

CHFP025

Declaration by the directors of a holding company in relation to assistance for the acquisition of shares

155(6)b

SCT STDIU7DU 0721
COMPANIES HOUSE 11/01/02

The assistance is for the purpose of ~~that acquisition~~ (reducing or discharging a liability incurred for the purpose of that acquisition).† (note 1)

Please do not write in this margin

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

The number and class of the shares acquired or to be acquired is: 178,973,000 ordinary shares
of £1.00 each

The assistance is to be given to: (note 2) Kyndal International Limited (the "Purchaser")
Registered Office: 310 St Vincent Street, Glasgow G2 5RG

The assistance will take the form of:

Please see attached Appendix 2

The person who ~~has acquired~~ ~~will acquire~~† the shares is:
The Purchaser

† delete as appropriate

The principal terms on which the assistance will be given are:

Please see attached Appendix 3

The amount (if any) by which the net assets of the company which is giving the assistance will be reduced by giving it is Nil

The amount of cash to be transferred to the person assisted is £ Nil

The value of any asset to be transferred to the person assisted is £ Nil

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

~~1/~~We have formed the opinion, as regards this company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

(a) ~~1/~~We have formed the opinion that this company will be able to pay its debts as they fall due during the year immediately following that date]* (note 3)

* delete either (a) or
(b) as appropriate

(b) ~~It is intended to commence the winding up of this company within 12 months of that date, and 1/ we have formed the opinion that this company will be able to pay its debts in full within 12 months of the commencement of the winding up.]* (note 3)~~

And ~~1/~~we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at 310 St Vincent St
Glasgow

Day Month Year
on

1	8	1	2	2	0	0	1
---	---	---	---	---	---	---	---

before me [Signature]

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

Declarants to sign below

[Signature]
[Signature]
[Signature]
[Signature]

NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies
Companies House
Crown Way
Cardiff
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies
Companies House
37 Castle Terrace
Edinburgh
EH1 2EB

Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Appendix 1 to Statutory Form 155(6)(b)

DIRECTOR:

ADDRESS:

Iain Gilchrist

8 Wellington Place, Edinburgh, Midlothian, EH6
7EQ

Ronald Bannatyne MacEachran

59 Finnart Street, Greenock, Renfrewshire, PA16
8HH

Alan Crawford Mackie

9 Meneith View, Dunblane, Perthshire, FK15 0PD

Brian John Megson

Darnley 96, Old Greenock Road, Bishopton,
Renfrewshire, PA7 5BB

Ian Gordon Palmer

5 Gillespie Crescent, Edinburgh, EH10 4HT

Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Appendix 2 to Statutory Form 155(6)(b)

- 1** A Scots law long lease (the "**Head Lease**") of the premises as described in Schedule 1 to Appendix 3 attached hereto made by the Company in favour of the Subsidiary.
- 2** A Scots law sub-lease (the "**Sub-Lease**") of the premises as described in Part I of Schedule 2 to Appendix 3 attached hereto made by the Subsidiary in favour of the Company.
- 3** A Scots law licence (the "**Licence**") of the premises as described in Schedule 3 to Appendix 3 attached hereto made by the Company in favour of the Subsidiary.
- 4** A Scottish floating charge (the "**Floating Charge**") to be entered into by the Subsidiary and Meadfine Limited as mezzanine security trustee (the "**Mezzanine Security Trustee**"). Upon execution of the Floating Charge the Subsidiary covenants with and undertakes to the Mezzanine Security Trustee that it will pay or discharge the Secured Obligations on the due date therefor in the manner provided in the Mezzanine Security Trust Deed. These obligations are secured by way of a floating charge.
- 5** A Scottish standard security over land (the "**Standard Security**") to be entered into by the Subsidiary and the Mezzanine Security Trustee. Upon execution of the Standard Security the Subsidiary covenants with and undertakes to the Mezzanine Security Trustee that it will pay and discharge all monies and liabilities whatsoever constituting the Secured Obligations which at the date of the Standard Security or at any time thereafter may (whether before or after demand) become due, owing or payable. These obligations are secured by way of a fixed charge.
- 6** A security trust deed (the "**Mezzanine Security Trust Deed**") made between the Subsidiary, the Mezzanine Security Trustee and WestLB (the "**Facility Agent**"), by which the Subsidiary acknowledges the agreement between the Secured Parties on the terms set out therein and grants certain indemnities in favour of the Mezzanine Security Trustee and certain claims which the Subsidiary has on the Company are subordinated to those of the Secured Parties.

- 7 A senior subordinated guarantee (the “**Senior Subordinated Guarantee**”) to be made by the Subsidiary in favour of the Security Trustee. Upon execution of the Senior Subordinated Guarantee the Subsidiary as primary obligor and not merely as surety, covenants with and undertakes to the Security Trustee that it will pay or discharge each of the Senior Obligations on the due date therefor in the manner provided in the relevant Finance Document. These obligations are secured by way of the provision of a guarantee by the Subsidiary.
- 8 A mezzanine guarantee (the “**Mezzanine Guarantee**”) to be made by the Subsidiary in favour of the Mezzanine Security Trustee. Upon execution of the Mezzanine Guarantee the Subsidiary as primary obligor and not merely as surety, covenants with and undertakes to the Mezzanine Security Trustee that it will pay or discharge each of the Mezzanine Obligations on the due date therefor in the manner provided in the relevant Finance Document. These obligations are secured by way of the provision of a guarantee by the Subsidiary.
- 9 An amendment deed (the “**Amendment Deed**”) between, amongst others, the Company, the Subsidiary and the Security Trustee under which the Subsidiary accedes to the Security Trust Deed.

Kyndal Spirits Limited
(the "Company")
Company No: SC014456

Appendix 3 to Statutory Form 155(6)(b)

1 Under the terms of the Head Lease:

- 1.1** The Company as landlord grants the Head Lease in favour of the Subsidiary of the premises known as Invergordon Distillery, Invergordon, Ross-shire as more particularly described in Schedule 1 to this Appendix 3 (the "**Head Lease Premises**") for a consideration of £10 sterling per annum for the duration of the Head Lease. The duration of the Head Lease is from 18 December 2001 until 17 December 2176 and from half year to half year thereafter until terminated by two months prior written notice given by either party (the "**Duration of the Head Lease**").
- 1.2** The Subsidiary's monetary obligations are as follows and the Subsidiary will be bound and obliged during the entire Duration of the Head Lease, *inter alia*:
- (a)** To pay the rent from time to time payable in terms of the Head Lease without deduction or demand;
 - (b)** To pay all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether payable by the owner or occupier) charged, assessed or imposed on or in respect of the Head Lease Premises other than those assessed upon the Company as a consequence of the grant of the Head Lease (other than VAT) on the Company's dealings with the Head Lease Premises or the rent payable thereunder;
 - (c)** To pay or reimburse to the Company such proportion as is applicable to the Head Lease Premises whether in terms of the title deeds or by statute, common law or otherwise of the costs and expenses of making, laying, repairing, maintaining, renewing, rebuilding, lighting and cleansing all roads, pavements, vaults, sewers, drains, pipes, watercourses, walls, fences and any other structure owned or used in common by the Head Lease Premises and other adjoining, neighbouring or nearby properties;
 - (d)** To pay to the Company any Value Added Tax and/or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies (including rent) undertaken to be paid by the Subsidiary under the Head Lease all of which monies are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid;
 - (e)** To free, relieve and indemnify the Company from and against liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Head Lease Premises or any alteration or addition or improvement to the Head Lease Premises or the use of the Head Lease Premises or from any claims arising from and against any liability (whether statutory or otherwise) in respect of any contamination or pollution within or affecting the Head Lease Premises arising from any act or omission of the Subsidiary or from any act, omission or default of the Subsidiary in the implementation and observance of the obligations contained in the Head Lease and from all fees, penalties, charges,

proceedings, costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default.

2 Under the terms of the Sub-Lease:

- 2.1** The Subsidiary grants the Sub-Lease of the premises known as Invergordon Distillery, Invergordon, Ross-shire as more particularly described in Part I of Schedule 2 to this Appendix 3 (the "**Sub-Lease Premises**") in favour of the Company for a consideration of £10 sterling per annum for the duration of the Sub-Lease. The duration of the Sub-Lease is from 18 December 2001 until 17 December 2176 and from half year to half year thereafter until terminated by two months prior written notice given by either party or, in the event of a Default Notice having been validly served, ten years from and after the Resumption Date (the "**Duration of the Sub-Lease**").
- 2.2** The Subsidiary shall resume possession of the Sub-Lease Premises under exception the premises described in Part II of Schedule 2 to this Appendix 3 (the "**Varied Premises**") on the Resumption Date and from and after the Resumption Date all references in the Sub-Lease to the Premises shall mean the Varied Premises.
- 2.3** The terms of paragraph 2.2 above shall not operate and have no effect until such times as the Company shall have granted a valid Licence in favour of the Subsidiary in terms of the Licence set out in Part Five of the Schedule to the Sub-Lease.
- 2.4** The Subsidiary as landlord grants warrandice.

3 Under the terms of the Licence:

- 3.1** The Company grants a Licence in favour of the Subsidiary to enable the Subsidiary to store in cask and blend on the premises known as the Bonded and Blending Warehouses at Invergordon Distillery, Invergordon, Ross-shire as more particularly described on Schedule 3 to this Appendix 3 (the "**Licence Premises**") such whisky as shall have been produced by the Subsidiary on the land owned by the Subsidiary adjacent to the Licence premises but only to the extent that such rights shall not interfere with the Company's ability to store and thereafter blend such whisky as shall be present on the Licence Premises at the Resumption Date and thereafter to store, retain on site and remove such blended whisky therefrom, for the duration of the Licence. The duration of the Licence is 10 years from the Resumption Date (the "**Duration of the Licence**").
- 3.2** The monetary obligations of the Subsidiary are as follows and the Subsidiary will be bound and obliged during the entire Duration of the Licence:
- (a)** To pay all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether payable by the owner or occupier) charged, assessed or imposed on or in respect of the Licence Premises other than those assessed upon the Company as a consequence of the grant of the Licence (other than VAT) on the Company's dealings with the Licence Premises or the rent payable thereunder;
- (b)** To pay or reimburse to the Company such proportion as is applicable to the Licence Premises whether in terms of the title deeds or by statute, common law or otherwise of the costs and expenses of making, laying, repairing, maintaining, renewing, rebuilding, lighting and cleansing all roads, pavements, vaults, sewers, drains, pipes, watercourses, walls, fences and any other structure owned or used in common by the Licence Premises and other adjoining, neighbouring or nearby properties;

- (c) To pay or reimburse the Company on demand an equitable proportion based on use as shall be determined by the Company acting reasonably, towards the payment of (i) the costs of repairing, maintaining, renewing, insuring and rebuilding the Licence Premises and the Service Systems, (ii) the costs of security and otherwise securing the Licence Premises incurred by the Company, (iii) all costs, charges and expenses for electricity, water, gas, telephone and other services applied to or consumed in the Licence Premises, including meter rents and standing charges where applicable, (iv) any costs incurred by the Company in complying with all or any statutory regulations regarding use and occupation of the Licence Premises and whether the said provisions are imposed on the owner or occupier of the Licence Premises and (v) generally all costs incurred by the Subsidiary as a result of the rights granted to the Subsidiary under the Licence;
- (d) To pay to the Company any Value Added Tax and/or any other tax or charge of a similar nature as shall be properly chargeable in respect of all monies (including rent) undertaken to be paid by the Subsidiary under the Licence all of which monies are for the avoidance of doubt expressed exclusive of Value Added Tax or such other tax as aforesaid;
- (e) To free, relieve and indemnify the Company from and against liability in respect of any injury to or the death of any person, damage to any property, heritable or moveable, any interdict or court action, the infringement, disturbance or destruction of any right, servitude or privilege or otherwise by reason of or arising directly or indirectly out of the repair, state of repair or condition of the Licence Premises or any alteration or addition or improvement to the Licence Premises or the use of the Licence Premises or from any claims arising from and against any liability (whether statutory or otherwise) in respect of any contamination or pollution within or affecting the Licence Premises arising from any act or omission of the Subsidiary or from any act, omission or default of the Subsidiary in the implementation and observance of the obligations contained in the Licence and from all fees, penalties, charges, proceedings, costs, claims, expenses and demands of whatsoever nature in respect of any such liability or alleged liability or any such act, omission or default.

4 Under the terms of the Standard Security:

- 4.1** The Subsidiary undertakes to the Mezzanine Security Trustee that it will pay and discharge all monies and liabilities whatsoever constituting the Secured Obligations which at the date of the Standard Security or thereafter may (whether before or after demand) become due, owing or payable and in implement *pro tanto* of Clause 20.11.2 of the Mezzanine Security Trust Deed.
- 4.2** The Subsidiary grants a standard security in favour of the Mezzanine Security Trustee and its successors or successors as security trustee and trustees under and in terms of the Mezzanine Security Trust Deed over the Subsidiary's interest under the Head Lease.
- 4.3** The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 and any lawful variation thereof operative for the time being shall apply.
- 4.4** The Subsidiary grants warrandice but excepting therefrom all current leases, sub-leases and rights of possession or occupation.

- 5** Under the terms of the Floating Charge:
- 5.1** The Subsidiary as primary obligor and not merely as surety or cautioner, undertakes to the Mezzanine Security Trustee and binds and obliges itself that it will pay and discharge each of the Secured Obligations on the due date therefor in the manner provided in the relevant Finance Document.
- 5.2** The Subsidiary grants in favour of the Mezzanine Security Trustee (as trustee for the Secured Parties) with absolute warrandice and as continuing security for the payment and performance of the Secured Obligations a floating charge over the whole of the Subsidiary's undertaking and assets whatsoever and wheresoever both present and future, provided always that the Subsidiary is and shall be prohibited from creating on or subsequent to the date of the Floating Charge any fixed security (as defined in Section 70 of the Insolvency Act 1986) or any floating charge (within the meaning of the Companies Act 1985) or any charge having the nature of a floating charge over the Charged Assets or any part or parts thereof other than (i) any such security or charge constituted under or pursuant thereto or permitted thereby and (ii) any such fixed security which may on or subsequent to the date of the Floating Charge be granted by the Subsidiary in favour of the Mezzanine Security Trustee, all of which shall rank in priority to the floating charge thereby created if granted in favour of the Mezzanine Security Trustee (save as the Mezzanine Security Trustee may otherwise declare at or after the time of creation of such security or charge), and providing further that, save as aforesaid, the floating charge thereby created shall rank in priority to any such fixed security or floating charge created on or subsequent to the date of the Floating Charge.
- 5.3** The Subsidiary undertakes that, save for the Permitted Encumbrances and as permitted under the terms of the Floating Charge, it will not create or permit to subsist any Encumbrance over all or any of its present or future revenues, assets or undertakings.
- 5.4** The security constituted by the Floating Charge shall be continuing security which shall extend to all the Secured Obligations, shall not be considered as satisfied or discharged by any intermediate payment or settlement of all or any of the Secured Obligations and is in addition to and independent of and shall not prejudice, affect or merge with any other security which the Mezzanine Security Trustee or any other of the Secured Parties may hold at any time for the Secured Obligations or any of them.
- 5.5** The Subsidiary shall, on demand by the Mezzanine Security Trustee, reimburse to the Mezzanine Security Trustee on a full indemnity basis all reasonable costs and expenses (including legal fees), and any VAT thereon, properly incurred by any Secured Party or any Receiver appointed under the Floating Charge in connection with the negotiation, preparation, execution, modification, amendment, release and/or preservation of any of its rights under the Floating Charge.
- 5.6** The Subsidiary shall pay all stamp, registration and other taxes to which the Floating Charge or any decree or judgment given in connection therewith is or at any time may be subject and shall, on demand, indemnify each Secured Party against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.
- 5.7** The Subsidiary undertakes to indemnify each Secured Party, Receiver, attorney, manager, agent or other person thereby from time to time on demand against any and all costs, claims, losses, expenses (including legal fees) and liabilities, and any VAT thereon, which such Secured Party may properly incur as a result of the occurrence of any Event

of Default or the lawful exercise by the Mezzanine Security Trustee or any other Secured Party of any of its rights and powers under the Floating Charge.

5.8 The Floating Charge contains an undertaking for further assurances.

6 Under the terms of the Senior Subordinated Guarantee:

6.1 The Subsidiary irrevocably and unconditionally guarantees to each Secured Party:

- (a)** the due and punctual performance by each member of the Group of all its obligations under or pursuant to the Finance Documents to which it is a party; and
- (b)** the payment of all moneys and discharge of all liabilities now or hereafter due, owing or incurred to each Secured Party by each member of the Group under or pursuant to the Finance Documents to which it is a party,

in each case when the same become due for payment or discharge whether by acceleration or otherwise, and whether such moneys, obligations or liabilities are express or implied; present, future or contingent; joint or several; incurred as principal or surety; originally owing to a Secured Party or purchased or otherwise acquired by any of them; denominated in Sterling or in any other currency; or incurred on any banking account or in any other manner whatsoever;

6.2 undertakes that if for any reason any member of the Group fails to discharge any such obligation or liability or to pay any such moneys as is referred to in Clause 2.1(a) of the Senior Subordinated Guarantee, the Subsidiary shall, immediately on demand by the Security Trustee, discharge such obligation or liability or, as the case may be, pay such moneys to the Security Trustee; and

6.3 as a separate and independent stipulation and as a primary obligation, irrevocably and unconditionally agrees that if any purported obligation or liability of any member of the Group which would have been the subject of Clause 2.1(a) and/or Clause 2.1(b) of the Senior Subordinated Guarantee had it been valid and enforceable is not or ceases to be valid or enforceable against such member of the Group on any ground whatsoever whether or not known to the Secured Party (including, without limitation, any irregular exercise or absence of any corporate power or lack of authority of, or breach of duty by, any person purporting to act on behalf of such member of the Group or any legal or other limitation, whether under the Limitation Acts or otherwise, any disability or incapacity or any change in the constitution of such member of the Group) it shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and it were a principal debtor in respect thereof. The Subsidiary irrevocably and unconditionally agrees to indemnify and keep indemnified each Secured Party against any loss or liability arising from any failure of a member of the Group to perform or discharge any such purported obligation or liability or from any invalidity or unenforceability of any of the same against a member of the Group.

6.4 The guarantee and subordination provisions constituted by or pursuant to the Senior Subordinated Guarantee shall be continuing security which shall extend to all the Senior Obligations, shall not be considered as satisfied or discharged by any intermediate payment or settlement of all or any of the Senior Obligations and is in addition to and independent of and shall not prejudice, affect or merge with any other security which the Security Trustee or any other of the Secured Parties may hold at any time for the Secured Obligations or any of them.

7 Under the terms of the Mezzanine Guarantee:

7.1 The Subsidiary irrevocably and unconditionally guarantees to each Secured Party:

- (a) the due and punctual performance by each member of the Group of all its obligations under or pursuant to the Finance Documents to which it is a party; and
- (b) the payment of all moneys and discharge of all liabilities now or hereafter due, owing or incurred to each Secured Party by each member of the Group under or pursuant to the Finance Documents to which it is a party,

in each case when the same become due for payment or discharge whether by acceleration or otherwise, and whether such moneys, obligations or liabilities are express or implied; present, future or contingent; joint or several; incurred as principal or surety; originally owing to a Secured Party or purchased or otherwise acquired by any of them; denominated in Sterling or in any other currency; or incurred on any banking account or in any other manner whatsoever;

7.2 undertakes that if for any reason any member of the Group fails to discharge any such obligation or liability or to pay any such moneys as is referred to in Clause 2.1(a) of the Mezzanine Guarantee, the Subsidiary shall, immediately on demand by the Mezzanine Security Trustee, discharge such obligation or liability or, as the case may be, pay such moneys to the Mezzanine Security Trustee; and

7.3 as a separate and independent stipulation and as a primary obligation, irrevocably and unconditionally agrees that if any purported obligation or liability of any member of the Group which would have been the subject of Clause 2.1(a) and/or Clause 2.1(b) of the Mezzanine Guarantee had it been valid and enforceable is not or ceases to be valid or enforceable against such member of the Group on any ground whatsoever whether or not known to the Secured Party (including, without limitation, any irregular exercise or absence of any corporate power or lack of authority of, or breach of duty by, any person purporting to act on behalf of such member of the Group or any legal or other limitation, whether under the Limitation Acts or otherwise, any disability or incapacity or any change in the constitution of such member of the Group) it shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and it were a principal debtor in respect thereof. The Subsidiary irrevocably and unconditionally agrees to indemnify and keep indemnified each Secured Party against any loss or liability arising from any failure of a member of the Group to perform or discharge any such purported obligation or liability or from any invalidity or unenforceability of any of the same against a member of the Group.

7.4 The guarantee constituted by or pursuant to the Mezzanine Guarantee shall be continuing security which shall extend to all the Secured Obligations, shall not be considered as satisfied or discharged by any intermediate payment or settlement of all or any of the Secured Obligations and is in addition to and independent of and shall not prejudice, affect or merge with any other security which the Mezzanine Security Trustee or any other of the Secured Parties may hold at any time for the Secured Obligations or any of them.

- 8 Under the terms of the Mezzanine Security Trust Deed the Subsidiary undertakes certain obligations and gives certain covenants and indemnities (if any) pursuant to the terms of the Mezzanine Security Trust Deed and subordinates any financial claims that it has on the Company to those of the Secured Parties.
- 9 Under the terms of the Amendment Deed the Subsidiary accedes to the Security Trust Deed and undertakes certain obligations and gives certain covenants and indemnities (if any) pursuant to the terms of the Security Trust Deed.

Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Schedule 1 to Appendix 3

Definition of the Premises under the Head Lease

ALL and WHOLE (Primo) ALL and WHOLE the farm and lands of Blackpark in the Burgh of Invergordon, Parish of Rosskeen and County of Ross and Cromarty extending to sixty three acres or thereby being the subjects more particularly described in and disposed by and delineated and shown outlined in pink on the plan annexed to the Head Lease and signed as relative to the Disposition granted by the Trustees of the Deceased Robert Bruce Aeneas Macleod of Cadboll in favour of the Provost, Magistrates and Councillors of the Burgh of Inverness dated 15th and 17th November 1920 and recorded in the Division of the General Register of Sasines applicable to the County of Ross and Cromarty on 2nd July 1921; under exception of (First) that plot or area of ground lying in the said Burgh, Parish and County containing two hundred and sixty eight decimal or one thousandth parts of an acre or thereby more particularly described in and disposed by Disposition by the said Invergordon Property Investments Limited with consent of The Invergordon Distillers Limited and The Board of Trade in favour of The North of Scotland Hydro Electric Board dated 4th and 13th May and 6th June and recorded in the said Division of the General Register of Sasines on 23rd June all in the year 1966 and (Second) ALL and WHOLE that plot or area of ground lying in the said Burgh, Parish and County containing nineteen decimal or one thousandth parts of an acre more particularly described in and disposed by Disposition by Invergordon Property Investments Limited in favour of the North of Scotland Hydro Electric Board date 23rd May 1972 and recorded in the said Division of the General Register of Sasines on 14th May 1973; and (Secundo) ALL and WHOLE that part of the subjects known as The Hutments Ground, lying in the said Burgh, Parish and County extending to twenty acres and five hundred and ninety decimal or one thousandth parts of an acre or thereby Imperial Measure (but which measurement is not guaranteed) being the subjects particularly bounded and described in and delineated in red and coloured pink on the plan annexed to the Head Lease and signed as relative to the Disposition granted by the Commissioners for executing the Office of the Lord High Admiral of the United Kingdom of Great Britain and Ireland with consent thereinmentioned in favour of The Invergordon Distillers Limited dated 23rd August and 6th November, both in the year 1960 and recorded in the said Division of the General Register of Sasines on 29th June 1961 but excepting therefrom ALL and WHOLE (First) that area or piece of ground lying in the said Burgh, Parish and County extending to twenty eight square metres or thereby and being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited in favour of North of Scotland Hydro-Electric Board dated 23rd September and 1st October and recorded in the said Division of the General Register of Sasines on 17th October, all in the year 1975; (Second) that area or piece of ground lying in the said Burgh, Parish and County containing eight hundred and sixty six square metres or thereby being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited with consent of Comben Homes (Grampian) Limited in favour of Simon Clark dated 10th and 18th December 1975 and recorded in the said Division of the General Register of Sasines on 19th January 1976; (Third) that area or piece of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the Feu Disposition by the said The Invergordon Distillers Limited with consent of the said Comben Homes (Grampian) Limited in favour of John Kydd Clark dated 26th September and 3rd October 1975 and recorded in the said Division of the General Register of Sasines on 27th February 1976; (Fourth) that plot or area of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the said The Invergordon Distillers Limited with consent of the said Comben Homes (Grampian) Limited in

favour of Roderick James MacGregor dated 31st December 1977 and recorded in the said Division of the General Register of Sasines on 28th January 1977; and (Fifth) that plot or area of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited in favour of Comben Land Holdings Limited dated 13th and recorded in the said Division of the General Register of Sasines on 25th, both days of January 1977 and (Sixth) ALL and WHOLE that area or piece of ground extending to seventy two and one half Square metres lying in the said Burgh, Parish and County and being the subjects more particularly described and disposed by The Invergordon Distillers Limited in favour of British Gas plc dated 8th September 1994 and recorded in the said Division of the General Register of Sasines on 18th October 1994; TOGETHER WITH (One) the whole servitude rights and others specified in the Disposition by North of Scotland Hydro-Electric Board in favour of The Invergordon Distillers Limited dated 3rd March 1989 and recorded in the said Division of the General Register of Sasines on 15th February 1989; (Two) the tiends, parsonage and vicarage of the said subjects insofar as the Landlords has right thereto; (Three) the whole houses, buildings and erections thereon (so far as belonging to the Landlords); (Four) the fittings and fixtures in the said houses, buildings and erections (so far as belonging to Landlords); (Five) free ish and entry to the said lands and buildings by the existing roads and ways at present used for the purpose of access thereto; (Six) the shooting, fishing and sporting rights over the said lands and others so far as the Landlords has right thereto; (Seven) the whole parts, pendicles and pertinents of and all rights and privileges attached to the said lands and others; and (Eight) the Landlords's whole right, title and interest therein and thereto.

Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Schedule 2 to Appendix 3

PART I

Definition of the Premises under the Sub-Lease

ALL and WHOLE (Primo) ALL and WHOLE the farm and lands of Blackpark in the Burgh of Invergordon, Parish of Rosskeen and County of Ross and Cromarty extending to sixty three acres or thereby being the subjects more particularly described in and disposed by and delineated and shown outlined in pink on the plan annexed to the Sub-Lease and signed as relative to the Disposition granted by the Trustees of the Deceased Robert Bruce Aeneas Macleod of Cadboll in favour of the Provost, Magistrates and Councillors of the Burgh of Inverness dated 15th and 17th November 1920 and recorded in the Division of the General Register of Sasines applicable to the County of Ross and Cromarty on 2nd July 1921; under exception of (First) that plot or area of ground lying in the said Burgh, Parish and County containing two hundred and sixty eight decimal or one thousandth parts of an acre or thereby more particularly described in and disposed by Disposition by the said Invergordon Property Investments Limited with consent of The Invergordon Distillers Limited and The Board of Trade in favour of The North of Scotland Hydro Electric Board dated 4th and 13th May and 6th June and recorded in the said Division of the General Register of Sasines on 23rd June all in the year 1966 and (Second) ALL and WHOLE that plot or area of ground lying in the said Burgh, Parish and County containing nineteen decimal or one thousandth parts of an acre more particularly described in and disposed by Disposition by Invergordon Property Investments Limited in favour of the North of Scotland Hydro Electric Board date 23rd May 1972 and recorded in the said Division of the General Register of Sasines on 14th May 1973; and (Secundo) ALL and WHOLE that part of the subjects known as The Hutments Ground, lying in the said Burgh, Parish and County extending to twenty acres and five hundred and ninety decimal or one thousandth parts of an acre or thereby Imperial Measure (but which measurement is not guaranteed) being the subjects particularly bounded and described in and delineated in red and coloured pink on the plan annexed to the Sub-Lease and signed as relative to the Disposition granted by the Commissioners for executing the Office of the Lord High Admiral of the United Kingdom of Great Britain and Ireland with consent thereinmentioned in favour of The Invergordon Distillers Limited dated 23rd August and 6th November, both in the year 1960 and recorded in the said Division of the General Register of Sasines on 29th June 1961 but excepting therefrom ALL and WHOLE (First) that area or piece of ground lying in the said Burgh, Parish and County extending to twenty eight square metres or thereby and being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited in favour of North of Scotland Hydro-Electric Board dated 23rd September and 1st October and recorded in the said Division of the General Register of Sasines on 17th October, all in the year 1975; (Second) that area or piece of ground lying in the said Burgh, Parish and County containing eight hundred and sixty six square metres or thereby being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited with consent of Comben Homes (Grampian) Limited in favour of Simon Clark dated 10th and 18th December 1975 and recorded in the said Division of the General Register of Sasines on 19th January 1976; (Third) that area or piece of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the Feu Disposition by the said The Invergordon Distillers Limited with consent of the said Comben Homes (Grampian) Limited in favour of John Kydd Clark dated 26th September and 3rd October 1975 and recorded in the said Division of the General Register of Sasines on 27th February 1976; (Fourth) that plot or area of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the said The

Invergordon Distillers Limited with consent of the said Comben Homes (Grampian) Limited in favour of Roderick James MacGregor dated 31st December 1977 and recorded in the said Division of the General Register of Sasines on 28th January 1977; and (Fifth) that plot or area of ground lying in the said Burgh, Parish and County being the subjects more particularly described in and disposed by the Disposition by the said The Invergordon Distillers Limited in favour of Comben Land Holdings Limited dated 13th and recorded in the said Division of the General Register of Sasines on 25th, both days of January 1977 and (Sixth) ALL and WHOLE that area or piece of ground extending to seventy two and one half Square metres lying in the said Burgh, Parish and County and being the subjects more particularly described and disposed by The Invergordon Distillers Limited in favour of British Gas plc dated 8th September 1994 and recorded in the said Division of the General Register of Sasines on 18th October 1994; TOGETHER WITH (One) the whole servitude rights and others specified in the Disposition by North of Scotland Hydro-Electric Board in favour of The Invergordon Distillers Limited dated 3rd March 1989 and recorded in the said Division of the General Register of Sasines on 15th February 1989; (Two) the tiends, parsonage and vicarage of the said subjects insofar as the Landlords has right thereto; (Three) the whole houses, buildings and erections thereon (so far as belonging to the Landlords); (Four) the fittings and fixtures in the said houses, buildings and erections (so far as belonging to Landlords); (Five) free ish and entry to the said lands and buildings by the existing roads and ways at present used for the purpose of access thereto; (Six) the shooting, fishing and sporting rights over the said lands and others so far as the Landlords has right thereto; (Seven) the whole parts, pendicles and pertinents of and all rights and privileges attached to the said lands and others; and (Eight) the Landlords's whole right, title and interest therein and thereto.

**Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Schedule 2 to Appendix 3 (continued)**

PART II

Definition of the Varied Premises under the Sub-Lease

ALL and WHOLE (FIRST) the area of ground forming part of Invergordon Distillery, Invergordon all as the said area of ground is shown marked as "Area 1" and is delineated red on the Plan annexed to the Sub-Lease and signed as relative thereto and (SECOND) ALL and WHOLE the two warehouses known as and forming Warehouses 2, 3, 4 and 5 inclusive forming part of the said Invergordon Distillery, all as the said warehouses are shown coloured blue on the said Plan; Declaring that there shall be included in the Varied Premises:

1. all permitted additions, alterations and improvements (except tenants' and trade fittings and fixtures) as at the date of the Sub-Lease or thereafter made on or about the Varied Premises.
2. all landlords' fixtures and fittings within the Varied Premises except any such fixtures installed by the Company and that can be removed from the Varied Premises without damaging the same.
3. the Service Systems that currently and exclusively serve the Varied Premises.

**Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Schedule 3 to Appendix 3**

Definition of Premises under the Licence

ALL and WHOLE (FIRST) the area of ground forming part of Invergordon Distillery, Invergordon all as the said area of ground is shown marked as "Area 1" and is delineated red on the Plan annexed to the Licence and signed as relative thereto and (SECOND) ALL and WHOLE the two warehouses known as and forming Warehouses 2, 3, 4 and 5 inclusive forming part of the said Invergordon Distillery, all as the said warehouses are shown coloured blue on the said Plan; Declaring that there shall be included in the Licence Premises:

1. all permitted additions, alterations and improvements (except tenants' and trade fittings and fixtures) as at the date of the Licence or thereafter made on or about the Licence Premises.
2. all landlords' fixtures and fittings within the Licence Premises except any such fixtures installed by the Subsidiary and that can be removed from the Licence Premises without damaging the same.
3. the Service Systems that currently and exclusively serve the Licence Premises.

Kyndal Spirits Limited
(the "Company")
Company No: SC014456
Definitions to Statutory Form 155(6)(b)

Unless otherwise defined in this Statutory Declaration, capitalised terms in this Statutory Declaration shall have the following meanings:

"Acquisition Agreement" means the agreement for the sale and purchase of shares of the Company dated 15 October 2001, among Jim Beam Brands Worldwide, Inc., as seller, and Kyndal International Limited, as buyer, together with all schedules, exhibits and attachments to such agreement and all amendments to such sale and purchase agreement made on or prior to the Closing Date, in the agreed form.

"Arranger" means WestLB.

"Bonding Agreements" means:

- (a) the £12,200,000 bonding agreement dated 15 October 2001 among the Purchaser, as borrower and the Bonding Bank and any cross-guarantee, netting arrangement or counter-indemnity referred to therein or entered into by the Purchaser or any member of the Group in connection with such bonding agreement; and
- (b) any replacement and/or additional bonding agreement entered into by an Obligor and a Bonding Bank; *provided that* the face amount of any such replacement and/or additional agreements (when aggregated with the principal amount outstanding under the agreement referred to in paragraph (a)) shall not exceed £15,000,000 in principal amount aggregate at any time outstanding.

and **"Bonding Agreement"** means any of them.

"Bonding Banks" means:

- (c) Barclays Bank PLC, solely in its capacity as bank under the Bonding Agreement; and
- (d) any other bank, insurance company or financial institution that provides a bond to HM Customs and Excise or Intervention Board for Agricultural Produce (or, in each case, a similar person) at the request of an Obligor, which has entered into a Deed of Accession in accordance with the Security Trust Deed,

and **"Bonding Bank"** means any of them.

"Bonding Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to a Bonding Bank under or arising out of or in connection with the Bonding Agreements (or any of them).

"Charged Assets" means all assets, rights and property of the Subsidiary which are from time to time the subject of the security created or intended to be created hereby or pursuant to the Floating Charge.

"Closing Date" means 15 October 2001.

“Company Subsidiaries” mean:

- (a) Wauchope Moodies & Company Limited
- (b) W & S Strong Limited
- (c) WMB Realisations Limited
- (d) Whyte & MacKay Limited
- (e) Whyte & MacKay Distillers Limited
- (f) Watson & Middleton Limited
- (g) Tamnavulin - Glenlivet Distillery Company Limited
- (h) The Sheep Dip Whisky Company Limited
- (i) Ronald Morrison & Co. Limited
- (j) Pentland Bonding Company Limited
- (k) John E Mcpherson & Sons Limited
- (l) Charles Mackinlay & Company Limited
- (m) Longman Distillers Limited
- (n) Loch Glass Distilling Company Limited
- (o) Leith Distillers Limited
- (p) Kensington Distillers Limited
- (q) Jarvis Halliday & Company Limited
- (r) Invergordon Gin Limited
- (s) IDCP Trustees Limited
- (t) Hay & Macleod Limited
- (u) Grey Rogers & Co. Limited
- (v) GPS Realisations Limited
- (w) Glentalla Limited
- (x) Glayva Liqueur Limited
- (y) Findlater Scotch Whisky Limited
- (z) Fettercairn Distillery Limited
- (aa) Ewen & Company Limited

- (bb) Edinburgh Scotch Whisky Company Limited
- (cc) Dalmore Distillers Limited
- (dd) Bruce & Company (Leith) Limited
- (ee) Dalmore, Whyte & MacKay Limited
- (ff) Isle of Jura Distillery Company Limited
- (gg) William Muir Limited
- (hh) The Invergordon Distillers Limited
- (ii) Invergordon Distillers (Holdings) Limited
- (jj) The Invergordon Distillers Group Limited; and
- (kk) Tullibardine Distillery Limited.

“Deed of Accession” means:

- (a) in respect of an assignee or transferee of a Secured Party, a deed of accession in the form set out in Schedule 2 (*Secured Party Deed of Accession*) to the Security Trust Deed; and
- (b) in respect of the Company, the Company Subsidiaries, any subsidiary of the Purchaser (other than the Issuer), a deed of accession in the form set out in Schedule 1 (*Obligor Deed of Accession*) to the Security Trust Deed.

“Default Notice” means a notice validly served by the Mezzanine Security Trustee under and in terms of the Mezzanine Security Trust Deed in accordance with Clause 22.6 (*Acceleration and Cancellation*) of the Mezzanine Facility Agreement. Declaring that the term Mezzanine Security Trustee shall have the meaning ascribed to it in the Mezzanine Security Trust Deed (as the same may be amended, varied or supplemented from time to time).

“Encumbrance” means, as to any person:

- (a) a mortgage, charge, pledge, standard security, assignation in security, lien or other encumbrance (however described in any relevant jurisdiction) securing any obligation of such person;
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to such person; or
- (c) any other type of preferential arrangement (including any title transfer and retention arrangement) the effect of which is to give a creditor in respect of Financial Indebtedness a preferential position in relation to any asset of such person on any insolvency proceeding of such person.

“Equipment” means all equipment, machinery, chattels, tools, parts, machine tools, furniture, furnishings, fixtures and supplies, of every nature, now owned or hereafter acquired by the Group, wherever located, additions, accessories and improvements thereto and substitutions therefor and all parts and equipment which may be attached to or which are necessary for the

operation and use of such personal property or fixtures, whether or not the same shall be deemed to be affixed to real or heritable property.

“Equipment Financing” shall have the meaning given to such term in Clause 19.3 (*Financial Definitions*) of the Senior Secured Facility Agreement.

“Event of Default” means any circumstance described as such in Clause 22 (*Events of Default*) of the Senior Secured Facility Agreement.

“Final Maturity Date” means 14 October 2016.

“Finance Documents” means:

- (a) the Finance Documents referred to in the Senior Secured Facility Agreement;
- (b) the Finance Documents referred to in the Mezzanine Facility Agreement;
- (c) the Revolving Facility Agreements;
- (d) the Bonding Agreements;
- (e) the Hedging Agreements;
- (f) the Security Documents;
- (g) the Security Trust Deed; and
- (h) all agreements between the Issuer and an Obligor.

“Finance Lease” means a contract treated as a finance or capital lease in accordance with UK GAAP.

“Finance Parties” means the Facility Agent, the Security Trustee, the Arranger, any Hedge Counterparties and the Lenders.

“Financial Indebtedness” means, without duplication, any indebtedness in respect of or arising under or in connection with:

- (a) moneys borrowed (including overdrafts); or
- (b) indebtedness under any debenture, bond (other than a performance bond issued in respect of the trade obligations), note or loan stock or other similar instrument; or
- (c) any acceptance or documentary credit (other than in respect of trade obligations); or
- (d) receivables sold or discounted (otherwise than on a non-recourse basis); or
- (e) the acquisition cost of any asset to the extent payable 180 days or more after the time of acquisition or possession by the person liable as principal obligor for the payment thereof where the deferred payment is arranged primarily as a method of raising finance or financing or refinancing the acquisition of the asset acquired; or
- (f) the sale price of any asset to the extent paid 180 days or more before the time of sale or delivery by the person liable to effect such sale or delivery where the advance payment is

arranged primarily as a method of raising finance or financing or refinancing the manufacture, assembly, acquisition or holding of the asset to be sold; or

- (g) Finance Leases; or
- (h) the net amount from time to time due pursuant to any agreement for managing or hedging currency and/or interest rate and/or commodity risk whether by way of forward exchange, cap, collar, swap, forward rate agreement or otherwise or the net amount from time to time due under any other derivative contract; or
- (i) the amount payable under any put option or other arrangement whereby any member of the Group is liable, at the request of a third party, to purchase share capital or other securities issued by it or any other member of the Group prior to the Final Maturity Date; or
- (j) the amount payable by any member of the Group in respect of the redemption of any share capital or other securities issued by it or any member of the Group (if the share capital or other securities are redeemable at the option of their holder or if the relevant member of the Group is otherwise obliged to redeem them) prior to the Final Maturity Date; or
- (k) the amount of any counter-indemnity obligation in respect of any guarantee or indemnity, bond, letter of credit or any other instrument issued by a bank or other financial institution; or
- (l) amounts raised under any other transaction required to be accounted for as a borrowing; or
- (m) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any indebtedness falling within paragraphs (a) through (l) of this definition.

“Guarantee and Debenture” means, collectively, each guarantee and debenture dated the Closing Date among, inter alios, the Purchaser, the Company, certain of their subsidiaries, and the Security Trustee on behalf of, amongst others, the Finance Parties.

“Group” means, collectively, the Purchaser, the Company and their respective subsidiaries from time to time.

“Hedge Counterparties” means a Lender or an affiliate of a Lender which has become a party to the Security Trust Deed as a Hedging Bank in accordance with the provisions thereof.

“Hedging Agreements” means:

- (a) the agreement dated 15 October 2001 in the form of the ISDA Master Agreement and confirmation thereto entered into between the Purchaser and the Hedging Bank; and
- (b) any replacement or additional hedging agreement entered into by an Obligor and a Hedging Bank.

“Hedging Banks” means:

- (a) WestLB, solely in its capacity as a party to the Hedging Agreement and its successors in title; and

- (b) any other bank or financial institution that enters into an interest rate swap with an Obligor which has entered into a Deed of Accession in accordance with the Security Trust Deed.

“Hedging Obligations” means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to a Hedging Bank under or arising out of or in connection with the Hedging Agreements (or any of them).

“Inventory” means mature or immature whisky in casks or in tanks now owned or hereafter acquired or produced by the Group.

“Invergordon Property” means the long leasehold distillery, warehouse and blending property held by the Subsidiary and known as the Invergordon Distillery located at Cottage Brae, Invergordon, Ross-shire and extending to approximately 80 acres, including all fixed plant, machinery and equipment thereon.

“Issuer” means Kyndal Finance Limited, a company organised under the laws of the Cayman Islands.

“Lenders” means any bank, affiliate of a Lender, financial institution, fund or institution that invests on loans or Related Fund:

- (a) named in Schedule 1 (*The Lenders*) to the Senior Secured Facility Agreement; or
- (b) which has become a party hereto in accordance with the provisions of Clause 28.3 (*Assignments and Transfers by Lenders*) of the Senior Secured Facility Agreement; and
- (c) which has not ceased to be a party hereto in accordance with the terms of the Senior Secured Facility Agreement.

“Mezzanine Facility Agreement” means subordinated mezzanine facility agreement dated 15 October 2001 among the Purchaser (as borrower), the Mezzanine Lender and the Security Trustee.

“Mezzanine Finance Documents” means:

- (i) the Mezzanine Facility Agreement;
- (ii) the Mezzanine Security Trust Deed;
- (iii) the Standard Security; and
- (iv) the Floating Charge.

“Mezzanine Lenders” means Meadfine Limited in its capacity as a mezzanine lender under the Mezzanine Facility Agreement, its successors in title and each transferee or assignee of its rights under the Mezzanine Facility Agreement that enters into a Deed of Accession in accordance with the Security Trust Deed, and **“Mezzanine Lender”** means any of them.

“Mezzanine Obligations” means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Mezzanine Lenders under or arising out of or in connection with the Mezzanine Facility Agreement.

“Mezzanine Security Trust Deed” means the security trust deed dated on or about the date hereof among, *inter alios*, the Mezzanine Security Trustee, the Subsidiary and Westdeutsche Landesbank Girozentale, London Branch.

“Obligors” means the Purchaser, the Company, the Company Subsidiaries, any subsidiary of the Purchaser (other than the Issuer and the Subsidiary whose only asset is a lease of the Invergordon Property as described in the Schedules to Appendix 3 hereto) and all other persons that sign a Deed of Accession in the form of Schedule 1 to the Security Trust Deed and **“Obligor”** means any of them.

“Permitted Encumbrance” means:

- (a) any Encumbrance over or affecting (i) any asset acquired by a member of the Group after the 15 October 2001 and subject to which such asset is acquired or (ii) any asset of any company which becomes a member of the Group after the Closing Date, where such Encumbrance is created prior to the date on which such company becomes a member of the Group; provided that, in any case,
 - (i) such Encumbrance was not created in contemplation of the acquisition of such asset by a member of the Group or the acquisition of such company;
 - (ii) the amount thereby secured has not been increased in contemplation of, or since the date of, the acquisition of such asset by a member of the Group or the acquisition of such company; and
 - (iii) such Encumbrance is removed or discharged within three months of the date of acquisition of such asset or such company becoming a member of the Group unless such Encumbrance falls within any of paragraphs (b) to (m) below;
- (b) (i) any netting or set-off arrangement (or any Encumbrance over a credit balance in a bank account which is entered into in order to effect such an arrangement) entered into: (x) by any member of the Group in the normal course of its banking arrangements or (y) by one Obligor with another Obligor in connection with any cash pooling arrangements between such Obligors;
- (ii) any netting or set-off arrangement under a Hedging Agreement where the obligations of other parties thereunder are calculated by reference to net exposure thereunder (but not any netting or set-off relating to such Hedging Agreement in respect of cash collateral or any other Encumbrance except as otherwise permitted hereunder);
- (c) any title transfer or retention of title arrangement entered into by any member of the Group in the normal course of its trading activities on such counterparty's standard or usual terms;
- (d) any Encumbrance arising by operation of law and in the normal course of business; provided that such Encumbrance is discharged within sixty days of the amount owing in respect thereof becoming due;
- (e) any Encumbrance arising under or evidenced by a Security Document or under the Securitisation Facility;

- (f) any Encumbrance in favour of a bank over goods and documents of title to goods arising in the ordinary course of documentary credit transactions entered into in the ordinary course of trade;
- (g) any Encumbrance arising on rental deposits in connection with the occupation of leasehold premises in the ordinary course of business;
- (h) any Encumbrance arising by operation of law in favour of any government, state or local authority in respect of taxes, assessments or government charges which are being contested by the relevant member of the Group in good faith and with a reasonable prospect of success;
- (i) Encumbrances (except floating charges) arising under Finance Leases permitted under the Senior Secured Facility Agreement and only to the extent such Encumbrances are granted by the relevant member of the Group over assets comprised within or constituted by such Finance Leases;
- (j) any Encumbrance arising under Equipment Financing permitted by the Senior Secured Facility Agreement and only to the extent such Encumbrances are granted by the relevant member of the Group over the Equipment supplied by the relevant vendor to such member of the Group;
- (k) in addition to any Encumbrances subsisting pursuant to paragraphs (a) to (l) above any other Encumbrances (not being Encumbrances over shares or floating charges over any assets charged by fixed charges to the Finance Parties); provided that the aggregate principal amount secured by such other Encumbrances referred to in this paragraph (k) does not at any time exceed £500,000 (or its equivalent); and
- (l) any Encumbrance securing the renewal, extension or refunding of any:
 - (i) Financial Indebtedness secured by any Encumbrance permitted by paragraph (g) above;
 - (ii) Finance Leases secured by any Encumbrance permitted by paragraph (i) above; or
 - (iii) Equipment Financing secured by any Encumbrance permitted by paragraph (j) above;

provided that, except for paragraphs (e) and (h) above, no Encumbrance is permitted over any of the Inventory sold by the Company to the Purchaser under the Stock Sale Agreement.

“Purchaser” means Kyndal International Limited with registered number SC221954.

“Receiver” means an administrative receiver, a receiver and manager or other receiver (whether appointed pursuant to the Floating Charge, pursuant to any statute, by a court or otherwise).

“Related Fund” means, with respect to any Lender or prospective Lender which is a fund that invests in loans, any other fund that invests in loans and is controlled by, managed by or advised by the same investment advisor as such Lender or by an affiliate of such investment advisor.

“Resumption Date” means the date of service of the Default Notice.

“Revolving Facility Agreements” means:

- (a) the overdraft facility agreement dated 15 October 2001 between the Company, the Revolving Lender and the Security Trustee and any cross-guarantee, netting arrangement or counter-indemnity referred to therein or entered into by the Company or any member of the Group in connection with such overdraft facility agreement; and
- (b) any replacement revolving credit or overdraft facility agreement entered into between an Obligor, the Security Trustee and a bank or financial institution; provided that the face amount of any such replacement agreements shall not exceed £10,000,000 in principal amount aggregate at any time outstanding.

and **“Revolving Facility Agreement”** means any of them.

“Revolving Lender” means:

- (c) Barclays Bank PLC, solely in its capacity as a lender under the Revolving Facility Agreement, its successors in title and each transferee or assignee of its rights and obligations under the Revolving Facility Agreement that enters into a Deed of Accession in accordance with the Security Trust Deed, and **“Revolving Lender”** means any of them; and
- (d) any other bank or financial institution that enters an agreement described in paragraph (b) of the definition above of Revolving Facility Agreements and enter into a Deed of Accession in accordance with the Security Trust Deed.

“Revolving Obligations” means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors to the Revolving Lenders under or arising out of or in connection with a Revolving Facility Agreement.

“Secured Obligations” means the Senior Obligations, the Revolving Obligations, the Hedging Obligations, the Bonding Obligations, the Mezzanine Obligations and the Securitisation Obligations, or any of them.

“Secured Parties” means the Facility Agent, the Security Trustee, the Mezzanine Lenders, the Revolving Lenders, the Bonding Banks, the Hedging Banks, the Senior Lenders and the Issuer and **“Secured Party”** means any of them.

“Securitisation Facility” means a facility to be made available to the Issuer pursuant to the Securitisation Mandate Letter, including any similar facilities in respect of any other Obligor entered into after the Closing Date, in each case in form and substance acceptable to the Facility Agent (acting reasonably) and in an aggregate principal amount of up to £210,000,000 (or any renewal, replacement, increase, further issue or extension of such facility for the same or a smaller amount).

“Securitisation Mandate Letter” means the letter from WestLB to (and duly countersigned by) the Purchaser dated prior to the Closing Date, addressing, among other matters, the establishment of and borrowing under the Securitisation Facility.

“Securitisation Obligations” means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Issuer from time to time.

“Security Document” means the Guarantee and Debenture and each other security document referred to in Section E of Schedule 10 (*Conditions Precedent*) of the Senior Secured Facility

Agreement together with any other document entered into by any member of the Group creating or evidencing security for all or any part of the obligations of the Obligors or any of them under any of the Finance Documents as defined in the Senior Secured Facility Agreement whether by way of personal covenant, undertaking, charge, security interest, mortgage, standard security, assignation, pledge or other Encumbrance.

"Security Trust Deed" means the security trust deed dated 15 October 2001 among, *inter alios*, the Purchaser, the Security Trustee, the Senior Lender and Facility Agent, the Mezzanine Lender, the Overdraft Lender, the Bonding Bank, the Hedging Bank and the Issuer.

"Security Trustee" means WestLB.

"Senior Lenders" means WestLB in its capacity as lender under the Senior Secured Facility Agreement, its successors in title and each transferee or assignee of its rights and obligations under the Senior Secured Facility Agreement that enters into a Deed of Accession in accordance with the Security Trust Deed, and **"Senior Lender"** means any of them.

"Senior Obligations" means all obligations and liabilities (whether present or future, actual or contingent, as principal or surety and whether severally or jointly) of the Obligors (or any of them) to the Senior Lenders, the Facility Agent, the Arranger and the Security Trustee under or arising out of or in connection with the Senior Secured Facility Agreement or any related Finance Document.

"Senior Secured Facility Agreement" means the £188,000,000 senior secured credit facility agreement dated 15 October 2001 among the Purchaser, as borrower, WestLB as arranger, the Facility Agent, the Security Trustee and the Senior Lenders.

"Service Systems" means the pumps, valves manholes, meters, connections, channels, heating and cooling installations, hot water systems and boilers, ventilation and air conditioning ducting, lifts and escalators (if any) drains, sewers, pipes, sprinkler systems, wires and cables or other conducting media and generally all other conducting media in, on, over, under or passing through or otherwise exclusively serving the relevant premises or any part thereof and all plant and equipment relative thereto.

"Stock Sale Agreement" means the Stock Sale and Servicing Agreement dated 15 October 2001, between the Company and the Company, together with all schedules, exhibits and attachments to such agreement, in the agreed form.

"Vendor" means Jim Beam Brands Worldwide, Inc., or such of its affiliates and subsidiaries which are party to the Acquisition Agreement.

"WestLB" means Westdeutsche Landesbank Girozentrale, London Branch.

PricewaterhouseCoopers
1 Embankment Place
London WC2N 6RH
Telephone +44 (0) 20 7583 5000
Facsimile +44 (0) 20 7822 4652

The Directors
Kyndal Spirits Limited
Dalmore House
310 St Vincent Street
Glasgow
G2 5RG

18 December 2001

Dear Sirs

Auditors' report to the directors of Kyndal Spirits Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors of Kyndal Spirits Limited ('the Company') dated 18 December 2001 in connection with the proposal that the Company's subsidiary undertaking, Kyndal Property Limited, should give financial assistance for the purchase of the entire issued share capital of the Company.

Basis of opinion

We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

Opinion

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in Section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.

Yours faithfully



PricewaterhouseCoopers
Chartered Accountants and Registered Auditors

PricewaterhouseCoopers is the successor partnership to the UK firms of Price Waterhouse and Coopers & Lybrand. The principal place of business of PricewaterhouseCoopers and its associate partnerships, and of Coopers & Lybrand, is 1 Embankment Place, London WC2N 6RH. The principal place of business of Price Waterhouse is Southwark Towers, 32 London Bridge Street, London SE1 9SY. Lists of the partners' names are available for inspection at those places.

All partners in the associate partnerships are authorised to conduct business as agents of, and all contracts for services to clients are with, PricewaterhouseCoopers. PricewaterhouseCoopers is authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.