

**THE COMPANIES ACTS 1985  
COMPANY LIMITED BY SHARES  
ARTICLES of ASSOCIATION**

**of**

**ORCHARD INCORPORATIONS (13S) LIMITED**

**NO. SC 208806**

**(as adopted by Special Resolution dated 30th November 2000)**

1. The Regulations contained in Table A in the Schedule to the Companies (Table A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (such Table hereinafter referred to as "Table A") shall apply to and shall be the Regulations of the Company save in so far as they are excluded or varied hereby or are inconsistent herewith.

2. The Regulations numbered 23, 24, 73, 74, 75, 80, 94 and 95 of Table A shall not apply to the Company and the following Regulations in Table A shall be modified:-

Regulation 1, so that for the words "in these regulations" the words "in these regulations and in any articles adopting the same" shall be substituted:

Regulation 5, so that the words "no person shall be recognised by the company as holding any share upon any trust and" shall be held to be delete, and that there shall be added to the end of the Regulation the following sentence, "The company shall however be entitled to register trustees as such in respect of any shares."

Regulation 8, so that the words "(not being a fully paid share)" shall be held to be delete.

Regulation 15, so that there shall be added after the words "(as defined by the Act)" the words "and all expense that may have been incurred by the company by reason of such non-payment" and so that there shall be added after the words "payment of the interest" the words "and/or expenses."

Regulation 40, so that there shall be added to the end of the first sentence thereof the words "when the meeting proceeds to business."

Regulation 41, so that the words, " or if during a meeting such a quorum ceases to be present," shall be delete.

Regulation 51, so that the words "not being more than thirty days after the poll is demanded," shall be delete.



Regulation 59, so that there shall be added at the end thereof the following sentence "A proxy need not be a member of the company."

Regulation 70, so that there shall be added at the end of the second sentence thereof the following sentence "The directors shall have power to petition the court in the name of the company for the winding up of the company."

Regulation 78, so that the words from and including "and may also determine" to the end of the Regulation shall be held to be delete.

Regulation 79, so that the last two sentences thereof shall be delete.

### **SHARE CAPITAL**

3. (a) The authorised share capital of the Company as at the date of adoption of these Articles of Association is £100 divided into 40 A Ordinary Shares of £1.00 each (hereinafter, together with any other shares in the capital of the Company from time to time designated as A Ordinary Shares of £1.00, referred to as the "A Shares") and 60 B Ordinary Shares of £1.00 each (hereinafter, together with any other shares in the capital of the Company from time to time designated as the B Ordinary Shares of £1.00 each referred to as the "B Shares"). The A Shares and the B Shares are together referred to as the "Ordinary Shares").

The A Shares and the B Shares shall be separate classes of Shares and shall carry the respective rights in respect of the allotment of shares in the Company and rights to appoint and remove directors hereinafter provided, but in all other respects shall rank pari passu.

All Ordinary Shares from time to time subscribed or otherwise acquired by a holder of A Shares shall be designated (or as the case requires re-designated) A Shares and all shares so subscribed or acquired by a holder of B Shares shall be designated (or as the case requires redesignated) B Shares.

- (b) The rights attached to the Ordinary Shares in respect of the matters undernoted are as follows:-

- (i) As regards Income

The profits of the Company available for distribution (hereinafter called "the available profits") in respect of any financial year or other financial period (hereinafter in this paragraph referred to as "the relevant period") shall subject

to any restrictions which may be imposed from time to time by the Company's bankers may be distributed by way of dividends among the holders of the Ordinary Shares.

(ii) As regards Capital:-

On the return of assets on liquidation, reduction of capital or otherwise, surplus assets of the Company remaining after payment of its liabilities shall be distributed among the holders of the Ordinary Shares pro rata according to the number of Ordinary Shares held by them respectively.

### **ALLOTMENT OF SHARES**

4. All of the unissued shares (whether forming part of the existing or any increased capital) which the Directors propose to issue, shall first be offered to the members of the Company in proportion, as nearly as may be possible to the number of shares held by them respectively, at the time of the proposed issue, unless the Company in general meeting shall be a Special Resolution otherwise direct, provided that no A Shares or B Shares or preference shares shall be issued otherwise than to members holding shares of the same class and on each such issue the A Shares and B Shares shall be issued at the same price and on the same terms as to payment or otherwise. The Offer shall be made by Notice, specifying the number of shares offered and limiting a period (not being less than 28 days) within which time the offer, if not accepted, will be deemed to be declined. After the expiration of that period, those shares so deemed to be declined will be offered in the proportion aforesaid to the members who have, within the said period, accepted all the shares offered to them. Such further offer shall be made in like terms in the same manner and limited by a like period as the original offer. Any shares not accepted pursuant to such offer or further offer as aforesaid or not capable of being offered as aforesaid except by way of fractions and any shares released from the provisions of this article by any such Special Resolution as aforesaid shall be under the control of the Directors who may subject to Section 80 of the Companies Act 1985 allot, grant options over or otherwise dispose of the same to such persons and on such terms and in such manner as they think fit provided that such shares shall not be disposed of on terms which are more favourable to the subscribers therefor than the terms on which they were offered to the members. In accordance with the provisions of Section 91 (1) of the Companies Act 1985, Sections 89(1) and 90 (1) to 90(6) (inclusive) are excluded from applying to the Company.

### **TRANSFER OF SHARES**

5. The Directors in their absolute discretion and without assigning any reason therefor may decline to register:-

- (a) any transfer of a share which is not fully paid or on which the Company has a lien; or
- (b) any transfer of a fully paid share unless it is made in accordance with the provisions of Article 7 or Article 8.

6. The Directors may decline to register any transfer of a share unless:-

- (a) the Instrument of Transfer is in the form recommended in the Stock Transfer Act 1963 or in such other form as the Directors shall from time to time approve;
- (b) it is lodged at the Registered Office or such other place as the Directors may appoint and is accompanied by the certificate for the share(s) to which it relates and/or such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer and if the Instrument of Transfer is executed by some other person on his behalf the authority of that person so to do; and
- (c) it is in respect of only one class of share.

7.1 For the purposes of this Article: -

7.1.1 references to the disposal of a share include reference to the transfer of a share, the renunciation or negotiation of any temporary document of title to a share, and the transfer or grant of any interest in a share, "interest" for this purpose being construed in accordance with Part VI of the Act;

7.1.2 reference to "share" or "shares" in this Article shall be to the A Shares or B Shares;

7.1.3 reference to the offer class of shares shall be to the class of the Offered Shares (as hereinafter defined);

7.1.4 references to the other classes of shares shall be to the classes of Ordinary Shares other than the offer class of shares.

7.2 No Ordinary Share in the Company shall be disposed of otherwise than in accordance with the provisions of this Article 7 or Article 8.

7.3 In this Article "fair value" in relation to shares shall mean the price per share certified in writing by the auditors from time to time of the Company. The auditors shall certify in their opinion the fair value of such share as at the date of the Transfer Notice (as hereinafter defined) provided that the auditors, in determining the fair value of the share, shall:-

- 7.3.1 if the Company is then carrying on business as a going concern, assume that it will continue to do so;
  - 7.3.2 determine the sum which a willing purchaser would offer to a willing seller on an arm's length basis for the whole of the issued Ordinary Shares in the capital of the Company;
  - 7.3.3 divide the resultant figure by the total number of Ordinary Shares in issue in the Company.
  - 7.3.4 The auditors shall act as experts and not as arbiters and shall give due weight to any written representations put forward by any shareholder received by them within such time limit as they may determine and they shall as a matter of urgency advise the Board in writing of their certification. The auditors need not give reasons for their certification which shall, in the absence of manifest error, be binding upon the shareholders and not subject to challenge. Their fees shall be payable by the Proposing Transferor (as hereinafter defined).
- 7.4 Any member wishing to dispose of any share(s) ("Proposing Transferor") shall give the Board notice in writing ("Stage One Transfer Notice") of such desire stating the number of shares which it wishes to dispose of ("the Stage One Offered Shares"), the price per share at which it is prepared to sell the Stage One offered Shares and whether or not the Proposing Transferor has received an offer ("a Stage one Third Party Offer") from any third party for the Stage One Offered Shares (and if so the identity of such third party ("the Stage One Third Party Offeror") and the price offered for the Stage One Offered Shares ("the Stage One Third Party Offer Price"), and shall at the same time deposit with the Board the share certificate(s) in respect of the Stage One Offered Shares. Such notice shall be irrevocable, save as provided in this Article.
- 7.5 The following provisions shall apply to every Stage One Transfer Notice:-
- 7.5.1 On receipt of the Stage One Transfer Notice the Board and the Proposing Transferor shall forthwith negotiate in good faith with a view to agreeing the price per share at which the Proposing Transferor is prepared to sell the Stage One Offered Shares ("the Internal Offer Price") and in the absence of such agreement within 7 days after service of the Stage One Transfer Notice the Internal Offer Price shall be the fair value certified by the auditors from time to time of the Company in accordance with Article 7.3.
  - 7.5.2 In the event that the fair value is determined by the said auditors in accordance with Article 7.5.1, the Board shall within 7 days of the issue of the certificate by the auditors

serve a copy on the Proposing Transferor who shall be entitled to withdraw the Transfer Notice by notice in writing ("Stage One Withdrawal Notice") given to the Company within 14 days of the service of such copy.

7.5.3 Upon agreement or as the case may be determination of the Internal Offer Price (and in the latter event following the expiry of the period allowed for serving a Stage One Withdrawal Notice without such service) the Board shall by notice in writing specifying the number and class of the Stage One Offered Shares and the Stage One Offer Price invite every shareholder of the offer class of shares (other than the Proposing Transferor) to apply in writing to the Board within 28 days of the date of the notice (save where the Proposing Transferor is the only holder of the offer class of shares in which case the provisions of Article 7.5.5 shall be deemed to apply) for such maximum number of the Stage One Offered Shares (being all or any thereof) as such shareholder may specify in such applications.

7.5.4 If the shareholders of the offer class of shares apply for all the Stage One Offered Shares the Board shall allocate them to and amongst the applicants in accordance with their applications but in case of competition pro rata (as nearly as possible) according to the number of shares of the offer class of shares held by them provided that no applicant shall be obliged to take more than the maximum number of shares specified by it as aforesaid; and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.5.5 If the shareholders of the offer class of shares do not apply for all the Stage One Offered Shares the Board shall invite the shareholders of the other classes of shares to apply for the Stage One Offered Shares which have not been applied for. Each invitation shall specify:-

- (a) the date (being neither earlier than 28 nor later than 42 days after the issue of the invitation) by which an application must be made,
- (b) the Internal Offer Price, and
- (c) the number of Stage One Offered Shares which may be applied for.

7.5.6 If the shareholders of the other classes of shares to whom invitations are made as aforesaid apply for all the Stage One Offered Shares (or for all the Stage One Offered Shares not applied for by the shareholders of the offer class of shares pursuant to Article 7.5.3 above) the Board shall allocate them or those applied for, to and amongst the applicants in accordance with their applications but in case of competition pro rata (as nearly as possible) according to the number of shares of the other classes of

shares held by them provided that no applicant shall be obliged to take more than the maximum number of shares specified by it as aforesaid and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.5.7 If the shareholders of the other classes to whom invitations are made as aforesaid do not apply for all the Stage One Offered Shares (or for all the Stage One Offered Shares not applied for by the shareholders of the offer class of shares pursuant to Article 7.5.3 above):-

(a) if the Stage One Transfer Notice contains such a stipulation as is referred to in Article 7.5.8 below, then the Board shall return the share certificate(s) in respect of the Stage One Offered Shares to the Proposing Transferor and inform the persons who have made applications for the Offered Shares, and

(b) if the Stage One Transfer Notice contains no such stipulation, the Board shall allocate to and amongst the applicants for the Offered Shares the number of the Offered Shares applied for them respectively, and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.5.8 A Stage One Transfer Notice may stipulate that unless all the Stage One Offered Shares are applied for pursuant to this Article 7, none shall be sold.

7.5.9 Any application for shares made to the Board pursuant to this Article 7.5 shall, subject to Article 7.5.2, be irrevocable.

7.5.10 Completion of any transfer of shares of the Company to be effected in terms of this Article 7.5 shall take place at the registered office of the Company or such other place as may be agreed between the parties thereto, and that no later than fifteen days after the giving of notice of allocation by the Board pursuant to this Article 7.5.

7.6 Upon such allocation being made, the holders to or amongst whom such allocation shall have been made shall be bound to pay the purchase price for, and to accept a transfer of the shares so allocated to them, respectively and the Proposing Transferor shall be bound upon payment of the purchase price to transfer such shares to the respective purchasers.

7.7 If any case the Proposing Transferor, after having become bound to transfer shares as aforesaid, makes default in so doing the Company may receive the purchase price and the Directors may appoint some person to execute instruments of transfer of such shares in favour of the purchasers and shall thereupon cause the name of the purchasers to be entered

in the register of members of the Company as the holders of the shares and shall hold the purchase price in trust for the Proposing Transferor. The receipt of the Company therefor shall be a good discharge to the purchasers, and after their names shall have been entered in the register of members of the Company in exercise of the aforesaid power, the validity of the transactions shall not be questioned by any person.

- 7.8 If any shares comprised in a Stage One Transfer Notice do not fall to be allocated pursuant to Article 7.5 hereof and a Stage One Third Party Offer has been received and notified in accordance with Article 7.4, and the Third Party Offer Price was equal to or greater than the Internal Offer Price, such shares may be transferred within 90 days of the expiration of whichever is the later of the periods specified in Articles 7.5.3 and 7.5.5 by the Proposing Transferor to the Stage One Third Party Offeror provided that:-

7.8.1 the price per share payable in respect of such transfer shall be the Stage One Third Party Offer Price, and

7.8.2 if the Stage One Transfer Notice contained such a stipulation as is referred to in Article 7.5.8, the Proposing Transferor shall only be entitled to transfer under this Article 7.8 the exact number of shares comprised in the Stage One Transfer Notice

provided that the Directors may require to be satisfied that such shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance whatsoever to the purchaser and if not so satisfied may refuse to register the instrument of transfer but shall not otherwise be entitled to refuse to register such transfer.

- 7.9 If any shares comprised in a Stage One Transfer Notice do not fall to be allocated pursuant to Article 7.5 hereof, and the Proposing Transferor is unable to, or does not wish to, transfer them pursuant to Article 7.8 hereof, the Proposing Transferor may, at any time during the period of 90 days following the period of 90 days referred to in Article 7.8 above, invite any third parties to submit an offer to acquire the shares at any price.

- 7.10 If a third party ("Stage Two Third Party Offeror") offers ("a Stage Two Third Party Offer") to purchase shares pursuant to Clause 7.9 and the Proposing Transferor wishes to accept the Stage Two Third Party Offer, then the Proposing Transferor shall give the Board notice in writing ("Stage Two Transfer Notice") specifying the identity of the Stage Two Third Party Offeror, and giving full details of the Stage Two Third Party Offer (which shall include a statement of the number of shares in respect of which the Stage Two Third Party Offer is made ("the Stage Two Offered Shares") and the price per share offered ("the Stage Two Third Party Offer Price")) and shall at the same time deposit with the Board the share certificate(s)



in respect of the Stage Two Offered Shares (unless the Board already holds the certificate). Such notice shall be irrevocable.

7.11 The following provisions shall apply to every Stage Two Transfer Notice:-

7.11.1 Upon receipt of the Stage Two Transfer Notice the Board shall by notice in writing specifying the number and class of the Stage Two Offered Shares and the Stage Two Third Party Offer Price invite every shareholder of the offer class of shares (other than the Proposing Transferor) to apply in writing to the Board within 14 days of the date of the notice (save where the Proposing Transferor is the only holder of the offer class of shares in which case the provisions of Article 7.11.3 shall be deemed to apply) for such maximum number of the Stage Two Offered Shares (being all or any thereof) as such shareholder may specify in such applications.

7.11.2 If the shareholders of the offer class of shares apply for all the Stage Two Offered Shares the Board shall allocate them to and amongst the applicants in accordance with their applications but in case of competition pro rata (as nearly as possible) according to the number of shares of the offer class of shares held by them provided that no applicant shall be obliged to take more than the maximum number of shares specified by it as aforesaid; and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.11.3 If the shareholders of the offer class of shares do not apply for all the Stage Two Offered Shares the Board shall invite the shareholders of the other classes of shares to apply for the Stage Two Offer Shares which have not been applied for. Each invitation shall specify:-

- (a) the date (being neither earlier than 14 nor later than 28 days after the issue of the invitation) by which an application must be made,
- (b) the Stage Two Third Party Offer Price, and
- (c) the number of Stage Two Offered Shares which may be applied for.

7.11.4 If the shareholders of the other classes of shares to whom invitations are made as aforesaid apply for all the Stage Two Offered Shares (or for all the Stage Two Offered Shares not applied for by the shareholders of the offer class of shares pursuant to Article 7.11.1 above) the Board shall allocate them, or those applied for, to and amongst the applicants in accordance with their applications but in case of competition pro rata (as nearly as possible) according to the number of shares of the other classes of shares held by them provided that no applicant shall be obliged to

take more than the maximum number of shares specified by it as aforesaid; and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.11.5 If the shareholders of the other classes to whom invitations are made as aforesaid do not apply for all the Stage Two Offered Shares (or for all the Stage Two Offered Shares not applied for by the shareholders of the offer class of shares pursuant to Article 7.1 1.1 above): -

(a) if the Stage Two Transfer Notice contains such a stipulation as is referred to in Article 7.11.6 below, then the Board shall return the share certificate(s) in respect of the Stage Two Offered Shares to the Proposing Transferor and inform the persons who have made applications for the Stage Two Offered Shares, and

(b) if the Stage Two Transfer Notice contains no such stipulation, the Board shall allocate to and amongst the applicants for the Stage Two Offered Shares the number of the Stage Two Offered Shares applied for by them respectively, and the Board shall forthwith give notice in writing of such allocations to the Proposing Transferor and to the applicants.

7.11.6 A Stage Two Transfer Notice may stipulate that unless all the Stage Two Offered Shares are applied for pursuant to this Article 7, none shall be sold.

7.11.7 Any application for shares made to the Board pursuant to this Article 7.11 shall be irrevocable.

7.11.8 Completion of any transfer of shares of the Company to be effected in terms of this Article 7.11 shall take place at the registered office of the Company or such other place as may be agreed between the parties thereto, and that no later than fifteen days after the giving of notice of allocation by the Board pursuant to this Article 7.11.

7.12 Upon such allocation being made, the holders to or amongst whom such allocation shall have been made shall be bound to pay the purchase price for, and to accept a transfer of the shares so allocated to them, respectively and the Proposing Transferor shall be bound upon payment of the purchase price to transfer such shares to the respective purchasers.

7.13 If in any case the Proposing Transferor, after having become bound to transfer shares as aforesaid, make default in so doing the Company may receive the purchase price and the directors may appoint some person to execute instruments of transfer of such shares in favour of the purchasers and shall thereupon cause the name of the purchasers to be entered in the

register of members of the Company as the holders of the shares and shall hold the purchase price in trust for the Proposing Transferor. The receipt of the Company therefor shall be a good discharge to the purchasers, and after their names shall have been entered in the register of members of the Company in exercise of the aforesaid power, the validity of the transactions shall not be questioned by any person.

7.14 If any shares comprised in a Stage Two Transfer Notice do not fall to be allocated pursuant to Article 7.11 hereof, and if the Stage Two Transfer Notice contained no such stipulation as is referred to in Article 7.11.6, such shares may be transferred within 90 days of the expiration of whichever is the later of the periods specified in Articles 7.11.1 and 7.11.3 (but not thereafter) by the Proposing Transferor to the Stage Two Third Party Offeror on all the terms of the Stage Two Third Party Offer (including the Stage Two Third Party Offer Price) provided:-

- (i) that if the Stage Two Transfer Notice contained such a stipulation as is referred to in Article 7.11.6, the Proposing Transferor shall only be entitled to transfer under this Article 7.14 the exact number of shares comprised in the Transfer Notice; and
- (ii) that the Directors may require to be satisfied that such shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance, whatsoever to the purchaser and if not so satisfied may refuse to register the instrument of transfer but shall not other-wise be entitled to refuse to register such transfer.

8.1 Any Incoming Shareholder may at any time (but only by virtue of one transfer) transfer all (but not some only) the B Ordinary Shares held by him to a Privileged Relation or to a Family Trust (and in the case of Andrew Doolan to an Approved Trust); and if an Incoming Shareholder transfers all his B Ordinary Shares held by him to a Privileged Relation that Privileged Relation may at time thereafter (but only by virtue of one transfer) transfer all (but not some only) the B Ordinary Shares then held by him or her to a Family Trust;

8.2 Where any shares are held by trustees upon a Family Trust or Approved Trust :-

8.2.1 On any change of trustees, such shares may be transferred to the new trustees of that Family Trust or Approved Trust;

8.2.2 All such shares held (but not some only) may be transferred to the Settlor;

8.2.3 If and whenever any such shares cease to held upon a Family Trust or Approved Trust (otherwise than in accordance with the preceding sub paragraph) or there cease to be any beneficiaries of the Family Trust or Approved Trust other than a charity or charities, a Stage One Transfer Notice (as defined in the Articles of Association of the

Company) shall be deemed to have been given in respect of the Relevant Shares (as hereinafter defined) by the holders thereof and such shares shall not otherwise be transferred.

8.3 In this Clause 8 the following expressions shall have the following meanings:-

8.3.1 "Privileged Relation" means the spouse or widow or widower of the Incoming Shareholder and the Incoming Shareholder's children and grandchildren (but excluding step and adopted children and their issue and step and adopted children of the Incoming Shareholder's children);

8.3.2 "Family Trust", in relation to a Settlor, means a trust which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of:-

8.3.2.1 that Settlor and/or a Privileged Relation of that Settlor; or

8.3.2.2 any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities);

and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees or the Settlor or the Privileged Relation of the Settlor;

8.3.3 "Settlor" means an Incoming Shareholder;

8.3.4 "Relevant Shares" means and includes the shares originally transferred to the trustees and any additional shares issued or transferred to the trustees by virtue of the holding of the Relevant Shares or any of them;

8.3.5 "Approved Trust", in relation to Andrew Doolan, means a trust which does not permit any of the settled property or the income therefrom to be applied otherwise than for the benefit of:-

8.3.5.1 Andrew Doolan and/or specified beneficiaries or a specified class of beneficiaries;

8.3.5.2 any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities);

and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees or Andrew Doolan.

8.3.6 "Incoming Shareholder" means each of Andrew Doolan, A. Donald M. MacDonald, and J. Alexander M. Orr.

### **GENERAL MEETINGS**

9. It shall not be necessary to give any notice of an adjourned meeting and Regulation 45 of Table A shall be construed accordingly.
- 10.1 A body corporate may, if it is a member, from time to time by notice in writing signed by an officer of that body corporate and delivered to the office or, immediately prior to the general meeting or class meeting, to the secretary or the chairman of that meeting, authorise such person as it thinks fit to act as its representative at any such meeting and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were a member who was an individual.
- 10.2 No business shall be transacted at any meeting unless a quorum of members is present, both at the time when the meeting proceeds to business and at the time when such business is transacted. Two members present in person or by proxy or by representative, of whom one shall be or represent a holder of any of the A Shares and the other shall be or represent a holder of any of the B Shares, shall be a quorum. Regulation 40 shall not apply.
- 10.3 The chairman shall not have a second or casting vote in addition to his own vote and Regulation 50 shall not apply.

### **DIRECTORS**

- 11.1 The holders of a majority of the A Shares may from time to time appoint any two persons to be A Directors. Any A Director so appointed may appoint another person to be their alternate director. The holders of a majority of the B Shares may from time to time appoint any three persons to be B Directors. Any B Director so appointed may appoint another person to be

their alternate director. The appointment of an alternate director in accordance with the provisions of this Article shall not be subject to a resolution of the directors. In these Articles the expressions A Director and B Director respectively designate directors and alternate directors according to the class ("appointer class") of shares, holders of a majority of which have appointed or are deemed to have appointed them. Regulations 65-68 of Table A shall be modified accordingly.

- 11.2 Each A Director or B Director shall hold office but may at any time be removed from office by the holders of a majority of his appointer class.
- 11.3 Any such appointment or removal shall be in writing served on the company and signed by the holders of a majority of his appointer class. Any such document may be signed, in the case of a body corporate, by a director or the secretary thereof or by its duly appointed Attorney or duly authorised representative.
- 11.4 The Directors may, with the approval of a majority of the A Directors and a majority of the B Directors, delegate any of their powers to a committee consisting of any two or more directors, but otherwise may not delegate such powers. Any such committee shall be formed of at least one A Director and one B Director unless a majority of the A Directors and a majority of the B Directors otherwise agree. Regulation 72 of Table A shall be modified accordingly.
- 11.5 Regulation 81 (e) of Table A shall be deleted.
- 12.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company shall declare the nature of his interest at a meeting of the directors in accordance with Section 317 of the Act.
- 12.2.1 No A Director shall vote at a meeting of directors or of a committee of directors on any resolution concerning the institution, conduct or termination (in whatever manner) of any legal proceedings or arbitration involving the holder of any A Shares or any person connected with any holder of A Shares (as such term is defined in Section 839 of the Income and Corporation Taxes Act 1988) as defender.
- 12.2.2 No B Director shall vote at a meeting of directors or of a committee of directors on any resolution concerning the institution, conduct or termination (in whatever manner) of any legal proceedings or arbitration involving the holder of any B Shares or any person connected with any holder of B Shares (as such term is defined in Section 839 of the Income and Corporation Taxes Act 1988) as defender.
- 13. The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled share capital or any part thereof, and subject

to the provisions of the Acts, to issue debentures, debenture stock and other securities whether outright or as securities for any debt, liability or obligation of the Company or any third party.

14. The directors without prejudice to their general powers may in the name and on behalf of the Company and from time to time at their discretion borrow from themselves or from others any sum or sums of money for the purpose of the Company without limit as to amount.
15. Save as otherwise provided herein or in Table A, an alternate director while so acting shall exercise and discharge all the functions, powers and duties of the director whom he represents and shall be responsible for his own acts and defaults and shall not be deemed to be the agent of the director appointing him. Such alternate director shall not be deemed to be a director within the meaning of the Acts.
16. All appointments and removals of an alternate director shall be effected by instrument in writing delivered to the Registered Office of the company and Regulation 68 of Table A shall be amended accordingly.

#### **PROCEEDINGS OF DIRECTORS**

- 17.1 The quorum necessary for the transaction of business by the Directors shall be two, including at least one A Director and at least one B Director. In the absence of his appointor, an alternate Director present at a meeting of Directors may be counted in reckoning whether a quorum is present. Regulation 89 shall not apply.
- 17.2 If a quorum is not present within half an hour of the time appointed for holding a meeting of the Directors, or if a quorum ceases to be present, the meeting shall be adjourned 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) and at any such adjourned meeting the quorum necessary for the transaction of the business of the Directors shall be any two Directors or (in the absence of his appointer) an alternate Director present at such meeting. If no quorum is present at such meeting within one hour of the time appointed for the meeting the same shall be dissolved. Regulation 90 shall not apply.
- 17.3 Questions arising at any meeting of Directors shall be determined by a majority of votes. Regulation 88 shall be modified accordingly.
- 17.4 The Chairman from time to time of the Directors shall be an A Director. Regulation 91 shall be modified accordingly. The Chairman shall not have a second or casting vote. Regulation 88 shall be modified accordingly.

- 17.5 Any one or more Directors may participate in a meeting of the Directors or of any committee thereof appointed under Regulation 72 by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall for all purposes be deemed to constitute presence in person at such meeting. 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.
- 17.6 Any Director who ceases to be a Director at any meeting of the Directors may continue to be present and to act as a Director and be counted in the quorum until the termination of the meeting if no other Director objects and if otherwise a quorum of Directors would not be present.
18. The power which the Company may exercise pursuant to the provisions of the Act to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer to any person of the whole or part of any of the undertaking of the Company or any of its subsidiaries may, before the commencement of any winding up, be exercised by a resolution of the Directors any payment made under this Article may be made out of the profits of the Company which are available for dividend.

#### **NOTICES**

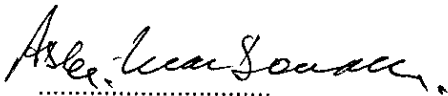
19. If a member has no registered address in the United Kingdom and has not supplied to the Company an address within the United Kingdom for the giving of notices to him, a notice addressed to him at his last known address in the United Kingdom shall be deemed to be duly given to him on the day on which it is posted.



## INDEMNITY

20. Subject to the provisions of the Act every director, managing director, agent, auditor, secretary and other officer for the time being of the Company shall be entitled to be indemnified out of the assets of the company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under the provisions of the Act in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, and no director, managing director, agent, auditor, secretary or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereof.
21. Without prejudice to the provisions of Article 18 hereof the Directors shall have power to purchase and maintain insurance from or for the benefit of any persons who are or were at any time Directors, Officers, or Employees or Auditors of the Company, or of any other Company which is its Holding Company or in which the Company or such Holding Company or any of the predecessors of the Company or of such Holding Company has any interest whether direct or indirect or which is in any way allied to or is associated with the Company, or of any subsidiary undertaking of the Company or of any such other Company or who are or were at any time Trustees of any Pension Fund in which any employees of the Company or any such other Company or subsidiary undertaking are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Company or any such other company, subsidiary, undertaking or pension fund; for the purposes of this Article "Holding Company" and subsidiary undertaking" shall have the meanings as in the Companies Act 1989.

Certified a true copy



Director

**THE COMPANIES ACTS**  
**COMPANY LIMITED BY SHARES**  
**MEMORANDUM of ASSOCIATION**  
**of**  
**ORCHARD INCORPORATIONS (13S) LIMITED**  
**No. SC208806**  
**(as amended by Special Resolution dated 30th November 2000)**

1. The Company's name is "Orchard Incorporations (13S) Limited".
2. The Company's Registered Office is to be situated in Scotland.
3. The Company's objects are:-
  - 3.1 primarily, but without prejudice to the other objects of the Company, to carry on business as a general commercial company, in all or any of their branches, including all or any of the following trades or businesses, namely:-

(a) to carry on in Scotland and elsewhere all or any of the businesses of a property development company in all its branches; and to acquire by lease, purchase, concession, grant, licence or otherwise such lands, buildings, options, privileges and other property and rights and interests in property as the Company shall deem fit and generally to hold, manage, develop, lease, sell or dispose of the same; and to construct, reconstruct, improve, alter, decorate, furnish, maintain and demolish or partly demolish hotels, restaurants, conference centres, motels, inns, leisure centres, cafes, coffee bars, brasseries, lounge bars, cocktail bars, bistros, wine bars, shops, kiosks or other retail units, offices, service suites, car parks, garages and other buildings, works and conveniences of all kinds; to consolidate or connect or subdivide properties and to sell, let, licence, lease or otherwise dispose of the same, and to advance money to and enter in contracts with builders and others and generally to finance building operations of every description; and to manage any land, buildings or other property as aforesaid, whether belonging to the Company or not, and to collect rents and income; and to undertake and provide management, administration and consultancy services of all kinds and to enter into, assist or participate in financial, commercial, mercantile, industrial and other transactions, undertakings and businesses of every description, and to establish, carry on, develop and extend the same or sell, dispose of or otherwise turn the same to account;

(b) to carry on in Scotland and elsewhere any or all of the businesses of proprietors and managers of hotels, restaurants, conference centres, motels, inns, leisure centres, cafes, coffee bars, brasseries, lounge bars, cocktail bars, bistros, wine bars, shops, kiosks or other retail units and all other kinds of licensed and unlicensed premises, offices, service suites, car parks, garages and other buildings, licensed victuallers, caterers, dealers in cigarettes and tobacco,

magazines, newspapers, chocolate toiletries, fancy goods and novelties of all and any description; to act as theatre and entertainment ticket agents; proprietors and managers of clubs, discotheques, leisure complexes and all other premises suitable for recreations, sports, games and all other leisure activities; to provide facilities for all tourist related developments; to let the Company's premises or any part thereof for banquets, dinners, concerts, dances or any other social functions which the company may consider desirable; to equip and furnish any property for the purpose of letting it to visitors or guests, whether in single rooms, suites, or otherwise; and to act as merchants generally;

(c) to buy, sell and deal generally in plant, machinery, appliances, apparatus, materials, produce and articles of every description capable of being used in connection with the foregoing business;

(d) to do any similar business which may be conveniently carried on in connection with any of the Company's objects or may be expected to increase the value or make more profitable its properties, assets, rights or interest;

**3.2** to carry on business as manufacturers of and dealers both wholesale and retail in and storers, hirers, carriers, exporters and importers of goods and merchandise of all kinds and merchants generally and to carry on any other business which can be advantageously or conveniently carried on by the Company and which is calculated directly or indirectly to benefit the Company or to enhance the value or render profitable any of the Company's property or rights;

**3.3** to acquire and hold, either in name of the Company or in that of any nominee, businesses and properties of all kinds, shares, stocks, debentures, debenture stocks, bonds, notes, obligations and securities issued or guaranteed by any company whether incorporated or not and to exercise and enforce all rights and powers conferred by or incidental to the ownership thereof and to provide managerial, executive, supervisory and consultancy services for or in relation to any company or business or property in which the Company is interested upon such terms as may be thought fit;

**3.4** to establish agencies and branches and appoint agents for the purpose of the Company's business in the United Kingdom and abroad and to regulate and discontinue the same;

**3.5** to enter into any arrangements with any government, municipal, local or other authority that may seem conducive to the attainment of any of the Company's objects and to obtain from any such authority any rights, privileges or concessions which the Company may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges or concessions;

**3.6** to apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority,

franchise, commission, right or privilege which any government or authority or corporation or other public body may be empowered to grant and to pay for, aid in and contribute towards carrying the same into effect and to appropriate any of the Company's shares, debentures or other securities and assets to defray the necessary costs, charges and expenses thereof;

- 3.7** to apply for, promote and obtain any Provisional Order or Act of Parliament to enable the Company to carry any of its objects into effect or to effect any modification of the Company's constitution and to assist in procuring improvements in the law and to oppose any Parliamentary or other proceedings which the Company may think adverse to its interest;
- 3.8** to acquire and undertake in any way whatever the whole or any part of the trade, business, property and liabilities of any person or company carrying on any trade or business that the Company is authorised to carry on or that is analogous thereto, or possessed of property suitable for the purposes of the Company, or to acquire an interest in, amalgamate with, or enter into partnership, or any arrangement for sharing profits, union of interests, reciprocal concession, co-operation, or mutual assistance with any such person or company and to give or accept by way of consideration for any of the things aforesaid, or property acquired or conveyed or handed over, any shares, stock, debentures, debenture stock or securities that may be agreed on; to enter into membership of any trade union or association or federation of employers or professional association and to pay any dues, subscriptions, levies or other payments in connection therewith;
- 3.9** to purchase, take on feu, lease or in exchange, hire or otherwise acquire in any way whatever, any property, heritable or moveable, real or personal and to sell, feu, let on hire, improve, develop, mortgage, dispose of, turn to account or otherwise deal with all or any of the land, property and rights of the Company;
- 3.10** to erect, buy, lease or otherwise acquire or provide such factories, warehouses, offices and other buildings, to manufacture, furnish, fit up and erect such machinery and to construct such other works and conveniences as may be deemed necessary for the purposes of the Company or any of them, and to alter, improve, extend, add to, maintain, repair, rebuild, replace or remove the same and generally, from time to time, to provide all requisite accommodation and facilities for the purposes of the Company;
- 3.11** to sell, dispose of, or transfer any part or the whole of the rights, businesses, property, and undertaking of the Company or any branch or part thereof in consideration of payment in cash or in shares or stocks, or in debentures or other securities of any other company, or in one or other or in all such modes of payment, or for such other consideration as may, by the Directors, be deemed proper and to promote any other company anywhere in the world for the purpose of carrying on any business which the Company is authorised to carry on, or for acquiring all or

any of the property rights or liabilities of the Company, or for any other purpose which may be deemed likely to promote or advance the interests of the Company;

- 3.12** to apply for, secure by grant, legislative enactment, assignment or transfer, purchase, hire, licence or otherwise acquire any patents, trade names, trade marks, designs, copyrights, licences, concessions and the like, or any secret or other information as to any invention, process, matter or thing which may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated directly or indirectly to benefit the Company; and to use, exercise, develop or grant licences in respect thereof, or otherwise turn to account, the property and rights so acquired, or to sell and dispose of the same;
- 3.13** to pay for any property or business or services rendered or to be rendered in shares (to be treated as either wholly or partly paid up) or in debentures or debenture stock or in loan stocks, convertible or otherwise, and partly in cash or partly in one mode and partly in others;
- 3.14** to invest, lend or otherwise deal with the moneys of the Company on such securities or in the stock, shares, debentures, mortgages, loans or bills of government or local authorities, or public or other companies, whether in the United Kingdom or abroad, and in such manner as the Directors may from time to time determine, and to vary and realise the same and to convert accumulated reserves or revenue into capital;
- 3.15** to borrow money on such terms as the Directors shall think fit and to give security for the payment thereof or for the performance of any other obligations or liabilities of the Company, and to guarantee and/or give security for the payment of money by or the performance of obligations of all kinds by any person or company including without prejudice to the generality of the foregoing any company which shall at the time be the holding company of the Company or another subsidiary of such holding company or a subsidiary of the Company all as defined in Section 736 of the Companies Act 1985 or any statutory amendment or re-enactment thereof for the time being in force or any company associated with the Company in business or by reason of common shareholdings or otherwise and in security of such guarantees to assign, dispo, convey, mortgage, pledge or charge the whole or any part of the undertaking, property, assets or revenue of the Company including uncalled capital;
- 3.16** to promote any company or companies, or to place or assist in placing or guaranteeing the placing of or underwriting any shares in any company for the purpose of acquiring all or any of the property and liabilities of the Company and to form any subsidiary company, in any part of the United Kingdom or in any other part of the world, necessary or convenient for carrying out any of the objects of the Company, or which may seem, directly or indirectly, calculated to benefit the Company;

- 3.17** to pay all the expenses of or relating to the formation, incorporation and registration of the Company or any subsidiary or associated company in any part of the world;
- 3.18** to enter into such insurance or assurance contracts and to insure all or any of the assets of the Company against such risks and for such sums as the Directors shall deem appropriate and to enter mutual insurance, indemnity or protection associations, to establish an insurance fund out of the profits of the Company and to insure the Company and its Directors, servants, agents and others against claims for compensation and damages by mutual insurance or otherwise and also to enter into policies of assurance assuring the Company or others against loss through death or invalidity of or accident to any Director or servant or agent of the Company;
- 3.19** to establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or Directors or past employees or Directors of the Company or of its predecessors in business, or the dependants or connections of any such persons; to grant pensions or gifts to Directors, ex-Directors and/or employees or their relatives and to join in any public or local subscription proposed to be raised for any charitable, religious, patriotic, political, benevolent business or other purpose;
- 3.20** to establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances, benefits or emoluments to any persons who are or were at any time in the employment or service of the Company, or of any company which is a subsidiary of the Company, or which is allied to or associated with the Company or with any such subsidiary company, either by substantial common shareholdings or one or more common directors or which is the holding company of the Company, or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, or any persons in whose welfare the Company or any such other company as aforesaid is or has been interested, and the wives, widows, families and dependants of any such persons, and to make payments for or towards the insurance of any such persons as aforesaid, and to do any of the matters aforesaid either alone or in conjunction with or through the holding company (if any) of the Company or in conjunction with or through any such other company as aforesaid;
- 3.21** to remunerate, as the Directors may decide, the officers, servants and agents of the Company and others out of, or in proportion to, the returns or profits of the Company or of any particular business carried on by it or otherwise as the Directors may deem proper and for that purpose to enter into any arrangements they may think fit;
- 3.22** to distribute among the members in kind any property of the Company or any proceeds of sale or disposal of any property of the Company but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law;

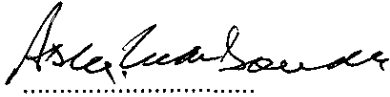
- 3.23** to cancel or accept surrender of any share or shares of any member or members for any reasons and on any terms and conditions and as and when the Directors in their absolute discretion think fit, with or without any continuing liability attaching to such member or members, and to pay up any uncalled or unpaid capital in respect of such share or shares so cancelled or surrendered, all however so far only as can be lawfully done;
- 3.24** to do all or any of the above things as principals, agents, trustees, contractors, sub-contractors, licensees, concessionaires or otherwise and by or through trustees, agents, sub-contractors, licensees, concessionaires or otherwise and either alone or in conjunction with others and to act as agents, licensees, concessionaires, trustees, nominees or otherwise for any person or company and to undertake and perform sub-contracts and to appoint agents, attorneys or factors for the Company;
- 3.25** to do all such things as are incidental or conducive to the attainment of the above objects or any of them; provided always that nothing herein contained shall empower the Company to carry on, save as agents for others, the business of life, accident, fire, employers' liability, industrial, motor, or other insurance or re-insurance within the meaning of the Insurance Companies Act 1974 or any Act amending, extending or re-enacting the same.

The objects set forth in any paragraph of this clause shall not be restrictively construed but the widest interpretation shall be given thereto and they shall not, except where the context expressly so requires, be in any way limited to or restricted by reference to or influence from any other object or objects set forth in such paragraph or from the terms of any other paragraph or by the name of the Company. None of such paragraphs or the object or objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to the objects or powers mentioned in any other paragraph but the Company shall have full power to exercise all or any of the powers or to achieve or to endeavour to achieve all or any of the objects conferred by and provided in any one or more of the said paragraphs. In this clause the word "company" except where used in reference to this Company shall be deemed to include any partnership or other body of persons whether corporate or unincorporate and whether domiciled in the United Kingdom or elsewhere.

- 4.** The liability of the members is limited.
- 5.** The Company's Share Capital is £100 divided into 40 "A" Ordinary Shares of £1 each and 60 "B" Ordinary Shares of £1 each with power, subject to the provisions of the Companies Act 1985 or any Act amending the same, to increase or reduce the Capital to purchase the Company's own shares and to consolidate, sub-divide, or otherwise deal with the shares forming the Capital and to convert paid-up Ordinary Shares into Stock and re-convert that Stock into paid-up Preference Shares, redeemable or irredeemable; the Shares forming the

Capital (original, increased or reduced) may be divided into such shares, with such liens, preference and other special incidents and held on such terms as may be prescribed by the Company's Articles of Association for the time being, or as the Company may from time to time determine in accordance with the said Act.

Certified a true copy

A handwritten signature in black ink, appearing to read "Ashley L. Sanders", written over a dotted line.

Director