

**Minutes of the 10th Annual General Meeting of
THURNHAM HALL OWNERS' CLUB
held at 10.30am on 22nd October 2006 at The Imperial Hotel, Blackpool**

Present:

John Jackson	Committee member	(JJ)
Pam Francis	Committee member	(PF)
George Yoxall	Committee member	(GY)
Peter Ingerslev Nielsen	Committee member and Founder Member Representative Sunterra Europe Ltd.	(PIN)
Steven Rixon	Committee member and Regional Resort Director, Sunterra Europe Ltd.	(SR)

In attendance:

Simon Lee	Head of Financial Analysis and Accounting Sunterra Europe Ltd.	(SL)
Kevin Haygarth	Resort Manager	(KH)
Philip Broomhead	Legal Services Director, First National Trust Co.	(PB)
Susan Crook	Solicitor, Sunterra Europe Ltd.	(SC)
Teri Jackson	Secretary to the meeting	

51 Attendees

The meeting commenced at 11.00am having been postponed by 30 minutes due to bad weather conditions and lack of parking facilities at the venue, thereby giving members who may have been delayed the opportunity to join in good time.

1. Appointment of Chairman

The meeting was opened by **JJ** who proposed that **PB** from (FNTC) be elected to chair the meeting. A number of members present did not feel that **PB** was a neutral party as one of the agenda items dealt with the Deed of Trust. After lengthy discussion about who should chair the meeting. **PIN** suggested that **PB** should chair the majority of the meeting but hand the chair to an ordinary member for item 11 of the agenda. It was agreed by a vote of hands and by the founder member casting its vote that **Mr Samuels** would chair item 11, namely the resolution to adopt and ratify the revised Deed of Trust for Thurnham Owners' Club (TOC) and that **PB** of FNTC would chair the remainder of the meeting.

A further discussion arose following a query raised by as **Mr Fred Evans** regarding the legality of Sunterra's assertion that they were the Founder member and its entitlement to vote. **Mr Charles Dickinson** also questioned if the meeting was quorate due to the low number of attendees.

PB gave his assurance to **Mr Fred Evans** that both the First National Trustee Company (FNTC) and Sunterra Europe Ltd. (SEL) were satisfied that SEL was from a legal perspective the Founder member. Furthermore the significant amount of weeks owned by SEL entitled it to vote and determined the number of votes it had. **PB** gave **Mr Charles Dickinson** his assurance that the meeting was quorate. **PB** suggested that an attempt

should be made to start the formal agenda of the meeting, explaining that the agenda was long and 45 minutes had already passed discussing the above points.

2. Apologies for Absence

Apologies were received from Mr Vandome, Mr & Mrs Hill, Mr Kay, Mr J Buckel, Mrs Yoxall, Roger and Brenda Haslam, Mr & Mrs Steve Lund and Mr and Mrs Cutts.

3. To read and confirm the minutes of the last Annual General Meeting (6th February 2005)

The minutes, having been previously circulated, were taken as read.

4. Matters arising

Mr Dickinson complained that the minutes failed to include his explanations for the resolutions and requested that the AGM minutes include the amendments to the past resolutions. **PB** explained that as the reasons for **Mr Dickinson's** resolutions had been set out in the 2005 AGM Notice there was no need to re-state them.

Mr Dickinson read a statement formally objecting to the size of Sunterra's block vote and arguing that the company was not a Founder member.

PIN stated that Sunterra Europe acquired the Founder Member rights by virtue of the acquisition of the club in 2003 and referred to the notice of the AGM clarifying this matter further. **PIN** reminded all present that the company pays the full maintenance fee on each and every one of the weeks owned and is fully entitled to cast one vote per week owned both under the current Club Constitution as under the proposed new Club Constitution.

PB confirmed to the members present that FNTC were satisfied that Sunterra Europe legally held the Founder Member Rights and was entitled to vote accordingly.

PB asked for a show of hands to approve the minutes, taking into consideration the comments that had been made. The minutes were duly approved.

5. Committee Report

JJ explained that it had originally been decided to rearrange the AGM to July 2006 to ensure the accounts were full audited in time. However an anomaly had been discovered in the Constitution, namely that while it requires the Club to give members 28 days' notice of the date of the AGM, including details of the business of the meeting and any resolutions, it also permitted members to submit resolutions not less than 35 days before an AGM. This allowed only 5 working days, in which to finalise the notice and agenda, print and post the documents, and allow for delivery to members. Despite the best efforts of the committee, SEL and the mailing company, many members received the Notice one or two days after the 28 day deadline and the committee was advised by a member that should the AGM take place, he would declare it void. Today's date was the only alternative that suited both the hotel and the Trustees. Although **JJ** was pleased to confirm that the hotel had not made a charge for the change of date, unfortunately a member who had submitted his nomination to be elected to the committee was on holiday and unable to attend, thereby barred from standing.

JJ reported that the committee had been busy on behalf of the Club and its members since the previous AGM. Two legal actions had been issued against members of the committee by an owner. In respect of the first, the District Judge at St. Helens had ordered the claim to be struck out. The second claim was under judicial consideration and therefore not able to be discussed. He noted that the member was incurring considerable costs to TOC and that ultimately all legal fees may be charged to the Club.

JJ went on to explain that subsequent to the previous AGM, members had been asked to volunteer to review the Club Constitution with a view to making it easier to understand. Three members under the Chair of **Mr Charlie Dickinson** had formed a working party to review the Constitution and make recommendations on

updating it, incorporating past resolutions, making various clauses clearer, and removing ambiguities. However it transpired that one member of the working group had an alternative agenda, to which he subsequently admitted. The Committee received notice of the first County Court action against it by this member, and felt it in was in TOC's best interest to halt the working party.

It was in fact subsequently concluded by SEL that it would be less confusing if a totally revised Constitution was produced in co-operation with the Trustee rather than making many amendments to the existing ones in circulation.

JJ turned to the issue of a lease or rental agreement for Thurnham's common areas, i.e. the Club House or Hall itself, and the leisure centre. The advantage was that a fixed rental would make it easier to budget for the Hall's running costs, and unexpected maintenance costs would be borne by SEL. Such an agreement would depend on a mutually agreeable rental or lease contract, mutually agreeable rental fee, and the Constitution allowing this to take place. SEL was currently working on documents for discussion with the committee, and pending reaching an acceptable rental agreement TOC continued to fund all repairs and maintenance work in the common areas via annual maintenance fees. **JJ** cautioned that if the status quo continued, the new committee may in view of the building's age wish to consider building up deposits in the sinking and/or reserve fund.

Six apartments had been gutted and refurbished to a high standard, using industrial quality materials. In part due to a large amount of unforeseen remedial work the final cost was £205,354 compared to the sum allocated from the sinking fund of £157,047. SEL had agreed to bear the cost of this overspend. **JJ** noted that in 2001 three of the Dower House apartments had been fully refurbished at a cost of £85,291, and was of the view that this latest cost compared quite favourably. Furniture and fittings deemed to be of serviceable quality were salvaged and put into storage for future use on the resort.

JJ mentioned that the committee was in early discussions with SEL regarding the future administration and use of the Club funds, and undertook that the committee report back to members with clear details once the work was complete.

JJ concluded that despite the large amount of time spent dealing with legal and other challenges to the committee's authority to perform its duties; the committee had strived to represent the membership of the club as a whole and not to be distracted by an undemocratic minority of members. He thanked **KH** and his excellent team for the continuing quality of service that they provided to the members and his colleagues on the committee for their sterling work and long hours. He confirmed that he would not be standing for re-election and took the opportunity to thank members for their support during the challenging times.

Michael Forth proposed a vote of thanks to **JJ**.

6. Finance Report

PB introduced **Simon Lee**, Head of Financial Analysis and Accounting. **SL** explained that the purpose of this item was to confirm the accounts for 2005. Limited information was available prior to January 2004 and so slightly affected comparative figures. **SL** showed an overview on screen and referred members to the detailed line by line accounts published in the Notice.

Under "income" the 2004 figures showed the very large contribution made by SEL that were paid in due to the disappearance of funds by the Thurnham Leisure Group (TLG). The relatively small income from members equated to the funds received late after SEL acquired the group and was generally in line with expectations. **SL** reminded members that SEL guarantees the funds even from non-payers, which in 2005 was 5% of fees. In 2005 the split between members of the club and the weeks owned by Sunterra as unsold or points club was approx 50% each.

SL noted that it was difficult to make a precise comparison on expenditure for the two years because some costs had been paid by TLG of which SEL was unaware. The Club had enjoyed rebates on business and water rates in 2004, and in the same year had taken the decision to outsource laundry. This gave an

approximate saving in the salary line of an equivalent amount. In 2005 under the item “grounds costs” the cost benefits of the sewage plant having been installed were apparent, as there was no longer a charge to remove sewage. Other small areas of cost were a one-off legal fee for drawing up a new management fee agreement, and pool maintenance. **SL** noted that in 2004 SEL had not charged the Club a management service fee, and in 2005 had charged at the reduced rate of 10% rather than 15%.

Overall there was a small surplus on the Club’s accounts which was available to the Club for use in future years.

The sinking fund had been in deficit at the end of 2004. A cash shortfall was planned and covered by SEL, who assessed the cost of the sewage plant over two years as it was too much to bear in a single year. **SL** was delighted that the sinking fund would show a small surplus of around £60,000 in 2006 to take care of future contingencies.

David Stanley – apartment 10, week 35, wondered whether in view of the main hall and restaurant now being open to the public and run as a separate business by SEL, the members should not be required to pay a business rate on these areas. **SL** referred to **JJ**’s earlier explanation that discussions are taking place regarding charging a straight rental on common areas so that members can plan for a fixed cost. However that was not yet the case.

David Samuel – 20 and 10, sought an explanation on the doubling of office costs. **SL** replied that this area was difficult to compare with figures in 2004 because items were pre-paid from the former management. He felt the 2005 figures were more indicative of true running costs.

Mr Dickinson stated that as the restaurant did not have its own electricity meter he wished to know how costs incurred were segregated from the bill paid by members. **SL** acknowledged that although SEL had benchmarked the restaurant electricity usage against that of restaurants in other resorts, this was not a transparent policy. The company therefore planned to put in a separate meter for the restaurant, and should that show a number significantly different to what SEL had charged, it would be reviewed and any difference either paid or charged to the club as the case may be.

Sylvia Butler noted that the cost of laundry had risen to £20,000 but that staff salaries had decreased by only £10,000. **SL** responded that approx £20,000 was taken out of the base salary bill due to the elimination of in-house laundry and confirmed that staff costs did not include the restaurant. **KH** added that regardless of figures quoted at AGMs under previous management, costs had not historically been correctly outlined. For example the real laundry bill in 2000-01 was £111,000; costs were being much better controlled now and much cleared thanks to group rates that TOC enjoyed under the management of SEL.

Mr Ian Hollins moved to propose that the accounts be received and **Mr Evans** seconded the proposal. By a show of hands the accounts were accepted.

7. Resort Manager’s Report

KH referred members to the report that he had submitted with the Notice. He declared he was proud to stand up in front of members and to serve both them and SEL, and thanked everyone for their continued support during his six years in post.

8. Founder Member’s Report

PIN referred the members to the founder member’s report which had been received with the Notice. He explained that SEL forms part of Sunterra Corporation, which is listed on NASDAQ, the US stock exchange. Sunterra Corporation grew aggressively during 2001-04 and acquired many new resorts. When at the end of 2005 SEL had made a slight loss the decision was taken to re-structure in Europe and cut certain sales and marketing expenditure, which was the reason for the much reduced sales presence at Thurnham Hall this year. A few weeks ago Sunterra Corporation announced its intention to sell SEL as one operation, including sales and marketing contracts, founder membership rights, databases, staff, officers and assets. Several

companies were interested in buying the European operation, but it was expected that the sale process would take a minimum of 9 months.

PIN continued by assuring all members that this change of ownership would be very different from the previous changes the members of TOC had experienced and this time there was no talk of a bankruptcy but rather of a sale of an existing business. Therefore it is expected that the actual impact, if any, to the members of TOC will be minimal.

Whilst **PIN** was conscious of the fact that our sales representatives may not have inspired confidence in the company when SEL acquired TOC in 2004, he asked the members to bear in mind that there were 2 sides to SEL: the sales and marketing arms which clearly in the case of TOC could have done better, and Sunterra as a Management Company which has produced significant improvements on site. **PIN** suggested that the low number of members attending the meeting today was an indication that in general members were satisfied with the resort operations and with Sunterra in general.

9. Matters arising from agenda items 5-8

Mr Dickinson requested clarification on the changes made on the VAT calculation of the fees.

SL advised that there was a case ongoing with a non Sunterra Resort versus Her Majesties Government. This case ruled that VAT was to be charged on 100% of maintenance. Following this ruling and having taken legal and tax advice, we have subsequently changed the manner in which we account for this. He expressed the view that there was a back charge from Inland Revenue he would be surprised if it goes back over a number of years. He confirmed that there were sufficient funds in the Sinking Fund to take care of any such charges. He confirmed that SEL was going everything possible to regularise the issue and that if there was any news, discussions would be held with the committee to reach a satisfactory conclusion.

Mr Dickinson – explained that he was asking because it could be that SEL would not be with TOC when these problems surface. **SL** replied that the plan is to sell SEL as a fully-fledged business; all possible liabilities will be made very clear in any sales/purchase document and will need to be solved before any transaction takes place.

Sylvia Butler was unclear as to why members should pay rent on common areas that were used by members of the public. **JJ** assured her that if a rental agreement was reached between the Club and the committee, it would take into account who uses which areas. **PIN** added that these areas are considered as a facility for the members.

PIN confirmed to **Sylvia Butler** that there had been no firm bid made for SEL to date and that the due diligence procedure had not commenced. Once an announcement was made, SEL would inform the committee.

JJ assured **Sandra Evans**, apartment 26 week 27, that there was no question of common areas being leased out to third companies who could then impose charges on members to access the common areas. He also confirmed that the members' right of access over public areas to gain access to their apartments was assured. TOC funds the maintenance of common areas and in return SEL, whether renting or leasing those areas, allows members to use them. Common areas fall under "other facilities" in the Constitution and are owned by SEL.

Mr Stanley sought clarification of the term "facilities" referred to in clause 7.1 of the existing Constitution, namely: "Founder members shall ensure ordinary members are admitted as members of Thurnham Club and have rights to use facilities of that Club subject to observance of rules."

JJ explained that "facilities" are anything provided by the company for members' use over and above their right to occupy their unit. Facilities can be added, such as in the case of the leisure facility, or removed.

10 – Resolution to adopt a new Club Constitution for Thurnham Owners' Club incorporating the management agreement

PB reminded members that copies of the draft constitution together with an explanation sheet had been circulated. He confirmed to **David Stanley** that the proposal was to adopt an entirely new Constitution rather than make additions to the existing one. **David Stanley** recorded his concern that clause 11.2.4 of the current Constitution may render the new one invalid, as it stated that the existing Constitution took precedence over anything that conflicted with it.

Charlie Dickinson read a statement to the AGM in which he alleged that:

- SEL had made misleading statements to members in an effort to persuade them to adopt a new Constitution
- The working party had not been informed that the existing Constitution was unworkable

He thanked the other members of the working party for their efforts in drafting a 24-section report that reviewed and made recommendations on the existing Constitution.

SC responded that SEL had been careful never to use misleading language. Upon becoming the founder member in January 2004 it soon became apparent that the current Constitution was unworkable. SEL had found the Club to be in an invidious situation in that Committee members, who had acted in the best interests of the Club, had had court proceedings issued against them by a small number of members who did not agree with their decisions. She, **PIN** and the Committee had dedicated a substantial amount of time to re-drafting the Constitution in August 2006 in an effort to resolve the Club's problems. This had been done by taking a standard constitution, amending it where it was felt to be less generous to members than it should be, and incorporating benefits already secured through the Club's AGMs etc. TOC had not been billed for any of this work. **SC** explained that SEL was giving significant decision-making powers that it currently held to the committee, and hoped that members who had mistrusted SEL would recognise that the Company was genuine in its commitment to Thurnham Hall.

PB clarified to **Mr Dickinson** that his report stated progress had been made by the working party. **JJ** explained to **Mr Dickinson** that the Constitution had become unworkable when different interpretations and indeed versions of the Constitution had resulted in legal action being taken against the Committee, seeking to render its work null and void and rendering the Club ungovernable.

Mr Dickinson expressed dissatisfaction with **JJ's** comments to the effect that **Mr Dickinson** had committed TOC to incur unnecessary expenses. **SC** explained that the Committee had defended itself against legal proceedings issued by **Mr Dickinson** that were without merit and which were subsequently discontinued by the court. **SC** confirmed that she had undertaken most of the costly work incurred in reviewing the claim made, filing the defence and defending the claim. Notwithstanding the fact that SEL was entitled to charge TOC for the man hours expended in defending the claim, she did not feel that SEL would be inclined to charge the club at this time, preferring instead to put this matter behind them and look to the future.

PB believed that if legal actions were to continue because of misinterpretations arising from the ambiguous Constitution, members would be deterred from standing for Committee and thus the balance of power that the Club evidently wanted would not be achieved.

David Stanley pointed out that the committee had a responsibility to ensure that rules are upheld, and should be prepared to take the risk of facing legal sanctions if they fail to address something. **PB** reminded him that some claims have already been thrown out by the court.

In response to **Mr Dickinson's** question **SC** explained that she was present today as a lawyer speaking on behalf of SEL and that she had become involved because two committee members who had been personally sued were employees of SEL. **PB** reminded **Mr Dickinson** that the present Constitution allowed arbitration as a forum for resolving disputes, and this option had been open to him rather than issuing legal proceedings, as

had been the option to stand for election to the committee. **Mr Dickinson** did not feel this second choice was relevant.

Mr Stanley asserted that a number of important clauses were missing from the new constitution **PIN** said that if items were missing from the new Constitution members should feel free to highlight omissions in order that these could be rectified. These amendments could then be presented at a future year AGM. **SC** assured **Mr Stanley** that it was absolutely not the Company's intention to withhold any facilities or to maintain anything other than high class standards, and offered to withdraw from the discussion in order to ascertain if the clauses referred to had in fact been incorporated in a different section of the new Constitution. **SC** suggested that if the Club felt that the accommodation was becoming shabby or falling into disrepair it should voice its concerns to the Committee in order that more money could be injected into the premises. This would of course have an impact on the management fees.

SC assured **Mr Stanley** that clause 9 in the new Constitution did not mean that SEL could take weeks from the members with a view to re-issuing them. The only situation where the Trustee would allow weeks to be forfeited this was in the event of non-payment of management fees. Existing apartments were held in Trust and detailed in the appendix. **SC** confirmed that clause 9 could for example apply to the ten new units that have just been built.

SC agreed with **Mr Stanley** that the new Constitution "jumped around" in terms of dates. However she explained that in order not to prejudice the members, beneficial clauses and dates in the old Constitution had (in order to be fair) to be incorporated into the new one. She repeated that the primary purpose of the re-draft was had been to iron out the ambiguities and to increase quite dramatically the powers of the Committee.

A member commented that committees are elected by members to serve the interest of the membership. There is an opportunity for members to vote out an incompetent committee, and he urged the dissatisfied members to think about standing for election but to stop wasting time and to let the meeting continue.

Mr Hitchin - 2 weeks, seconded this sentiment, he trusted his committee and was anxious to get on with the business of the day. He acknowledged that times had changed and Thurnham Hall was now a large resort; he hoped that it remained a Gold Crown resort so that RCI would ensure it was maintained to their standards.

Fred Evans alleged that the committee had not adhered to the existing Constitution when setting the sinking fund at 18.4% instead of 10%. **JJ** explained that the 1989 Constitution allowed for the setting up of a sinking fund, but did not state at what level. No resolution had ever been put to the Club to say it should be a certain amount. **PB** added that sinking fund expenditure is a matter for the committee to decide on normally following advice from the Management Companies.

David Stanley was anxious that "high class establishment" was reinstated in the new Constitution. **PIN** agreed that this phrase had been omitted because it didn't form a part of SEL's standard constitutions, and it was company procedure to ensure all resorts were managed to high standards, but if the new Constitution was adopted the Company would seek to incorporate the phrase by means of a resolution at the next year's AGM as this would be the proper and only manner to make any changes.

Mr Stanley also noted the new Constitution allowed for a 15-year management agreement with SEL and whichever company bought it. **SC** confirmed that although this point was not open for voting, Committee members did have the power to terminate the management agreement if there was proof of impropriety. The terms of the management agreement are contractual terms negotiated between SEL and the management company. **PIN** noted that the management agreement as presented was already in-situ and had simply been included for the sake of clarity with no changes made since its adoption in 2005.

In response to **Sylvia Butler's** enquiry as to what powers the Company had given to the committee, **SC** explained that she had been surprised she by the enormous powers conferred on Thurnham Leisure Ltd. by virtue of clauses 11.1, 11.2 i-viii, and 11.3 of the present Constitution. SEL had felt that these clauses should be completely redrafted and powers given to committee. She added that all of the differences were detailed in the explanatory notes, and recommended that the members appraise themselves of these.

SC also confirmed to **Mrs Butler** that ordinary members are represented on the committee by 3 ordinary members and SEL by 2. The Chair had the deciding vote, and would always be one of the ordinary members. Hence if all the ordinary members on the committee were present at a meeting and were not in agreement with a proposal, they had the power to prevent it.

PIN added that another major difference in the new Constitution was the clarification of exactly what “a” and “b” or “odd” and “even” membership entailed. **Mr Dickinson** interjected that the new Constitution creates ordinary members and “a” and “b” members, which was at odds with discussions at previous AGMs where it had been concluded that everyone had equal membership rights. **PB** explained that it was not always clear when members bought odd/even that they had one week per vote, and more so there was no clear indication at present about the status of these members in the event of distribution of assets, and so after discussion the committee had proposed this revision to the Constitution.

In response to the concerns raised by **Mr Dickinson**, **PIN** explained that Clause 13.1.11 protects members from a situation where SEL may build something they may not want, e.g. a golf club, and then charge for membership. **SC** added that all budgets have to be approved by the committee. This being the case, if SEL wished to build for example a golf course but the maintenance was going to be expensive and would have to be met by members, then the committee had the power to refuse their approval of the budget. If this happened, the proposals would have to be reviewed. She assured **Mr Dickinson** that the whole point of producing a draft budget was to ensure it met with the approval of the committee.

Mr Dickinson raised two other issues:

- SEL could control when committee meetings were held by its proposal to increase the quorum from 3 to 4, inasmuch as if SEL did not send one of its members there would not be a quorum. **PIN** replied that to the contrary it ensured that there would always be at least 2 elected members present at the committee meetings. At present 2 Company representatives and 1 elected member could hold a meeting. The idea is not to invalidate any meetings but to ensure that there is equal representation as a minimum at the meetings.
- Why is the voting restriction that **JJ** was instrumental in including in the current constitution not included in the proposed new Constitution. As it stands now, the Club is protected from any group owning more than 10 weeks, with the exception of the founder member. **PIN** replied that when the new constitution was drafted, discussions were had on this point. The Founder Member has no issue with this restriction. However it was felt that it would be undemocratic to limit a paying member in the exercise of their voting rights. Also, from experience with other clubs, these kinds of restrictions are quite easily overcome. Hence after discussion with the committee it was agreed to leave this out from the new constitution.

PB assured **Dr Michael Altree** Week 26 that if there were any amendments required to the new Constitution they would be proposed and included at a subsequent AGM.

11. Resolution to adopt and ratify the revised Deed of Trust for Thurnham Owner’s Club

At this point **PB** handed the chair to **Mr Samuel** for this agenda item who proceeded to invite questions.

PB confirmed to **Mr Dickinson** that there were no alterations between the management agreement as signed in 2004 when the purchase was made from TLG, and the management agreement included (for information purposes) with the Deed of Trust. **SC** interjected that at the bottom of page 4, the word “reasonable” had in fact been inserted, but that this being the only change. **PIN** confirmed that the management agreement – which is between two contracting parties – had been seen by the committee but that it had not hitherto been circulated to members because no Constitution had been circulated. **SC** apologised to **Mr Stanley** if he felt that the delay had prejudiced the members in any way. However the opportunity to remedy the situation had arisen and she had believed that it was appropriate to circulate the agreement now so that everyone could have a copy. She furthermore assured **Mr Dickinson** that SEL would always be happy to provide a copy of the management agreement to anyone who requested a copy.

Mr Samuel thanked the members present and invited **PB** resume the chair and continue the meeting

12. Submitted members' resolutions

Submitted members' resolutions were outlined in the Notice together with reasons set forward by the proposers and the committee's response.

Resolution 3 – that the ordinary members of the management committee have been elected to represent the interests of ordinary members and not the interests of Sunterra

There were no questions or remarks from the Floor as to this resolution and the committee declined to comment further on this point and felt that the explanation given in response to this resolution in the notice of the AGM was self-explanatory.

Resolution 4 – The management committee should hold an up to date copy, at all times, of the register of members' details available from the Trustee, FNTC

Mr Stanley asserted that as the Constitution required 10% of owners to call a Special General Meeting (SGM), any member wishing to put forward a resolution for an SGM would need access to the membership list. **SC** responded that as Data Protection Officer for SEL, she was aware that the member database was a hugely desirable list that could be totally abused if it fell into the hands of one of its unscrupulous competitors. As such, confidentiality was absolutely paramount. She acknowledged **Mr Stanley's** willingness to have a confidentiality agreement in place, but explained that such an agreement would be worthless unless the other party had sufficient assets to warrant SEL suing them if the members sustained losses through inappropriate use of data.

She read out clause 12 which had been incorporated into the new Constitution and noted that FNTC had guaranteed to facilitate the communication of any special resolutions to the members. She stressed that the Trustee would be acting in breach of its obligations if it did not comply with its obligations. The procedure would simply be for a member to write to anyone on the committee or to **SC**, and they would make the request to FNTC. **JJ** confirmed that the committee had received an undertaking from FNTC on behalf of the Trustees to this effect.

In response to **Mr Dickinson's** assertion **SC** clarified for the record that:

1. The Information Commissioner (formerly the Data Protection Commissioner) had not made any ruling about SEL.
2. That SEL had confirmed in writing to the Information Commissioner that it did own the membership database.
3. That there is a data protection notice on the Company's website.
4. That if adopted, the new Constitution contained a full data protection notice.
5. That the Information Commissioner had confirmed that SEL may release the data if it chose to do so (SUBJECT ALWAYS to ensuring that the principles detailed in the schedules at the back of the Act regarding security were adhered to). However the word "may" did not make the release mandatory. In any event, for the reasons stated above, SEL did not feel that it was appropriate to release the data. This being the case, it had taken steps (thereby ensuring that members were not prejudiced) by securing the agreement of FNTC to facilitate communication to members at the request of the Committee (and as detailed under clause 12 of the proposed constitution).

PB added that the Officer of Data Protection in the Isle of Man had written to FNTC, concluding: "if FNTC decides to disclose the membership list to the committee they should ensure all the committee members are fully aware that the list cannot be used for any purpose that is not specified in the Constitution."

Resolution 5 That the Management Committee should be empowered to use the Club's funds that are surplus to immediate requirements, to offer Sunterra Europe Ltd. short term loans at commercial interest rates. All such loans are to be secured against Sunterra's Thurnham Hall assets.

Both **PIN** and **JJ** felt that the resolution was impractical as it would necessitate paying a member to operate a money-lending business, with many legal, taxes and accounting issues.

Mr Dickinson stated that the Club's funds had not been securely ring fenced. **SL** confirmed that hitherto, money had been held in an escrow account but not necessarily in the name of Thurnham Hall. SEL and the committee had worked together to take measures to ensure the Club's money was now ring fenced, and the Company was awaiting an explicit document from the bank confirming the funds were in the name of Thurnham Hall. **SL** gave his assurance that Thurnham's funds had not been used to finance SEL's operations. He also noted that the Club was in huge deficit when it was bought by SEL, but that SEL had not charged the Club for the loans it had made to the Club.

In response to **Mr Dickinson's** proposal that Thurnham Hall might consider investing in a high savings account, **PIN** agreed that theoretically this was possible. However, the Club had no funds to invest at present, hence this was not an issue.

SL confirmed to **Mr Evans** that Thurnham has a separate sinking fund bank account.

Resolution 6 That the Management Committee, Sunterra Europe and the Trustee First National Trust confirm to the Information Commissioner's Office that

- *Sunterra Europe do not own Thurnham Owners' Club*
- *Thurnham Owners' Club belongs to the members of this Club.*

Mr Dickinson explained that he had not been aware when wording this resolution that SEL owned both the database and TOC. He wished for a ruling that stated data can only be used for purposes associated with the management of TOC.

PB reminded Mr Dickinson that he could not simply change his mind as to what he wished to propose. The resolution proposed stands as it is with no alterations.

SC proposed that **should** the new Constitution not be passed, she would put a notice on SEL's website specifying both the members' and company's rights in relation to the data. In addition, she would circulate the Data Protection notice with the minutes. If the new constitution was passed of course, the notice would be set out in the constitution itself. Although she did not believe that SEL's use of data had prejudiced members, members were at liberty to write to SEL explaining they did not wish to receive marketing literature, company updates, exclusive offers etc. The only materials they would then receive would be those SEL needed to send in order to administer the Club. She referred to the Data Protection notice in clause 12 of the new Constitution, which specified what SEL could and could not do with the data, and what members had the right to request in relation to that data.

Mr Dickinson did not feel he should have to write to SEL asking to be put on the "do not contact" list.

Mr Forth noted that there is a clear statement in the terms and conditions that if members do not want to receive additional information from SEL, they should notify by letter and such contact would cease immediately.

13. Election to the Committee

PB confirmed that **JJ**, who was due to retire by rotation, had decided to stand down after several years' service and that due to a change in personal circumstances **PF**, who had one year left to run on the committee, was also standing down. Under rule 10.5 of the Constitution **Roy Cutts**, **Fred Evans** and **Ian Hollins** had submitted their résumés in good time. Regrettably **Roy Cutts** had called prior to the meeting advising he would be unable to attend and therefore would not be eligible to stand for election. It was recorded that **Fred Evans'** application was seconded by **Mr Forth**, and **Ian Hollins'** application by **Mark Blakeley**. Both candidates were invited to speak for 2 minutes if they wished. As there were two vacancies and two nominations, the gentlemen were duly elected. **PB** proposed that lots were drawn to determine who took the

one year term and who took the full three year term, with the person who was elected for 1 year seeking re-election at the 2007 AGM.

PB invited the members to mark their papers appropriately for the resolutions, and then they were gathered in for the votes to be counted.

14. Submitted members' questions

PB invited members to raise questions, including any relating to the question and answer sheet.

Mr Dickinson read out a series of questions regarding the refurbishment of the eight units in the Hall. (See Appendix 1). **PB** suggested that as a substantial amount of information had been requested, **KH** should give his written response with the minutes (See Appendix 2).

PIN explained that in response to **Mr Dickinson** having challenged the manner in which the Club charged electricity cost, he had received quotes to install individual electric meters in units, and these indicated a cost in the region of £28,000. The merits of spending this kind of money, which would be a charge on each fee would be discussed at the forthcoming committee meetings. He sympathised with Mr Dickinson who stated that one week's electricity had cost £30, but did remind all about the high increase in utility costs.

In response to **Fred Evans'** enquiry as to whether present metres could be used to gauge the accuracy of assessments, **KH** explained that there were three main metres across the site. Although each of the units in the Dower House had its own meter, none of the Dower units were 2-bed: hence it would not be possible to assess what a 2-bed unit would use, nor how much electricity two people would use compared to four.

KH was pleased to report that the external and remedial works on the Lancastrian suite were complete, and undertook to ensure IT removed the electrical conduit in the bathrooms and lounges. He explained that the slight recess in the carpet which concerned **Mr Evans** was an inspection chamber underneath the carpet that went into the apartment's bedroom.

Mr Dickinson asked what progress had been made by SEL on the setting up of a secure website for TOC as promised by Dave Harris at the February 2005 AGM. **PIN** replied that plans to set up individual resort websites with access to members only had had to be temporarily discontinued because of lack of security. Unfortunately in 2006 due to company restructuring, the decision had been taken to abolish this project and instead to concentrate on the resort information management system (RIMS). **SR** added that RIMS II would be ready by the end of 2006; that this was a website covering all resorts that gave information from a management and committee perspective. There would be individual communications for each resort by the committees and the site would be regularly updated.

Mr Dickinson offered either to read out his questions about the Management Agreement, or to give a copy of his questions to the meeting secretary for inclusion in the minutes and for the committee to comment. (See Appendix 3) The latter course was agreed on by a show of hands in order not to delay the proceedings further. **PB** and **SC** both commented that the entire subject relating to the management agreement has already been discussed at length earlier in the meeting. (See response at Appendix 4)

Mark Blakely, week 51, unit 27, suggested that RIMS II would be a convenient way to contact 10% of membership and convene a special AGM if necessary. **PIN** added that although he was not sure whether RIMS II would have a chat room, there was currently an independent forum run by a member who was present at the AGM for the benefit of Thurnham members.

For **Mr Dickinson's** benefit, **SC** clarified that if a member stated his/her wish to inspect SEL's records and books of account, then "reasonable notice" simply meant within business hours and with a reasonable amount of notice.

PB thanked everyone for attending what had been a lengthy meeting. He formally welcomed **Messrs Hollins and Evans** onto the committee and thanked **PF, JJ** and all the committee for their work before inviting them to say a few words.

PF added her congratulations to the new committee members. She warned them it would be hard work and that changes had brought challenges and increased responsibilities.

Ian Hollins responded by thanking **JJ** and **PF** for their personal commitment during difficult times.

GY added that he had learnt a great deal since joining the committee in February 2005, and emphasised there would be plenty of hard work and long hours ahead for the new committee members. He also wished to thank **PF** and **JJ** for the 9 years' work they had put into the committee.

15. Any other business

PB read out the results of the voting in the matter of the various resolutions as follows:

Resolution 1

In favour 1337; 14 against. Resolution carried

As a result of the vote, the proposed resolution 1 was carried with an excess of 75% majority.

Resolution 2

In favour 1337; 14 against. Resolution carried

As a result of the vote, the proposed resolution 2 was carried with an excess of 75% majority.

Resolution 3

In favour 22; 1324 against. Resolution defeated

As a result of the vote, the proposed resolution 3 was defeated

Resolution 4

In favour 25; 1327 against. Resolution defeated

As a result of the vote, the proposed resolution 4 was defeated

Resolution 5

In favour 23; 1328 against. Resolution defeated

As a result of the vote, the proposed resolution 5 was defeated

Resolution 6

In favour 23; 1325 against. Resolution defeated

As a result of the vote, the proposed resolution 6 was defeated

The meeting was closed at 16.00

**POST MEETING NOTE: THE 2007 AGM OF THURNHAM OWNERS CLUB WILL BE HELD ON TUESDAY
12TH JUNE 2007.**

In accordance with the Adopted Constitution, no further advance notice will be sent to any member advising about the 2007 AGM. All members who wish to stand for election to the Committee or who wish to propose any resolution need to do so within the prescribed deadlines as indicated in the constitution.

PLEASE NOTE THAT ALL MEMBERS HAVE RECEIVED A COPY OF THE NEWLY ADOPTED CONSTITUTION TOGETHER WITH THE NOTICE OF THE 2006 AGM AND NO FURTHER COPY WILL BE ISSUED.

If any member should have misplaced their copy a new one can be requested by contacting Teri Jackson on 00-1524-589078 or tjackson@sunterra.com

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Appendix 1

Statement and questions submitted by Mr Charlie Dickinson at the AGM

Refurbishment of the 8 units in the Hall

At the December 2000 AGM, John Jackson told us that “most of the apartments in the main hall have already been refurbished. Once work in the Dower was completed all the apartments in the resort will either be new or recently refurbished and should give us a good number of years’ grace to enable the sinking fund which stands at £55k to grow to a sizeable sum before we have to create an ongoing rolling programme of refurbishment.” Like the sinking fund, we seem also to have lost the good number of years’ grace.

At the February 2005 AGM, there was no mention of a refurbishment problem. Then in the December 2005 newsletter, the Committee suddenly told us that, as the first phase of a rolling refurbishment, we will see eight units completely stripped out.

With this background to refurbishment and John Jackson’s previous statement that refurbishment would not be needed “for a good number of years”, it seems reasonable to ask why has an extensive rolling programme of completely stripping out units in the Hall been necessary? When was this rolling programme of stripping out included in the resort manager’s 5-year plan? Who was responsible for this decision?

Now let’s look at the financial aspects. The first eight refurbished units have been paid from the 2006 sinking fund payment. But the Committee, in their December 2004 newsletter, told us that this money had been allocated to cover the cost of the second half of the water treatment costs. What we then see is the introduction of a “special charge” as alternative funding for the water treatment costs. Why was this smoke screen of creative accounting needed?

Reading the Committee minutes sheds very little light on what has been going on. Why is there no mention in the minutes of an authorisation to implement this work which involved the very significant expenditure of over £200k? Days before the refurbishment work started, at the meeting held on 23rd January 2006, there was a brief statement that said that “6 units were being refurbished and 2 others would be looked at. There followed a discussion on what work needed to be done in the units and how essential the work was.” No other details were provided. Sunterra told the meeting that “the refurbishment costs were based on a best guess” and that “they now found that each unit in the Hall is a different size and shape, new plans have had to be drawn up.” How could plans be drawn up and a contractor appointed to do the work without Sunterra and the contractor being aware that each unit in the Hall is a different size and shape? How and when was it decided how much to pay the contractor?

Having stayed in one of the refurbished units about two months after the work had been completed, I would seriously question the Committee's description of "quality furnishings fabrics and fittings". Why has a dishwasher not been installed in the refurbished kitchen? My wife's comment on this was that she did not expect to stay in quality accommodation and have to wash dishes by hand. The fridge and freezer are not quality branded items. The furnishings look very much down market, more MFI than John Lewis. The knife block had four old blunt knives, a pair of scissors and a bottle opener in it. What happened to the new knife block and knives listed in the invoices for the refurbishment? Why was the television purchased in 2004 replaced with a similar tube type television?

Now let's look at the budget control for this refurbishment:

- The project budget used for the allocation of Club funds was £184,355. This was to refurbish 8 units
- Refurbishment was then reduced to 6 units, presumably because the project budget was inadequate
- The final grand total cost was £212,533, which gives an average cost per unit £35,422

If original 8 units had been refurbished, the cost would have been about £283,376. This represents an overspending of 54% on the original project budget! Where was the budget control and who was responsible? How was the contractor selected? Sunterra seem to have been working on the assumption that they had a blank cheque to do this refurbishment work.

Finally may I suggest to the Management Committee that they ask a working group of members to look, in detail, at how the refurbishment of the eight units in the Hall was carried out and report back to the Committee? Meanwhile may I also suggest that the rolling refurbishment programme is suspended until this working group reports back?

Appendix 2
Resort Manager's Response to Appendix 1

KH, having read the comments from **Mr Dickinson** feels that an explanation is indeed required but feels that **Mr Dickinson** is not entirely correct in his reasoning.

As mentioned in the minutes of the AGM six apartments had been gutted and refurbished to a high standard, using industrial quality materials. In part due to a large amount of unforeseen remedial work the final cost was £205,354 compared to the sum allocated from the sinking fund of £157,047.

"A good number of years" is indeed correct and it is 6 years since **John Jackson** made that statement – of course the units and items therein have tired over 6 years and it should be noted that these units were not fully renovated 6 years ago.

The initial quote received by Property Development Department was based on a preliminary survey and on the average price incurred when refurbishing units across the group over the last 12 months.

As the Property Development Department could not secure access to these units due to very high occupancy levels until the works were imminent, it was not until after the full survey was completed that it became apparent that each unit was totally unique requiring dedicated and individual planning.

Due to this the original plan for 8 units was lowered to 6 units in order to meet the expected standard and quality which the members demand and deserve to receive.

That there eventually was an overspend on the actual work carried out in the 6 units was due to further unforeseen remedial work. Sunterra Europe does wish to make it clear that the Club did not bear any of this overspend as this was paid for by Sunterra Europe Limited.

Sunterra has refurbished close to 150 units in the last year across Europe and made very detailed comparison studies and the conclusion is that the price of these units is not unreasonable, falling in line with the high industry standard. In fact comparing the cost of gutting and renovating a whole unit at once instead of renovating it over a period of 4 or 5 years bit by bit is more economical. The main difference is that instead of seeing the total bill in one lump sum, the cost is spread out and not so noticeable.

KH apologized that the dishwasher specified for the unit has not been installed prior to **Mr Dickinson** stay, but one has since then been installed.

Both **KH** and the management company feel that the comment made by **Mr Dickinson** in respect to the furnishing is totally incorrect. The furnishings are not down market, they are in fact tailor made for Thurnham Hall, having been sourced as hotel furnishings as they need to withstand a great deal of usage over time

The comment made in regard to kitchen knife blocks is correct as these had not been delivered in time for **Mr Dickinson's** visit hence an old block was put into the unit on an interim basis. New items have now been placed in the units.

The TV's were all purchased in 2004 from John Barratts – prior to 2004 the club used to rent these at an extortionate cost so to buy them made sense as the cost was less than one years rent. The new TV's in the apartments now have built in digital TV which is a demand made by the majority of clients.

Sunterra has never assumed that such a thing as a blank cheque book exists, if anything the company as the majority owner of the Hall, contributing more than 50% of the overall running cost of the resort is very conscious of the impact this exercise has had and for that reason Sunterra agreed to pay the difference between the agreed and approved quote and the actual final cost.

FITZGERALD SUITE – total	£33,456.83
Builder	£18,663.70
Bathroom	£168.87
Furnishings (soft and hard)	£10,472.28
Kitchen	£3,031.50
Bedding items	£147.23
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£551.53

Prince Richard suite – total	£28,731.31
Builder	£18,663.70
Bathroom	£168.87
Furnishings (soft and hard)	£5,874.19
Kitchen	£3,031.50
Bedding items	£102.05
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£469.28

Dorset suite – total	£32,007.58
Builder	£18,663.70
Bathroom	£168.87
Furnishings (soft and hard)	£9,023.02
Kitchen	£3,031.50
Bedding items	£147.23
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£551.53

Thomas Grey suite - total	£37,306.10
Builder	£22,115.85
Bathroom	£230.82
Furnishings (soft and hard)	£10,729.55
Kitchen	£3,031.50
Bedding items	£225.13
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£551.53

Dalton suite – total	£41,086.35
Builder	£22,115.85
Bathroom	£230.82
Furnishings (soft and hard)	£14,509.80
Kitchen	£3,031.50
Bedding items	£225.13
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£551.53

Priest Hide suite – total	£33,140.08
Builder	£18,663.70
Bathroom	£168.87
Furnishings (soft and hard)	£10,155.53
Kitchen	£3,031.50
Bedding items	£147.23
Worktop appliances	£229.61
Kitchen utensils	£192.11
TVs and DVD	£551.53

The actual work in progress was carried out and supervised by the builders with a foreman on site at all times – all involved were qualified and registered tradesmen and all works were in accordance with regulations, including noise, dust etc.

Minimal interruption was caused to the on site clients and **KH** oversaw all aspects being carried out.

Appendix 3

Statement and questions submitted by Mr Charlie Dickinson at the AGM

Management Agreement

When we became members at Thurnham, we accepted the Club's Constitution and Management Agreement as a condition of our membership. Sunterra have signed the Management Agreement, similar to the one you now have as part of the agenda package, on your behalf on 16th November 2004.

- How many of you have previously seen a copy of this Management Agreement?

In April 2004 the Management Committee wrote to all of us to say that "a new management agreement must be put in place and the Committee wish to propose acceptance of a new agreement at the AGM in December of this year". It was also recorded in the Management Committee minutes on more than one occasion that the new management agreement would have to be approved by members before it was signed. They have failed to honour this commitment to members. They have failed to provide us with an explanation of their actions.

- Why did the Management Committee do this?

I would like to make the following comments about this Agreement.

I have the advantage over other members at this meeting in that, as a member of the Constitution Review Working Party, I have seen a previous signed copy of this document.

- Why have Sunterra provided an unsigned copy of the Agreement to members?

Sunterra Europe has signed the previous document on our behalf. The other party to this Agreement, as the Management Company, is also Sunterra Europe.

- Whose interests are Sunterra Europe going to look after if there is a problem with this management contract?

There is no signature on the signed copy I have for Sunterra Europe (as the Management Company). The signature that should have been there has been given as a witness.

- With the legal expertise available to Sunterra, and Joe Tully, Sunterra's solicitor, was a witness to this document, how did Sunterra miss this one?
- In the event of a dispute, without this signature, do we have an agreement that would stand up in a court of law?

The signatures to the agreement on behalf of Sunterra Europe are unreadable and have not been identified.

- Why have the two persons who signed this document not been identified?

We have been given an assurance by the Committee that the Management Company would hold management fees and the sinking fund in separate escrow accounts.

Why is there no mention in this Agreement as to how our Club funds will be controlled and protected? For the payment of annual management charges, members are to be bound by the terms of this Management Agreement.

- Why have members not been asked to approve this document?

The terms of this agreement allow the Management Company to set a levy for special projects without reference to the members.

- Where in our Constitution is the clause that allows such a special levy to be made?

This document states that the costs of the sinking fund will be subject to Value Added Tax.

- Why?

The Term period of this Agreement, in practice, will be a minimum of 15 years.

- Why have the three Committee members representing ordinary members committed the Club to such a long period?

This Agreement states that the records and books of account are at all times available for inspection by any member of the Club. My experience is that Sunterra have not reasonably made these records and books of account available.

- Would the Committee ensure that Sunterra conform to this requirement and agree with Sunterra an acceptable interpretation of “at all times”?

From the fact that Sunterra are trying to introduce a new Management Agreement it can be reasonably argued that they do not wish to renew the existing Agreement, as there cannot be two Agreements in operation at the same time. This means that all members should have been notified of their intention to ask for a new agreement, in writing, 3 months prior to the AGM.

- What is the Committee and the Chairman of the meeting going to do about this?

Appendix 4

Response

It is acknowledged that prior to exhibiting the Management Agreement to the 2006 AGM notice, the said agreement had not been circulated previously. At the AGM, the Founder Member apologised to the Members if any of them had been prejudiced, and confirmed that that was why the opportunity had been taken to circulate the Management Agreement with the AGM agenda documents.

It is also acknowledged that the Founder Member was more than happy for Mr Dickinson to have a signed copy of the original agreement and Mr Dickinson was indeed provided with a signed copy.

The Management Agreement (which Mr Dickinson rightfully states is dated 16th November 2004) was in fact signed by Geoff Bruce (signature one) on behalf of Sunterra Europe Limited (Founder Member) and Dave Harris (signature two) on behalf of Sunterra Title (Founder Member) and by Geoff Bruce (signature three) on behalf of Sunterra Europe Limited (in its capacity as Management Company). The signatures were witnessed by Joe Tully (solicitor employed by Sunterra at that time).

It is not unusual that a Management Agreement is between companies in the same group. The previous Thurnham Management agreement was between two Thurnham companies.

An unsigned copy was exhibited to the proposed draft constitution, this being the only version of the document held in Word format. This was forwarded by email to the Company Solicitor (Miss Crook) at her request for forwarding on to the printers.

In light of Mr Dickinson's questions, the whereabouts of the signed original were located. It is now apparent that although the circulated copy does not differ in any material respects from the executed document, it does differ. Clearly, therefore, the Word document provided was not the final version. For that reason, (and because Mr Dickinson has made a good point in that this could cause further confusion were the contents of the Management Agreement ever to be debated) we have arranged for the original agreement to be scanned and a copy of the same has been enclosed hereto. This is the Management Agreement that should be referred to should any Members wish to clarify any of the terms.

In order to avoid confusion however, (and in view of the adoption of a new constitution) references to clause numbers in the constitution should be amended to read as follows;

Recital (B) – The reference to Clause 10.6 should now read Clause 11.1 and Clause 10 should now read Clause 11

Paragraph (1) - The reference to Clause 12 should now read Clause 13.

Paragraph (3) - The reference to Clause 12 should now read Clause 13 and the reference to Clause 13.10 should now read Clause 15.8.

Had it not been for Mr Dickinson's questions, the original agreement would not have been scrutinised. In this regard, therefore we are grateful to Mr Dickinson.

Please insert 6 page management agreement pdf here

Turning now to the points raised by Mr Dickinson.

Mr Dickinson has made the point that when he became a member of Thurnham, he accepted the Club's constitution and Management Agreement as a condition of membership.

We agree that this was indeed the case. "Management Agreement" is defined in the original constitution as "The Agreement relating to the management of the Club a copy of which is annexed to this Constitution *or any similar document for the time being in force*" [our emphasis]. The constitution itself therefore recognises the possibility of the Management Agreement being altered from time to time.

On careful comparison with the previous Management Agreement, there appear to be very few differences of any significance, save in so far as the new management agreement is more detailed and leaves few or no grey areas. For example, clause 6 of the old Management Agreement prescribed that "each Ordinary Member shall pay ... the Annual Charge in respect of ... the various items of expenditure specified in Rule 12 of the [old] Constitution". Under the new Management Agreement, the cost is allocated pro rata as between all of the Members (including the Founder Member). If (as strictly interpreted) each Ordinary Member was expected to bear the cost of the expenditure (and the Founder Member was required to bear none of the cost) the liability of the Ordinary Members would be increased significantly. This could never have been intended by the draughtsman of the original agreement, not least because this would have proven grossly unfair to the Ordinary Members.

Although the Committee may at one stage have thought that the approval of the Members was required to make any changes to the Management Agreement (and the Founder Member makes no submissions on this point) this was not in fact necessary. By virtue of clause 10.6 of the old constitution, all powers necessary to carry out the objects of the Club are conferred on the Committee. As such, if the Committee was of the view that it was in the best interest of the Club to approve the new Management Agreement, they were entitled to approve it without seeking the approval of the Members. The Management Agreement does not form part of the Club constitution.

Mr Dickinson has questioned why there is no mention in the 2004 Management Agreement of the management fees and sinking fund monies being held in escrow accounts. Of course, there is no obligation under the terms of the constitution for the monies to be held in an escrow account (and having reviewed the original management agreement there is no reference in that agreement to the funds being held in escrow). Suffice to say, the maintenance fees are accounted for by Sunterra in an account maintained entirely separately from the Founder Member's corporate funds. The Founder Member is currently working with its bankers with a view to implementing safeguards so that those monies will be protected as "client funds".

Mr Dickinson questioned why a levy for special projects was charged without the matter having been referred to the Members for their approval and asks where in the constitution there is a right to charge a special levy. The special levy was nothing more than an unexpected cost (the breakdown of the sewage plant) that had not been budgeted for in the Annual Management charge. The right to agree to incur such expenditure is provided for in clause 12.1 of the old constitution. So as to effect the installation of the sewage plant expeditiously, the outlay was paid for in advance by the Founder Member (there being no funds available to discharge this outlay in the sinking fund accounts). Had the Founder Member not been prepared to advance the money, the Club would have been forced to shut down by the Environmental Authorities. This outlay was then apportioned pro rata between the Members (including the Founder Members). However rather than recoup the cost over a twelve-month period (and in order to share the cost fairly as between the A and B members) the cost was recouped over a two year period.

Mr Dickinson has raised the point why the sinking fund is subject to vat.

The sinking fund relates to potential expenditure that the Club will incur in the form of (for example) replacement of capital items). All such expenditure will be subject to vat. Historically, when invoicing members in respect of the Sinking Fund, the expenditure was expensed gross in the invoices (and as such already 'included' VAT). In 2007, however due to a review in the VAT treatment, the VAT element of the Sinking Fund now has to be shown separately.

Mr Dickinson has queried why the Committee approved a Management Agreement for a minimum term of 15 years.

The Management Agreement (at clause 2) specifies that it shall be for an initial term of 5 years. Before the expiry of the initial term, a resolution must be proposed by the Founder Members that the Agreement shall be renewed for a further term of 5 years. Such resolution shall be deemed passed unless a three-quarters majority of the Members entitled to attend and vote at the AGM vote against renewal. In the event that the Agreement is renewed for a further five year term, before the expiry of that second term, a further resolution shall be proposed by the Founder Members that the Agreement shall be renewed for a further term of 5 years. Again, such resolution shall be deemed passed unless a three-quarters majority of the Members entitled to attend and vote at the AGM vote against renewal.

The proposed Term of five years is not unusual or onerous. Furthermore, the Management Agreement between Thurnham Leisure Limited and Thurnham Hall Management Limited contained similar provisions.

Finally, it is agreed that paragraph 7 of the Management Agreement does indeed confer on the Members the right to inspect the records and books of account of the Club "at all times." We would submit that this must be interpreted to mean at all reasonable times (ie when accounts staff are present in the building). It is acknowledged that when Mr Dickinson requested sight of the accounts, there was a delay before his request could be accommodated. It should however be pointed out that Mr Dickinson also required guidance on their interpretation/an explanation in relation to certain entries and as such, accounting staff had to be made available to assist him (which clearly took them away from their normal duties). If all that is required is access to the accounts, then such access can generally be facilitated at any time during office hours (Monday to Thursday 9am to 5.30 pm/Friday 9am to 5pm).

APPENDIX 5

The following is a list of Written Questions submitted by members prior to the AGM. A copy of these together with the response of the Company was distributed to those present at the meeting and is hereby included for information purposes

Questions	Responses
<p>1. Mr L KELLY – letter 24 June 06</p> <p>1. Having received notification of the 10th Annual General Meeting. We would suggest that 6 days notice is too short a time to enable a thoughtful response. Why is there such short notice given, and why are the documents not date stamped to verify when they were dispatched?</p> <p>2. Notice 19. Why are all members requested to specify an address within the UK? Is it a fact that in the event of any members wishing to reside abroad such a condition makes it extremely difficult to take an active part in the protection of their rights?</p> <p>3. It would appear that that main thrust of the amendment to the Constitution is to strengthen the managements hand, not to overly protect the owners. Why has not a buy back scheme been incorporated to simplify owners’ disposal of the months? This would allow for the exit of those members who are dissatisfied and feel trapped by events, to part company amicably.</p>	<p>1. Under the current constitution, it has not been possible to give more notice because members are permitted to submit resolutions right up to the last minute. Indeed this was the very reason as to why this year’s AGM (which had originally been scheduled for July) had to be cancelled. The new constitution proposed by the Founder Member will (if adopted) hopefully prevent this from happening again and will enable the Founder Member to send out the notice sooner.</p> <p>Although the documents are not date stamped, the date of dispatch can be ascertained from the date of the postmark.</p> <p>2 .Unfortunately we are in some difficulty in responding to this question as we cannot find either an Item 19 or any request to specify a UK address. Suffice to say, members can provide the Founder member with an overseas address if this is the address that the member wishes us to send correspondence to. All that is asked of the member is that they ensure that any changes to their contact details are notified to the Founder member.</p> <p>3. A full explanation in relation to the new constitution has been provided. The Founder member does <u>not</u> believe that the proposed constitution strengthens the management’s hand. Indeed, the Founder member is of the view (for the reasons stated) that the new constitution actually strengthens the powers of the Committee (and therefore the Ordinary members).</p> <p>Sunterra has never offered a buy back scheme and does not wish to provide such a facility - not least because a large number of weeks have not been sold and the Founder Member is already responsible for discharging the management fees for these unsold weeks.</p>
<p>1. Mr & Mrs C HILL – letter 24 Sept 06</p> <p>Regarding agenda item 15: under the rules as I understand them as a member of the Thurnham Vacation Club with a fixed week ownership in Thurnham Hall, I can book 2 years in advance to reserve my week. This I have done without a problem until this year (29/7/06) when booking for 2008. I was told that the 2007 booking for which I had written confirmation had been cancelled because I had not reconfirmed the booking 11 months in advance.</p> <p>This ruling, if correct, has never been advised to me/us and surely if a written confirmed booking was being cancelled by Sunterra, they</p>	<p>Fixed time members of Thurnham Owners Club are not required to provide any advance notification of their intention to occupy their own week.</p> <p>This being the case, we query if the question actually relates to Thurnham Vacation Club. If so (and although not relevant for the purpose of this AGM) we would confirm that as per the rules and regulations of Thurnham Vacation Club (and as advised in writing to the members in April 2004) members wishing to reserve their “fixed” home week can do so between 24 and 12 months in advance of the week. In the event that we have not received written confirmation from the member advising of their intention to use the respective week not less than 11 months in advance of the commencement date of the week, their home week will then be released in</p>

<p>should contact the member in writing. If this practice is continuing, it could affect many members.</p>	<p>accordance with standard practice. It is certainly not the practice of the company to release a week in circumstances where it has been confirmed prior to the cut off date.</p>
<p>2. Roger HASLAM – undated letter 1. As this information, which we would find helpful, is not readily available elsewhere can the figures requested below be given in the AGM minutes: a) The number of ordinary members b) The number of owners of 1 week (except Sunterra owned) c) The number of owners of multiple weeks (except Sunterra owned) d) The number of owners of A and B weeks e) The number of weeks held by the founder members f) The number of weeks ‘handed over to RCI and II’</p> <p>2 .Are the sales team endeavouring, and succeeding, in selling ‘weeks ownership’, or Sunterra points, or both</p> <p>3. What are the prices being asked for the various sized ‘apartments’ (st/1bed/2bed) in the various ‘seasons’?</p>	<p>1.a) There are 622 ordinary members not including the owners of Odd or Even (A or B) memberships. 1.b) There are 606 ordinary members owning 1 week. 1.c) There are 16 ordinary members who own more than one week 1.d) There are 247 Odd year members and 309 Even year members 1.e) The Founder member owns 1,306 weeks as at October 2006. 1.f) To date, no weeks have been handed over to RCI or II by the Founder member. Ordinary Owners of Thurnham Owners Club may deposit their weeks with RCI or II individually when wishing to make an external exchange and these weeks then become available to the exchange company for them to book their members into.</p> <p>2. All the sales efforts of Sunterra in Europe are focused on selling Club Sunterra Points Membership. Sunterra Europe does not sell Fixed/Floating timeshare weeks.</p> <p>3. As no weeks as such are being sold, Sunterra is unable to give an answer to this question</p>
<p>Mr & Mrs Conlon letter 2nd October 2006 When we bought our timeshare in Oct 99, we were advised that the company would help us sell it should we decide we no longer wanted to keep it, subject to all the units being sold. We decided some years ago that we did not use the facilities either at home or abroad and would like to sell it. However all the companies running Thurnham Hall refused to help us. We were even advised that the timeshare we held was something that was not currently being marketed and therefore had little value (we own alternative years). We have tried to sell through specialist timeshare selling companies, but have been ripped off on several occasions after paying fees of around £350 per time. Two companies have offered us alternatives to selling of ‘free’ holidays in other sites and then refused to refund our fee after 12 months when the timeshare has not been sold stating that an offer has been made which we refused. Can you please tell me why the company will not help us sell our timeshare if it is such a valuable asset that many people want to stay at and own?</p>	<p>Sunterra Europe do not and never have operated a resale/repurchasing scheme for fixed/floating weeks. Whilst Sunterra cannot be bound by representations made by Thurnham sales personnel it would appear from the question that even the Thurnham group of companies were not prepared to assist with re-sales unless all of the units had been sold. As detailed in response 3(1)(f,) a number of weeks remain unsold. We can provide a list of considered reputable resale companies (as recommended by OTE – Organisation for Timeshare in Europe) who may be able to help sell week ownerships. There are many companies in the market place offering various sales & marketing services and it unfortunately appears that some do request substantial registration fees up front and then do not fulfil their obligations. We would always strongly suggest that owners to not pay any fee until such time as a sale is agreed and balance monies received. Of course it does remain the decision of the owner as to how they wish to proceed.</p>

Constitution Review Report.	The Constitutional Review group held a number of meetings in 2005 and 2006. However by circa April 2006, it was felt that unfortunately, little progress had been made. The Company therefore resolved to conduct an internal review instead. The outcome of the review is the proposal of the Founder member to adopt a new Club Constitution. In the event that the original Review Group wish to make any further comments, these will be enclosed with the minutes of the AGM.
Legal actions against the Management Committee and the refusal of the Management Committee to go into arbitration regarding points of Disagreement	A claim was brought against the Committee asserting that the Committee had acted ultra vires. The Committee did not feel that the dispute was appropriate for arbitration. That claim has now been dismissed by the court. A second claim has recently been issued by the same Claimant. However it is not felt appropriate for comment to be made until that claim has been adjudicated upon.
Refurbishment of the units in the hall and the cost of refurbishment of said Apartments with a breakdown of those costs	A breakdown of the refurbishment costs for 2005 will be discussed at the AGM and will be detailed in the minutes subsequently circulated.
Sunterra Europe Limited.	The Company intends to update the members at the AGM regarding any developments pertinent to the members of the Thurnham Owners Club.
Management agreement.	The Management Agreement was signed in 2004 and a full copy of the current agreement is enclosed with the proposed Club Constitution.
Date of AGM.	The meeting had been planned to take place in July of this year and the notices had been sent out. Unfortunately, due to the receipt of last minute resolutions, the printing and mailing of the notice was not done within the prescribed timeframe. A number of members objected to this non-compliance. A decision was therefore taken by the Committee to reschedule this meeting to October. As has been stated in the Founder member's report, if the new constitution is adopted, we will be able to prevent this from happening again in the future.
Use of sinking fund and level at which sinking fund should be charged (10%).	We believe that this question relates tot he current constitution. Clarification will not be required in the event that the new constitution is adopted.
Use of correct and enforceable version of the constitution.	The Founder member totally agrees that the current constitution needs to be replaced, hence its proposal to adopt a new constitution. The current situation is unworkable.
9. Mr. C. Dickinson has raised a question regarding last year's minutes, specifically agenda item 9 in relation to proposed resolutions from Mr C. Dickinson. Mr. Dickinson is of the opinion that the agenda item 9 should be re-printed to include the missing explanations of his resolutions and that this should then be distributed with the minutes from this year's AGM.	The Committee are of the opinion that in order to avoid additional costs, the minutes should simply be amended to say 'please refer to the Notice for the 2005 AGM for explanations as to why the resolutions had been made', it being the case that a full explanation was contained therein.