

TERRITORY OF THE BRITISH VIRGIN ISLANDS

THE BVI BUSINESS COMPANIES ACT, 2004

AMENDED AND RESTATED MEMORANDUM OF ASSOCIATION

OF

BERGGRUEN RESIDENTIAL LIMITED

A COMPANY LIMITED BY SHARES

1 DEFINITIONS AND INTERPRETATION

1.1 In this Memorandum of Association and the attached Articles of Association, if not inconsistent with the subject or context:

“**Act**” means the BVI Business Companies Act, 2004 (No. 16 of 2004) and includes the regulations made under the Act;

“**Additional Shares**” means all shares in the Company (including without limitation, Ordinary Shares and Preferred Shares) and Convertible Securities, issued or granted by the Company excluding securities: (i) issued or issuable as a dividend or other distribution payable to all Shareholders pro rata in accordance with their respective holdings in the Company; (ii) issued or issuable to all Qualified Shareholders pro rata in accordance with their respective holdings in the Company, on an as-converted basis, upon a Recapitalization Event; (iii) issued or issuable pursuant to an acquisition of another Person by the Company, provided such acquisition has been approved by the Qualified Shareholders or the Board, as applicable, in accordance with the terms of these Articles; (iv) issued or issuable to employees, consultants, or directors, other than any of the Qualified Shareholders, pursuant to a stock option plan or incentive plan approved by the Board; and (v) issued or issuable upon the exercise of any Convertible Securities outstanding at the Effective Date, (vi) issued or issuable as part of the First Tranche or Second Tranche, and (vii) issued or issuable pursuant to: (i) HCI's or BHL's right to convert their Bridge Loan into Ordinary Shares of the Company based on a Company pre-money valuation of 80% (eighty percent) on a fully diluted and as-converted basis, as determined by one of the "big-five" Israeli accounting firms; or (ii) HCI's right to convert its indemnity entitlement in relation to the SPA according to a Company pre-money valuation to be determined by one of the "big-five" Israeli accounting firms agreed by HCI and BHL;

“**Affiliate**” means, with respect to any Person, another Person who directly or indirectly Controls, is Controlled by, or is under common Control with such Person, for so long as it remains so;

“**Articles**” means the attached Articles of Association of the Company;

“**BHL**” means Berggruen Holdings Ltd., a British Virgin Islands limited liability company, whose registration No. with the British Virgin Islands Companies Registrar is 259579;

“**BHL Deferred Shareholder's Loan**” means the second tranche of the outstanding Shareholder Loan provided by BHL to the Company pursuant to the terms of the Loan Agreement (entered between BHL and the Company on June 2009) in the principal amount of NIS59,580,000 (fifty nine million five hundred and eighty thousand New Israeli Shekels).

"BHL Preferred Shareholder's Loan"- means the first tranche of the outstanding Shareholder Loan provided by BHL to the Company pursuant to the terms of the Shareholder's Loan Agreement (entered between BHL and the Company on June 2009) in the amount of NIS 100,300,000 (one hundred million and three hundred thousand New Israeli Shekels);

"Board" means the board of directors of the Company;

"Bridge Loan" means a loan provided by either HCI or BHL in lieu of the other shareholder (who failed to provide its pro-rata financing called for by the Board), in the form of a bridge loan for a period of 3 (three) months, which shall be repayable along with an annual interest of 15% (fifteen percent) compounded annually and accrued commencing from the date it has been actually paid to the Company and until it has been repaid in full, or converted (together with the interest accrued thereon) into Ordinary Shares of the Company;

"Chairman of the Board" or **"Chairman"** has the meaning specified in Regulation 14.8;

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person that is a legal entity, whether through the ownership of voting securities, by contract, or otherwise; and the terms, **"Controlling"** and **"Controlled"** shall be construed accordingly;

"Convertible Securities" means Options, any debt convertible into securities, or other securities exercisable or convertible into or exchangeable for shares of the Company of any class;

"Distribution" in relation to a distribution by the Company to a Shareholder means the direct or indirect transfer of an asset, other than Shares, to or for the benefit of the Shareholder, or the incurring of a debt to or for the benefit of a Shareholder, in relation to Shares held by a Shareholder, and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of Shares, a transfer of indebtedness or otherwise, and includes a dividend;

"Eligible Person" means individuals, corporations, trusts, the estates of deceased individuals, partnerships and unincorporated associations of persons;

"Financing Undertakings" means all of the Company's and its subsidiaries' undertakings towards their respective third party financiers, made from time to time (other than to the shareholders and their Affiliates, and Related Parties), including, without limitation, banks, bond holders and the trustee for the bond holders

"First Tranche" means 33,333 of the Issued Shares, which together with the Second Tranche constitutes the entire Issued Shares;

"HCI" means Hagag-Cohen Investments Ltd., a limited liability company duly incorporated under the laws of Israel;

"HCI Shareholder's Loan"- means the shareholder loan actually provided by HCI to the Company pursuant to the terms of the Loan Agreement entered between HCI and the Company on June 2009;

"Issued Shares" means 50,000 Series B Preferred Shares of the Company issued to HCI pursuant to the terms of the SPA;

"IPO" means the sale of the Company's shares in a firm commitment underwritten public offering pursuant to an effective registration statement under the US Securities Act-1933, the Israeli Securities Law, 1968, or equivalent law of another jurisdiction;

"Memorandum" means this Memorandum of Association of the Company;

"**Options**" means rights, options or warrants to subscribe for, purchase or otherwise acquire shares in the Company;

"**Person**" means any natural or legal person, including without limitation any company, partnership or other corporate entity;

"**Preferred B Original Issue Price**" means NIS 0.01 per each Preferred B Share (as may be adjusted for any Recapitalization Event);

"**Qualified Shareholder**" means each of HCI and BHL for as long as it holds Shares in the Company;

"**Real Estate**" means the following projects:

- (a) Rothschild Meier Project – a residential project located at 36 Rothschild Str., Tel-Aviv, Israel, with residential area of approximately 18,665 sq/m, commercial area of approximately 2,990 sq/m, and approximately 12,843 sq/m of underground parking and basement, the area of which may be increased by further 3,000 sq/m by transfer of building rights from other projects (the "**Tower Project**");
- (b) Nahalat Binyamin Project – a residential project located at Nahalat Binyamin Str., Tel-Aviv, Israel, composed of 8 (eight) land plots, on some of which there are buildings;
- (c) Ehad Haam Project - a conservation project located at Ehad Haam Str., 20, Tel-Aviv, Israel, with residential and commercial areas, purchased for its building rights, which have been transferred to another project of the Company;
- (d) Savyon Tower Project – a 15 (fifteen) apartment residential project constructed by Africa Israel Ltd., located at 50 Ben Gurion Str., Ramat-Gan, Israel; and
- (e) Karkur Project – a residential project known as plot 24 parcel 10072, Pardes-Hana, Israel.

"**Recapitalization Event**" means any subdivision, share split, share combination, issuance of bonus shares, or any other recapitalization, reclassification or change of the Company's shares into a different number of shares of the same or any other class or classes of shares;

"**Registrar**" means the Registrar of Corporate Affairs appointed under section 229 of the Act;

"**Related Party**" of a Person means any of the following: (a) such Person, any of its Affiliates, or any shareholder, director, officer or employee of such Person; (b) the spouse, civil partner or employer or any relative of any current shareholder, director or officer of the Person; or (c) any other Person who Controls, directly or indirectly, alone or together with others, such Person;

"**Resolution of Directors**" means either:

- (a) a resolution approved at a duly convened and constituted meeting of directors of the Company or of a committee of directors of the Company by the affirmative vote of a majority of the directors present at the meeting who voted except that where a director is given more than one vote, he shall be counted by the number of votes he casts for the purpose of establishing a majority, all subject to and in accordance with the provisions of Regulations 24 and 14.10; or
- (b) a resolution consented to in writing by all directors or by all members of a committee of directors of the Company, as the case may be, all subject to and in accordance with the provisions of Regulations 24 and 14.10;

"**Resolution of Shareholders**" means either:

- (a) a resolution approved at a duly convened and constituted meeting of the Shareholders of the Company by the affirmative vote of a majority of in excess of 50% of the votes of the Shares entitled to vote thereon which were present at the meeting and were voted, all subject to and in accordance with the provisions of Regulation 24; or
- (b) a resolution consented to in writing by a majority of in excess of 50% of the votes of Shares entitled to vote thereon, all subject to and in accordance with the provisions of Regulation 24;

“**Seal**” means any seal which has been duly adopted as the common seal of the Company;

“**Second Tranche**” means 16,667 of the Issued Shares, which together with the First Tranche constitutes the entire Issued Shares;

“**Securities**” means Shares and debt obligations of every kind of the Company, and including without limitation options, warrants and rights to acquire shares or debt obligations;

“**Share**” means a share issued or to be issued by the Company;

“**Shareholder**” means an Eligible Person whose name is entered in the register of members of the Company as the holder of one or more Shares or fractional Shares;

“**SPA**” means the Share Purchase Agreement dated April 7, 2009 between the Company and HCI;

“**SRA**” means the Shareholders' Rights Agreement by and among HCI, BHL and the Company, dated June 2009.

“**Treasury Share**” means a Share that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled; and

“**written**” or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange, electronic mail, telegram, telex or telecopy, and “**in writing**” shall be construed accordingly.

1.2 In the Memorandum and the Articles, unless the context otherwise requires a reference to:

- (a) a “**Regulation**” is a reference to a regulation of the Articles;
- (b) a “**Clause**” is a reference to a clause of the Memorandum;
- (c) voting by Shareholders is a reference to the casting of the votes attached to the Shares held by the Shareholder voting;
- (d) the Act, the Memorandum or the Articles is a reference to the Act or those documents as amended or, in the case of the Act any re-enactment thereof; and
- (e) the singular includes the plural and vice versa.

1.3 Any words or expressions defined in the Act unless the context otherwise requires bear the same meaning in the Memorandum and the Articles unless otherwise defined herein.

1.4 Headings are inserted for convenience only and shall be disregarded in interpreting the Memorandum and the Articles.

2 NAME

The name of the Company is **BERGGRUEN RESIDENTIAL LIMITED**.

3 STATUS

The Company is a company limited by shares.

4 REGISTERED OFFICE AND REGISTERED AGENT

4.1 At the time of the application to re-register the Company, the registered office of the Company is at Bison Court, Road Town, Tortola, British Virgin Islands.

4.2 At the time of the application to re-register the Company the registered agent of the Company is Bison Financial Services Limited of Bison Court, P.O. Box 3460, Road Town, Tortola, British Virgin Islands.

4.3 Any change of registered office or registered agent will take effect on the registration by the Registrar of a notice of the change filed by the existing registered agent or a legal practitioner in the British Virgin Islands acting on behalf of the Company.

5 CAPACITY AND POWERS

5.1 Subject to the Act and any other British Virgin Islands legislation, the Company has, irrespective of corporate benefit:

- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

5.2 For the purposes of section 9(4) of the Act, there are no limitations on the business that the Company may carry on.

6 NUMBER AND CLASSES OF SHARES

6.1 The Company is authorised to issue a maximum of 208,332 Shares, no par value each, divided into four classes of shares as follows: (i) 104,166 Ordinary Shares, no par value each (the "**Ordinary Shares**"); (ii) 4,166 Ordinary A Shares, no par value each (the "**Ordinary A Shares**"); (iii) 50,000 Preferred A Shares, no par value each (the "**Preferred A Shares**"); and (iv) 50,000 Preferred B Shares, no par value each (the "**Preferred B Shares**" and together with the Preferred A Shares, the "**Preferred Shares**")

6.2 The Company may issue fractional Shares and a fractional Share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

6.3 Shares may be issued in one or more series of Shares as the directors may by Resolution of Directors determine from time to time, subject to the provisions of Regulation 24.

7 RIGHTS OF SHARES; CONVERSION OF SHARES

7.1 Each Ordinary Share, Preferred A Share and Preferred B Share confers upon the holder thereof:

- (a) the right to one vote at a meeting of the Shareholders of the Company or on any Resolution of Shareholders;

- (b) the right to a share in any dividend paid by the Company in accordance with and subject to the provisions of Clause 7.6; and
- (c) the right to a share in the distribution of the surplus assets of the Company on its liquidation in accordance with and subject to the provisions of Clause 7.7.

7.2 Each Ordinary A Share confers upon the holder thereof:

- (a) the right to a share in any dividend paid by the Company in accordance with and subject to the provisions of Clause 7.6; and
- (b) the right to a share in the distribution of the surplus assets of the Company on its liquidation in accordance with and subject to the provisions of Clause 7.7.

7.3 The Ordinary A Shares shall not entitle the holders thereof to any voting rights whatsoever.

7.4 Subject to the provisions of Regulation 24, the Company may by Resolution of Directors redeem, purchase or otherwise acquire all or any of the Shares in the Company subject to Regulation 2.7 of the Articles.

7.5 The Preferred B Shares, Preferred A Shares and Ordinary A Shares may be converted into Ordinary Shares of the Company only upon the written consent of the holders of all of the Preferred A Shares and Preferred B Shares. If and when converted into Ordinary Shares pursuant to the terms of this Clause 7.5, each Preferred A Share, Preferred B Share and/or Ordinary A Share, as applicable, shall be converted into 1 (one) Ordinary Share.

7.6 Dividend Preference.

7.6.1 The distributions of funds to the Company's Shareholders shall be made subject to applicable law and all agreements the Company is a party to (including its Financing Undertakings) in accordance with the following order:

- (a) first, the Shareholders providing the Bridge Loan who elected to be repaid the amounts provided by them to the Company shall be entitled to receive the Bridge Loan amount (not including, however, any interest accrued thereon) in full ("**Bridge Loan Preference**");
- (b) second, and only after the Bridge Loan Preference has been paid in full, the holders of Preferred B Shares shall be entitled to receive for each Preferred B Share held by them, the Preferred B Original Issue Price together with the repayment in full of the HCI Shareholder's Loan, not including, however, any interest accrued on such loan (the "**Preferred B Preference**");
- (c) third, and only after the Bridge Loan Preference and the Preferred B Preference have been paid in full, BHL shall be entitled to the repayment in full of the BHL Preferred Shareholder's Loan, not including, however, any interest accrued on such loan (the "**BHL Preference**");
- (d) fourth, and only after the Bridge Loan Preference, the Preferred B Preference and the BHL Preference have been paid in full (subject to any deductions agreed between the shareholders), the holders of the Preferred B Shares shall be entitled to receive a dividend on a pro-rata basis with the repayment to BHL of the BHL Deferred Shareholder's Loan (based on the shareholdings ratio between BHL and the holders of Preferred B Shares)

until the BHL Deferred Shareholder's Loan has been repaid in full (not including, however, any interest accrued on such loan), such that, assuming that the holding ratio in the Company between BHL and the holders of the Preferred B Shares is on a one-to-one basis, all Preferred B Shareholders shall be entitled to receive in the aggregate a dividend in the amount of 0.5 NIS for every 0.5 NIS being repaid to BHL in respect of the BHL Deferred Shareholder's Loan (the "**Preferred Shareholders Preference**"); and

- (e) fifth, and only after the Bridge Loan Preference, the Preferred B Preference, the BHL Preference and the Preferred Shareholders Preference have been paid in full, any further distributions made by the Company, shall be made to all shareholders of the Company (including the holders of Ordinary Shares, Ordinary A Shares (subject to Clause 7. below), Preferred A Shares and Preferred B Shares) on a pro-rata basis in respect of the shares held by them in proportion to their respective percentage holdings of all of issued and outstanding Company's Shares (on an as-converted basis).

7.6.2 Any interest accrued on the Bridge Loan, the HCI's Shareholder's Loan, the BHL Preferred Shareholder's Loan or the BHL Deferred Shareholders Loan, shall be paid:

- (a) in case of payment to HCI- only after the BHL Preferred Shareholder's Loan (not including the interest accrued thereon) has been paid to BHL; and
- (b) in case of BHL- only after the BHL Deferred Shareholder's Loan (not including the interest accrued thereon) has been paid in full,

and shall be made in lieu of a dividend distribution to such shareholder, in such manner that shall not effect the pro-rata distributions and preferences set out in Clause 7.6.1 **שגיאה! מקור ההפניה לא נמצא.** through 7.6.1 **שגיאה! מקור ההפניה לא נמצא.**

7.6.3 The holders of Ordinary A Shares shall not be entitled to a dividend payment in respect of their Ordinary A Shares until the Shareholders have received in the aggregate from the Company NIS 219,000,000 (as payments of their shareholders loans and dividends), and until such time any pro-rata distribution to the shareholders of the Company pursuant to Clause 7.6.1 **שגיאה! מקור ההפניה לא נמצא.** shall be made on a pro-rata basis in respect of all issued and outstanding preferred shares of the Company, excluding the Ordinary A Shares.

For illustration purposes only, if, for example, the Company has available funds to distribute, in the sum of NIS 310,480,000 in the aggregate and there are no outstanding Bridge Loans (and assuming that the BHL Preferred Shareholder's Loan has not been reduced), then: (i) first, HCI will receive NIS 60,180,000, as repayment of: (a) the HCI Shareholder's Loan, not including any interest accrued thereon (assuming that the entire amount has been actually provided by HCI to the Company); and (b) the Preferred B Original Issue Price, (ii) second, BHL shall be entitled to receive NIS 100,300,000 (as repayment of the BHL Preferred Shareholder's Loan, not including any interest accrued thereon); (iii) third, an amount of NIS 119,160,000 shall be paid on a pro-rata basis between BHL and HCI (i.e., NIS 59,580,000 will be paid to HCI as a repayment of the interest accrued on the HCI Shareholder's Loan and/or as dividend and NIS 59,580,000 will be paid to BHL as a repayment of the BHL Deferred Shareholders' Loan, not including any interest accrued thereon); and (iv) fourth, the remaining NIS 30,840,000 will be paid to all shareholders of the Company on a pro-rata basis (as payment of interest accrued on their outstanding shareholders loans and/or dividends) based on their shareholdings in the Company.

7.7 Liquidation Preferences; Deemed Liquidation

7.7.1 If the Company should be wound-up, in bankruptcy, liquidation, dissolution or similar proceeding, then subject to applicable law, all the assets of the Company available for distribution among its shareholders shall be distributed to them in accordance with the same

order and preference set out in Clause 7.6 above (it being clarified that any preferences already paid in accordance with Clause 7.6 shall not be paid again pursuant to this Clause 7.7).

7.7.2 For purposes of this Clause 7.7, in addition to any liquidation, dissolution, or winding up of the Company under applicable law, the Company shall be deemed to be liquidated in the event of a consolidation, merger or reorganization of the Company with or into, or a sale of all or substantially all of the Company's assets, or substantially all of the Company's issued and outstanding authorised shares, to any other company, or any other entity or Person (which, in any event, are not any of the Shareholders or their Affiliates or any of their Related Parties).

8 VARIATION OF RIGHTS

Subject to the provisions of Regulation 24, the rights attached to any class may only be varied, whether or not the Company is in liquidation, with the consent in writing of or by a resolution passed at a meeting by the holders of not less than 50% of the issued shares in that class.

9 RIGHTS NOT VARIED BY THE ISSUE OF SHARES PARI PASSU

Subject to the provisions of Regulation 24, the rights conferred upon the holders of the Shares of any class shall not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking in preference or *pari passu* therewith.

10 REGISTERED SHARES

- 10.1 The Company shall issue registered shares only.
- 10.2 The Company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares for bearer shares.

11 TRANSFER OF SHARES

- 11.1 Subject to the provisions of Regulations 6 through 10, the Company shall, on receipt of an instrument of transfer complying with Sub-Regulation 6.1 of the Articles, enter the name of the transferee of a Share in the register of members unless the directors resolve to refuse or delay the registration of the transfer for reasons that shall be specified in a Resolution of Directors.
- 11.2 Subject to the provisions of Regulations 6 through 10, the directors may not resolve to refuse or delay the transfer of a Share unless the Shareholder has failed to pay an amount due in respect of the Share.

12 AMENDMENT OF THE MEMORANDUM AND THE ARTICLES

Subject to Clause 8 and the provisions of Regulation 24, the Company may amend the Memorandum or the Articles only by Resolution of Shareholders. Any amendment of the Memorandum or the Articles will take effect on the registration by the Registrar of a notice of amendment, or restated Memorandum and Articles, filed by the registered agent.

- 13. The Company was incorporated on 13th April, 2005 under the International Business Companies Act which immediately prior to its re-registration governed the Company.

We, BISON FINANCIAL SERVICES LIMITED of Bison Court, Road Town, Tortola, British Virgin Islands for the purpose of Re-registering a BVI Business Company under the laws of the British Virgin Islands hereby sign this Memorandum of Association the 1st day of March, 2006 as the Applicant to re-register the Company:

Applicant

Sgd. Graham Cook

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Graham Cook
Authorised Signatory
BISON FINANCIAL SERVICES LIMITED