

**THE
KENMORE
CLUB
CONSTITUTION**

THE KENMORE CLUB

1. Constitution

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THE KENMORE CLUB

CONSTITUTION

The Club

1. The Club shall be called “The Kenmore Club” and in this Constitution is hereinafter referred to as “the Club”.
2. The Club shall be a non-profit making club and its object is to secure for its Members:
 - (a) Joint rights of ownership of certain Club Houses, Cottages and land at Taymouth Castle Garden, Kenmore.
 - (b) Exclusive rights of occupation of these Houses and Cottages for specified periods in each year.
 - (c) Maintenance of these Houses, Cottages and land.
 - (d) Provision for access to a range of leisure facilities for its Members.
3. The main office of the Club shall be at Taymouth Castle Garden, Kenmore or elsewhere as the Club Members shall decide.
4. The Club shall consist of not more than two original Members (one of whom shall be its promoter) and (a) ordinary Members who shall be persons or corporate bodies who have been granted an exclusive right of occupation of one or more of the Houses and Cottages as is hereinafter defined and in accordance with Rule 9 below and (b) temporary members admitted simply to use the social leisure facilities to such extent as the Members may from time to time agree.
5. The original Members of the Club were (a) Taymouth Castle Garden Limited and (b) Elliot Property and Leisure (Scotland) Limited. On 11 January, 1990, Taymouth Castle Garden Limited transferred its interest in the Club as Founder Member to Elliot Country Clubs plc and on 1 July, 1994 Elliot Country Clubs plc transferred its interest in the Club as Founder Member to Kenmore Country Club Limited which shall, with effect from 1 July, 1994 be referred to in this Constitution as a Founder Member in succession to Taymouth Castle Garden Limited and Elliot Country Clubs Limited and shall have all the rights, privileges and obligations herein set out as Founder Member.
6. The Founder Member shall arrange for the building and furnishing of residential holiday Houses and Cottages in Taymouth Castle Gardens complete with such amenities, leisure facilities, services, fixtures, fittings and equipment, furnishings, provisions and utensils as it shall consider appropriate for a high class development.

The Trustee

7. (a) The Founder Member will arrange for these Houses, Cottages and land to be conveyed at such time or times as it shall determine free from all charges and encumbrances to an independent Trustee in trust for the benefit of the Members of the Club, subject to a right of pre-emption in normal form in favour of the Founder Member.
- (b) The original Trustee, Barclays Bank Trust Company Limited, 54 Lombard Street, London, EC3P 3AH, was appointed by the Original Members and was succeeded as Trustee by York Trustees Limited, 19 York Place, Edinburgh, EH1 3BL on 25th

March, 1994, such Trustee being appointed under and holding office upon the terms of a Trust Deed in the form annexed hereto and such Trustee shall hold the title of the property of the Club.

- (c) Members of the Club shall automatically be bound by the terms and provisions of the Trust Deed upon admission to membership.
 - (d) The Trust Deed shall be ratified and confirmed at the first General Meeting of the Members of the Club duly convened and held in accordance with this Constitution.
8. In consideration of the Founder Member conveying to the Trustee the Houses, Cottages and land the Founder Member will initially be entitled to all the rights in respect of such Houses and Cottages under this Constitution.

Occupation

9. The exclusive rights of occupation of the Houses and cottages shall be granted in accordance with the following provisions:-
- (a) The Founder Member shall be entitled to issue for each House or Cottage no more than fifty-one Membership Certificates so that each Certificate will entitle its holder to occupy the House or Cottage to which it relates for the weekly period in each calendar year referred to therein. Each Membership Certificate shall be substantially in the form annexed.
 - (b) The weekly periods will be numbered from 1 to 49 and 51 and 52 with the first period beginning on the 29th December in each calendar year.
 - (c) In the case of weekly periods numbered 4 to 49 (inclusive) each period shall commence on a Saturday at 16.00 hours and shall end at 10.00 hours on the following Saturday.
 - (d) "In the case of weekly periods 1,2,51 and 52, each period shall commence on the 29th December, 5th January, 15th December and 22nd December respectively in each calendar year at 16.00 hours and shall respectively end at 10.00 hours on the 5th January, 12th January, 22nd December and 29 December in each calendar year. In the case of weekly period 3, each period shall commence on 12th January in each calendar year at 16.00 hours and shall end at 10.00 hours on the commencement day of weekly period 4 in each calendar year.
 - (e) The dates of the weekly period for the duration of the Club shall be as set out in the Table of Weekly periods annexed to the Constitution and any days unallocated to Members for weekly periods will be available for maintenance purposes.

Membership

- 10(A) Admittance of ordinary Members shall be subject to the following provisions: -
- (a) Any person or body corporate entitled by law to hold an interest in land may apply for and be admitted to membership of the Club.
 - (b) The weekly periods will be numbered from 1 to 49 and 51 and 52 with the first period beginning on 29th December in each calendar year.
 - (c) Membership Certificates will be issued to ordinary Members by the Founder Member either pursuant to its rights under Rule 8 or in accordance with Rule 17.

- (d) In the case of weekly periods 1, 2, 51 and 52 each period shall commence on 29th December, 5th January, 15th December and 22nd December respectively in each calendar year at 16.00 hours and shall respectively end at 10.00 hours on 5th January, 12th January, 22nd December and 29th December in each calendar year. In the case of weekly period 3, each period shall commence on 12th January in each calendar year at 16.00 hours and shall end at 10.00 hours on the commencement day of weekly period 4 in each calendar year.
 - (e) The rights in respect of any Membership Certificates not issued by the Founder Member to ordinary Members will belong to the Founder Member as an ordinary Member subject to all the rights privileges and obligations of being an ordinary Member.
 - (f) Admittance to temporary membership of the Club, without any such temporary member obtaining any interest in the Club or any of its assets, shall be competent for the purpose of making use of any leisure facilities established, used or enjoyed by the Club.
- 10(B) Membership of the Ordinary Members of the Club shall cease on the occurrence of any of the following events:
- (a) the transfer of a Member's Membership Certificate subject to the transferee becoming a Member of the Club; or
 - (b) the cancellation of a Member's Membership in accordance with the subsequent provisions of this Constitution; or
 - (c) termination of the Club in accordance with the provisions of Rule 28 of this Constitution provided always that termination as aforesaid shall be without prejudice to any person's rights in respect of a Member's liabilities arising prior to the said determination.

Founder Member

- 11. Initially, the management of the Club shall be vested by the original Members in the Founder Member under a contract for the management of the property of the Club in the form annexed. The Founder Member and any other person or company to whom the management of the Club shall be delegated is hereinafter referred to as "the Management Company".
- 12. Without prejudice to the powers contained in Rule 11 the Founder Member shall have the following specific powers:-
 - (a) To suspend for such period as the Founder Member shall think fit the rights of membership of any member who shall have committed a breach of this Constitution or whose conduct shall be unbecoming as a Member and who has not remedied the breach or conduct complained of within a reasonable time following a written request by the Founder Member for him to do so. Any such suspension shall be ratified by the Members at the Annual General Meeting next following the suspension taking effect.

- (b) In the event of the determination of the appointment of the Trustee to appoint whenever necessary another body or person as trustee of the property of the Club under a Trust Deed substantially in the same form as the Trust Deed in existence immediately before it comes into effect and Members of the Club shall automatically be bound by the terms of any provisions of such Trust Deed.
- (c) To vary or add to the regulations annexed to this Constitution subject to ratification by the Club in General Meeting.

Members' Obligations

13. The following obligation will apply to each of the ordinary Members of the Club:
- (a) To occupy the House or Cottage to which his Membership Certificate relates for no longer than the appropriate period of time in each year.
 - (b) At all times to observe the annexed Regulations as from time to time varied or added to pursuant to Rule 12 (c).
 - (c) To keep and maintain the interior of the House or Cottage to which his Membership Certificate relates and all of its contents in a good and tenable state and condition during the period of his occupancy and to pay or indemnify the Club against any damage deterioration or dilapidations (over and above fair wear and tear and damage or destruction by fire or any other risk insured against which may have taken place during the period of occupation) as to which the Management Company shall be the sole judge save in the case of manifest error. At the Management Company's sole discretion, Members and guests may be requested to lodge with the Management Company a deposit of a reasonable amount to be held against the cost of making good damage or breakages within the House or Cottage during the relevant period of occupation. Such deposit will be refunded to the Member and/or guest at the time of departure, less any deduction for damages or breakages as aforesaid, the amount of such deduction being such reasonable amount as is determined at the sole discretion of the Management Company.
 - (d) In the event of any inspection repair or maintenance work requiring to be carried out to the House or Cottage or its contents or to any adjacent building during the period of a Member's entitlement to occupation of a House or Cottage to allow access to the Management Company and necessary tradesmen and others if given reasonable prior written notice (except in emergency) to enable any relevant works to be carried out such works making good all damage to the House or Cottage and using its or their best endeavours to minimise any disturbance or inconvenience.
 - (e) Not to do anything which would make void or voidable the insurance of the House or Cottage and its contents or another insurance for the time being in force and relating to the buildings of which the House or Cottage forms part.
 - (f) Not to make any alterations or additions to the exterior or interior of the House or Cottage or anything therein
 - (g) To notify the Founder Member forthwith of any change in his permanent address.
 - (h) To pay to the Management Company at the end of the relevant period of occupation all metered charges for telephone and electricity, consumed during such period in the House or Cottage to which his Membership Certificate relates.
 - (i) To pay within one month of the same being demanded any charge falling due under paragraphs (c) or (h) of this Clause.

- (j) In the event of any Member letting, granting rights over or for any other reason parting with occupation of the House or Cottage to which his Membership Certificate relates in accordance with Rule 18 for the whole or any part of the relevant period of occupation immediately to give notice to the Founder Member or the Management Company together with details of the name and address of the person who has been allowed into occupation.

Committee

- 14. (A) A Committee of not more than six persons, all of whom shall be ordinary Members of the Club will be elected at the first General Meeting of the Members of the Club and this committee shall:
 - (a) represent the views and wishes of the Members in general to the Management Company, and vice-versa.
 - (b) be entitled to examine the books of Account of the Management Company and take any other reasonable steps to satisfy itself of the accuracy of the annual Management Charge and the efficacy of the Management Services, reporting to the Members in general as it thinks fit.
 - (c) elect from its number a Chairman who shall have a casting vote.
 - (d) arrange that two Members shall retire in rotation each year at the Annual General Meeting and may offer themselves for re-election, except that a Member who has served continually for 6 years shall not be eligible for re-election until after a lapse of one year.
 - (e) apply for and hold, if required a liquor or other licence for the leisure facilities of the Club.
 - (f) at any time appoint a Member of the Club to fill any casual vacancy amongst the elected members of the Committee occurring through any death, illness, resignation or otherwise. All such persons so appointed shall hold office only until the next following Annual General Meeting but shall be eligible for re-election for the unexpired portion of the period for which the Committee member whom he or she was so co-opted to replace would otherwise have been due to serve:
 - (g) appoint a chartered accountant, being a member of the Institute of Chartered Accountants In England and Wales or a member of the Institute of Chartered Accountants of Scotland or other competent person as auditor to audit the accounts of the Club annually and to appoint lawyers or other professional advisors and to fix their remuneration.
- 14. (B) No person other than a Member retiring by rotation shall be appointed or reappointed a member of the Committee at any General Meeting unless not less than 2 calendar months before the date appointed for the meeting notice executed by such person has been given to the Club of his/her intention to stand for such appointment or reappointment. All nominees must to present at the Meeting.

Management Charge

- 15. (A) Each Member will pay within one month of the same being demanded by the Management Company a Management Charge being the appropriate proportion (as determined in accordance with paragraph (C) of this Rule) of all the costs properly incurred by the Club and the Management Company on behalf of the Club which costs shall without prejudice to the generality of the foregoing includes costs in respect of the following: -
 - (i) maintenance, repair and upkeep of the House or Cottage and surrounding land, leisure facilities and access roads all as granted to the Trustee including any

reserve fund reasonably deemed prudent by the Management Company in relation thereto.

- (ii) maintenance, repair, redecoration and necessary renewal of the furniture, furnishings, fittings and fixtures in the House or Cottage including any reserve fund reasonably deemed prudent by the Management Company in relation thereto.
 - (iii) payment of all costs and wages in respect of staff.
 - (iv) insurance of the Club's property and any other insurances which the Management Company considers reasonably necessary and appropriate.
 - (v) outgoings in respect of the Club's property, including rates and other charges.
 - (vi) all works which shall be required to be done to comply with any statutory provisions or the directions or notices of any governmental, local or public authority.
 - (vii) all reasonable costs incurred by the Trustee in accordance with the Trust Deed and any other costs incurred by the Trustee in observing and performing the obligations under any of the titles of the Houses, Cottages and land.
 - (viii) reasonable fees and expenses as appropriate of the Management Company.
 - (ix) the provision of, or access to, leisure facilities.
 - (x) any other expenses which may be properly incurred in the management of the Club and the running of the Club's affairs.
- (B) Whereas the Management Company shall have discretion in deciding what money should be spent for any of the above mentioned purposes and when the same should be spent, it shall be obliged to justify the decisions to the Committee and to a General Meeting of Members. In each year the Management Company will estimate the Management Charge for the current year (taking into account a provision for payment of any shortfall or allowance for any surplus in the previous year) and each Member shall pay the appropriate proportion as determined in paragraph (C) of this Rule within 21 days' of notification. In the event of any further sum becoming payable, for whatever reason, the Management Company shall give not less than 28 days' notice thereof in writing to the Members. Should any sum not be paid by the due date, the Founder Member shall be entitled to suspend all rights of the defaulting Member until such sum has been paid with interest at 3% per annum above the base rate of Barclays Bank PLC for the time being from the date the same falls due until paid.
- (C) In addition, a late payment charge of an amount to be determined at each Annual General Meeting of the Club shall be added to any outstanding Management Charge, at the sole discretion of the Management Company, where payment of all sums due from a Member in respect of Management Charge have not been paid to the Management Company by the due date.
- (D) The Committee shall have the power at any time to cancel the membership of any Member who has failed to pay any sum due hereunder for a period of six months after the due date for payment thereof. Any such cancellation shall be ratified by the Members of the Club at the General Meeting next following the cancellation having been effected.
- (E) Without prejudice to the generality of the provisions of Rule 15(D), in the event of the cancellation of any person's Membership thereunder and such cancellation subsequently being ratified by the Members in General Meeting in accordance with Rule 15(D), the Committee shall be entitled to sell or otherwise transfer that person's Membership Certificate for such price as the Committee in its discretion may decide and each Member hereby irrevocably agrees to appoint the Committee as attorney for that purpose. The proceeds of such sale shall first be applied in paying up all arrears of contributions or other payments or amounts due to be paid hereunder and all

reasonable legal and other costs properly incurred by the Committee in effecting such sale or transfer, and any balance thereafter will be paid to the former Member. Prior to such sale or transfer, the Committee shall also be entitled to let out the House or Cottage to which the cancelled Membership relates for the whole or part of any weekly period and the rental or other payment received thereafter shall first be applied in paying up all arrears of contributions or other payments or amounts due to be paid hereunder and all reasonable legal and other costs properly incurred by the Committee in effecting such letting and any balance thereafter will be paid to the former Member.

- (F) The annual Management Charge which shall be at different rates for those Members having an interest in a House or Cottage (as to which difference the Management Company shall be the sole judge save in the case of manifest error) which shall be levied by the Management Company pursuant to paragraph (A) of this Rule shall be payable by the Members (including the Founder Member) in the proportion to which the number of Membership Certificates held by them (or to which they are entitled) bears to the total number of Membership Certificates whether issued or unissued (i.e. the Founder Member will pay the proportion in respect of unissued (unsold) Membership Certificates).

Disposal of Membership Rights

16. Any Member may subject to Rule 17 and subject to payment in full of any outstanding Management Charge or other sums bequeath, agree to sell or otherwise transfer the rights to which he is entitled pursuant to a Membership Certificate in favour of a third party subject to such third party becoming a Member of the Club. In the event of the death or bankruptcy of a Member or the winding up of a Member being a corporation his personal representatives trustee in bankruptcy or liquidator (as the case may be) may subject to Rule 17 agree to sell such rights to a third party or beneficiary subject to such third party or beneficiary becoming a Member of the Club.
17. In the event of a Member agreeing to sell or otherwise dispose of the rights vested in him in terms of his Membership Certificate (or in the case of the personal representatives trustee in bankruptcy or liquidator of a Member agreeing to dispose of or vest such rights in a third party) the Member (or such personal representatives, trustee or liquidator) shall deliver the relevant Membership Certificate to the Founder Member with the form of surrender and request endorsed duly executed by such Member (or such personal representatives, trustee or liquidator) and by the person to whom such rights are to be transferred or vested in and upon production of satisfactory evidence of the transfer vesting or other devolution of such Membership rights, the Founder Member shall within 28 days of such evidence being produced issue a new Membership Certificate in the name of the new Member provided that there are no management charges or other sums outstanding. Any purported transfer is ineffective until such new Membership Certificate has been issued.
18. A Member may let, grant rights over or otherwise part with occupation of the House or Cottage to which his Membership Certificate relates for the whole of any weekly period subject to notification being given in accordance with Rule 13 (j) hereof and subject to third parties not acquiring any rights of tenancy or occupation therein whether by way of statute or common law but the Member will during the period of such letting, grant of rights or parting with occupation remain the holder of the Membership Certificate and will be responsible for all the obligations incumbent upon such holder.

Club Meetings

19. The first Annual General Meeting of the Club shall be convened within 12 months of the first Membership Certificate being issued and shall be held at The Kenmore Club or elsewhere on such a date as the Founder Member shall decide. The date and location of subsequent Annual General Meetings shall be determined by Members at the previous Annual General Meeting and shall be convened by Notice sent to all Members by the Management Company not less than twenty-eight days before the day of the Meeting together with the Agenda of the business to be conducted at such Meeting.
20. The Founder Member, Management Company or the Committee may (and shall upon a request in writing from the holders of not less than one tenth in number of the issued

Membership Certificates) call a Special General Meeting of the Club to be convened and held in the manner prescribed for an Annual General Meeting save that only twenty-one days' Notice shall be necessary.

21. At every General Meeting of the Club the Chairman of the Committee shall preside or in his absence a Chairman shall be appointed by a majority of those present at the Meeting and entitled to vote. Votes may be given on a poll either personally or by proxy. A corporation may vote by its duly authorised representative appointed as provided by Section 375 of the Companies Act 1985. A proxy need not be a Member. At all Meetings in the case of an equality of votes the Chairman of the Meeting shall have a casting vote. A quorum shall consist of not less than one tenth in number of the Members entitled to attend and vote at the relevant Meeting present in person or by proxy including at least five ordinary Members present in person. Proper Minutes of all General Meetings shall be taken.
22. Voting at all Meetings of the Members including Annual General Meetings and Special General Meetings shall be on the basis of the number of Membership Certificates held including unissued Membership Certificates in respect of which the rights remain vested in the Founder Member under Rule 10 (e).
23. The instrument appointing a proxy shall be in writing under the hand of the appointor or if such appointor is a corporation under its Common Seal. The instrument appointing a proxy or a certified copy shall be deposited at the main office of the Club not less than forty eight hours before the time appointed for holding the Meeting or adjourned Meeting at which the person named in the instrument proposes to vote (or in the case of a poll not less than twenty four hours before the time appointed for the taking of the poll) and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiry of twelve months from its date.
24. Any resolution to be proposed otherwise than by the Committee at any Annual or Special General Meeting of the Club shall be submitted in writing to the Committee not less than 42 days before the date of the meeting if it is an Annual General Meeting or 35 days if it is a Special General Meeting and shall be signed by the proposer and seconder. No business other than that specifically stated in the Notice convening the Meeting shall be considered. Any resolution to be proposed shall be intimated in writing to the Members not less than 28 days before the date of the Meeting if it is an Annual General Meeting or 21 days if it is a Special General Meeting.
25. A resolution in writing signed by all the Members of the Club who would be entitled to receive notice of and attend and vote at a General Meeting of the Club at which such resolution was to be proposed or by their duly appointed attorneys, shall be as valid and effectual as if it had been passed at a General Meeting of the Club duly convened and held. Any such resolution may consist of several documents in the like form each signed by one or more of the Members or their attorneys, and signature in the case of a body corporate which is a Member shall be sufficient if made by a director thereof or its duly appointed representative.

Execution of Deeds

26. All Deeds and documents to be executed on behalf of the Club shall be validly executed by the original Members until the Committee referred to in Rule 14 has been elected and thereafter by a Director of the Founder Member and one Committee Member.

Alteration of Constitution

27. No alterations or addition of any nature whatsoever shall be made to this Constitution without the approval of a resolution of the Club passed by not less than 75% of those Members attending and voting in person or by proxy at a duly constituted General Meeting of the Club convened inter alia for that purpose provided that no such resolution shall take effect without approval of the Trustee if less than 25% of the total available Membership Certificates have been issued to ordinary Members.

Winding Up

28. The Club shall continue in existence until otherwise resolved by a duly constituted General Meeting of the Club by seventy five per cent of those Members attending and voting at such Meeting whether in person or by proxy and thereafter the Club shall be wound up and its net assets dealt with in accordance with Rule 29.
29. In the event of the net assets of the Club for any reason being or becoming due for distribution amongst the Members of the Club the same shall be distributed (after the discharge of all liabilities in accordance with the provisions of any Trust Deed for the time being in force) in proportion to the number of Membership Certificates held by them.

Arbitration

30. Any dispute or difference arising out of this Constitution shall be referred to the decision of a single arbiter to be agreed between the parties in dispute or in default of agreement to be appointed on the application of either party or parties by the President for the time being of The Law Society of Scotland which arbiter shall act as an expert and not as an arbiter.
31. This Constitution shall be construed according to the law of Scotland.

DEED OF TRUST

among

KENMORE CLUB LIMITED

ELLIOTT COUNTRY CLUBS PLC

and

YORK TRUSTEES LIMITED

Subjects: The Kenmore Club

THIS DEED OF TRUST is made: -

the Twenty-ninth day of July, Nineteen Hundred and Ninety Four

AMONG: -

- (1) KENMORE CLUB LIMITED (hereinafter called "Kenmore") whose registered office is at The Kenmore Club, Kenmore, Perthshire, PH15 2HH.
- (2) ELLIOTT COUNTRY CLUB PLC (hereinafter called "Elliott" whose registered office is at Norwich House, 45 Poplar Road, Solihull, West Midlands, B91 3AW, and
- (3) YORK TRUSTEES LIMITED (hereinafter called "the Trustee") whose registered office is at 19 York Place, Edinburgh EH1 3EL.

WHEREAS: -

- (1) Elliott is the Founder Member (as such term is defined in the Constitution) of a Club known as The Kenmore Club whose object is to secure for its members joint rights of ownership of certain Houses, Cottages and land at Taymouth Castle Garden, Kenmore, Perthshire and also exclusive rights of occupation of the Property (as hereinafter defined) for specified periods in each year during the period mentioned in the Club's Constitution.
- (2) Kenmore is the Management Company (as such term is defined in the Constitution) which has been delegated by the Club the management and administration of the whole of the Club's property.
- (3) It is provided in the Constitution that the title to the property of the Club shall be vested in an independent trustee in trust for the benefit of the Members of the Club from time to time.
- (4) A trust deed ("the First Trust Deed") setting out the terms on which the Property was held on trust was made among Taymouth Castle Garden Limited, Elliott Property and Leisure (Scotland) Limited and Barclays Bank Trust Company Limited ("Barclays").
- (5) On 15th September, 1993 the appointment of Barclays as Trustee was terminated by the Club serving not less than 6 months notice in writing on Barclays pursuant to Clause 14 of the First Trust Deed, such termination being ratified at a general meeting of the Club held on 26th March, 1994.
- (6) Pursuant to Rule 12(b) of the Constitution Elliott as the Founder Member has the power to appoint whenever necessary another body or person as Trustee of the Property.
- (7) Barclays has conveyed the Property to the Trustee.
- (8) Pursuant to the power granted to Elliott under Rule 12(b) of the Constitution Elliott has agreed to appoint the Trustees and the Trustee has agreed to act as trustee of the Property on the terms herein appearing.

THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

1.1 in this Deed except where the context otherwise requires:-

- (a) "Club" means the Club known as The Kenmore Club referred to in Recital (1).
- (b) "Constitution" means the constitution of the Club from time to time.
- (c) "Houses and Cottages" means the House, Cottages and land at The Kenmore Club, Kenmore now or to be formed as the same may be conveyed to the Trustee and "Houses and Cottages" shall be construed accordingly.
- (d) "Titles" mean the Titles by which the Houses and Cottages from time to time constituting the Property may be conveyed to the Trustee and "Title" shall be construed accordingly.

- (e) "Members" means the members from time to time of the Club.
 - (f) "Property" means the House/Houses or Cottage/Cottages to be conveyed to the Trustee together with all other property which may from time to time be transferred to the Trustee to be held for the benefit of the Members of the Club from time to time in trust.
 - (g) "holding company" and "subsidiary company" shall have the meanings assigned to them by Section 736 of the Companies Act 1985.
 - (h) "associated company" shall have the meaning assigned to it by Section 416 of the Income and Corporation Taxes Act 1988.
- 1.2 Other than in the Recitals hereto, "Founder Member" and "the Management Company", unless the context otherwise requires mean respectively "Elliott" and "Kenmore" or their respective successors as Founder Member and the Management Company with the intention that undertakings and warranties given in this Deed by the Founder Member and the Management Company respectively shall be binding on Elliott and Kenmore respectively and their respective successors.
- 1.3 Undertakings or warranties given and obligations or liabilities otherwise assumed under the provisions of this Deed by two or more persons shall be deemed to be so given and assumed by such persons jointly and severally.
- 1.4 Where reference is made herein to directions of the Club the Trustee shall be entitled to rely on and accept firstly decisions of the Club which shall be stated by the Chairman of the General Meeting at which the relevant decision was reached to have been so reached in accordance with the relevant rules of the Constitution and without prejudice to the generality of Clause 4.2 hereof the Trustee shall not be concerned to enquire or satisfy itself in any way as to the election of the Chairman of the General Meetings, the convening of the General Meetings or the procedure adopted for the reaching of decisions thereat and secondly resolutions in writing in respect of which it shall have been certified by the Management Company that the provisions of Rule 25 of the Constitution have been fully observed.
- 2.1 Elliott hereby appoints the Trustee and the Trustee hereby agrees to act as trustee on behalf of the Club and the Members thereof from time to time on the terms set out in this Deed.
- 2.2 The Titles of the Property will remain throughout the period of this Deed in the custody of the Trustee.
3. The Trustee shall hold the Property as such trustee in trust for the Members from time to time of the Club entitled thereto under the Constitution and shall deal with the same and every part thereof only in accordance with the provisions hereof and not otherwise PROVIDED THAT: -
- (i) the Trustee shall not be bound to concur in or perform any act or acts which in the opinion of the Trustee shall be illegal or inconsistent with the trusts hereby declared or shall constitute a breach of trust or involve the Trustee in any personal liability or in any action which may be improper or disreputable;
 - (ii) Notwithstanding any direction of the Founder Member, the Trustee shall not be obliged to charge or otherwise encumber the Property or any part thereof;
 - (iii) the Trustee shall not be required to take any legal action whatever in relation to any matter whatsoever relating to the Property unless fully indemnified or secured by the Club or the Management Company or the Founder Member to the reasonable satisfaction of the Trustee for all costs and liabilities which may be incurred or suffered by the Trustee;
 - (iv) the Trustee shall not be obliged to accept a Title of any of the Houses or Cottages or any other property to be held in trust until such House or Cottage has been constructed, furnished and fitted out to the satisfaction of the Trustee or until such other conditions as the Trustee may think fit to impose before accepting such other property have been complied with to the satisfaction of the Trustee.

- 4.1 The Trustee shall have no responsibility for the repair, renewal, rebuilding, maintenance or decoration, administration or management of the Property or the contents thereof or the maintenance or service charges in respect of the Property and shall not be liable for any damage, losses or depreciation which may result in any way to the Property and gives no guarantee or warranty in regard to the validity or otherwise of the title to the Property or the suitability of the Property for use as contemplated by the provisions of the Constitution.
- 4.2 The Trustee shall not be bound to concern itself in any way with the management of the Club or its assets or finances nor with the rights, duties and obligations of Members or any other matter to which Members may be subject nor with the replacement or retrieval or renewal of any of the contents, furniture, fittings or fixtures of the Houses and Cottages whether the said contents, furniture, fixtures or fittings be broken, lost, stolen or damaged or otherwise mislaid or misplaced and the Trustee shall bear no liability to the Members in respect of such matters.
- 4.3. No warranty is given by the Trustee and the Trustee shall have no obligation or responsibilities whatsoever in respect of the provisions or continued provision or the nature, standard and quality of the sporting, leisure, relaxation or other facilities and amenities provided or to be provided for the benefit and enjoyment of the Members whether exclusively or in conjunction with others.
- 4.4 The Trustee shall not in any way be responsible for and no warranty is given by the Trustee as to the availability, operation or continued existence of the time-sharing exchange system operated by Resorts Condominiums (UK) Limited (in conjunction with its holding subsidiaries or holding companies in England and elsewhere) or as to such exchange system as may from time to time be operated.
5. The Trustee shall be entitled at the expense of the Club or Management Company: -
 - (i) to obtain legal advice from its solicitors for the time being and in particular shall be entitled to obtain such advice from and to remunerate any firm of Solicitors with whom the Trustee may be associated or whose partners may be directors of the Trustee or which or whose partners or some of whose partners may be members of the Trustee or of its holding company and/or the Opinion of Counsel on any matter relating to the Property or in relation to the Trust hereby constituted or the exercise of the Trustee's powers or duties hereunder; and
 - (ii) to take such advice and/or opinion as aforesaid and to take such action or resolve by litigation as the Trustee thinks fit whether before any court or tribunal or arbiter or authority or otherwise, with such assistance from such solicitors and Counsel and such advisers as the Trustee thinks appropriate on any matter as aforesaid.
6. The Founder Member shall be entitled to grant rights of occupation of parts of the Property in accordance with the Constitution.
7. The Management Company on behalf of the Club and (as a separate undertaking) the Management Company for itself and the Founder Member hereby warrant that: -
 - (a) save as otherwise ordered by a court of competent jurisdiction or as provided herein the Trustee shall not by entering into and acting in pursuance of the terms and conditions of this Deed owe any duty or obligation or incur any liability to any person or persons (whether corporate or individual) other than the members of the Club and that no such person or persons is entitled to require or oblige the Trustee to transfer or deal with the Property;
 - (b) the Trustee's name shall not appear on any literature or document or on other advertisements issued by or on behalf of the Founder Member or any document issued in relation to the Club or the Property without prior approval in writing of the Trustee first having been obtained;
- 8.1 The Trustee shall not be responsible for any loss suffered by the Club or any Member thereof or by the Management Company or the Founder Member arising out of or in respect of any act or omission on the part of the Trustee, its officers, employees or agents in respect of the Property or the trust hereby created, unless the same shall have been caused by or have arisen

from negligence, fraud, other criminal act or conscious wrong doing on the part of the Trustee or its said officers, employees or agents.

- 8.2 The Trustee shall not be under any liability on account of anything done or suffered by the Trustee in accordance with or in pursuance of any request or advice of the Founder Member, the Management Company or the Club and the Trustee shall be entitled to rely on the same.
9. The Management Company shall pay to the Trustee as remuneration for the performance of its duties hereunder such fees (together with any Value Added Tax thereon) as may from time to time be separately agreed upon between the Management Company and the Trustee (or failing which between the Club and the Trustee) and all professional fees, outgoings and expenses (together with any Value Added Tax thereon) incurred by the Trustee in the performance of its duties or exercise of its powers under this Deed and in default of such payment the Management Company on behalf of the Club hereby undertakes that the Club will pay all such sums.
10. In connection with the Titles of the Property or part thereof the Management Company on behalf of the Club and (as a separate undertaking) for itself undertakes to the Trustee: -
 - (a) on demand to pay as the Trustee may direct all payments whatsoever (including rent, rates, service or maintenance charges interest costs, expenses and damages) covenanted or agreed to be paid (whether contingently or otherwise) in connection with the Property or in any other way in connection with the holding by the Trustee of the Titles.
 - (b) to indemnify and keep fully and effectually indemnified the Trustee from and against all actions, claims, demands, losses, damages, costs and expenses made against, or suffered or incurred by the Trustee arising directly or indirectly from any breach, non-observance or non-performance of any of the covenants contained in paragraph (a) of this Clause.
11. The Management Company on behalf of the Club and (as a separate undertaking) for itself undertakes to the Trustee henceforth to observe and perform and that there have been observed and performed up to the date hereof all conditions and restrictions attaching to or subject to which any planning permissions under the Town & Country Planning (Scotland) Act 1972 (as amended) have been granted in respect of the Property and all other relevant Statutes.
- 12.1 The Management Company on behalf of the Club and (as a separate undertaking) for itself hereby agrees to indemnify and keep free the Trustee from and against all fees, costs, liabilities and expenses to which it may be entitled and which may result from or be incurred in connection with the performance by the Trustee of its duties or exercise of its powers hereunder and the Trustee shall be kept fully indemnified by the Management Company and the Club against all actions, claims, demands, losses, damages, costs, expenses made or incurred in connection with the Property or the performance by the Trustee of its duties or the exercise of its powers or in any other way in connection with holding by the Trustee of the office of trustee hereunder. The Trustee shall have the right if at any time it considers it desirable so to do to require that the Management Company or the Club shall deposit with the Trustee such sums as the Trustee shall reasonably consider to be necessary in support of the indemnities contained in this Clause and in Clause 10 or referred to in Clause 3(iii).
- 12.2 The indemnity contained in this Clause shall continue notwithstanding termination of this Deed or appointment of a successor pursuant to the Constitution or Clause 14 and 15 hereof.
13. The Trustee shall be entitled to be indemnified out of the Property or the proceeds of the sale thereof for all sums expended by it in implement of the terms of this Deed and for all sums (including remuneration) payable to it hereunder and shall have all the powers of an absolute owner to sell, let or mortgage the Property or any part thereof unrestricted by Clause 3 hereof or by the Constitution.
14. This Deed shall continue until terminated either by the Management Company or the Club on behalf of the Club giving not less than six months' notice in writing to the Trustee or by the Trustee giving the Management Company or the Club not less than three months' notice in writing whichever of such dates shall be the earlier. Any notice given under this Clause shall expire on the last day of any calendar month and no such notice shall in any event take effect before 31st March 1995, unless the Founder Member or the Management Company or the Club is in default in the performance of any of its or their respective obligations under this Deed.

15. Upon termination of this Deed the Management Company (or failing whom the Club) shall pay to the Trustee all remuneration then owing to the Trustee together with any outstanding out-of-pocket expenses and all fees, costs and expenses incurred by or on behalf of the Trustee in acting on the termination of the Trust (as limited by the provisions of paragraph (b)(iii) below) and transferring its interest in the Property in manner hereinafter provided and all other sums then due or to become due to the Trustee in terms of this Deed. The Trustee shall in the event of this Deed terminating, provided it has received payment of all such remuneration, out-of-pocket expenses, fees, costs, expenses and other sums as aforesaid, transfer the Property at the expense of the Management Company (or failing whom at the expense of the Club) to any succeeding trustee or otherwise as the Club may in writing direct. In the event that no such direction of the Club is received by the Trustee by the date of determination or that payment as referred to in the foregoing proviso contained in this Clause has not been received by the Trustee within three months of the date of determination, or, if later, of the date of demand made therefor by the Trustee then the Trustee shall be entitled thereafter: -
- (a) to sell the Property in such manner as it may choose and so that the Trustee shall not be liable to the Management Company or the Founder Member or the Club or to any other person or persons in respect of the consideration received for any such sale or for any loss or damage suffered in respect thereof; and
 - (b) to deduct from the consideration received: -
 - (i) all payments due to the Trustee under this Deed;
 - (ii) all fees, costs and expenses incurred in connection with any such sale or sales; and
 - (iii) the Trustee's fees for acting on the termination of the Trust and the subsequent distribution of the net proceeds of sale such fees to be fair and reasonable bearing in mind the work and responsibility involved and to be in addition to any remuneration payable to the Trustee under Clause 9 hereof;
 - (c) after the deduction of all sums referred to in paragraph (b) hereof to distribute the net proceeds of sale to such persons as would be entitled under Rule 29 of the Constitution to such proceeds on a dissolution of the Club and pending such distribution to invest the whole or part of such net proceeds in any mode of investment at such time authorised by law and for such purposes may employ bankers or investment managers or advisers to the Trustee on the same terms as are usual without being liable to account for any profit made thereby
- 16.1 The Management Company on behalf of the Club and (as a separate undertaking) for itself undertakes to the Trustee and the Founder Member in respect of Clause 16.1(a) (i) only undertakes to the Trustee: -
- (a) to supply the Trustee with: -
 - (i) the names and address of all Members of the Club within 21 days of the date of entry of each such person (including a body corporate) to membership and with details of any changed addresses of Members within 21 days of such change coming to the notice of the Club or (as the case may be) themselves, but only if called upon to do so by the Trustee;
 - (ii) the names and addresses of all persons who are from time to time officers of the Club and details of the offices so held;
 - (iii) a copy of any contract for the management of the Club entered into with any person or body within 21 days of the date thereof;
 - (iv) notice in writing of all General Meetings of the Club and copies of the Agenda of the business to be conducted at such Meeting and of any resolution to be proposed thereat all of which shall be provided at the time when notice of any Meeting is given to Members of the Club;

- (b) that within seven days of the relevant Meeting there shall be delivered to the Trustee duly certified by the Chairman of such meeting a copy of the Minutes of such Meeting and in particular an extract from the Minutes of any Meeting of the Members of the Club dealing with any change in the Constitution of the Club approved by the Members thereof;
 - (c) that there shall be delivered to the Trustee a copy of each notice of any General Meeting of the Club;
 - (d) there shall be delivered to the Trustee a copy of each annual audited account of the Club as soon as the same is available.
- 16.2 The Trustee shall have the right to attend all General Meetings of the Members of the Club but shall have no right to vote at any such Meeting.
17. Notwithstanding the provisions of this Deed neither the Trustees nor any holding or subsidiary company of the Trustee nor any firm of solicitors with which the Trustee may be associated or whose partners may be directors of the Trustee or which or whose partners or some of whose partners may be members of the Trustee or of its holding company shall be precluded from acting as investment manager or legal adviser to the Management Company or the Founder Member or the Club and shall not be liable to account either to the Management Company or the Founder Member or the Club for any profit made in connection therewith.
18. The Trustee and the Management Company and the Founder Member (or either of them) shall be entitled by deed supplemental hereto to modify, alter or add to the provisions of these presents in such a manner and to such extent as they may consider expedient for any purpose; provided that unless the Trustee shall certify in writing that in its opinion such modification, alteration or addition does not prejudice the interest of the Members and does not operate to release the Trustee or the Management Company or the Founder Member from any responsibility to the Members no such modification, alteration or addition shall be made without the sanction of a resolution of a Special General Meeting of Members duly convened and held in accordance with the Constitution of the Club or of a written resolution of the Members in accordance with Rule 25 of the Constitution of the Club; provided also that no such modification, alteration or addition shall impose upon any Member any obligation to make any further payments in respect of his membership of the Club or to accept any liability in respect thereof.
19. Any notice which is required to be given in pursuance of any provision of this Deed shall be given or served by sending the same by prepaid first class post addressed to the appropriate party (except the Club) as the case may be at its respective registered office referred to herein or such other substituted registered office as may be notified in writing to all the other parties hereto or to the Club at The Kenmore Club, Kenmore, Perthshire, PH15 2HH as aforesaid or such address in the United Kingdom as shall from time to time be notified to the Trustee for such purpose and any notice if sent by prepaid first class post and recorded delivery shall be deemed to have been given or served 48 hours (excluding Sundays and public holidays) after dispatch.
20. This Deed of Trust shall be construed according to the law of Scotland and the parties hereto submit to the jurisdiction of the the Courts of Scotland:

IN WITNESS WHEREOF this Deed of Trust consisting of this and the previous pages is executed as follows:

Subscribed by KENMORE CLUB LIMITED at

on the _____ day

of _____, 1994

by

Director and

Director

Subscribed by ELLIOTT COUNTRY CLUBS PLC at

on the _____ day

of _____, 1994

by

Director and

Director

Subscribed by YORK TRUSTEES LIMITED at

on the _____ day

of _____, 1994

by

Director and

Director

**REGULATIONS FOR THE OCCUPATION
OF THE HOUSES AND COTTAGES
(Rule 13(b))**

1. Not to use any House or Cottage forming part of the property of the Club nor permit the same to be used for any purpose whatsoever other than as a private holiday home for the occupation of no more than the maximum number of persons from time to time permitted by the Founder Member or Management Company nor for any purposes which is or from which a nuisance can arise to other Members or their permitted occupiers or any adjoining or neighbouring property nor for any illegal or immoral purpose whatsoever nor for the purpose of any trade, business, profession or manufacture.
2. No windows belonging to any House or Cottage shall be stopped up darkened or otherwise obstructed other than by use of the curtaining material or internal blinds provided.
3. To comply with all arrangements from time to time made by the Club or by The Founder Member under Rule 15(A) (i) in relation to the disposal of refuse from any House or Cottage and not to throw dirt, rubbish, rags or other refuse or other substances or permit the same to be thrown into the sinks, baths, lavatories, cisterns or out of the windows or doors thereof but to place the same in the dustbins for that purpose provided.
4. Not to make or permit any unreasonable noise in any House or Cottage and in particular so that no piano, record player, radio, loudspeaker, television or other mechanical or musical instrument of any kind shall be played or used nor shall any singing be practised or performed in any House or Cottage so as to cause annoyance to the owners, lessees and occupiers of adjoining or neighbouring premises or so as to be unduly audible outside that House or Cottage.
5. Dogs must be kept on leads at all times within the confines of the walled garden and may not be permitted to foul this area, nor the landscaped surroundings of the walled garden or the pavilion.
6. No clothes or other articles shall be hung or exposed outside any House or Cottage or shall be shaken out of the window or doors of a House or Cottage or in any position visible from outside the building of which any House or Cottage forms part.
7. At all times (a) to keep the private roadways, gardens, grounds and amenities of the Kenmore Club clear from all obstruction by motor vehicle(s), perambulators, bicycles, tricycles, wheelchairs or other vehicles and all seats, chairs or other possessions of whatsoever kind belonging to a Member and (b) to comply with all reasonable directions from time to time made by the Kenmore Club in relation to their use by Members, Vehicles, other than those for the use of disabled persons, may only be brought into the walled garden on days of arrival and departure and must otherwise be left in designated parking places.
8. Not to store or allow to remain in any House or Cottage any inflammable or explosive substance.
9. In the event of any damage caused to any House or Cottage by reason of the negligence or neglect or other act or default of any Member to pay the costs of any necessary repairs or reinstatement as assessed by the Surveyor appointed by either the Club, the Founder Member or the Management Company.
10. To have all electrical apparatus brought into any House or Cottage fitted with an effective suppressor to obviate interference from any such apparatus to radio or television sets.
11. Not to place or display or cause to be placed or displayed any advertisement sign or notice in the windows or on the outside walls or door of any House or Cottage or so as to be visible from the outside and in particular not to erect any external wireless or television aerial.

Weekly Period Chart

To go here

Certificate No: _____

KENMORE CLUB CERTIFICATE

THE KENMORE COUNTRY CLUB LTD. whose registered office is at Orchard Brae House, 30 Queensferry Road, Edinburgh, EH4 2HG HEREBY certifies that the person or persons whose name(s) and address are stated in Paragraph 1 of the Schedule is/are entitled to the exclusive Right of Use of the property described in Paragraph 2 of the Schedule for the Weekly Period or Periods in each calendar year stated in Paragraph 3 of the Schedule in all respects in accordance with and subject to the observance by such person or persons of an Agreement to Purchase entered into by him or them.

The said KENMORE COUNTRY CLUB LTD. further acknowledges receipt of the full Purchase Price as stated in Paragraph 4 of the schedule.

IN WITNESS whereof the said KENMORE COUNTRY CLUB LTD. has executed this Certificate the day and year below written in Paragraph 5 of the Schedule.

THE SCHEDULE

1	CLUB	MEMBER'S NAME: ADDRESS:
2	PROPERTY:	<i>situated at The Kenmore Club Kenmore, Perthshire, Scotland</i>
3.	WEEKLY PERIOD(S):	
4.	TOTAL PAYMENT RECEIVED: £	I
5.	DATE OF CERTIFICATE:	

**THE COMMON SEAL of
THE KENMORE COUNTRY CLUB LTD.**
was. hereunto affixed in the presence of:

_____ Director

_____ Director/Secretary

FORM OF SURRENDER AND REQUEST
(Pursuant to Rule 17 of the Constitution of the Club)

I/We, the within named Member/or (Name)

of

(Address)

being the

of the within named Member hereby surrender this Membership Certificate pursuant to Rule 17 of the constitution of the Kenmore Club subject to the issue of the new Members Certificate in accordance with the Request contained below and hereby agree to use our/my best endeavours at the cost of the person or persons named below to procure that such person or persons is/are admitted to membership of the Club in accordance with the Constitution and pending such admission declare that I/we hold my/our interest as a Member of the Club (to the extent that such interest may be so held) in trust for such person or persons and

I/we

(Name)

of (Address)

hereby request the issue of a new Membership Certificate to me/us in respect of the House or Cottage within-mentioned and undertake that with effect from the date mentioned below I/we shall observe and perform all the obligations of membership of the Club pursuant to the said Constitution.

DATED the _____ day of _____

SIGNED

by* _____

(or if the existing member is a Company)

THE COMMON SEAL of*

was hereunto affixed in the presence of: -

Director _____

Secretary _____

SIGNED

by** _____

(or if the new member is a Company)

THE COMMON SEAL of**

was hereunto affixed in the presence of:-

Director _____

Secretary _____

* Insert existing Member's name or personal representatives or as the case may be.

** Insert new member's name.

MANAGEMENT AGREEMENT *relating to* **THE KENMORE CLUB**

THIS AGREEMENT

is made the Second day of November, Nineteen Hundred and Eighty Seven

BETWEEN: TAYMOUTH CASTLE GARDEN LIMITED whose registered office is at 31 St George Street, London W1R 9FA and ELLIOTT PROPERTY AND LEISURE (SCOTLAND) LIMITED whose registered office is at 31 St George Street, London W1R 9FA acting on behalf of THE KENMORE CLUB of Kenmore, Perthshire (hereinafter called "the Club" of the one part and TAYMOUTH CASTLE GARDEN LIMITED who registered office is at 31 St George Street, London (hereinafter called "the Manager") of the other part.

APPROVAL was given at the Annual General Meeting of THE KENMORE CLUB held on 24th March 1990 for the transfer by TAYMOUTH CASTLE GARDEN LIMITED to ELLIOTT COUNTRY CLUBS plc to its whole rights and obligations under and in terms of the MANAGEMENT AGREEMENT dated 2nd November 1987 (details as printed herewith).

Approval was given at the Annual General Meeting of THE KENMORE CLUB held on 25th March 1994 for the transfer by ELLIOTT COUNTRY CLUBS plc to KENMORE CLUB LIMITED to its whole rights and obligations under and in terms of the MANAGEMENT AGREEMENT dated 2nd November 1987 (details as printed herewith).

WHEREAS:

The Club has been established to secure for its members joint rights of ownership of certain Houses, Cottages and land at The Kenmore Club, Kenmore, Perthshire and also exclusive rights of occupation of the Houses and/or Cottages for specified periods in each year during the period mentioned in the Club's Constitution.

In pursuance of Rule 11 of the Constitution the Club has agreed to appoint the Manager as Management Company for the purpose of the general management of the Club.

THEREFORE the parties have agreed and do hereby agree as follows:

The Manager hereby agrees to undertake on behalf of the Club and the Club hereby delegates to the Manager the management and administration of the whole of the Club's property at The Kenmore Club, Kenmore as aforesaid.

The appointment of the Manager will continue during the period (hereinafter called "the Management Period") beginning on the date hereof and continuing subject to the provision for determination hereinafter contained for a period of 80 years from the 1st day of 1987.

The Manager shall during the Management Period be entitled to exercise all the powers of the Founder Member referred to in the Club's Constitution and relating to the management and administration of the Club's property and affairs including power to collect from each Member any sum or sums due by him pursuant to Rule 15 of the Constitution including any Management Charges referred to in Rule 15 but excluding the power to appoint a new Trustee or to determine the remuneration of the Trustee.

- (A) During the Management Period the Manager will manage the Club's property and affairs and the interest of the Members therein in a proper and businesslike manner with all due diligence and to the best advantage of the Members in accordance with the principles of good estate management.
- (B) (i) The Members of the Club following a resolution passed in General Meeting may by not less than three months' written notice to the Manager to the effect require the Manager to reduce or cease to provide any service or services for the time being provided by the Manager hereunder.
- (ii) Following service of any such notice the Members and the Manager shall use their best endeavours to ascertain the amount by which the Management Charge referred

to in Clause 5 hereof shall be reduced. Following the date of expiry of such notice and in default of agreement as to such reduction within two months of the service of such notice the matter shall be referred to a Chartered Surveyor in accordance with Clause 10.

- (C) (i) The Members of the Club following a resolution passed in General Meeting may by not less than three months written notice to the Manager to that effect request the Manager to provide such reasonable additional services as may be specified in such notice in addition to all services for the time being provided by the Manager hereunder.
- (ii) As soon as reasonable possible receipt of such notice the Manager shall submit to the Members a written statement setting out its computation of the addition to the Management Charge resulting from the additional services such computation to be based on the estimated cost to the Manager of providing such additional services.
- (iii) Within two months of the receipt of such statement the Members shall elect by written notice to the Manager as to whether or not to accept such computation and if it shall so accept the Manager shall commence the provision of the relevant services within one month thereafter and the Management Charge shall henceforth be increased by the amount of such computation.
- (iv) In the event of the Members electing not to accept such computation and being in a position to enter into an agreement with a third party for the provision of that service at the cost acceptable to them they shall not enter into any such agreement unless the Manager shall have been given at least one month's written notice of such intention and does not offer itself to provide the service on similar terms.
5. In respect of its services performed hereunder the Manager shall be entitled to charge a fee amounting to 15% of all the costs incurred by the Manager in terms of Rule 15(A) of the Club's Constitution but excluding therefrom the items specified in clause (viii) of the said Rule. The said fee will be included in the Management Charge levied pursuant to Rule 15 of the Club's Constitution.
6. The Manager shall arrange for the prompt collection of the Management Charge payable by each Member pursuant to Rule 15 of the Club's Constitution and shall properly pay and discharge out of all such monies collected by it from ordinary Members all expenses in relation to which such amounts have been collected and shall ensure that proper records and books of account relating to the management of the Club's said property and affairs are maintained at all times on behalf of the Members and that such records and books of account are at all reasonable times available for inspection by any Member or any person on his or their behalf.
7. The Manager shall be obliged as follows: -
- (a) to procure the provision of leisure facilities incorporating swimming pool, squash court, gymnasium, sauna solarium and other facilities for members.
- (b) to procure the maintenance of such facilities in good order and condition.
- (c) to levy charges to the Club and its members for the use of such facilities not exceeding £30 per prescribed period by the occupant(s) of a Member's house or cottage for the period until 31st December, 1992 and thereafter to levy such reasonable charges on a basis which makes due allowance for other income received by the Manager from others using the said facilities.
- (d) to have regard to representations made by the Club Committee about such facilities.
8. The Manager shall be entitled to assign its rights and transfer its obligations under this Agreement at any time to any other person or persons provided that such other person or persons shall have previously been approved by Members of the Club.
9. The Management Period shall forthwith terminate:

- (a) if the Manager being a corporation shall pass a resolution to wind up or enter into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or suffer a Receiver to be appointed or being an individual or individuals shall become apparently insolvent or
 - (b) if the Club shall be wound up or for any reason shall cease to exist or
 - (c) if the Manager shall have committed a breach of this Agreement and shall neglect or otherwise fail to remedy such breach (whether capable of remedy or not) within one month of being required in writing to do so by the Committee of the Club, and the Committee of the Club thereafter serves upon the Manager a notice in writing summarily terminating the Management Period.
10. The Members of the Club shall indemnify and keep indemnified the Manager from and against all claims, demands, proceedings, damages, liabilities, costs and expenses arising out of or incidental to the proper and reasonable performance by the Manager of its duties under this Agreement.
11. Any dispute or difference arising out of this Agreement shall be referred to the decision of a Chartered Surveyor to be agreed between the parties or in default of agreement to be appointed on the application of either party by the Chairman for the time being of The Scottish Branch of the Royal Institution of Chartered Surveyors, to act as an expert and not as an arbiter.
12. This agreement shall be construed according to the law of Scotland and the parties hereto submit to the jurisdiction of the courts of Scotland.

IN WITNESS whereof.

Sealed with
THE COMMON SEAL of TAYMOUTH CASTLE GARDEN LIMITED

at

on

Director

Secretary

Sealed with
THE COMMON SEAL of TAYMOUTH CASTLE GARDEN LIMITED for and on behalf of
THE KENMORE CLUB

at

on

Director

Director/Secretary