(1) of such Regulations) is situated in its original jurisdiction of incorporation and it has no "establishment" (as defined in Article 2(10) of such Regulations) in any other jurisdiction.

- (i) Its payment obligations under this Deed rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying generally.
- (j) It has good title to and is the sole legal and beneficial owner of the Charged Assets.
- (k) Neither it nor any of its assets is entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding.
- (l) It has not sold, transferred or otherwise disposed of the benefit of or agreed to sell, transfer or otherwise dispose of the benefit of any of its rights, title or interest in or to any Charged Asset (other than as expressly permitted under this Deed).

6.2 The representations and warranties set out in clause 6.1 are deemed to be repeated by the Company, by reference to the facts and circumstances then existing, on each day falling in the Security Period.

## **7. ENFORCEMENT OF SECURITY**

7.1 The Security created by this Deed shall become immediately enforceable and the statutory power of sale and all other statutory powers conferred on mortgagees by section 101 of the Act (as varied and extended by this Deed) shall be exercisable:

- (a) on the occurrence of a Default;
- (b) if the Company is in breach of any of its obligations under any Facility Document;
- (c) if the Company has failed to pay or discharge any Secured Liabilities when due (whether on demand, at scheduled maturity, by acceleration or otherwise) following a demand for payment by the Security Trustee;
- (d) if a resolution is passed, any other step is taken or a petition is presented for the winding up, dissolution, administration or re-organisation of the Company;
- (e) if a receiver, administrative receiver or receiver and manager is appointed over any Charged Asset or if any person entitled to do so gives notice (or files notice with the court) of its intention to appoint such a receiver, administrative receiver or receiver and manager;

- (f) if an Administrator is appointed (or the Security Trustee receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 to the Insolvency Act 1986) in respect of the Company; and/or
  - (g) upon request by the Company and at any time thereafter.
- 7.2 For the purposes of all powers implied or conferred by statute (including, without limitation, the power of sale and other powers conferred by section 101 of the Act (as varied and extended by this Deed)) and all other powers conferred on a mortgagee by law, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 7.3 Sections 93 (restricting the right of consolidation) and 103 (restricting the power of sale) and the restrictions contained in section 109(1) (restricting the appointment of a Receiver) of the Act shall not apply to this Deed.
- 7.4 After the Security created under this Deed has become enforceable, the Security Trustee and any Receiver may enforce all or any part of the Security created under this Deed in any manner it sees fit and neither the Security Trustee nor any Receiver will be liable by reason of entering into possession of any Charged Asset or the exercise of any right, to account as mortgagee in possession; or for any loss on realisation of any Charged Asset, or arising from the manner in which the Security Trustee or any Receiver enforces or refrains from enforcing the Security created under this Deed; or for any default or omission for which a mortgagee in possession might be liable.
- 7.5 At any time after the Security created under this Deed has become enforceable, the Security Trustee shall be entitled to:
  - (a) complete all instruments of transfer referred to in clause 3.10 and otherwise have any stocks, shares and other securities referred to in clause 3.1(b)(v) registered in its name or the name of its nominee;
  - (b) in the name of the Company, exercise or direct (or refrain from exercising or directing) the exercise of the voting and other rights and powers attached to any stock, shares and securities charged by clause 3.1(b)(v) in such a manner as it considers fit (in its absolute discretion); and/or
  - (c) receive and retain all dividends and other distributions payable in respect of such stock, shares and securities and applied such dividends and distributions in accordance with clause 13 and to the extent such dividends, distributions and/or other amounts are received by or on behalf

of the Company such amounts shall be held on trust for the Security Trustee.

**8. PRIOR SECURITY**

- 8.1 The Security Trustee may at any time after the Security created under this Deed has become enforceable redeem (or procure the transfer to itself of the benefit of) any prior Security over any Charged Asset and may settle and pass the accounts of the holder of the prior Security. Any accounts so settled and passed shall (save in respect of any manifest error) be conclusive and binding on the Company. All principal moneys, interest, costs, charges and expenses of and incidental to the redemption and transfer shall be Secured Liabilities and shall be payable by the Company to the Security Trustee on demand.

**9. RIGHT OF APPROPRIATION**

- 9.1 To the extent that any Charged Asset constitutes financial collateral and this Deed and the Security created and the obligations of the Company under it constitute a security financial collateral arrangement (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No 3226) (the Regulations)) the Security Trustee shall have the right, at any time after the Security created under this Deed has become enforceable, to appropriate with immediate effect by notice in writing to the Company all or any part of such financial collateral in or towards payment and/or discharge of the Secured Liabilities in such order as the Security Trustee in its absolute discretion may determine.
- 9.2 The Parties agree that the value of any financial collateral appropriated under clause 9.1 shall be (i) in the case of cash, the amount standing to the credit of the relevant account, together with any accrued but unposted interest, and (ii) in other cases the price of the relevant Charged Asset as listed on any recognised market index, in each case at the time the right of appropriation is exercised, or determined by such other method as the Security Trustee may select (including independent valuation). The Parties agree that the methods of valuation for financial collateral set out in this Deed constitute commercially reasonable methods of valuation for the purposes of the Regulations.
- 9.3 The Security Trustee shall account to the Company for any amount by which the value of any appropriated Charged Assets exceeds the Secured Liabilities and the Company shall remain liable to the Security Trustee for any amount by which the value of any appropriated Charged Assets is less than the Secured Liabilities.

**10. RECEIVERS AND ADMINISTRATORS**

- 10.1 At any time after the Security created by this Deed becomes enforceable the Security Trustee may without prior notice to the Company from time to time by deed or otherwise in writing signed by any officer or manager of the Security Trustee or any person authorised for this purpose by the Security Trustee appoint:
- (a) any one or more persons (whether or not an employee of the Security Trustee) to be an administrative receiver, receiver or receiver and manager of any Charged Asset (and to the extent permitted by law none of the restrictions imposed by the Act in relation to the appointment of such persons or to the giving of notice or otherwise shall apply); or
  - (b) when permitted by law and by any method permitted by law, any one or more persons to be an Administrator of the Company.
- 10.2 An appointment over part only of the Charged Assets shall not preclude the Security Trustee from making any subsequent appointment of a Receiver over any other Charged Asset.
- 10.3 If at any time and by virtue of any appointment under this clause 10 any two or more persons shall hold office as a Receiver, each such person shall (unless otherwise provided in any relevant deed or other instrument of appointment) be jointly and severally entitled to exercise all the powers and discretions conferred by this Deed on a Receiver.
- 10.4 The Security Trustee may (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in its place.
- 10.5 The Security Trustee may either at the time of appointment of any Receiver or at any time thereafter and from time to time fix the remuneration of such Receiver. The maximum rate specified in Section 109(6) of the Act will not apply.
- 10.6 Any Receiver appointed under this Deed shall so far as the law permits be the agent of the Company for all purposes. The Company shall be solely responsible for any Receiver's acts, omissions, defaults, losses, liabilities, remuneration, costs, charges and expenses and liable on any contracts or engagements made or entered into by any Receiver, failing which he shall act as principal and shall not be or become agent for the Security Trustee.
- 10.7 To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver in relation to any

Charged Asset may (after the Security created by this Deed becomes enforceable) be exercised by the Security Trustee without appointing a Receiver and notwithstanding the appointment of a Receiver and irrespective of whether the Security Trustee has taken possession of any Charged Asset.

## **11. POWERS OF RECEIVER**

**11.1** Any Receiver appointed under this Deed shall have power, in addition to any powers conferred upon it by law and in each case as he may think fit to:

- (a) enter upon, take possession of, appropriate, collect and get in all or any part of the property in respect of which he is appointed and for that purpose to take any proceedings;
- (b) manage, carry on or concur in carrying on to develop, reconstruct, amalgamate or diversify the business of the Company (or any part of it) and to raise or borrow money from the Security Trustee or others on the security of any Charged Asset;
- (c) purchase or acquire any land and purchase, acquire and grant any interest in or right over land;
- (d) terminate or accept surrenders of leases or tenancies of any of the property charged by this Deed and to carry any such transactions into effect;
- (e) sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of or otherwise realise, any Charged Asset and any of the debts in respect of which he is appointed in any manner and on any terms which he thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration. Any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit;
- (f) make any arrangement or compromise between the Company and any other person which he may think expedient;
- (g) insure, repair, improve, develop, exploit and replace any Charged Asset;
- (h) construct and complete any building on any Mortgaged Land;
- (i) call up any uncalled capital of the Company conditionally or unconditionally with all the powers conferred by the articles of association of the Company in relation to calls;

- (j) employ, engage and appoint managers and other employees and professional advisers including, without limitation, those to guard and protect any freehold or leasehold property charged by this Deed;
- (k) settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Company or relating in any way to any Charged Asset;
- (l) bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Charged Asset which he thinks fit;
- (m) do all such other acts and things as he may consider:
  - (i) necessary or desirable for the realisation of any Charged Asset; or
  - (ii) incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (n) generally to exercise any powers conferred by the Insolvency Act 1986 on administrative receivers (whether or not he is an administrative receiver, provided that if he is not an administrative receiver any powers conferred on administrative receivers under the Insolvency Act 1986 shall be exercisable by the Receiver in respect of the Charged Assets only) and/or other receivers;
- (o) generally to use the name of the Company in the exercise of any of the powers conferred by this clause 11; and/or
- (p) generally to exercise all the powers and rights of an absolute beneficial owner of the Charged Assets and do or omit to do anything which the Company could do or omit to do,

provided that any Receiver shall in the exercise of his powers, authority and discretions conform to any directions from time to time given by the Security Trustee and shall not be responsible to the Company or any other person nor shall the Security Trustee or any Receiver be responsible for any loss thereby occasioned.

- 11.2 The powers conferred on mortgagees or receivers by the Act shall apply to any Receiver as if such powers were incorporated into this Deed except in so far as they are expressly excluded. If there is any ambiguity or conflict between the powers contained in the Act and those contained in this Deed, the term of this Deed shall prevail.

**12. SET-OFF AND CONSOLIDATION**

- 12.1 At any time after the Security constituted by this Deed becomes enforceable, in addition to any right of set-off or other general lien or similar right to which it may be entitled by law, the Security Trustee may (but shall not be obliged to) set-off against the Secured Liabilities any amount or obligation (contingent or otherwise) owing by any of the Secured Parties to the Company. If any relevant obligations or amounts are in different currencies, the Security Trustee may convert either obligation or amount at a market rate of exchange in its usual course of business.

**13. APPLICATION OF PROCEEDS**

- 13.1 All moneys received by the Security Trustee or any Receiver after the Security created by this Deed becomes enforceable shall be applied (subject to any liabilities having priority to the Secured Liabilities) in the following order:
- (a) in or towards payment of the costs, losses, liabilities, charges and expenses incurred in connection with this Deed by the Security Trustee or any Receiver and the exercise of any of such person's powers and of all outgoings paid by such person (including preferential debts) and in payment to any Receiver of such remuneration as may be agreed between that Receiver and the Security Trustee at, or at any time and from time to time after, the Receiver's appointment in accordance with the terms of this Deed;
  - (b) in or towards satisfaction of the Secured Liabilities in such order as the Security Trustee may in its absolute discretion determine; and
  - (c) in payment of the surplus (if any) to the Company or any other person entitled to it.
- 13.2 This clause 13 does not prejudice the right of the Security Trustee (or any Receiver) to recover any shortfall from the Company.

**14. PROTECTION OF THIRD PARTIES**

- 14.1 In favour of any purchaser (as defined in section 205 of the Act) or person dealing in good faith, the Secured Liabilities shall be deemed to become due and all rights of enforcement conferred upon the Security Trustee by the Act, as varied and extended by this Deed, shall be deemed to arise, immediately after the execution of this Deed.
- 14.2 No purchaser or other person dealing with the Security Trustee or a Receiver shall be bound or concerned to enquire whether any power exercised or purported to



be exercised under this Deed has arisen, become exercisable or is being properly exercised or whether any money is due on the Security created by this Deed or as to the propriety or regularity of any sale by or other dealing with the Security Trustee or any Receiver or be concerned with notice to the contrary. Any such sale or dealing shall be deemed to be within the powers conferred by this Deed and to be valid and effective.

**15. FURTHER ASSURANCE**

**15.1** The Company shall, at its own expense, at any time on written demand by the Security Trustee or any Receiver:

- (a) take whatever action the Security Trustee or any Receiver may require to create, perfect, protect, enhance or maintain any Security created or intended to be created under this Deed;
- (b) take whatever action the Security Trustee or any Receiver may require to affix to or to endorse on any Charged Assets labels, signs, memoranda or other recognisable identification markings referring or drawing attention to the Security created under this Deed;
- (c) take whatever action the Security Trustee or any Receiver may require to create and/or perfect Security in favour of the Security Trustee over the Company's assets located in any jurisdiction outside England and Wales; and/or
- (d) to facilitate:
  - (i) the realisation of any Charged Asset;
  - (ii) the exercise of any right, power or discretion exercisable by the Security Trustee or any Receiver in respect of any Charged Asset or otherwise under this Deed; and/or
  - (iii) the enforcement of the Security created under this Deed,

including, without limitation, the execution of any legal mortgage, charge, transfer, conveyance or assignment of any property or asset to the Security Trustee or its nominee and the giving of any notice, order or direction and the making of any filing or registration, in each case which the Security Trustee or any Receiver considers expedient.

**16. REGISTERED LAND**

- 16.1 The Company consents to a restriction in the following terms or such other terms as the Security Trustee may reasonably require being entered on the register of title of any Mortgaged Land that is now or in the future registered at the Land Registry:

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 [date] in favour of ESF Loans Limited referred to in the charges register.

- 16.2 To the extent that the Security Trustee is under an obligation to make further advances to the Company such obligation is deemed incorporated into this Deed as if set out in this Deed in full and the Company consents to an application being made to the Land Registry for a note of such obligation to be entered on the registers referred to in clause 16.1 above.

**17. POWER OF ATTORNEY AND DELEGATION**

- 17.1 The Company irrevocably and by way of security appoints the Security Trustee and any Receiver and any delegate acting jointly and severally as its attorney with full power of substitution in its name, on its behalf and as its act and deed to execute, seal and deliver and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which the Company is obliged to execute or do under this Deed. The Company hereby ratifies and confirms and shall ratify and confirm whatever any attorney appointed under this clause 17.1 does or purports to do under this clause 17.1.

- 17.2 The Security Trustee or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which the Security Trustee or any Receiver may think fit. Neither the Security Trustee nor any Receiver will be in any way liable or responsible to the Company for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

**18. INDEMNITIES**

**18.1** The Company shall indemnify the Security Trustee any Receiver and any other person duly appointed by the Security Trustee under this Deed immediately on demand against:

- (a) any losses, liabilities, costs and expenses (including, without limitation, legal fees) and any VAT thereon incurred, directly or indirectly, by any of them in the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Deed or as a result of holding the Security granted under this Deed; and
- (b) all actions, proceedings, costs, losses, liabilities, claims and demands in respect of any matter or thing done or omitted in any way relating to any Charged Asset, this Deed or the Security granted under this Deed,

and the Security Trustee and any Receiver may retain and pay all sums in respect of the same out of any moneys received under this Deed.

**19. NEW ACCOUNT**

**19.1** If the Security Trustee receives or is deemed to be affected by actual or constructive notice of any subsequent Security, assignment or other disposition affecting any Charged Asset, the Security Trustee may open a new account for the Company. If the Security Trustee does not open a new account then, unless it gives express written notice to the contrary to the Company, 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 Company to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the Secured Liabilities.

**20. REINSTATEMENT AND AVOIDANCE OF PAYMENTS**

**20.1** Any settlement or discharge between the Security Trustee and the Company in respect of the Secured Liabilities shall be conditional upon no Security of, or payment to, the Security Trustee (whether made by the Company or otherwise) being avoided, reduced or required to be refunded or paid away by virtue of any requirement (whether or not having the force of law) or enactment, whether relating to bankruptcy, insolvency, liquidation, administration or otherwise, at any time in force or by virtue of any obligation to give effect to any preference or priority.

**20.2** If any settlement or discharge is so avoided, reduced, refunded or paid away the liability of the Company and the Security created under this Deed shall continue,

and the Security Trustee shall be entitled to recover the value or amount of any such payment or Security from the Company, in each case as if such settlement, discharge, refund or payment had not occurred.

- 20.3 The Security Trustee may concede or compromise any claim that any payment, Security or other disposition is liable to avoidance or restoration.

## **21. APPROPRIATIONS**

- 21.1 The Security Trustee (or any Receiver) may at any time:

- (a) appropriate and apply any money or payments received in respect of the Secured Liabilities in reduction of any part or parts of the Secured Liabilities as it may think fit in its absolute discretion;
- (b) refrain from applying or enforcing any other moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Company shall not be entitled to the benefit of the same; and
- (c) hold in an interest bearing suspense account any moneys received from the Company or otherwise on account of the Secured Liabilities.

## **22. NOTICES**

- 22.1 Each notice or other communication required to be given to a party under or in connection with this Deed shall be:

- (a) in writing;
- (b) delivered:
  - (i) by hand; or
  - (ii) by pre-paid first-class post or other next working day delivery service; or
  - (iii) (in the case of any notice or other communication to be given by the Security Trustee to the Company only) by fax; or
  - (iv) (in the case of any notice or other communication to be given by the Security Trustee to the Company only) by email; and
- (c) sent to:
  - (i) the Company at the address, fax number or email address stated in Schedule 1.

(ii) the Security Trustee at:

C/o Unit 2/3 Charter Point Way, Ashby-de-la-Zouch,  
Leicestershire, LE65 1NF

or to any other address or (where applicable) fax number or email address as is notified in writing by one party to the other from time to time.

22.2 Any notice or other communication that the Security Trustee gives to the Company shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax or email, at the time of transmission.

22.3 A notice or other communication given as described in clause 22.2(b) or clause 22.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

22.4 Any notice or other communication given to the Security Trustee shall be deemed to have been received only on actual receipt.

22.5 This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.6 A notice or other communication given to the Security Trustee under or in connection with this Deed is not valid if sent by fax or email.

## 23. COSTS AND EXPENSES

23.1 All costs, charges and expenses (including, without limitation, legal fees and all amounts determined by any of the Secured Parties to be necessary to compensate it for internal management or administration costs, charges and expenses) and any VAT thereon incurred by any of the Secured Parties or other person appointed by the Security Trustee or any Receiver under this Deed:

- (a) in the creation or discharge of or otherwise in connection with this Deed (including, without limitation, the remuneration of any Receiver) or in respect of any Charged Asset; and

- (b) in evaluating, negotiating or complying with any request made by the Company for an amendment, waiver, consent or release in respect of this Deed; and
- (c) in connection with the holding, preservation or enforcement (or attempted preservation or enforcement) of the Security or other rights created under this Deed or obtaining or attempting to obtain payment of any Secured Liabilities; and
- (d) in connection with or enforcement (or attempted enforcement) of the Facility Documents,

shall be recoverable on a full indemnity basis as a debt due from the Company and shall form part of the Secured Liabilities.

- 23.2 All amounts payable under clause 23.1 shall bear interest at the Default Rate from the date the same are incurred, such interest shall be payable on demand and shall be computed and compounded monthly.

## **24. GENERAL**

- 24.1 A certificate, determination, notification or opinion of the Security Trustee as to the amount of any of the Secured Liabilities or any other matter connected with this Deed (or the Security created by this Deed) shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- 24.2 The Security constituted by this Deed shall be a continuing security for the payment and discharge of the Secured Liabilities and will extend to the ultimate balance of the Secured Liabilities regardless of any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.
- 24.3 The Security created by this Deed is in addition to and is not in any way excluded or prejudiced by any other Security or any right of set-off, combination, guarantee or indemnity now or in the future held by the Security Trustee for any of the Secured Liabilities.
- 24.4 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.
- 24.5 No failure to exercise, nor any delay in exercising, on the part of the Security Trustee, any right or remedy under this Deed shall operate as a waiver, nor shall

any single or partial exercise of any right or remedy prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative, and are in addition to and not exclusive of any rights or remedies provided by law.

- 24.6 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed. Each counterpart is an original but all counterparts shall together constitute one and the same instrument.
- 24.7 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed (other than the Security Trustee and its permitted successors and assignees and any Receiver) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.
- 24.8 It is intended that this Deed takes effect as a deed notwithstanding the fact that a party to it may only execute it under hand.
- 24.9 The Security Trustee shall have a full and unfettered right to assign or transfer in any way the whole or any part of the benefit of this Deed and its rights or rights and obligations under this Deed. The expression "the Security Trustee" shall include its successors, transferees and assignees. The Security Trustee shall be entitled to disclose any information about the Company, this Deed and the Secured Liabilities to any actual or prospective successor, transferee or assignee or as permitted or required by law. Any successor, transferee or assignee shall be entitled to the full benefits of this Deed. The Company shall not assign any of its rights or novate or otherwise transfer any of its rights and obligations under or interests in this Deed.
- 24.10 This Deed is granted in favour of the Security Trustee for itself and as security trustee on behalf of the Lender Members.
- 24.11 The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of 125 years from the date of this Deed.
25. **GOVERNING LAW**
- 25.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**26. JURISDICTION**

- 26.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including claims for set-off and counterclaim and any dispute regarding the existence, validity or termination of this Deed and any non-contractual obligations arising out of or in connection with it) (a **Dispute**)
- 26.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 26.3 This clause 26 is for the benefit of the Security Trustee only. As a result, neither the Security Trustee nor any Receiver shall be prevented from taking proceedings relating to a Dispute in any other court or other forum with jurisdiction. To the extent allowed by law, the Security Trustee and any Receiver may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS** whereof this Deed has been duly executed as a deed by the Company and the Security Trustee and is intended to be and is delivered on the date first above written.



**Schedule 1**

**the Company**

<b>Company Name:</b>	GFL DAIRY LIMITED
<b>Place of Registration:</b>	England and Wales
<b>Registration number:</b>	09538234
<b>Registered office:</b>	Cleave Farm, Templeton, Tiverton, Devon, EX16 8BP
<b>Fax number:</b>	N/A
<b>Email Address:</b>	winston@willandbiogas.com

**Schedule 2**

**Mortgaged Land**

NOT APPLICABLE

### Schedule 3

#### the Borrower

<b>Borrower Name:</b>	CLEAVE FARM LIMITED
<b>Place of Registration:</b>	England and Wales
<b>Registration number:</b>	11435401
<b>Registered office:</b>	Cleave Farm, Templeton, Tiverton, EX16 8BP

EXECUTED as a deed  
by GFL DAIRY LIMITED  
acting by:

Signature of Director  
Print name of Director

W. Paul  
W. Paul

Signature of Director/Secretary  
Print name of Director/Secretary

Emilee  
E M REED

OR

EXECUTED as a deed  
by GFL DAIRY LIMITED  
acting by:

Signature of Director  
Print name of Director  
in the presence of:

.....  
.....

Witness:

Signature

Cynthia Burrow

Name

CYNTHIA BURROW

Address

5 BLITS CLOSE

WITHERIDGE

TILBERTON EX16 8AJ

Occupation

ACCOUNTS ASSISTANT

EXECUTED as a deed  
by ESF LOANS LIMITED as security  
trustee for the Lender Members  
acting by:

Signature of Director  
Print name of Director

.....  
.....

Signature of Director/Secretary  
Print name of Director/Secretary

.....  
.....

OR

**EXECUTED** as a deed  
by **ESF LOANS LIMITED** as security  
trustee for the Lender Members  
acting by:

Signature of Director .....  
Print name of Director .....  
in the presence of:

Witness:  
Signature .....  
Name .....  
Address .....  
.....  
Occupation .....