



Registration of a Charge

Company name: **BREATHFULL 4 LIMITED**

Company number: **11452621**

Received for Electronic Filing: **07/12/2018**



Details of Charge

Date of creation: **07/12/2018**

Charge code: **1145 2621 0009**

Persons entitled: **INVESTEC BANK LIMITED**

Brief description: **ALL THAT LEASEHOLD PROPERTY KNOWN AS COSTA COFFEE UNIT, OLD WARWICK ROAD, LEAMINGTON SPA CV31 3NT CONTAINED IN A LEASE OF EVEN DATE AND MADE BETWEEN (1) OPTIMISATION INVESTMENTS LIMITED AND (2) THE COMPANY. FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11452621

Charge code: 1145 2621 0009

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th December 2018 and created by BREATHFULL 4 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th December 2018 .

Given at Companies House, Cardiff on 11th December 2018

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 7 December 2018

BREATHFULL 4 LIMITED (1)
as Company

and

INVESTEC BANK LIMITED (2)
as Lender

LEGAL MORTGAGE
of land at Costa Coffee Unit, Old Warwick Road,
Leamington Spa CV31 3NT

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PARTIES

- (1) **BREATHFULL 4 LIMITED** (registered in England and Wales under company number 11452621), the registered office of which is at Fourth Floor, 27 Gloucester Place, London W1U 8HU (the "**Company**"); and
- (2) **INVESTEC BANK LIMITED** (registered under registration number 1969/004763/06), a limited liability company registered and incorporated in accordance with the laws of South Africa (the "**Lender**").

INTRODUCTION

- A The Lender has agreed to make available to the Company a term facility of up to £7,070,000 subject to and upon the terms and conditions contained in the Facility Agreement (as defined below).
- B As a condition precedent to and pursuant to the provisions of the Facility Agreement the Company has agreed to enter into this Mortgage for the purpose of providing security to the Lender for the Secured Liabilities.

IT IS AGREED THAT:**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Mortgage:

"Agreements for Sale" means all agreements, contracts, or options in existence from time to time:

- (a) for, or in relation to, the assignment, transfer, underlease or disposal by way of sale of the whole or any part of, or of any estate or interest in, the Charged Property;
- (b) for, or in relation to, the creation of any estate or interest in the Charged Property upon the sale of the Charged Property; and
- (c) under which any consideration of a capital nature, whether monetary or otherwise, is derived, or is to be derived, from the Charged Property.

"Authority" means any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other organisation.

"Charged Property" means the whole or any part of the property, assets, income and undertaking of the Company from time to time mortgaged, charged or assigned to the Lender pursuant to this Mortgage.

"Costs" means all costs, charges or expenses of whatsoever nature (including, without limitation, legal fees) including, without limitation, disbursements and any

Value Added Tax to be charged on such costs, charges, expenses and disbursements.

"Default Rate" means the annual rate of interest specified in clause 8.3.1 (*Default Interest*) of the Facility Agreement.

"Environment" means all of the air, water and land including air within buildings and other natural or manmade structures above or below ground.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the Environment.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business or any member of the Group conducted on or from the properties owned or used by any member of the Group.

"Event of Default" means any of those events or circumstances set out in clause 19 (*Events of Default*) of the Facility Agreement.

"Facility Agreement" means the Facility Agreement dated 21 November 2018 and made between the Company and the Lender.

"Finance Documents" bears the meaning ascribed to it under the Facility Agreement.

"Fixtures" means all assets of whatsoever nature, apart from land and buildings, forming part of any freehold or leasehold property owned by the Company and deemed by law to be immovable property.

"Insolvency Act" means the Insolvency Act 1986.

"Laws" means any European Community legislation (including any regulation or directive), the common law, United Kingdom legislation (including subordinate regulation and any order or regulations made under such legislation), by law or order of any court or administrative tribunal which is in force in the United Kingdom.

"LPA" means the Law of Property Act 1925.

"Material Adverse Effect" bears the meaning ascribed to it under the Facility Agreement.

"Occupational Leases" means all leasehold interests and other occupational rights whatsoever (including, without limitation, all licences and agreements for leases) in

existence from time to time relating to the whole or any part of the Charged Property, the immediate reversion to which is vested in the Company.

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980 and the Ancient Monuments and Archaeological Areas Act 1979.

"Property Insurance" means the insurance referred to in clause 9.3 (*Property Insurance*).

"Receiver" means any receiver appointed pursuant to this Mortgage.

"Rights" means all the Company's rights, title and interest from time to time in any lease, licence or occupational right whatsoever together with the entire benefit of all the Company's rights, title and interest from time to time in any renewal of, replacement of or variation to any such lease, licence or occupational right (including, without limitation, all its rights, title and interest in any Occupational Lease, agreement for any Occupational Lease and any associated agreements which may be granted by the Company or any person deriving title from the Company from time to time over or in respect of the whole or any part of the Charged Property.

"Scheduled Property" means all the property short particulars of which are set out in the Schedule (*The Scheduled Property*), including, without limitation, all Fixtures on such property.

"Secured Liabilities" means all moneys, debts and liabilities from time to time due, owing or incurred by the Company to the Lender on any current or other account whatsoever pursuant to the Finance Documents or otherwise, in each case:

- (a) whether present or future;
- (b) whether alone or jointly with any other person;
- (c) whether actual or contingent;
- (d) whether as principal or as surety;
- (e) in whatsoever name, firm or style;
- (f) in whatsoever currency denominated; or
- (g) otherwise,

including, without limitation, all liabilities in connection with foreign exchange transactions, accepting, endorsing or discounting notes or bills, under bonds, guarantees, indemnities, documentary or other credits or any instruments from time to time entered into by the Lender for or at the request of the Company together with interest to the date of payment at such rates and upon such terms as may from time to time be agreed and all commission, fees, costs (including, without limitation, legal fees) on a full indemnity basis and other charges.

"Security Documents" means any document entered into by any person from time to time creating any Security Interest, directly or indirectly, for the obligations of the Company under the Finance Documents including, without limitation, this Mortgage.

"Security Interest" means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.2 Interpretation

(a) In this Mortgage:

- (i) the contents page and clause headings are included for convenience only and do not affect the construction of this Mortgage;
- (ii) words denoting the singular include the plural and vice versa; and
- (iii) words denoting one gender include each gender and all genders.

(b) In this Mortgage, unless the context otherwise requires, references to:

- (i) persons include references to natural persons, firms, partnerships, companies, corporations, associations, organisations and trusts (in each case whether or not having a separate legal personality);
- (ii) documents, instruments and agreements (including, without limitation, this Mortgage and any document referred to in this Mortgage) are references to such documents, instruments and agreements as modified, amended, varied, supplemented or novated from time to time;
- (iii) receivers are references to receivers of whatsoever nature including, without limitation, receivers and managers and administrative receivers;
- (iv) the terms the **"Lender"** and the **"Receiver"** include, where the context so admits, references to any delegate of any such person;
- (v) a party to this Mortgage include references to its successors, transferees and assigns;
- (vi) recitals, clauses and schedules are references to recitals to this Mortgage, clauses of this Mortgage and schedules to this Mortgage; and references to this Mortgage include its schedules;
- (vii) paragraphs are references to paragraphs of the schedule in which the references appear;
- (viii) statutory provisions (where the context so admits and unless otherwise expressly provided) are construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time, and to any orders regulations instruments or other subordinate legislation made under the relevant statute; and

(ix) a time of day is a reference to London time.

1.3 Facility Agreement defined terms

Unless otherwise defined in this Mortgage, terms defined in the Facility Agreement bear the same meaning in this Mortgage.

1.4 Conflict with Facility Agreement

If there is any conflict between the provisions of this Mortgage and the provisions of the Facility Agreement, the provisions of the Facility Agreement shall prevail.

2 COVENANT TO PAY

The Company shall on demand pay to the Lender or discharge, as the case may be, all the Secured Liabilities when the Secured Liabilities become due.

3 INTEREST

The Company shall pay to the Lender in respect of interest comprised in the Secured Liabilities (after as well as before any demand made or judgment obtained or the liquidation or administration of the Company) such interest at the rates and upon the terms from time to time agreed with the Lender upon such days as the Lender may from time to time determine and such interest shall be compounded in the event of it not being punctually paid with quarterly rests in accordance with the usual practice of the Lender but without prejudice to the right of the Lender to require payment of such interest when due.

4 SECURITY

By way of continuing security in favour of the Lender for the payment and discharge of the Secured Liabilities, the Company with full title guarantee hereby charges to the Lender by way of first fixed charge by way of legal mortgage, the Scheduled Property and all Rights relating to the Scheduled Property in existence at the date of this Mortgage.

5 FURTHER ASSURANCE

The Company shall:

- (a) forthwith, at any time if so required by the Lender, at its own expense execute and deliver to the Lender such further legal or other mortgages, charges, assignments, securities, authorities and documents as the Lender may in its discretion require of the whole or such part of the Charged Property as the Lender may specify, in such form as the Lender may in its discretion require, to secure the payment or discharge of the Secured Liabilities, including, without limitation, in order to vest the whole or such part of the Charged Property in the Lender, the nominee of the Lender or in any purchaser from the Lender or the Receiver;
- (b) pending the execution and delivery of any such assignments, hold such Charged Property upon trust for the Lender subject to the provisions of this Mortgage; and

- (c) pending the execution and delivery of any such mortgages, charges, or other security, hold such Charged Property subject to the provisions of this Mortgage.

6 DEPOSIT OF DOCUMENTS AND TITLE DEEDS

The Company shall deposit with the Lender (and the Lender during the continuance of this security may hold and retain) all deeds and documents of title relating to the Scheduled Property including, without limitation, all Occupational Leases.

7 NEGATIVE PLEDGE

Save as otherwise provided in the Facility Agreement, the Company shall not:

- (a) create, purport to create or allow to subsist, any Security Interest over the whole or any part of the Charged Property;
- (b) convey, assign, transfer, or agree to convey, assign or transfer the whole or any part of the Charged Property;
- (c) permit or agree to any variation of the rights attaching to the whole or any part of the Charged Property; or
- (d) do, cause or permit to be done anything which may in the opinion of the Lender, in any way depreciate, jeopardise or otherwise prejudice the value to the Lender (whether monetary or otherwise) of the whole or any part of the Charged Property.

8 REPRESENTATIONS AND WARRANTIES

8.1 General

The Company makes the representations and warranties set out in this clause to the Lender.

8.2 Ownership of the Charged Property

It is absolutely, solely and beneficially entitled to all the Charged Property as from the date it or any part of it falls to be charged under this Mortgage and the rights of the Company in respect of the Charged Property are free from any Security Interest of any kind.

8.3 No disposal

It has not sold or agreed to sell or otherwise disposed of, or agreed to dispose of, the benefit of all or any of the Company's right, title and interest in and to the Charged Property.

8.4 Occupational Leases

The Occupational Leases are valid, binding and enforceable in accordance with their respective provisions and the details of the Occupational Leases are true and accurate.

8.5 Times when representations made

The representations and warranties set forth in this clause are given and made on and as of the date of this Mortgage, shall survive the execution of this Mortgage and are continuing representations and warranties which are deemed to be repeated during the continuance of the security constituted by this Mortgage.

9 UNDERTAKINGS

The Company gives each of the undertakings contained in this clause to the Lender.

9.1 Duration

The undertakings in this clause shall remain in force during the continuance of the security constituted by this Mortgage.

9.2 To comply with statutes

The Company shall comply with all requirements of any Authority, all obligations under any statute and all byelaws and regulations relating to the whole or any part of the Charged Property.

9.3 Property Insurance

Save as otherwise provided in the Facility Agreement, the Company shall insure and keep insured the Charged Property with reputable and responsible insurers previously approved by the Lender:

- (a) in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or a similar business and in the same or similar localities including, without limitation, insurance to cover loss or damage arising by fire, civil commotion, explosion, aircraft, flood, storm, tempest, burst pipes, public liability and such other risks and contingencies as the Lender shall from time to time request; and
- (b) in the full reinstatement cost of the Charged Property (being not less than such sum or sums (if any) as the Lender may in its discretion require) including, without limitation:
 - (i) architects', surveyors' and all other professional fees, demolition and shoring up costs;
 - (ii) Value Added Tax chargeable on the cost of such reinstatement and liable to arise out of any self supply charge; and
 - (iii) loss of income from rents, licence fees or otherwise for not less than three years or such greater period as the Lender may in its discretion require, having regard to any potential increases in rent as a result of rent reviews, reversions or otherwise.

9.4 General obligations regarding insurance

The Company shall:

- (a) effect the Property Insurance in accordance with the terms of the Facility Agreement and in the joint names of the Company and the Lender and such other names as the Lender may approve;
- (b) duly and punctually pay all premiums and any other moneys necessary for maintaining the Property Insurance in full force and effect;
- (c) ensure that every policy of insurance relating to the Property Insurance contains a first loss payee clause and a standard mortgagee clause, whereby such insurance will not be invalidated, vitiated or avoided as against a mortgagee in the event of any misrepresentation, act, neglect or failure to disclose on the part of the insured;
- (d) produce to the Lender on request copies of all policies and all receipts for the current premiums with respect to the Property Insurance; and
- (e) immediately give notice to the Lender of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance relating to the Property Insurance and, except with the prior written consent of the Lender, the Company shall not agree to settlement of any such claim.

If the Company at any time fails to perform any of its obligations contained in this clause, the Lender may effect or renew such insurance as the Lender thinks fit and the Company shall reimburse the Lender for the Costs thereby incurred on demand. Such Costs will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

9.5 Insurance monies

- (a) Any monies received by virtue of any insurance relating to the whole or any part of the Charged Property (whether effected pursuant to this Mortgage or otherwise) will be deemed to be part of the Charged Property. Subject to the terms of the Facility Agreement, the Company shall apply all such monies in making good, or in recouping expenditure incurred in making good, any loss or damage or, if the Lender in its discretion so requires, towards discharge of the Secured Liabilities.
- (b) The Company shall ensure that all such monies as are referred to in clause 9.5(a) which are not paid directly by the insurers to the Lender shall be held by the recipient upon trust for the Lender and be applied by the Company in accordance with clause 9.5(a).
- (c) This clause applies whether or not this Mortgage has become enforceable.

9.6 To repair

The Company shall at all times keep in good and substantial repair and condition, all buildings, erections and structures on and in the Charged Property and where it is uneconomic to repair any part of the Charged Property, replace such part by another similar asset of equal or greater quality and value.

9.7 To allow entry

The Company shall allow, and shall procure that any person occupying the whole or any part of the Charged Property under any Occupational Lease shall allow, the Lender and its agents, with or without surveyors, workmen or others authorised by it upon prior notice (except in an emergency) to enter the Charged Property in order to view the Charged Property, to carry out any repairs on the Charged Property which the Lender considers necessary or to do anything the Lender is entitled to do pursuant to clause 10.2 (*Lender's performance of covenants*).

9.8 Alterations

The Company shall not:

- (a) commit any waste, or in any manner lessen the value of the Charged Property;
- (b) carry out any works of demolition, construction, refurbishment, addition or otherwise in or to the Charged Property;
- (c) sever any Fixtures; or
- (d) except with the prior written consent of the Lender, make any alterations to the Charged Property.

9.9 Title

The Company shall:

- (a) comply with, enforce and not waive, release or vary (or agree so to do) any restrictive or other covenants or obligations affecting the Charged Property;
- (b) pay all rents, rates, Taxes and outgoings however arising payable in respect of the whole or any part of the Charged Property owed by it or by the owner or occupier of the whole or any part of the Charged Property and comply with all restrictive and other covenants and obligations to be performed by it under any lease under which it holds the whole or any part of the Charged Property;
- (c) if the Lender or the Receiver pays any such sum, reimburse the Lender or the Receiver in full, on demand, the amount of such sum together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date of payment by the Lender or the Receiver until the date of reimbursement;
- (d) enforce all restrictive or other covenants and obligations owed to it by any lessor under any such lease;
- (e) not waive, release or vary (or agree so to do) any obligation owed to it by any such lessor or any provision of any such lease;
- (f) not exercise any option or power to break or terminate any such lease;
- (g) not surrender or agree to surrender any such lease;

- (h) not do, or omit to do, anything under any such lease whereby such lease might be forfeited; and
- (i) except with the prior written consent of the Lender, not agree any increase in the rent payable under any such lease.

9.10 No creation of easements etc.

The Company shall not grant, create, or permit to be acquired, any easement, right or privilege relating to or affecting the whole or any part of the Charged Property.

9.11 Leasing

The Company shall not:

- (a) exercise any statutory or other power of leasing, agreeing to lease or accepting surrenders of leases otherwise available to the Company;
- (b) grant or agree to grant or create any Occupational Lease of any description or contractual right to occupy or use the whole or any part of the Charged Property except with the prior written consent of the Lender; or
- (c) grant any licence or permission to assign, underlet or part with, or share occupation or possession, of the whole or any part of the Charged Property.

9.12 Occupational Leases

The Company shall:

- (a) comply with all restrictive and other covenants and obligations, however arising, to be performed by it as lessor under any Occupational Lease;
- (b) enforce all restrictive and other covenants and obligations, however arising, owed to it as lessor under any Occupational Lease;
- (c) not waive, release or vary (or agree so to do) any Rights or any provision of any Occupational Lease;
- (d) except with the prior written consent of the Lender, not:
 - (i) exercise any option or power to break, terminate, renew or extend any Occupational Lease;
 - (ii) accept or agree to accept any surrender of any Occupational Lease; or
 - (iii) grant any consent or licence as lessor or grantor under any Occupational Lease; and
- (e) comply with any provisions contained in any Occupational Lease for the review of the rents thereby reserved and, except with the prior written consent of the Lender, shall not settle or agree to settle any such rent review.

9.13 Agreements for sale

The Company shall:

- (a) enforce all obligations owed to it by any purchaser under any Agreement for Sale;
- (b) not waive, release or vary (or agree so to do) any obligation owed to it under, or any provision of, any Agreement for Sale; and
- (c) except with the prior written consent of the Lender, not exercise any power to terminate any Agreement for Sale.

9.14 To manage

The Company shall manage the Charged Property and any person occupying the whole or any part of the Charged Property under any Occupational Lease in accordance with the principles of good estate management and in any manner that the Lender may in its discretion require.

9.15 Planning

The Company shall:

- (a) comply with all the provisions of the Planning Acts;
- (b) comply with any conditions attached to any consent under the Planning Acts relating to or affecting the Charged Property;
- (c) not carry out any development (as defined in the Planning Acts) or redevelopment on or of the Charged Property;
- (d) except with the prior written consent of the Lender, not change the use of the whole or any part of the Charged Property;
- (e) except with the prior written consent of the Lender, not make any application for any consent under the Planning Acts or implement any planning permission; and
- (f) except with the prior written consent of the Lender, not enter into, or agree to enter into, any agreement under Section 106 of the Town and Country Planning Act 1990 (Agreement regulating development or use of land), Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (Enforceability by local authorities of certain covenants relating to land) or Section 38 of the Highways Act 1980 (Power of highway authorities to adopt by agreement), Section 278 of the Highways Act 1980 (Contributions towards highway works), Section 111 of the Local Government Act 1971 (Subsidiary powers of local authorities) or any other similar act.

9.16 Compulsory purchase

The Company shall:

- (a) except with the prior written consent of the Lender, not consent to, or enter into any negotiations with any Authority with regard to, the acquisition of the whole or any part of the Charged Property;
- (b) if so requested by the Lender, permit the Lender or its agent or anyone engaged by the Lender to conduct such negotiations or give such consent on the Company's behalf; and
- (c) if a notice is given to the Company by an Authority that such Authority intends to acquire the whole or any part of the Charged Property and such notice contains any condition, not, at any time after the date of such notice, do or omit or suffer to be done or omitted any act or thing which may be in breach of such condition.

9.17 To give notice

The Company shall, forthwith after receipt of any notice, order, direction, designation, resolution, proposal or other matter given or made by any Authority (whether or not under the Planning Acts) and relating to the Charged Property or the area in which the Charged Property is situated (a "notice"):

- (a) give full written particulars to the Lender of such notice;
- (b) if required by the Lender forthwith, and at the Company's cost, take all necessary steps to comply with such notice; and
- (c) at the request of the Lender, and at the Company's cost, make or join with the Lender in making such objection or representation against, in respect of, or relating to, such notice as the Lender may in its discretion require.

9.18 Investigation of title and other enquiries

The Company shall, at its expense:

- (a) forthwith on demand provide the Lender with a report as to the title of the Company to the Charged Property and the Occupational Leases and related matters concerning the items which may properly sought to be covered by a prudent mortgagee in a solicitor's report of this nature;
- (b) on demand, grant the Lender or its solicitors all such facilities within the power of the Company to enable the Lender or such solicitors to carry out investigations of title to the Charged Property and to carry out general enquiries relating to the Charged Property; and
- (c) co-operate and comply with all other reasonable requests relating to the Charged Property.

9.19 Environment

The Company shall:

- (a) comply with all Environmental Laws;

- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

10 COSTS AND LENDER'S PERFORMANCE OF COVENANTS

10.1 Costs undertaking

The Company shall on demand pay to the Lender or the Receiver, as the case may be, and discharge all Costs payable by it pursuant to this Mortgage on a full indemnity basis, together with interest at the Default Rate calculated in accordance with clause 3 (*Interest*) from the date the relevant Cost was expended, incurred or suffered (whichever is the earlier) by the Lender or the Receiver, as the case may be, until full discharge of such Cost.

10.2 Lender's performance of covenants

If the Company fails to perform any of the undertakings contained in clause 9.6 (*To repair*) to clause 9.19 (*Environment*) (inclusive), the Lender may perform any such covenant at the Company's expense and the Company shall reimburse the Lender for the Costs of such performance on demand. Nothing in this Mortgage shall oblige the Lender to perform any covenant of the Company.

11 DEFAULT

11.1 Enforcement

This Mortgage will become enforceable on the occurrence of any Event of Default or if the Company requests the Lender to appoint a receiver over the whole or any part of its undertaking or assets.

11.2 Consequences of default

On and at any time after the occurrence of an Event of Default, the Lender in its absolute discretion may by written notice to the Company:

- (a) declare the Secured Liabilities to be immediately due and payable, together with all accrued interest thereon and any other sums then owed by the Company under any Finance Document to which it is a party and, upon that declaration, such sums shall become immediately due and payable without demand or notice of any kind, all of which are hereby expressly waived by the Company; or
- (b) declare the Secured Liabilities to be due and payable on demand of the Lender; and/or
- (c) declare the security constituted by the Finance Documents to be enforceable.

12 STATUTORY POWER OF SALE

- 12.1 For the purposes of all powers implied by statute, and in particular the power of sale under Section 101 of the LPA (Powers incident to estate or interest in a mortgage), the Secured Liabilities will be deemed to have become due when the security created by this Mortgage becomes enforceable and Section 103 of the LPA (Regulation of exercise of power of sale) and Section 93 of the LPA (Restriction on consolidation of mortgages) will not apply.
- 12.2 The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make arrangements for leases, accept surrender of leases and grant options on such terms and conditions as the Lender may in its discretion think fit. The Lender is not obliged to comply with any of the provisions of Section 99 (Leasing powers of mortgagor and mortgagee in possession) and Section 100 (Powers of mortgagor and mortgagee in possession to accept surrenders of leases) of the LPA.
- 12.3 Each of the Lender and the Receiver may exercise such person's statutory power of sale in respect of the whole or any part of the Charged Property.

13 RECEIVER

13.1 Appointment of Receiver

- (a) At any time after the security constituted by this Mortgage has become enforceable, whether or not the Lender has entered into or taken possession of the whole or any part of the Charged Property pursuant to this Mortgage:
- (i) the Lender may, by writing under the hand of any authorised officer of the Lender, appoint any person to be a receiver and/or an administrator of the Charged Property and such person shall, with effect from the date of such appointment, be a **"Receiver"**;
 - (ii) subject to the Insolvency Act the Lender may, from time to time, in similar manner, remove the Receiver and appoint another in his place; and
 - (iii) the Lender may, either at the time of appointment or at any time thereafter, fix the remuneration of the Receiver.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (b) The Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Mortgage or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Lender shall not be liable to the Company for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.

13.2 Powers of Receiver

The Receiver has all the powers to do or abstain from doing anything which the Company could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by Section 109 of the LPA (Appointment, powers, remuneration and duties of receivers) and, in the case of a Receiver who is an administrative receiver, the powers conferred by Section 29 of the Insolvency Act (Definitions) and Schedule 1 to the Insolvency Act (Powers of administrator or administrative receiver), and in particular the Receiver may:

- (a) carry on, manage or concur in carrying on managing the whole or any part of the business of the Company as he may in his discretion think fit;
- (b) in each case as he may in his discretion think fit:
 - (i) manage, insure, repair, decorate, maintain, alter, improve, renew or add to the Charged Property or concur in so doing;
 - (ii) commence or complete any building operations on the Charged Property; and
 - (iii) apply for and maintain any planning permissions, building regulations, approvals and any other permissions, consents or licences;
- (c) sell, exchange, convert into money and realise the Charged Property or concur in so doing by public auction or private contract and generally in such manner and on such terms as he may in his discretion think fit. Without prejudice to the generality of the foregoing, he may do any of these things for any valuable consideration, including, without limitation, cash, shares, stock, debentures or other obligations. Any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
- (d) in each such case in such manner and generally on such terms as he may in his discretion think fit, with all the powers of an absolute beneficial owner:
 - (i) let, hire or lease (with or without premium) and accept surrenders of leases or tenancies or concur in so doing;
 - (ii) grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property; and
 - (iii) exchange or concur in exchanging the Charged Property.

The Receiver may exercise any such power by effecting such transaction in the name or on behalf of the Company or otherwise;

- (e) without any further consent by, or notice to, the Company, exercise on its behalf, in respect of any rent, all the powers and provisions conferred on a landlord or a tenant by any legislation in force relating to such rent;

- (f) make allowances to, and re-arrangements with, any person occupying the whole or any part of the Charged Property under any Occupational Lease from whom any rent and any profits may be receivable, and negotiate and agree, or refer to arbitration, any revision of rent under any leases in respect of which the rental may fall to be reviewed and accept service of, or serve, any notice received or required or deemed desirable in connection with any such review or with the exercise of any option;
- (g) for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to this Mortgage or of defraying any Costs (including, without limitation, his remuneration) which are incurred by him in the exercise of such powers, authorities or discretions or for any other purpose, to raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Mortgage or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;
- (h) make, or require the directors of the Company to make, such calls upon the shareholders of the Company in respect of any uncalled capital of the Company as the Receiver may in his discretion require and enforce payment of any call so made by action (in the name of the Company or the Receiver as the Receiver may in his discretion think fit) or otherwise;
- (i) settle or compromise any claim by, adjust any account with, refer to arbitration any dispute with, and deal with any question or demand from, any person who is, or claims to be, a creditor of the Company, as he may in his discretion think fit;
- (j) settle or compromise any claim, adjust any account, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- (k) bring, prosecute, enforce, defend and abandon all such actions, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- (l) promote the formation of any Subsidiary of the Company with a view to such Subsidiary purchasing, leasing, licensing or otherwise acquiring an interest in the Charged Property;
- (m) arrange for the purchase, lease, licence or acquisition of an interest in the Charged Property by any such Subsidiary for any valuable consideration, including, without limitation, cash, shares, debentures, loan stock, convertible loan stock or other securities, profits or a sum calculated by reference to profits, turnover, royalties, licence fees or otherwise, whether or not secured on the undertaking or assets of such Subsidiary and whether or not such consideration is payable or receivable in a lump sum or at any time or any number of times by instalments spread over such period, as the Receiver may in his discretion think fit;

- (n) arrange for such Subsidiary to trade or cease to trade as the Receiver may in his discretion think fit;
- (o) appoint and discharge any manager, officer, agent, professional adviser, employee and any other person, upon such terms as he may in his discretion think fit;
- (p) give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for realising the Charged Property;
- (q) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions, whether required under Environmental Law or by the Lender or otherwise and comply with all lawful orders and directives of all Authorities regarding Environmental Law; and
- (r) do all such other acts and things as the Receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Mortgage or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

13.3 Receiver as agent of the Company

The Receiver is at all times and for all purposes the agent of the Company. Subject to the provisions of the Insolvency Act, the Company is solely responsible for all the Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his remuneration and Costs, to the exclusion of liability on the part of the Lender.

13.4 No obligation

The Receiver is not obliged to exercise any of the powers set out in this clause.

13.5 Several power

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Lender specifies otherwise in the appointment of such Receiver.

13.6 Powers exercisable by the Lender

- (a) The Lender may exercise all powers granted to the Receiver by this Mortgage, whether as attorney of the Company or otherwise.
- (b) The powers of the Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Lender as provided in clause 12 (*Statutory Power of Sale*) or otherwise and so that, inter alia, such powers are and remain exercisable by the Lender in respect of that part of the Charged Property in respect of which no appointment of a Receiver by the Lender is from time to time subsisting.

13.7 Application of proceeds

The provisions of Sections 99 to 109 inclusive of the LPA are varied and extended to the extent that all monies received by the Receiver be applied in the following order:

- (a) in full payment of his remuneration and the Costs of realisation including, without limitation, all Costs of, or incidental to, any exercise of any power referred to in this Mortgage, including, without limitation, all outgoings paid by the Receiver;
- (b) providing for the matters specified in paragraphs (i) to (iii) inclusive of Section 109(8) of the LPA (Appointment, powers, remuneration and duties of receiver);
- (c) in or towards satisfaction of any debts or other imposts which are by statute made payable in preference to the Secured Liabilities to the extent to which such debts or imposts are made so payable;
- (d) if so required by the Lender in its discretion, in or towards satisfaction of the Secured Liabilities; and
- (e) to the person entitled to any surplus.

14 PROTECTION OF THIRD PARTIES

14.1 Any person (including, without limitation, any purchaser, mortgagor or mortgagee) (in this clause a "**purchaser**") dealing with the Lender may assume without inquiry that:

- (a) some part of the Secured Liabilities has become due;
- (b) a demand for such Secured Liabilities has been duly made; and
- (c) such Secured Liabilities have become due within the meaning of Section 101 of the LPA (Powers incident to estate or interest in a mortgage).

14.2 No purchaser dealing with the Receiver or the Lender is to be concerned to enquire whether any power exercised or purported to be exercised by the Receiver or the Lender has become exercisable, or as to the propriety or regularity of any sale by, or other dealing with, the Receiver or the Lender. Any such sale or dealing is deemed to be within the powers conferred by this Mortgage and to be valid and effective accordingly. All the protection to purchasers contained in Section 104 (Conveyance on sale) and Section 107 (Mortgagee's receipt, discharges etc.) of the LPA and Section 42(3) of the Insolvency Act (Prohibition upon enquiry into administrative receiver's powers) apply to any purchaser.

15 NO LIABILITY AS MORTGAGEE IN POSSESSION

15.1 Mortgagee's liability

Neither the Lender nor the Receiver is:

- (a) liable to account as mortgagee in possession in respect of the Charged Property; or
- (b) liable for any loss upon realisation or exercise of any power, authority or right of the Lender or the Receiver arising under this Mortgage, or for any act, default, neglect, or misconduct of any nature whatsoever.

15.2 Possession

If the Lender or the Receiver enters into possession of the Charged Property, such person may at any time go out of possession at the discretion of such person.

16 POWER OF ATTORNEY

- 16.1 The Company irrevocably appoints, by way of security the Lender, each person deriving title from the Lender and the Receiver, jointly and severally to be its attorney (with full power to appoint substitutes and to sub-delegate) for it, in its name, on its behalf and as its act and deed or otherwise to sign or execute any deed or document or do any act or thing which the Company is, or may become, obliged to sign, execute or do pursuant to this Mortgage or which the Lender, the Receiver or any person deriving title from the Lender or the Receiver may in the discretion of such person think fit in connection with the exercise of any of the powers of such person or the realisation of any security constituted by this Mortgage.
- 16.2 Without prejudice to the generality of the foregoing, the Company unconditionally undertakes to the Lender, and separately to the Receiver and to each person deriving title from the Lender or the Receiver, that it shall ratify and confirm anything done or purported to be done by any attorney appointed pursuant to this clause.

17 CUMULATIVE AND CONTINUING SECURITY

- 17.1 This Mortgage is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities and will not be prejudiced or affected by any act, omission or circumstance which, but for this clause, might affect or diminish its effectiveness.
- 17.2 The security constituted by this Mortgage is in addition to, is not in substitution for, is without prejudice to, and does not merge with, any rights whatsoever which the Lender may have, whether in respect of the Secured Liabilities or otherwise, including, without limitation, any rights arising under any other Security Interest, any bill, note, guarantee, contract or applicable rule of law.
- 17.3 Any receipt, release or discharge of the security constituted by, or of any liability arising under, this Mortgage shall not release or discharge the Company from any liability which may exist independently of this Mortgage to the Lender.
- 17.4 Where the security constituted by this Mortgage initially takes effect as a collateral or further security to any other Security Interest held by the Lender then, notwithstanding any receipt, release or discharge given in respect of such other Security Interest, this Mortgage shall take effect as an independent security for any monies, liabilities or other sums secured by such other Security Interest.

18 AVOIDANCE OF PAYMENTS

- 18.1 No assurance, security or payment which may be avoided under the law or subject to an order of the court made under any law relating to bankruptcy, insolvency, administration or winding-up, including, without limitation, the Insolvency Act, and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, prejudices or affects the right of the Lender:

- (a) to recover any monies from the Company (including, without limitation, any monies which it is compelled to refund under Chapter X (Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions) of the Insolvency Act and any Costs payable by it incurred in connection with such process); or
- (b) to enforce the security constituted by this Mortgage to the full extent of the Secured Liabilities.

18.2 The Lender may at its discretion retain the security so created as security for the Secured Liabilities for a period of one month plus any statutory period within which any such assurance, security or payment can be avoided or invalidated notwithstanding any release, settlement, discharge or arrangement given or made by the Lender.

18.3 If at any time within the period referred to in clause 18.2 any person takes any step whatsoever relating to (i) the winding-up or administration of the Company, or (ii) any arrangement with the creditors of the Company, the Lender may retain the whole or any part of the security constituted by this Mortgage for such further period as the Lender may in its discretion think fit. Such security will be deemed to have been held and remained held by the Lender as security for the payment to the Lender of the Secured Liabilities.

19 PRIOR CHARGES

19.1 If there subsists any prior Security Interest against the Charged Property and either, any step is taken to exercise any power or remedy conferred by such Security Interest or the Lender or the Receiver exercises any power of sale pursuant to this Mortgage, the Lender may redeem such prior Security Interest or procure the transfer of such Security Interest to itself and may settle and pass the accounts of the person entitled to such Security Interest. Any accounts so settled and passed are conclusive and binding on the Company.

19.2 The Company shall reimburse the Lender for any Costs incurred by the Lender in exercise of its rights under this clause.

20 OPENING A NEW ACCOUNT

20.1 If the Lender receives notice of any subsequent Security Interest affecting the Charged Property, the Lender may open a new account for the Company in its books.

20.2 If the Lender does not open such new account, then, unless the Lender gives express written notice to the contrary to the Company, all payments by or on behalf of the Company to the Lender will be treated as from the time of receipt of notice of such subsequent Security Interest by the Lender as having been credited to a new account of the Company and not as having been applied in reduction of the amount of the Secured Liabilities as at the time when the notice was received.

21 SUSPENSE ACCOUNT

The Lender may, in its discretion credit to any suspense or impersonal account and hold in such account, on such terms as the Lender may in its discretion think fit, all

monies received, recovered or realised by the Lender pursuant to this Mortgage (including, without limitation, the proceeds of any conversion of currency) pending the application from time to time (as the Lender may effect in its discretion) of such monies and accrued interest, if any, in or towards satisfaction of the Secured Liabilities.

22 PAYMENTS AND WITHHOLDING TAXES

Subject to clause 12 (*Tax Gross-Up and Indemnities*) of the Facility Agreement, the Company shall pay and discharge the Secured Liabilities without any set-off, counterclaim, restriction or condition, without regard to any equities between the Company and the Lender and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent that the Company is required by law to deduct or withhold any Taxes on any amounts payable under this Mortgage, in which case it shall pay to the Lender such additional amount as may be necessary in order to ensure that the net amount received by the Lender after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) be equal to the amount that the Lender would have received had no such deduction or withholding been made. Any additional amount paid under this clause shall be treated as agreed compensation and not as interest.

23 CURRENCY

- 23.1 All monies received or held by the Lender or any Receiver in respect of the Secured Liabilities may, from time to time after demand has been made, be converted into such other currency as the Lender in its absolute discretion considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Company in that other currency at the Lender's prevailing spot rate of exchange for purchasing that other currency with the existing currency.
- 23.2 If and to the extent that the Company fails to pay the amount due on demand the Lender may in its absolute discretion without notice to the Company purchase at any time thereafter so much of any currency as the Lender considers necessary or desirable to cover the obligations and liabilities of the Company in such currency hereby secured at the Lender's prevailing spot rate of exchange for purchasing such currency with sterling and the Company hereby agrees to indemnify the Lender against the full sterling cost incurred by the Lender for such purchase.
- 23.3 Neither the Lender nor any Receiver shall be liable to the Company for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.
- 23.4 No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Company in respect of which it was made unless and until the Lender shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability actual or contingent expressed in that currency the Lender shall have a further separate cause of action against the Company, shall be entitled to enforce the security constituted by this Mortgage to recover the amount of the shortfall and such amount will bear interest in accordance with clause 3 (*Interest*) from the date of payment by the Lender until the date of reimbursement.

24 SET-OFF

The Company agrees the Lender may at any time without notice or further demand notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of its then existing accounts wherever situate including any accounts in the name of the Lender or of the Company jointly with others (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in sterling or in any other currency) and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of the Secured Liabilities. Where such combination, set-off or transfer requires the conversion of one currency into another, such conversion shall be calculated at the Lender's prevailing spot rate of exchange for purchasing the currency for which the Company is liable, with the existing currency.

25 ASSIGNMENT

Neither the Lender nor the Company may assign, transfer, novate or dispose of any of or any interest in, its rights and obligations under this Mortgage, save as provided in the Facility Agreement.

26 WAIVERS

No failure or delay or other relaxation or indulgence on the part of the Lender to exercise any power, right or remedy shall operate as a waiver thereof or shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

27 SEVERABILITY

Each of the provisions of this Mortgage is distinct and severable from the others and if at any time one or more of such provisions is or becomes illegal, invalid or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

28 LAND REGISTRY

The Company hereby consents to the entry of the following restriction in the Proprietorship Register of any registered land forming part of the Scheduled Property:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [^{7 December} 2018] in favour of [the Lender] as referred to in the Charges Register (or its conveyancer) or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer or one of its directors."

The Company authorises the Lender to make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter this restriction against the relevant registered estate.

29 NOTICES

29.1 Communications in writing

Any communication to be made under or in connection with this Mortgage shall be made in writing and, unless otherwise stated, may be made by fax or letter.

29.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Mortgage is:

- (a) in the case of the Company, that identified with its name below; and
- (b) in the case of the Lender, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the other by not less than five Business Days' Notice.

29.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Mortgage will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 29.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

30 GOVERNING LAW

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

31 ENFORCEMENT

- 31.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Mortgage (including a dispute regarding the existence, validity or termination of this Mortgage) or any non-contractual obligation arising out of or in connection with this Mortgage (a "**Dispute**").
- 31.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

31.3 Notwithstanding clause 31.1 above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

32 COUNTERPARTS

This Mortgage may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Mortgage.

33 THIRD PARTY RIGHTS

Unless expressly provided in this Mortgage, no term of this Mortgage is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

This Mortgage has been executed and delivered as a deed on the date stated at the beginning of this Mortgage.

SCHEDULE

The Scheduled Property

Short description of property	Title number (if any)
All that leasehold property known as Costa Coffee Unit, Old Warwick Road, Leamington Spa CV31 3NT contained in a lease of even date and made between (1) Optimisation Investments Limited and (2) the Company.	

EXECUTION PAGE

The Company

EXECUTED and DELIVERED as a DEED)
for and on behalf of **BREATHFULL 4**)
LIMITED by one director in the presence of:)

.....
Director

Witness signature:

Witness name:

Witness address:

John R W Hayward
John R W Hayward
7 Dering Lane Square
London EC2M 4YH

Notice Details:

Address: c/o Cashlong Group Limited
Fourth Floor
27 Gloucester Place
London W1U 8HU

Fax No: 020 7935 8431

Telephone No: 020 7491 0683

Email: aristo@cashlonggroup.co.uk

Attention: Aristides D'Costa

The Lender

EXECUTED and DELIVERED as a DEED)
by and)
by each)
as a duly authorised signatory for and on)
behalf of **INVESTEC BANK LIMITED** in the)
presence of:)

.....
Authorised signatory

.....
Authorised signatory

EXECUTION PAGE

The Company

EXECUTED and DELIVERED as a DEED)
for and on behalf of **BREATHFULL 4**)
LIMITED by one director in the presence of:)

.....
Director

Witness signature:

Witness name:

Witness address:

.....

Notice Details:

Address: c/o Cashlong Group Limited
Fourth Floor
27 Gloucester Place
London W1U 8HU

Fax No: 020 7935 8431

Telephone No: 020 7491 0683

Email: aristo@cashlonggroup.co.uk

Attention: Aristides D'Costa

The Lender

EXECUTED and DELIVERED as a DEED)
by *Sarah Meyer Pickermann* and)
by **ESKA SCHOEMAN** each)
as a duly authorised signatory for and on)
behalf of **INVESTEC BANK LIMITED** in the)
presence of:)

.....
Authorised signatory

J. Chcem
.....
Authorised signatory

Witness signature:



Witness name:

Prasta Kolapo

Witness address:

Cnr Atterbury & Klarinet
Menlo Park

Notice Details:

Address:

Cnr Atterbury and Klarinet Street
Menlo Park
Pretoria 0102
South Africa

Fax No:

Telephone No:

Email:

ria.claassen@investec.co.za

cc: Pretoria Branch Manager: melanie.humphries@investec.co.za

Attention:

Head of Private Bank, Pretoria