

**PRIVATE COMPANY LIMITED BY SHARES**

I hereby certify that this is a true and correct copy of the original document produced to us



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COMPANIES HOUSE

**WRITTEN RESOLUTIONS**

of

**ROCCO FORTE & FAMILY (GENEVA) LIMITED**

(the "Company")

**Forsters LLP**  
Forsters LLP, Solicitors  
31 Hill Street, London W1J 5LS

Dated 4.11.08

31 October 2008

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the Directors of the Company propose that resolution 1 be passed as a special resolution and resolution 2 be passed as an ordinary resolution (the "**Resolutions**").

**RESOLUTIONS**

- 1 THAT the regulations annexed to this written resolution and initialled for the purpose of identification be adopted as the articles of association of the Company in substitution for and to the exclusion of the existing articles of association.
- 2 THAT the terms of, the arrangements contemplated by, and the execution, delivery and performance by the Company of the following documents (together referred to as the "**Documents**"):-
  - 2.1 a fifth supplemental agreement to be made between the Company, Group Companies, the Bank of Scotland Plc ("**BoS**") as Agent, Arranger, Security Trustee and Issuing Bank and the Financial Institutions (all as defined therein) pursuant to which the facility agreement (between *inter alia* the Company and the BoS dated 20 June 2003 as amended and restated on 17 November 2004, as further amended and restated on 28 September 2007 and further amended on 25 March 2008 and 2 July 2008) is to be amended as set out therein (the "**Fifth Supplemental Agreement**"),
  - 2.2 a second supplemental intercreditor to be made between certain Group Companies, BoS as Agent, the Security Trustee, the Lenders and the Loan Stockholders (each as defined therein) pursuant to which certain amendments are to be made to the intercreditor agreement dated 3 July 2003 (as previously amended by the supplemental intercreditor agreement dated 17 November 2004);
  - 2.3 a deed of confirmation to be entered into between the Company and BoS as Security Trustee in relation to the debenture granted by the Company in favour of BoS as Security Trustee and dated 3 July 2003,
  - 2.4 a security agreement to be entered into between BoS as Security Trustee and the Company as Pledgor (as defined therein), and

- 2.5 a replacement security agreement to be entered into between BoS as Security Trustee, the Company and Rocco Forte & Family Geneva SA as Pledgors (as defined therein),

BE HEREBY APPROVED as being in the best interests of the Company and of commercial benefit to the Company.

THAT any act done or document executed pursuant to any of the foregoing paragraphs shall be valid, effective and binding upon the Company notwithstanding any limitation on the powers of the directors of the Company contained in or incorporated by reference in the Company's articles of association (any such limitation being hereby suspended, waived, relaxed or abrogated to the extent required to give effect to the foregoing resolutions).

#### AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolutions

The undersigned, being the persons entitled to vote on the Resolutions on 31 October 2008, hereby irrevocably agree to the Resolutions

Signed on behalf of **ROCCO FORTE & FAMILY (LUXURY HOTELS) LIMITED**

.. *Rocco Forte* .. ..

Date

.. 31. Oct. 2008 .. ..

#### NOTES

1. If you agree with the Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company

If you do not agree to the Resolutions, you do not need to do anything. you will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolutions, you may not revoke your agreement

3. Unless, by 28 November 2008, sufficient agreement has been received for the Resolutions to pass, it will lapse. If you agree to the Resolutions, please ensure that your agreement reaches us before or during this date.

180  
Company number 5133159

**THE COMPANIES ACT 1985**

**PRIVATE COMPANY LIMITED BY SHARE**

**ARTICLES OF ASSOCIATION**

**of**

**SIR ROCCO FORTE & FAMILY (GENEVA) LIMITED**

**(adopted by special resolution passed on 31 October 2008)**

**1 Preliminary**

- 1.1 The Company is established as a private company within the meaning of section 1(3) of the Act (as hereinafter defined) in accordance with and subject to the provisions of the Act and of the Memorandum of the Company and of the Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (such Table A being hereinafter called "Table A") with the exception of Regulations 5, 24, 25, 38, 53, 64 to 69 inclusive, 73 to 78 inclusive, 80, 87, 93 to 96 inclusive and 118 of Table A and of any other Regulations which are inconsistent with the additions and modifications hereinafter set out.
- 1.2 In these Articles the expression the "Act" means the Companies Act 1985 but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force
- 1.3 In these Articles the expressions "subsidiary" and "holding company" shall have the meanings ascribed thereto in section 736 of the Act

**2 Share capital**

The authorised share capital of the Company as at the date of adoption of these Articles is £10,000 divided into 10,000 ordinary shares of £1 each

**3 Allotment of shares**

- 3.1 All unissued shares or any other relevant securities in the Company shall be at the disposal of the directors and, provided that if and so long as any company is for the time being the holding company of the Company (hereinafter referred to as the "Parent Company") the prior consent in writing of the Parent Company has been obtained, the directors may offer, allot (with or without conferring a right of remuneration), grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think fit provided that (in so far as the Company shall not have varied, renewed or revoked the said authority) the directors shall not be authorised to make any offer or allotment of shares in the Company, (or grant any right to subscribe for or to convert any securities into shares in the Company) if such

allotment (or an allotment in pursuance of such offer or right) would or might result in the aggregate of the relevant securities in issue exceeding (in nominal value) the amount of the authorised share capital of the Company for the time being and such limitation shall determine the maximum amount of the relevant securities which at any time remain to be allotted by the directors under this Article 3.1

3 2 The period within which such authority may be exercised shall be limited to five years, commencing upon the incorporation of the Company.

3 3 Any shares in the Company for the time being unissued shall, before they are issued, be offered to the members in proportion to their existing holdings of shares as nearly as the circumstances admit. Such offer shall be made by notice specifying the number of shares offered and limited to a time after which the offer, if not accepted, will be deemed to be declined. After the expiration of such time or, if earlier, on the receipt of a notice from the person to whom the offer has been made that he declines to accept the shares offered, the directors may subject to these Articles dispose of the same in such manner as they think most beneficial to the Company.

3 4 In accordance with section 91 (1) of the Act, sections 89 (1) and 90 (1) to (6) inclusive of the Act shall be excluded from applying to allotments by the Company of equity securities (as defined in section 94 of the Act)

#### **4. Transfer of shares**

4 1 The directors may in their absolute discretion and without assigning any reason decline to register any transfer of any share whether or not it is fully paid. If and so long as the Company has for the time being a Parent Company, the prior written consent of the Parent Company to any transfer of any share shall be required.

4 2 The directors shall not decline (nor shall any sanction of the board be required) to register any transfer of shares, nor may they suspend registration of any shares where such transfer is executed by any person to whom such shares have been charged by way of security, or by any nominee of such person, pursuant to a power of sale under such security, and a certificate by any such person or any employee of any such person that the shares were so charged and the transfer was so executed shall be conclusive evidence of such facts.

#### **5 Notice of general meetings**

5 1 An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty-one days' notice. All other extraordinary general meetings shall be called by at least fourteen days' notice but a general meeting may be called by shorter notice if it is so agreed:

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat, and
- (b) in case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety-five per cent in nominal value of the shares giving that right.

5 2 Such agreement must be signed by the requisite percentage of members specified above, which consent and signature may be evidenced by letter, electronic mail, facsimile, or otherwise in writing and may consist of several documents in the like form consented to and signed by one or more members as the directors may from time to time resolve to permit. The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

5 3 Subject to the provisions of the Articles and to any restrictions imposed on any shares, the notice shall be given to all members, to all persons entitled to a share in consequence of the death, bankruptcy or insolvency of a member and to the directors and auditors of the Company.

## **6 General meetings**

6.1 If and so long as the Company has for the time being a Parent Company, the Parent Company's authorised representative shall constitute a quorum and Regulation 40 of Table A shall be modified accordingly.

6.2 If the Company shall have only one member, these Articles shall (in the absence of an express provision to the contrary) apply with such modification as may be necessary and in particular

(a) one member present in person or by proxy shall be a quorum, and

(b) a proxy for such member shall be entitled to vote on a show of hands and regulation 54 of Table A shall be modified accordingly.

6 3 Subject to the provisions of the Articles, a member may participate in a meeting of the Company by means of conference telephone or similar communications equipment whereby all the members participating in the meeting can hear each other, and the members participating in a meeting in this manner shall be deemed to be present in person at such a meeting.

6 4 A resolution in writing which has been consented to and signed by or on behalf of all the members who would have been entitled to vote upon it if it had been proposed at a general meeting at which they were present (which consent and signature may be evidenced by letter, electronic mail, facsimile, or otherwise in writing as the directors may from time to time resolve to permit) shall be as effective as a resolution passed at a meeting of members duly convened and held and may consist of several documents in the same terms each consented to by one or more members.

## **7 Entrenched rights**

Notwithstanding anything to the contrary in these Articles, the members hereby agree that they shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (insofar as they are able by the exercise of such rights and powers) that the Company shall not without the prior written consent of all of the members or, if and so long as the Company has for the time being a Parent Company, the Parent Company (and all of the members thereof)

7 1 alter the memorandum of association, the articles of association or the accounting reference date of the Company, or

- 7.2 issue any unissued shares or create or issue any new shares in the Company or grant options over any of its shares or other securities; or
- 7.3 acquire, purchase, or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or any body (except for the purpose of setting up a wholly owned subsidiary of the Company in furtherance of the business carried on by it); or
- 7.4 hold any meeting of its members or purport to transact any business at any such meeting unless there shall be present duly authorised representatives or proxies for the Parent Company, or
- 7.5 alter, increase, reduce or redeem the authorised or issued share capital of the Company, or
- 7.6 reorganise, consolidate, sub-divide or convert the shares for the time being in the capital of the Company or vary any of the rights attaching to any such shares, or
- 7.7 make any political gift or charitable donation, or
- 7.8 give any guarantee, indemnity or security in respect of the obligations of any other person or permit any such guarantee or indemnity or security to subsist or vary any such guarantee or indemnity or security or provide any credit (other than normal trade credit on commercially reasonable terms in the ordinary course of the business carried on by the Company), or
- 7.9 pay any remuneration or expenses to any person (but not, without the consent of the Parent Company and all of the Shareholders, to any person who is a director or an employee of any Shareholder) other than as proper remuneration for work done or services provided or as proper reimbursement for expenses incurred in connection with the business carried on by the Company (the "Business"), or
- 7.10 alter any restriction on the powers of the directors of the Company to borrow, give guarantees or create charges, or
- 7.11 make any application for admission of any part of the share capital of the Company to the Official List of the Financial Services Authority, the Alternative Investment Market of London Stock Exchange plc or any other recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000) or make any arrangements for any other form of marketing of any of its share capital (including without limitation on any bourse or stock exchange other than the London Stock Exchange plc), or
- 7.12 make any loan or advance; or
- 7.13 create any mortgage or charge over any part of its undertaking, property or assets, or
- 7.14 incur any expenditure or liability or authorise, approve or permit any expenditure or liability to be incurred in respect of the acquisition of any business or capital asset whatsoever of the Company of an aggregate amount in excess of £10,000 in any financial year, or
- 7.15 acquire or dispose of any hotel or enter into any commitment to do so, or

- 7 16 enter into any contract or arrangement of a long term nature other than in the ordinary course of business, or
- 7 17 appoint any committee of the board of directors of the Company (the "Board") to take any decisions which are material to the Company otherwise than at a meeting of the Board, or
- 7.18 establish or vary the rules of any profit sharing, bonus or incentive scheme or any benefits scheme, or
- 7.19 sell the undertaking of the Company or any substantial part thereof or sell any fixed assets of the Company other than in the ordinary course of business, or
- 7 20 sell or otherwise dispose of any freehold or leasehold property or any interest therein other than in the ordinary course of business, or
- 7 21 dispose of any share in the capital of any subsidiary of the Company, or
- 7 22 borrow any money or incur any indebtedness in the nature of borrowing; or
- 7 23 commence legal proceedings except for the purposes of the recovery of debts owed to the Company in the ordinary course of business, or
- 7 24 change or permit a change in the general nature of or diversify the Business, or
- 7 25 take any steps to have the Company wound up whether for the purposes of amalgamation or reconstruction or otherwise unless a registered insolvency practitioner shall have advised that the Company requires to be wound up by reason of having become insolvent, or
- 7 26 use the name of The Governor and Company of the Bank of Scotland, Uberior Investments plc or Uberior Ventures Limited

## **8 Directors**

- 8 1 The number of directors (other than alternate directors) shall not be less than two nor more than five No person shall be ineligible for appointment as a director by reason of his having attained any particular age
- 8 2 If and for so long as the Company has for the time being a Parent Company each holder of ordinary shares in the Parent Company shall be entitled to appoint two directors of the Company, save to the extent that the Parent Company (and the members thereof) otherwise agree Any appointment or removal of such directors shall be effected by instrument in writing signed on behalf of the Parent Company by one of its directors duly authorised in that regard and shall be effective forthwith upon the receipt of such instrument at the registered office of the Company. Regulation 79 shall not apply
- 8 3 If the Company does not have a Parent Company
  - (a) Regulation 79 shall apply,
  - (b) without prejudice to the powers of the directors under Regulation 79, a member or members holding more than half in nominal amount of the issued share capital of the Company shall have power to appoint any person or persons as a

director or directors, either as an addition to the existing directors or to fill any vacancy, and to remove from office any director howsoever appointed, and

- (c) any such appointment or removal shall be effected by an instrument in writing signed by the member or members making the same or by their duly appointed attorney or attorneys (or, in the case of a Member which is a body corporate, by a director of it or by a duly appointed representative) Any such instrument may consist of several documents in the like form each signed or approved by one or more of the members or their attorneys (or, in the case of a member which is a body corporate, by a director of it or by a duly appointed representative) and shall take effect upon delivery to the registered office of the Company

8.4 No director shall be required to retire by rotation

## **9 Disqualification of directors**

The office of a director shall be vacated in any of the following events

- 9 1 if he resigns his office by notice in writing to the Company, or
- 9 2 if he becomes bankrupt or makes any arrangement or composition with his creditors generally, or
- 9 3 if he is admitted to hospital in pursuance of an application for his admission under either the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984 or an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise power with respect to his property or affairs, or
- 9 4 if he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director, or
- 9 5 if he is absent from meetings of the Board for six successive months without leave and his alternate director (if any) shall not during such period have attended in his stead and the directors resolve that his office be vacated; or
- 9 6 if he shall be removed from office under the provisions of Articles 8 2 or 8 3

## **10 Proceedings of directors**

10 1

- (a) The directors shall meet together for the dispatch of business at least once every two months, or with such other frequency as the directors may from time to time agree in writing
- (b) Unless otherwise agreed by each of the directors, notice of meetings of the Board shall be provided to each of the directors not less than three working days prior to the date of the said meeting of the Board.
- (c) The quorum for the transaction of business of the Board or any committee of the Board shall

- (i) if and for so long as the Company has for the time being a Parent Company, such persons as constitute a quorum in relation to the board of directors or committee of the board of directors (as the case may be) of the Parent Company, save to the extent that the Parent Company (and the members thereof) otherwise agree, and
    - (ii) otherwise, any two directors.
  - (d) An alternate director who is not himself a director may if his appointor is not present be counted towards the quorum
  - (e) No business shall be transacted by the Board or any committee of the Board unless a quorum is present at the commencement of the relevant Board meeting and also when the business is voted on
  - (f) If a Board meeting is adjourned because a quorum is not present, and at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the directors present shall form a quorum.
- 10 2 Any director or his alternate may validly participate in a meeting of the Board or a committee of the Board by conference telephone or other form of communication equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no group which is larger than any other group, where the chairman of the meeting is.
- 10 3 The chairman of the Board shall not have a second or casting vote at a meeting of the Board
- 10 4 Each director shall have one vote
- 10 5 A director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement (within the meaning of section 317 of the Act) with the Company shall declare the nature of his interest at a meeting of the Board or of any committee of the Board in accordance with that section. Subject where applicable to such disclosure a director may vote at any such meeting on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company. He may also be taken into account in ascertaining whether a quorum is present at any meeting of the directors or of a committee of the directors at which any such contract or arrangement is proposed or considered. Regulation 97 shall be modified accordingly
- 10 6 Questions arising at any meeting of the Board or at any committee of the Board shall be decided by unanimity. If at any time at or before any meeting of the Board or of any committee of the Board any director should request that the meeting should be adjourned or reconvened to another time or date (whether to enable further consideration to be given to any matter or for other directors to be present or for any other reason, which he need not state) then such meeting shall be adjourned or reconvened accordingly, and no business shall be conducted or proceeded with at that meeting after such request has been made

10 7 A resolution in writing which has been consented to and signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors (which consent and signature may be evidenced by letter, electronic mail, facsimile, or otherwise in writing as the directors may from time to time resolve to permit) shall be as effective as a resolution duly passed at a meeting of the directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the same terms each consented to by one or more directors, but a resolution signed by an alternate director need not also be signed by his appointor, and if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity

## 11 **Alternate directors**

Any director (other than an alternate director) may appoint any person (whether or not a director) to be an alternate director and may remove from office an alternate director appointed by him. An alternate director shall, except as regards remuneration, be subject to the provisions of these presents with regard to directors and shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) be entitled to receive notices of all meetings of the directors and of all meetings of committees of directors of which his appointor is a member and to attend and vote as a director at any such meetings at which the director for whom he is alternate is not personally present and generally to exercise and discharge as a director all of the functions, powers and duties of the director for whom he is alternate in the absence of such director. Any director acting as alternate shall have an additional vote for each director for whom he acts as alternate. An alternate director shall ipso facto cease to be an alternate director if the director for whom he is alternate ceases for any reason to be a director.

## 12 **Notices**

12 1 Any notice to be given to the Company pursuant to these Articles shall be sent to the registered office of the Company or presented at a meeting of the Board.

12 2 Any notice to be given pursuant to these Articles may be given by facsimile transmission to the facsimile number maintained at the relevant address of the addressee. Such a notice shall be conclusively deemed to have been properly given at the time shown on the transmission report received by the sender.

12 3 The words "unless the contrary is proved" shall be omitted from the second sentence of Regulation 115 and the figure "24" shall be inserted in substitution for the figure "48" in the second sentence of that Regulation. Any notice or other document delivered or left at a registered address otherwise than by post shall be deemed to have been served or delivered on the day it was so delivered or left.

## 13 **Indemnity**

13 1 Subject to the provisions of the Act, but without prejudice to any other indemnity to which the person concerned may otherwise be entitled, every director, alternate director, auditor, manager, secretary or other officer of the Company shall be entitled to be indemnified by the Company against all reasonable costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or the exercise of his powers or otherwise in relation thereto.

- (a) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted; or
- (b) in connection with any application under s 144(2) or (3) of the Act (acquisition of shares by innocent nominee) or s 727 of the Act (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the court

Regulation 118 shall be extended accordingly

- 13 2 The directors may exercise all the powers of the Company to purchase and maintain for every director or other officer insurance against any liability for negligence, default, breach of duty or breach of trust or any other liability which may be lawfully insured against

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