

DATED

2011

LEICESTERSHIRE COUNTY COUNCIL

and

BIFFA WASTE SERVICES LIMITED

and

THE SQUIRE GERARD AMAURY ARNAUD MARCH  
PHILLIPPS DE LISLE  
SIR ANDREW GEORGE BUCHANAN  
SIR GEORGE JOHN AIRD  
and  
PETER ANDREW MARCH PHILLIPPS DE LISLE

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AGREEMENT

under section 106 of the Town and Country Planning Act 1990  
relating to Newhurst Quarry, Charnwood, Leicestershire

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AMC/LJB/GAR0085-0091 – Section 106 Agreement v2 – 14.09.2011



N A B A R R O

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## CONTENTS

Clause	Subject matter	Page
1.	OPERATIVE POWERS .....	2
2.	DEFINITIONS .....	2
3.	INTERPRETATION.....	5
4.	OWNER'S COVENANTS TO THE COUNCIL .....	6
5.	COUNCIL'S COVENANTS .....	8
6.	THE TRUSTEES' OBLIGATIONS .....	9
7.	AGREEMENTS AND DECLARATIONS .....	9
	SCHEDULE 1 .....	13
	SCHEDULE 2 .....	14
	SCHEDULE 3 .....	15

## DEED

DATE

2011

### PARTIES

- (1) LEICESTERSHIRE COUNTY COUNCIL whose principal offices are situated at County Hall, Glenfield, Leicester LE3 8RA (the "**Council**")
- (2) BIFFA WASTE SERVICES LIMITED (company registration number 00946107) the registered office of which is at Coronation Road, Cressex Business Park, High Wycombe, Buckinghamshire HP12 3TZ (the "**Applicant**") and
- (3) THE TRUSTEES OF THE GARENDON TRUST comprising Gerard Amaury Arnaud March Phillipps de Lisle of Cold Newton Lodge, Billesden, Leicestershire LE7 9JD (otherwise known as The Squire Gerard Amaury Arnaud March Phillipps de Lisle), Sir Andrew George Buchanan of Hodsock Priory, Blythe, Worksop, Nottinghamshire, Sir George John Aird of Grange Farm, Evenlode, Morton-in-the-Marsh, Gloucestershire and Peter Andrew March Phillipps de Lisle of Osbaston Hall, Nuneaton, Warwickshire (the "**Owner**")

### RECITALS

- (A) Words and Phrases used in this Deed are defined in clause 2
- (B) **Interests in the Site**
  - (i) The Owner is registered as the owner of the freehold interest in the Site and the Garendon Estate Site under title numbers LT292081 LT156838 and LT429675
  - (ii) The Council is a local planning authority for the purposes of sections 1 and 106 of the 1990 Act and a local authority for the purposes of section 111 of the Local Government Act 1972 for the area in which the Site and the Garendon Estate Site are situate and is satisfied that the arrangements made in this Deed will facilitate and be conducive to and incidental to the Council's functions
- (C) **Planning**
  - (iii) The Applicant on 14 December 2009 submitted the Application to the Council
  - (iv) The Council on 20 October 2010 refused the Application and the Owner on 6 April 2011 lodged the Appeal
  - (v) The Council wish to restrict and regulate the Development and use of the Site and the Garendon Estate Site in the manner set out in this Deed and to that end the Council, the Owner and the Applicant have agreed to enter into this Deed
- (D) **Planning Obligations**

Subject in the case of clauses 1, 2, 3, 4.1 and 4.8 to the satisfaction of the First Condition and in the case of the remainder of the Deed to the satisfaction of the Conditions this Deed is

intended to create and does create planning obligations for the purposes of section 106 of the 1990 Act enforceable by the Council

## **OPERATIVE PROVISIONS**

### **1. OPERATIVE POWERS**

- 1.1 This Deed is entered into under section 106 of the 1990 Act and creates planning obligations enforceable by the Council for the purposes of section 106 (9) (d) of the 1990 Act
- 1.2 This Deed is also entered into under section 111 of the Local Government Act 1972 and all other enabling powers.

### **2. DEFINITIONS**

In this Deed the following expressions shall have the following meanings set out below:

#### **"1990 Act"**

the Town and Country Planning Act 1990 as substituted and amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008

#### **"2009 Planning Permission"**

planning permission for the development of the Site by the provision of an integrated waste management facility comprising a materials recovery facility with in vessel composting and restoration of Newhurst Quarry by controlled land filling including the re-profiling of the quarry void by blasting and the temporary storage and processing of rock within Longcliffe Quarry together with retention of recycling facilities granted on 13 February 2009 under LPA reference 2007/1987/02

#### **"Appeal"**

the appeal to the Secretary of State against the Council's refusal of the Application allocated reference number APP/M2460/A/11/2150748/NWF

#### **"Application"**

the application for planning permission for the Development submitted by the Owner to the Council and bearing LPA reference 2009/2492/02

#### **"Certificate of Substantial Completion"**

the completion save in minor respects of the Garendon Estate Listed Structures Works

#### **"Commence"**

the service of written notice on the Council by the Applicant that the Development is to be commenced in accordance with the Permission or the earlier

commencement of the Development on the Site by the carrying out by the Applicant of a "material operation" as defined by section 56(4)(a) of the 1990 Act and "**Commencing**" "**Commencement**" and "**Commenced**" shall be construed accordingly

**"Complete/Completion"**

complete in all respects and "**Completed**" shall be constructed accordingly

**"Conditions"**

the First Condition and the Second Condition

**"Contractor"**

a Contractor or others authorised by a Contractor permitted or required to bring Heavy Goods Vehicles on to the Site

**"Development"**

the development of the Site under LPA reference 2009/2492/02 by the provision of an energy recovery facility

**"Director"**

[ ]

**"Final Certificate"**

a certificate issued by the Council under clause 5.1.3

**"First Condition"**

the grant of the Permission by the Council

**"Fourth Condition"**

a condition enabling the agreement to be terminated upon written notice in the event of non-compliance with the Third Condition after two written warnings

**"Garendon Estate Listed Structures"**

the Triumphal Arch and the Temple of Venus

**"Garendon Estate Listed Structures Bond Figure"**

the sum of One hundred and fifty thousand pounds (£150,000)

**"Garendon Estate Listed Structures Works"**

the works to protect and conserve the Triumphal Arch and the Temple of Venus more particularly described in Schedule 1 to this Deed

**"Garendon Estate Planting Plan"**

the attached plan marked "Garendon Estate Planting Plan"

**"Garendon Estate Planting Scheme"**

the delivery as part of the Landscape and Ecological Management Plan of offsite planting of dispersed woodland between documented tree lined avenues which are contemporary with the parkland buildings within the Garendon Park Site more particularly described in Schedule 2 to this Deed

**"Garendon Estate Site"**

all that land at Garendon Park, Leicestershire as is shown for the purposes of identification only edged red on the Garendon Estate Site Plan

**"Garendon Estate Site Plan"**

the attached plan marked **"Garendon Estate Site Plan"**

**"Garendon Estate Trees"**

those trees identified by a green dot on the Garendon Estate Planting Plan

**"Heavy Goods Vehicle"**

a vehicle within the meaning of large goods vehicle defined by Section 121 of the Road Traffic Act 1988 which is either (a) delivering waste to the Site or (b) leaving the Site after delivering waste [or other materials] or (c) exporting of recycled materials or other products or materials arising out of or in connection with the Development [PROVIDED THAT any heavy goods vehicle which is used for the collection of waste or other materials from the Site to (in each case) Shepshed Village and adjacent land (as shown on the Routing Plan) shall not be deemed to be a Heavy Goods Vehicle for the purposes of this deed] and **"Heavy Goods Vehicles"** shall be construed accordingly

**"Landscape and Ecological Management Plan"**

landscape and ecological management of the Garendon Estate Site more particularly described in Schedule 3 to this Deed

**"Mineral Planning Permissions"**

the Interim Development Order Determination issued by the Council under reference 92/054/02 on 28 August 1992 and the Review of Mineral Permission Determination issued by the Council under reference 97/1584/2 on 8 July 1998

**"Occupy"**

occupation for operational purposes but not occupation for the purposes of fitting out and **"Occupied"** and **"Occupation"** shall be construed accordingly

**"Permission"**

the Secretary of State allowing the Appeal

**"Prohibited Lorry Routes"**

the roads lying within the area shown hatched purple on the Routing Plan

**"Routing Plan"**

the attached plan marked "Routing Plan" and showing marked in purple those routes not to be utilised by HGVs accessing and egressing the Site

**"Second Condition"**

the Commencement of the Development

**"the Secretary of State"**

the Secretary of State for Communities and Local Government

**"the Site"**

all that land at Newhurst Quarry, Ashby Road East, Shepshed, Leicestershire as is shown for identification purposes only edged red on the Site Plan

**"Site Plan"**

the attached plan marked "**Site Location Plan**"

**"Substantially Completed"**

completed save in minor respects and "**Substantial Completion**" shall be construed accordingly

**"Surety"**

such bank or other financial or guarantee institution as shall be nominated by the Applicant for the purpose of the Garendon Estate Listed Structures Bond

**"Third Condition"**

a condition requiring all Heavy Goods Vehicles under the control of the Contractor or others authorised by the Contractor to be driven to or from the Site by routes other than the Prohibited Lorry Routes

**"Working Days"**

any day(s) upon which banks in the City of London are open to the general public

**3. INTERPRETATION**

- 3.1 Where in this Deed reference is made to a clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of (or in the case of a plan attached to) this Deed
- 3.2 In this Deed the singular includes the plural and vice versa
- 3.3 Where in any schedule or part of a schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or if relevant a part of a schedule
- 3.4 References in this Deed to the Owner shall include reference to its successors in title or persons deriving title through or under it

- 3.5 References in this Deed to the Applicant shall include reference to its successors in title or persons deriving title through or under it
- 3.6 References in this Deed to the Council shall include reference to its successors as local authority and local planning authority
- 3.7 Words denoting an obligation on any party to this Deed to do any act matter or thing include an obligation to procure that it be done and words placing any party under a restriction (subject to any qualification on the obligation itself) include an obligation not to permit or allow an infringement of the restriction
- 3.8 This Deed is a local land charge and shall be registered as such

#### **4. APPLICANT'S COVENANTS TO THE COUNCIL**

Subject in the case of clauses 1, 2, 3, 4.1 and 4.8 to the satisfaction of the First Condition and in the case of the remainder of clause 4 to the satisfaction of the Conditions the Applicant covenants with the Council:

##### **4.1 Notice of Intention to Commence the Development**

- 4.1.1 To provide the Council and the Owner with not less than 10 Working Days prior notice in writing of the Commencement of the Development

##### **4.2 Garendon Estate Listed Structures Works**

- 4.2.1 Not to Commence the Development unless it has first entered into a bond with the Surety in the Garendon Estate Listed Structures Bond Figure to the effect that if the Applicant fails to discharge its obligations to carry out the Garendon Estate Listed Structures Works in accordance with the terms and conditions of this Deed that the Council may (subject to the provisions of clause 5.1.1) itself carry out the Garendon Estate Listed Structures Works and call upon the Surety to reimburse the lesser of (a) the cost expended in doing so and (b) the Garendon Estate Listed Structures Bond Figure **Provided That** upon confirmation by the Council in accordance with clause 5.1.2 that the Garendon Estate Listed Structures Works have been Substantially Completed the Council will authorise the reduction of the Garendon Estate Listed Structures Works Bond by 90% of the Garendon Estate Listed Structures Bond Figure or such higher percentage as shall be agreed between the parties and the said bond shall in any event automatically be released and discharged upon the issue of the Final Certificate
- 4.2.2 Not to Occupy the Development unless it has first carried out and Completed the Garendon Estate Listed Structures Works
- 4.2.3 To advise the Director and the Owner in writing of the Substantial Completion of the Garendon Estate Listed Structures Works
- 4.2.4 To advise the Director and the Owner in writing of the Completion of the Garendon Estate Listed Structures Work

##### **4.3 Landscape and Ecological Management Plan**

- 4.3.1 Not to Commence the Development unless it has first submitted to and had approved by the Council the Landscape and Ecological Management Plan



4.3.2 Not to Occupy the Development unless it has first carried out and Completed the works contained in the approved Landscape and Ecological Management Plan which shall include the Garendon Estate Planting Scheme

#### 4.4 **Garendon Estate Planting Scheme**

4.4.1 To manage the Garendon Estate Trees for ten years following the Completion of the works contained in the approved Landscape and Ecological Management Plan in accordance with details contained in the approved Landscape and Ecological Management Plan

#### 4.5 **Routing Restriction**

4.5.1 To use its reasonable endeavours to procure that all Heavy Goods Vehicles accessing and egressing the Site in connection with the Development shall use routes other than the Prohibited Lorry Routes

4.5.2 To include in any agreement concerning the Site that the Applicant may enter into with any Contractor:

(a) a condition to require all Heavy Goods Vehicles under the control of the Contractor or others authorised by the Contractor to be driven to and from the Site by routes other than the Prohibited Lorry Routes; and

(b) a condition to enable the agreement to be terminated upon written notice in the event of non-compliance with the Third Condition

4.5.3 If following a breach of the Third Condition in any agreement referred to at clause 4.5.2 above and subject to the satisfaction of the Fourth Condition the Council so requires by written notice to the Applicant to terminate that agreement immediately in accordance with the Fourth Condition

4.5.4 To take disciplinary action against any employee of the Applicant who drives a Heavy Goods Vehicles to or from the Site and via the Prohibited Lorry Routes

4.5.5 To erect within the Site prior to Commencement of the Development and subsequently to maintain signs to be approved by the Council directing Heavy Goods Vehicles from the Site for the Development so as to avoid the Prohibited Lorry Routes

4.5.6 To issue drivers of Heavy Goods Vehicles on their first visit to the Site for the Development following Commencement of the Development with details of the Prohibited Lorry Routes Provided Always that the restrictions contained in this paragraph 4.5.6 shall cease absolutely to apply and be of no effect if whenever and to the extent that all or any of the Prohibited Lorry Routes are unavailable either by reason of an obstruction or by reason of having been stopped up temporarily or permanently by the Council or by reason of an emergency invoked by the fire ambulance police and or defence services as the case may be

#### 4.6 **Mineral Extraction Planning Permission**

4.6.1 Not to carry out any further development and/or operations including mineral extraction associated with the 2009 Planning Permission and operations associated with the Mineral Planning Permissions

#### **4.7 Liaison Committee**

4.7.1 Not later than 3 months after Commencement of the Development to procure the establishment of a liaison committee consisting of:

(a) TBC

4.7.2 The liaison committee shall determine from time to time the membership of such committee and the frequency of its meetings.

4.7.3 The purpose of such meetings shall be to assist in the exchange of information relating to the Site with the Council and the local community

4.7.4 Meetings of the liaison committee shall take place at a suitable venue to be arranged by the Applicant which shall also undertake all administrative duties associated with the meetings of the liaison committee including the taking preparation and circulation of minutes

#### **4.8 Costs**

4.8.1 To pay the Council's reasonable legal costs incurred in the negotiation and conclusion of this Deed.

### **5. COUNCIL'S COVENANTS**

#### **5.1 Garendon Estate Listed Structures Works**

5.1.1 If the Garendon Estate Listed Structures Works are not carried out and Completed to the satisfaction of the Council in accordance with the terms of this Deed the Council after given 20 Working Days written notice of its intention to the Applicant and the Owner may execute or Complete the relevant part or parts of the Garendon Estate Listed Structures Works in accordance with the provisions of this Deed by its own employees or contractors and recover its reasonable and proper costs as properly and reasonably certified by the Director from the Surety up to the value of the Garendon Estate Listed Structures Bond Figure Provided That if the Applicant shall by serving a written notice upon the Council before the expiry of the 20 Working Day period indicate that it intends immediately to carry out and/or Complete the Garendon Estate Listed Structures Works in accordance with the terms of this Deed and if it proceeds to do so the Council shall not be entitled to execute or Complete the relevant part of parts of the Garendon Estate Listed Structures Works and this clause 5.1.1 is without prejudice to the proviso to clause 4.2.1 above

5.1.2 when the Director is notified that the Garendon Estate Listed Structures Works have been Substantially Completed he shall within 5 Working Days issue the Certificate of Substantial Completion to that effect to the Applicant and the bond to cover the Garendon Estate Listed Structures Works shall be reduced as specified in the proviso to clause 4.2.1

5.1.3 The Director shall within 10 Working Days of being advised of the Completion of the Garendon Estate Listed Structures Works issue the Final Certificate and upon the issue of the Final Certificate the bond in respect of the Garendon Estate Listed Structures Works shall be automatically released in full

## **6. OBLIGATIONS OF THE OWNER**

### **6.1 Licence**

- 6.1.1 The Owner gives to the Applicant licence to enter into and upon and remain upon with or without workmen plant and machinery such part of the Garendon Estate Site as shall be reasonably necessary for the Applicant to discharge its obligations in sub-clauses 4.2.2, 4.3 and 4.4 of this Deed (but not further or otherwise) and it is expressly agreed that such licence extends to entering and remaining upon such parts of the Garendon Estate Site as shall be reasonably necessary for the purposes of this Deed and also to breaking open (subject to making good after) the surface and carrying out such works in on or under the Garendon Estate Site as may be reasonably necessary for the purpose of discharging the obligations of the Applicant in sub-clause 4.2.2, 4.3 and 4.4 of this Deed (but not further or otherwise)
- 6.1.2 The Applicant shall give the Owner reasonable advance notice in writing of its intended entry onto the Garendon Estate Site and the likely duration of any required licence to enter and remain on the Garendon Estate Site

## **7. AGREEMENTS AND DECLARATIONS**

The Owner the Council and the Trustees agree and declare as follows:

### **7.1 Lapse of Deed**

- 7.1.1 This Deed shall be revoked and be of no further effect if the Permission shall lapse without having been Commenced or shall be revoked or modified by the Council or the Secretary of State under section 97 or 100 of the 1990 Act other than at the request or with the consent of the Applicant or if a planning permission inconsistent with the terms of the Permission is implemented on the Site prior to the Commencement of the Development which prevents or substantially hinders the delivery of the Development

### **7.2 Release**

- 7.2.1 That save in respect of liability for any prior breach of this Deed the Owner shall upon parting with their interest in any part of or the whole of the Site be released from all obligations rights and duties under the terms of this Deed in the case of a partial disposal to the extent only of such partial disposal and in the case of a total disposal entirely save in either case insofar as it relates to a relevant prior breach of this Deed
- 7.2.2 That save in respect of liability for any prior breach of this Deed the Owner shall upon parting with its interest in any part of or the whole of the Garendon Park Site be released from all obligations rights and duties under the terms of this Deed in the case of a partial disposal to the extent only of such partial disposal and in the case of a total disposal entirely save in either case insofar as it relates to a relevant prior breach of this Deed
- 7.2.3 That save in respect of liability for any prior breach of this Deed the Applicant shall upon parting with its interest in any part of or the whole of the Site be released from all obligations rights and duties under the terms of this Deed in the case of a partial disposal to the extent only of such partial disposal and in the case of a total disposal entirely save in either case insofar as it relates to a relevant prior breach of this Deed

### 7.3 Notices

7.3.1 Any notice or written communication to be served or given by one party upon or to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class post to the party upon whom it is to be served or to whom it is to be given as specified in clause 7.3.2 or as otherwise notified for the purposes by notice in writing:

7.3.2 The address for any notice or other written communication is:

- (a) for the Council as specified above and marked for the attention of "the Development Control Manager" addressed to Council Offices
- (b) for the Applicant as specified above and marked for the attention of "the Director"
- (c) for the Owner at Cold Newton Lodge Billesden Leicestershire LE7 9JD and also at Roythornes LLP Enterprise Way Pinchbeck Spalding Lincolnshire PE11 3YR marked for the attention of "the Garendon Trustees"

7.3.3 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory .

### 7.4 Reasonableness

7.4.1 That unless otherwise specified any agreement consent permission expression of satisfaction or other approval to be given by the Council the Owner or the Applicant as the case may be under any provision of this Deed shall not be unreasonably withheld or delayed

### 7.5 Non Derogation

7.5.1 Nothing contained within this Deed shall fetter the Council in the future exercise of its rights and powers under the 1990 Act or any other statutory power

### 7.6 Material Operations

7.6.1 Irrespective of section 56 (4) (a) of the 1990 Act none of the following operations shall be treated as satisfying the Second Condition:

- (a) ground investigations/site survey works;
- (b) construction of boundary fencing or hoardings;
- (c) archaeological investigations;
- (d) removal or relocation of statutory undertakers equipment or construction of new statutory undertakers equipment;
- (e) demolition of any existing buildings on the Site;
- (f) site clearance remediation or reclamation works.

### 7.7 Land Outside Control

7.7.1 Nothing in this Deed shall require the performance by the Applicant of any obligation upon land outside its ownership unless such land shall be made available for the performance of the obligation at no cost to the Applicant

## 7.8 Disputes

- 7.8.1 Any dispute or difference arising between the parties to this Deed with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed (and it is agreed that a dispute may be inferred if either party fails to respond to a submission of the other within five Working Days and the offending party has received five Working Days notice in writing of an intention to infer a dispute) shall be referred to the decision of an expert (acting as an expert and not as an arbitrator) to be agreed by the parties within 10 Working Days of such dispute or difference arising with time being taken to run from receipt of the five Working Days notice or failing agreement between them to be nominated by the President for the time being of the Royal Town Planning Institute and the reference to the expert shall be on terms:
- (a) that determination shall take place within 20 Working Days of the expert accepting his instructions
  - (b) that the expert shall be limited in his findings to the proposals put by the parties in dispute or any proposal(s) falling between them and shall provide written reasons for his decision
  - (c) that except in the case of manifest material error the findings of the expert shall be final and binding on the parties in dispute

## 7.9 Legality and Waiver

- 7.9.1 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed by virtue of that fact to be affected or impaired
- 7.9.2 No waiver (whether express or implied) by one party of any breach or default of the other in performing or observing any of the obligations or covenants of this Deed shall constitute a continuing waiver and no such waiver shall prevent any such party from enforcing any of the obligations or covenants or from acting upon any subsequent breach or default

## 7.10 Contracts (Rights of Third Parties) Act 1999

- 7.10.1 No provisions of this Deed shall or may be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and all third party rights as may be implied by law or deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are excluded to the fullest extent permitted by law

## 7.11 Owner

- 7.11.1 The Owner is joined to this Deed solely for the purpose of binding its freehold interest in the Garendon Estate Site but only those parts of it which are directly affected by the obligations set out at clauses 4.2.2, 4.3 and 4.4 (and not further or otherwise) and subject to clause 7.11.2 below shall not be required itself to discharge any of the obligations under this deed and the Council shall not be entitled to enforce those obligations against the Owner whether directly or indirectly
- 7.11.2 The Owner shall from a date commencing ten years after Completion of the works contained in the approved Landscape and Ecological Management Plan manage the Garendon Estate Trees in accordance with the approved Landscape and Ecological Management Plan

**IN WITNESS** whereof the parties have executed this deed the day and year first before written.

**SCHEDULE 1**

**Gardendon Estate Listed Structures Works**

**SCHEDULE 2**

Garendon Estate Planting Scheme



**SCHEDULE 3**

Landscape and Ecological Management Plan

The Common Seal of )  
LEICESTERSHIRE COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

The Common Seal of BIFFA WASTE )  
SERVICES LIMITED was hereunto )  
affixed in the presence of: )

SIGNED AS A DEED by GERARD AMAURY )  
ARNAUD MARCH PHILLIPS DE LISLE )  
in the presence of the witness named below )

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation:

SIGNED AS A DEED by ANDREW GEORGE )  
BUCHANAN in the presence of the witness )  
named below )

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation:

SIGNED AS A DEED by GEORGE JOHN AIRD )  
in the presence of the witness named below )

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation:

SIGNED AS A DEED by PETER ANDREW )  
MARCH PHILLIPS DE LISLE in the presence of )  
the witness named below )

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation:

