

## DRAFT

### UNDERSCAR OWNERS' CLUB LIMITED

#### 1<sup>ST</sup> ANNUAL GENERAL MEETING

2 pm on Sunday 2<sup>nd</sup> April 2017

at

Rheged, near Penrith.

**Present** Peter Allen (Chairman), Barbara Hedley, Ian Hedley, Janice Lawson, James Moore and Alex Parsons (Board members); Gill Stubbs and Chris Jackson (representing Fisherbeck Management Ltd); Jennie Thompson from Resort Fiduciary Services (the Trustee); 120 members of Underscar Owners' Club Ltd; and, Wendy Holey from Dial an Exchange. Apologies were received from David Edmundson.

#### **Formal meeting**

1. Peter Allen opened the meeting and welcomed all present. He introduced the members of the Board, Jennie Thompson from the Trustee, Resort Fiduciary Services (RfS) and representatives of Fisherbeck Management Ltd (FML). He went on to propose a vote of thanks to Barbara Hedley for her many years of service to UOC and UOCL as a committee member and Board member. Members were all aware of the improvements in communication via the Newsletter which Barbara edits but probably not so aware of her extensive contribution to the work of the Board – the most recent example being her diligent revision of the Articles of Association.

2. The first item to be discussed was whether there were any matters arising from the approved minutes of the Special General Meeting of Underscar Owners' Club on 31.5.2015. Mr Whithear questioned whether the SGM minutes could be approved by the Board without the agreement of a general meeting of members. The Chairman explained that the old club no longer exists so could not approve the minutes. The meeting agreed that there was no need for owners to approve the SGM minutes of the old club. There were no other matters raised that were not on the agenda of the informal part of the meeting.

3. PA explained to members present that for all motions to be considered at the meeting, the vote would be a poll vote, ie proxies would be included as well as the votes in the room. All owners present had been given a voting card for each week they owned on the basis that they had not already cast a postal vote.

4. **Motion 1: To adopt the first year's audited accounts for Underscar Owners' Club Limited (UOCL) for the period ended 31 August 2016.** IH thanked Gill Stubbs (FML, Finance Director) for all her work in keeping the accounts in such a professional manner. The Auditors had complimented her on her efficiency and her work with them to agree a form of presentation that would be acceptable for UOCL. IH commented that these were the first

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accounts for the inaugural year of UOCL and hence might appear a bit unusual. He referred to his explanatory note sent out with the accounts.

5. IH drew attention to the make up of our income (page 12 in the accounts) and the difference between non-mutual and mutual trading. UOCL has to pay corporation tax on non-mutual but not on mutual trading. He mentioned the non-trading loss could be carried forward against any future non-mutual trading profit. IH then referred to the exceptional items on page 8, the £254,118 brought in from the old UOC and the rate rebate of 84,190. There was a brief discussion about how much is transferred to the Refurbishment reserve fund each year. A question was raised about the interest rate on the bank loan. It is 4.75% over Base rate, so 5% at present.

Alan Buckett proposed the adoption of the accounts and was seconded by Andrea Allen. An overwhelming majority of votes in the meeting were in support of the motion. Proxy votes cast before the meeting were 333 for the motion, nil against the motion and no abstentions.

6. **Motion 2: to propose re-appointment of Moore & Smalley as auditors for the financial period 1 September 2016 to 31 August 2017.** IH commented that Moore & Smalley gave top quality advice and had been particularly helpful in setting up the accounts in an understandable way in this first year of operation.

James Moore (no relation) proposed reappointment of Moore & Smalley and was seconded by Elizabeth Davies. An overwhelming majority of votes in the meeting were in support of the motion. Proxy votes cast before the meeting were 331 for the motion, 2 against the motion and no abstentions.

7. **Election of candidates for the Board.** As set out in UOCL Articles of Association, all Directors retired from office at the first AGM of the company. Five of the Directors had offered themselves for re-election and there were no other candidates so all five were re-appointed. PA expressed disappointment that there were no new candidates and the Board now had 2 vacancies. The quorum for meetings was 4, so it meant the Board was vulnerable to occurrences where they would be unable to make formal decisions. He asked members to consider putting themselves forward and suggested they could attend a meeting to test the water.

8. **Motion 3: to adopt the revised Articles of Association of UOCL.** BH introduced the motion proposing adoption of the Articles. This motion would require a 75% majority as it was a matter of constitutional change. BH explained that in 2015, at the inception of UOCL, we adopted a set of articles recommended by our advising company lawyer to get the new company structure launched. It was clear from the discussion at the SGM (see minutes) that some owners had legitimate concerns about whether the wording was fully appropriate for the timeshare business we have become, so the newly formed Board asked her to lead a detailed exercise of revision.

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9. BH thanked the consultation group that worked with her on the revision of the Articles of Association; namely David Davies, Geoffrey Snow, Tim Kirker and David Edmundson. Together they developed a layman's draft, then took detailed advice from Oglethorpe, Gillibrand and Sturton solicitors (OSG), who act for us and for Langdale, and have a specialist in this field. In addition they consulted our Trustees RfS - namely Jennie Thompson - who also provided helpful suggestions. After further consultation rounds they were able to agree on the version put before the AGM.

10. A fully annotated version of the original version of the Articles of Association was available on the UOCL website so that everyone who wished to do so could scrutinise the changes. The revised Articles now focus, as they should, on defining the proper conduct of UOCL as a business entity. This provides clear separation from those matters that properly belong with day-to-day operational management; which now sit within the club rules and regulations.

11. BH invited questions from the floor. Mr Whithear addressed the meeting to express his concern that neither the original Articles, nor the proposed revised Articles, provided the comfort he sought to deal with an owner's liability on death. He felt it was insufficient that the ownership of a timeshare week became part of someone's estate. He was also dissatisfied that the Board had not been willing to support and put forward at the AGM the motion that he proposed that membership of the club should cease at death. PA explained that his request for an independent motion was not supported by the Board, nor properly made. However, time had been allocated at agenda item 9 for detailed discussion on this point and the wider issues that it raised.

12. BH expressed thanks to Mr Snow for identifying a typo on page 4 of the new Articles - under Interpretation - 'Rules' the cross-reference to Article 26 requires correction to Article 27. With the consent of the meeting it was agreed that this error would be corrected before the newly adopted Articles of Association are lodged at Companies House.

Mr Snow proposed adoption of the revised Articles of Association and was seconded by Mr Kirker. A majority of votes in the meeting were in support of the motion, with 7 against. Proxy votes cast before the meeting were 326 for the motion, nil against the motion and no abstentions.

### **Informal meeting: briefings for owners and open discussion**

#### **13. Outcome of planning application by the owners of the Manor.**

IH explained that he had experience as a local councillor on his authority's planning committee so he had taken the lead for the Board on the planning application for the new wall (as he had with the Herb Garden wall). The Board engaged a planning consultant who had been the planning officer on the original Underscar time share development planning process. The consultant advised that the original application for the new wall would, in all likelihood, have been given planning consent as it stood.

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14. The Board made representations to the landlord and to the Lake District Planning Authority (LDPA). We sought amelioration by moving the wall further away from the southern units. In response, the landlord moved the wall back from 3.5m to 4.8m and made changes to the height and configuration of the wall in order to preserve some of the iconic view from the Ashness corridor and reduce the hemmed-in feeling. IH explained that we wrote to LDPA saying we were negotiating with the applicant and would object to the wall application if we were not satisfied by their amelioration. In the end we did object, as did 30+ of our owners. IH attended the planning meeting on February 1st with our planning consultant and he put our case well. The application was given planning approval with 2 members of the committee voting against. The planning consent awarded includes an undertaking by the landlord that nothing would be allowed to grow above the height of the wall.

### 15. The Leases.

There are five leases extant relating to the UOCL relationship with the landlord (freeholder). IH explained that these were created in stages as the site was developed. The leases are:

- Lease 1 - the Coachhouse
- Lease 2 - half the back car park and 4 units on the back and 2 on the front
- Lease 3 - the rest of the car park and all the units to the east, Oxleys and the Herb garden units
- Lease 4 - the staff car park outside Oxleys to the right of the entrance
- Lease 5 as an L shaped car park to the left of the entrance and across the front of Oxleys

The central part of the Oxleys car park is not on a lease but can only be accessed via our entrance.

16. Our trustee, RfS, holds the leases on behalf of members of UOCL. The leases are not well constructed, lack clarity and refer to previous landlords and trustees. The owner of the Manor (our landlord) is willing to discuss moving to a single lease and tidying up the existing ambiguity in relation to access and boundaries. PA and IH are pursuing this opportunity working with the landlord's agent at Underscar. Howard Allen, an Underscar owner and retired from a career specialising in land lease work, is working with the Board to support the negotiations and develop Heads of Terms. Beyond that, the Board would put any further work in the hands of solicitors. RfS believes the Board is best placed to lead the negotiation, though they would be signatories to the lease.

17. Issues raised from the floor included:

- The need for access to Ormathwaite Road through the woodland;
- The question of safe egress from the Herb Garden units in case of fire;
- Alternative routes for escape from the front row units other than the Ashness corridor;

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- Need for more car parking spaces, in particular for 3 bed units;
- Would we consider requesting an extension to the lease?
- Would the revised leases be brought to a future AGM before a decision was reached?

18. PA expressed concern that we might lose the good will of the landlord if we delayed a decision while consulting owners through a general meeting. David Davies proposed that the owners should trust the Board to negotiate on behalf of UOCL and come back to owners with a done deal. Those present unanimously agreed this proposal.

### 19. **Progress on refurbishment.**

AP explained that following the news of our rates rebate, the board considered whether some of the windfall could be used to help purchase the heatpumps and whether such a purchase would benefit the club. The conclusion, following analysis, was that purchasing the pumps would be of great benefit to the club. We therefore proceeded by using £64000 from the rebate, together with a £116000 loan over 5 years. The outline effect on our finances is that, during the loan repayment period, our costs rise slightly by around £2000 pa. Following the loan repayment, finances are improved by around £24,500 pa. This is because we no longer pay lease costs and we receive, as the owners, the government's Renewable Heat Incentive payment. Over the remaining period of the original lease (20 years), the net benefit to the club is around £220,000.

20. JL reported that we had now refurbished the bathrooms in 6 apartments and kitchens in 2 apartments. She showed slides of the family bathroom in Hindscarth and the en-suite in Great Gable, and the kitchens in Whinlatter and Catbells. Our current annual spending on maintenance of £150000 was insufficient to speed up the refurbishment programme. If we do not speed up the refurbishment programme the final bathrooms will not be refurbished until 2024-25 and the kitchens even later. We also have priority spending pressures for replacement windows, boilers and tables, as well as urgent work on the pool. JL showed a slide of the new handcrafted oak table and chairs which had been sourced by CJ (FML) and recently put in to Whinlatter. The Visit England inspection had noted that some of the original tables were looking worn.

21. There are two issues about timing. While many of the bathrooms and the kitchens may seem OK for the moment, a mix of quality across the site is unfair for the owners of properties not refurbished. In addition, we cannot risk reaching a point when 10-15 apartments all need refurbishment at once. It would be unlikely that there would be sufficient funds in reserves to cover that scenario without a large surcharge. Apart from the funding required for refurbishment, the time available in the 2 weeks closure for maintenance each year is not sufficient to attend to that level of major works. We could manage about 4-5 apartments each year.

22. The Board is in favour of increasing the rate of refurbishment to refurbish all bathrooms and kitchens within a 5-6 year programme. This would

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require an additional £60-70k pa, approximately £60-70 on the management fee per week. PA asked for a show of hands to indicate who present would be prepared to see an increase of £50 per week on the management fee to support a faster refurbishment programme. A large majority of owners voted in favour of this, with a small minority against and a small group willing to pay more.

23. A consultation would begin with owners via the Newsletter and website to gather views and the Board would look at the options for securing the necessary funds.

**24. Ownership continuity.**

PA asked Mr Whithear to introduce the subject of ownership continuity and his concerns about not wishing to leave his heirs a financial burden. Mr Whithear felt that UOCL should have a rule setting out the circumstances under which owners could give up their timeshare and liability for future management fees. A robust discussion took place. Many owners did not wish the company to take on the liability for people who pass back their week to the company and pointed out that owners who wished to reduce their liability should sell or rent out their week. Several made the point that we had bought holidays, not an asset. If owners wanted to sell, they should be prepared to do so for a very reduced price compared to what they paid initially. JT (from RfS) suggested owners should seek advice from TATOC or the Timeshare Consumer Association and beware of scam companies seeking to buy weeks but not being liable for the ongoing liability.

25. PA acknowledged that there may be hardship cases, or probate cases and said that the Board would look again at the options currently being used by other timeshare sites and see if we could recommend a practice that would be manageable without placing financial burden on UOCL.

26. PA thanked owners for attending the AGM and their input to the discussions. Alan Buckett proposed to those present that the meeting should declare grateful thanks to the Board for their work.

Janice Lawson  
April 2017