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The Companies Acts 1985 – 1989

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**COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION  
OF  
OVERGATE GP LIMITED**



(Adopted by Special Resolution passed on 14<sup>th</sup> June 2000)

(Amended by Special Resolution passed on 11 October 2004)

**1. PRELIMINARY**

The regulations contained in Table A in The Companies (Tables A to F) Regulations 1985 (as amended so as to affect companies first registered on the date of the adoption of these Articles) shall, except as hereinafter provided and so far as not excluded by or inconsistent with the provisions of these Articles, apply to the Company to the exclusion of all other regulations or Articles of Association. References herein to regulations are to regulations in the said Table A unless otherwise stated.

**2. SHARE CAPITAL**

2.1 The share capital of the Company at the date of the adoption of these Articles is £500,000,020, divided into 500,000,000 O Shares of £1 each and 2,000 D Shares of £0.01 each.

2.2 Each D Share shall:

- (a) carry the right to vote on a resolution to appoint or remove the D Director as specified in these Articles;
- (b) be subject to the restrictions on transfer set out in these Articles; and
- (c) have the right, upon the winding up of the Company, to be repaid all sums paid up upon that D Share in preference to any payments being made to the holders of the O Shares.

The D Shares shall have no rights other than those specified above, and in particular, shall have no right to receive notice of or attend and vote at General Meetings, participate in any dividends declared by the Company, or participate in the surplus assets of the Company upon a winding up of the Company.

D Shares may only be issued, and held, in accordance with the Partnership Documents.

- 2.3 Each O Share shall, except as specifically provided otherwise in these Articles, carry the right to receive notice of and attend and vote at General Meetings, participate in any dividends declared by the Company, participate in the surplus assets of the Company upon winding up of the Company (subject to Article 2.2), and have such other rights as attach to ordinary shares in a company, whether by statute or otherwise, provided that no O Share shall confer on its holder any right to vote upon any resolution to appoint or remove the D Director.

### **3. ISSUE AND PURCHASE OF SHARES**

Subject to Article 2.2 and Section 80 of the Companies Act 1985, all unissued shares shall be at the disposal of the Directors and they may allot, grant options over or otherwise dispose of them to such persons, at such times and on such terms as they think, proper, including allotting any unissued D Shares in accordance with the Partnership Documents. Section 89(1) of the Companies Act 1985 shall not apply to the allotment by the Company of any equity securities (as that expression is defined for the purposes of that Section 89).

### **4. TRANSFER OF SHARES**

In addition to the provisions of Regulation 24, D Shares shall not be transferable without the consent of the Directors, provided that the Directors' consent to a transfer of D Shares shall not be refused or delayed in the case of a transfer required or permitted by the Partnership Documents.

### **5. PROCEEDINGS AT GENERAL MEETINGS**

- 5.1 Save as herein otherwise provided, the quorum at any General Meeting shall be one member present in person or by proxy being or representing a holder of any of the O Shares. Subject to Article 5.3, Regulation 40 shall be modified accordingly.
- 5.2 In the case of a corporation, a resolution in writing may be signed on its behalf by a Director or the Secretary thereof or by its duly appointed attorney or duly authorised representative. Regulation 53 shall be extended accordingly.
- 5.3 Class meetings of the holders of the D Shares shall be held as if such meetings were General Meetings, with such modifications as may be necessary, provided

that Regulation 40 shall, notwithstanding Article 5.1, apply unmodified to such class meetings.

**6. VOTES OF MEMBERS**

6.1 On a show of hands every member who is present in person shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder; Provided that no shares of either class shall confer any right to vote upon a resolution for the removal from office of a Director appointed or deemed to have been appointed by holders of shares of the other class. Regulation 54 shall not apply.

6.2 An instrument appointing a proxy (and, where it is signed on behalf of the appointor by an attorney, the letter or power of attorney or a duly certified copy thereof) must either be delivered at such place or one of such places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting (or, if no place is so specified, at the registered office) at least one hour before the time appointed for holding the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used or be delivered to the Secretary (or the chairman of the meeting) on the day and at the place of, but in any event before the time appointed for holding, the meeting or adjourned meeting or poll. An instrument of proxy shall not be treated as valid until such delivery shall have been effected. Regulation 62 shall not apply.

**7. O DIRECTORS**

7.1 The Directors at the date of the adoption of these Articles shall be designated as O Directors (and shall be deemed to have been appointed under Article 7.2 by the holders of the O Shares).

7.2 The holders of a majority of the O Shares may from time to time appoint any number of persons to be O Directors and to remove those O Directors from office. Regulations 73 to 80 shall not apply.

7.3 Any appointment or removal of O Directors by the holders of the O Shares shall be in writing served on the Company and signed by the holders of a majority of the issued O Shares. A notice given by a corporation pursuant to this Article may be signed on its behalf by a Director or the Secretary thereof or by its duly appointed attorney or duly authorised representative.

**8. D DIRECTORS**

8.1 Members holding a majority of the issued D Shares may from time to time appoint a person to be a D Director in accordance with the provisions of these Articles. The D Director shall be a person who is independent of both the Lend Lease Group, the Group of any holder of D Shares and the Group of any

Participant in a Feeder Fund. The terms of appointment of the D Director shall include an acknowledgement by him that, subject and without prejudice to his duties as a Director, he must act in good faith in what he considers to be the best interests of the Partnership as a whole taking account of the provisions of the Partnership Agreement but otherwise (save in the case of wilful default or fraud) owes no duties or liability to the Partnership or the Limited Partners and is not a representative or agent of the Limited Partners or any of them nor is entitled to represent himself as such.

- 8.2 The first D Director shall be appointed by a resolution passed by the holders of a majority of the issued D Shares at a class meeting of the holders of the D Shares, such meeting to be held within 28 clear days following the Formation Date. A candidate for appointment as D Director pursuant to this Article shall be nominated by the O Directors being a person who is eligible and willing to act as D Director. If the candidate nominated is not approved by such resolution, further nominations shall be made until such time as the D Shareholders shall have appointed a D Director.
- 8.3 Subject to Articles 8.1, 8.2, 8.4 and 8.5, the holders of a majority of the issued D Shares shall be entitled to appoint and remove from office, by a resolution passed at a class meeting of the holders of the D Shares, the D Director, provided that the D Director shall retire at class meetings of the holders of the D Shares which shall be held within 2 months following every third anniversary of the Formation Date (a "**Retirement Meeting**"). Regulations 73 to 80 shall not apply.
- 8.4 If the holders of the D Shares do not fill the vacancy of a D Director retiring at a Retirement Meeting pursuant to Article 8.3, the D Director retiring at such a Retirement Meeting shall, if willing to act, be deemed to have been reappointed unless a resolution for the reappointment of the D Director is put to the Retirement Meeting and lost. If the holders of the D Shares fail to hold a Retirement Meeting in accordance with these Articles, the D Director shall, if willing to act, be deemed to have been reappointed as if such Retirement Meeting had been held and no resolution for the appointment of a D Director had been put to that meeting and lost.
- 8.5 No person other than a D Director retiring at a Retirement Meeting pursuant to Article 8.3 shall be appointed as a D Director at a class meeting of the holders of the D Shares unless not less than fourteen nor more than 35 clear days before the date appointed for the meeting, notice executed by a holder of D Shares has been given to the Company or the intention to propose that person for appointment stating the particulars which would, if he were so appointed, be required to be included in the Company's register of Directors together with notice execution by that person of his willingness to be appointed.
- 8.6 Not less than seven nor more than twenty-eight clear days before the date appointed for holding a meeting of the holders of the D Shares pursuant to Article

8.3 notice shall be given to all the holders of D Shares of any person (other than, in the case of a Retirement Meeting, the D Director retiring at that meeting) in respect of whom notice has been duly given to the Company of the intention to propose at the meeting for appointment as a D Director. The notice shall give the particulars of that person which would, if he were so appointed, be required to be included in the Company's register of Directors.

- 8.7 Subject as aforesaid, the D Director retiring at Retirement Meetings may, if willing to act, be reappointed. If a D Director is not reappointed, he shall retain office until the Retirement Meeting appoints someone in his place, or if it does not do so, until the end of the Retirement Meeting.

## **9. ALTERNATE DIRECTORS**

- 9.1 The holders of a majority of any one class of shares may at any time appoint any person (including another Director) to be the alternate Director of any Director appointed by the holders of the relevant class and may at any time terminate such appointment. Any such appointment or termination of appointment shall be effected in like manner as provided in Article 7.2 or 8.3 (as the case may require). The same person may be appointed as the alternate Director of more than one Director. Regulations 65 to 68 shall not apply.
- 9.2 The appointment of an alternate Director shall determine on the happening of any event which if he were a Director would cause him to vacate such office or if the Director of whom he is the alternate ceases to be a Director.
- 9.3 An alternate Director shall be entitled to receive notices of all meetings of the Directors and of all committees of Directors of which a Director of whom he is the alternate is a member to attend and vote and be counted in the quorum at any such meeting at which a Director of whom he is the alternate is not personally present and generally to perform all the functions of a Director of whom he is the alternate in his absence and the provisions of these Articles shall apply as if he were a Director appointed by the holders of the relevant class of shares. If he shall be himself a Director or shall attend any such meeting as an alternate for more than one Director his voting rights shall be cumulative.

## **10. VACATION OF OFFICE**

The office of a Director shall be vacated :

- (a) in any of the events specified in Regulation 81;
- (b) if he is removed from office pursuant to Article 7.2 or 8.3 (as the case may be);

- (c) if he shall in writing offer to resign and the Directors shall resolve to accept such offer; or
- (d) if, being a D Director, he ceases to be independent of the Lend Lease Group, the Group of any holder of D Shares and the Group of any Participant in a Feeder Fund.

## **11. REMUNERATION OF DIRECTORS**

A D Director shall be entitled to such remuneration as may be agreed between him and the holders of a majority of the issued D Shares. Regulation 82 shall not apply.

## **12. PROCEEDINGS OF DIRECTORS**

- 12.1 The quorum at a meeting of Director shall be two of which one shall be an O Director and one the D Director, provided that if within half an hour of the time appointed for the holding of any meeting of the Directors the D Director shall not be present the O Directors present shall resolve to adjourn that meeting to a specified place and time (which shall not be earlier than three nor later than seven days after the date originally fixed for the meeting). At such adjourned meeting the quorum necessary for the transaction of the business of the Directors shall be at least one O Director. An alternate Director shall be counted in the quorum in the same capacity as his appointor but so that not less than two individuals will constitute the quorum. Regulation 89 shall not apply.
- 12.2 No Director shall be appointed otherwise than as provided in these Articles. Regulation 90 shall be modified accordingly.
- 12.3 The Directors may appoint any one O Director or D Director to be chairman of the board of directors and may at any time remove him from that office. Regulation 91 shall be modified accordingly.
- 12.4 All business arising at any meeting of the Directors or of any committee of the Directors shall be determined only by resolution passed by a majority of the Directors, other than any resolution considered at a meeting of the Directors in relation to a conflict of interest which shall be decided by a majority of the votes of the Directors, provided that no such resolution shall be passed without the vote of the D Director in favour of that resolution. Regulation 88 shall be modified accordingly.
- 12.5 Notwithstanding anything in these Articles, the D Director shall have the powers conferred on the D Director by the Partnership Agreement including, without limitation, those set out in Clause 15.2 thereof (Procedure for Resolving Conflicts).

- 12.6 On any matter in which a Director is in any way interested he may nevertheless vote and be taken into account for the purposes of a quorum and (save as otherwise agreed) may retain for his own absolute use and benefit all profits and advantages directly or indirectly accruing to him thereunder or in consequence thereof. Regulations 94 to 98 shall be modified accordingly.
- 12.7 The Directors, and any committee of the Directors, shall be deemed to meet together if, being in separate locations, they are nonetheless linked by conference telephone or other communication equipment which allows those participating to hear and speak to each other, and a quorum in that event shall be two persons so linked. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

### **13. INDEMNITY**

Subject to the provisions of and so far as may be permitted by law, every Director, Auditor, Secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto including any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court. Regulation 118 shall not apply.

### **14. WINDING UP**

If the Company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Companies Act 1985, and subject to Article 2.2, divide among the holders of the O Shares in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the holders of O Shares. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the holders of O Shares as he with the like sanction determines, but no holders of O Shares shall be compelled to accept any assets upon which there is a liability. Regulation 117 shall not apply.

### **15. DEFINITIONS**

In these Articles, the following terms shall have the following meanings, unless the context requires otherwise :

**"conflict of interest"** has the meaning set out in Clause 15 of the Partnership Agreement;

**"D Director"** means a director appointed by members holding a majority of the issued D Shares pursuant to Article 8.1, 8.2 or 8.3;

**"independent"** means, in relation to a Group, an individual who is not, and who has not been within the two year period preceding the relevant date, a director, officer or employee of any company in that Group;

**"O Directors"** mean the directors appointed by members holding a majority of the issued O Shares pursuant to Article 7.2;

**"Participation", "Participant", "Formation Date", "Founder", "Feeder Fund", "Group", "Lend Lease Group", "Limited Partner", "Material Matter"** and **"Operator"** have the respective meanings set out in Schedule 1 to the Partnership Agreement;

**"Partnership"**, means Lend Lease Overgate Partnership, a limited partnership registered under the Limited Partnerships Act 1907;

**"Partnership Agreement"** means the Agreement dated 26<sup>th</sup> May 2000 entered into between the Company, Lend Lease Europe Retail Investments Limited and Lend Lease Funds Management Limited which constitutes the Partnership; and

**"Partnership Documents"** means the Partnership Agreement and/or any agreement or other document which constitutes a Feeder Fund.