

**RENTAL POOLING AGREEMENT**

**Consolidated with all amendments to February 21, 1995**

THIS AGREEMENT made as of the 1st day of January, 1980

BETWEEN:

(hereinafter called the "Owner")

OF THE FIRST PART

AND:

Each and Every of the Persons named as  
Owners in Schedule "A" attached hereto;

(hereinafter collectively called the "Owners")

OF THE SECOND PART

WHEREAS the Owner is the Owner of the Unit(s) described in Schedule "A" attached to this Agreement (the "Unit") which Unit forms part of the condominium lodge development known as "Tantalus"; and

WHEREAS each of the Owners is or will become the Owner of the Unit(s) described in Schedule "A" attached to this Agreement; and

WHEREAS the Owners have agreed to establish a joint venture arrangement whereby the Units are made available for rental on the terms set out in this Agreement, and whereby their risks as Owners of the Unit shall be minimized if an Owner's Unit is not rented, and, on the happening of this event, the Owners of the rented Units shall ensure that the Owners of the unrented Units shall not suffer a greater loss of rental income than is necessary (the "Pooling Arrangement"); and

WHEREAS the Owner has agreed to participate in the Pooling Arrangement and has agreed to designate and appoint the General Manager as his duly authorized representative to manage his Unit and to administer the Pooling Arrangement; and

WHEREAS the Tantalus Strata Corporation (the "Corporation") will be created pursuant to the provisions of the Strata Titles Act of British Columbia; and

WHEREAS this Agreement is not meant to supersede or detract from the powers of the Strata Council or the Strata Corporation established or to be established pursuant to a subdivision of Tantalus in accordance with the provisions of the Strata Titles Act of British Columbia; nor to detract from or limit the by-laws of the said Strata Corporation as set out in the First and Second Schedules to the Strata Titles Act;

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1.00 **TERMS AND DEFINITIONS**

The terms used in this Agreement shall have the meanings ascribed to them in Schedule "B" to this Agreement.

2.00 **APPOINTMENT OF GENERAL MANAGER**

2.01 Except to the extent that any matters may be the responsibility or right of the Corporation, until an event of major cause and subject to the terms hereof, the Owner and the Owners agree to engage a General Manager as the sole and exclusive representative, supervisor and manager of the Unit and the Units of Tantalus to manage and rent the Unit and to administer and maintain the Pooling Arrangement and to carry out all such other acts as provided herein, on behalf of the Owner, and the Owners and without restricting the generality of the foregoing:

- (a) The General Manager shall operate, supervise, manage, maintain, control and rent the Units in such manner as would a prudent owner of a condominium lodge comparable to Tantalus;
- (b) The General Manager shall use his best efforts to perform all of the managerial functions normally associated with the operation of a condominium lodge;
- (c) The General Manager shall employ for and on behalf of, and at the cost and expense of the Owner and the Owners, competent personnel for the operating, maintaining, renting, controlling and managing of the Unit and Tantalus including, without limitation, a resident manager, an assistant manager and reception staff, as may be required, and as would be reasonable and prudent of an owner of a condominium lodge comparable to Tantalus, in accordance with the provisions of the Budget;
- (d) The General Manager may advertise and promote Tantalus and the Unit as a desirable vacation and recreation facility, by stimulating and co-ordinating events, advertising and placing articles in newspapers, magazines and trade journals, but shall spend not more than the amount shown in Schedule "C" or as determined in the annual Budget from time to time as the maximum expenditure permissible for promotion and advertising;

- (e) The General Manager may promote, advertise and offer accommodation in the Unit and, in connection therewith may negotiate the terms and execute as Attorney for the Owner, all rental of the Unit;
- (f) At the cost and expense of the Owner and the Owners, the General Manager may appoint, employ, instruct and obtain services as may be necessary or expedient for the purposes of assisting the resident manager in carrying out the resident manager's duties as determined by the General Manager, up to maximum expenditures as authorized by the Agreement of the annual Budget as hereinafter described;
- (g) The General Manager shall collect and disburse the gross revenues, gross operating expenditures, cash balances and set up reserves all as provided for herein, in accordance with the terms of this Agreement;
- (h) The General Manager shall collect, adjust, settle and compromise such debts, claims, demands and disputes and matters which may arise in connection with the Unit, or Tantalus;
- (i) The General Manager shall insure and keep insured the Unit (if such insurance is required in addition to the insurance carried by the Corporation) in such amount and on such terms as the General Manager considers proper;
- (j) The General Manager shall arrange for bookkeeping and secretarial services and in this respect will arrange for and maintain adequate payroll records with respect to all persons engaged to work in Tantalus and the Unit and will make all payroll reports and returns required by law, and will make and remit to the proper authorities, all income tax deductions, unemployment insurance and workers' compensation payable and any other similar deductions or payments which may, from time to time, be applicable to such person; provided however that the General Manager shall not be required to provide audited statements to the Owner and the Owners;
- (k) Subject to the provisions of this Agreement, the General Manager may make contracts for the supply of electricity, gas, water and telephone and other such services as may reasonably be required for the proper operation, maintenance and management of the Unit and Tantalus;
- (l) The General Manager shall manage, administer and implement the Pooling Arrangement;
- (m) The General Manager may do all such other things which the General Manager may consider necessary in order to effectively carry out its powers, rights, duties and obligations under this Agreement;

- (n) Without limiting the generality of the foregoing, the General Manager shall be responsible for the management of the Unit and Tantalus, and will carry out such responsibility in a manner that will best serve the interest of the Owner and the Owners.

2.02 The General Manager shall cause and direct the resident manager to:

- (a) arrange for such repairs to and conduct such maintenance of the Unit as may be required to maintain them in a first class state of repair and as befits a well-managed condominium lodge comparable to Tantalus;
- (b) provide such services as may be necessary and convenient to coordinate the preparation of the Unit for occupancy;
- (c) pay any fees or costs (including agent fees) which may be due and payable in connection with the renting of the Unit;
- (d) set up and maintain rental records and collect all rents payable by the renters of the Unit and maintain a careful vigilance over the collection of all such rents and other sums so as to ensure so far as may be possible, that the same are paid when due;
- (e) keep and maintain the Unit while it may be unrented, in a state of cleanliness and to purchase all necessary cleaning materials and other supplies required for this purpose;
- (f) arrange for the making of all repairs to and maintenance of the Unit and Tantalus;
- (g) give and render at all proper times, all notices and statements required to be sent to tenants of the Unit;
- (h) take such steps, so far as it may be within its power to do so, to ensure that all restrictions and obligations with respect to the Unit imposed upon the General Manager, the staff and the Owner, by the Corporation are observed and fulfilled.

### 3.00 SERVICES AND EXPENSES

3.01 All services and outlays made by the General Manager shall be at the Owner's sole cost and expense.

3.02 The Owner hereby acknowledges that the performance by the General Manager of his covenants and obligations shall be limited to the extent of the funds in the possession of the General Manager, and that if, from time to time, the General Manager's disbursements incurred in carrying out his duties under this Agreement exceed the balance of funds in his possession, the Owner agrees to advance to the General Manager within fifteen (15) business days following

receipt of notice from the General Manager, a fraction of such funds as the General Manager requires, which fraction shall have for its numerator, the Owner's pro rata share as described in Schedule "A" hereto and for its denominator the total of all of the pro rata shares of the Owners.

3.03 The General Manager shall, in each year, two months prior to the termination of any Management Year, furnish the Owner with a Budget which shall outline the costs, charges, outlays and expenditures which the General Manager considers may be made and incurred in the next ensuing year (the "Budget") in respect to the Unit. This Budget shall be considered and amended or approved at the Annual Meeting by ordinary resolution. If it is disapproved, a new Budget shall be submitted which shall be subject to amendment or approval.

3.04 Subject to the terms hereof, the General Manager shall not make any expenditure in excess of the amount authorized for such expenditure by the Budget unless it is required to make the expenditure in an emergency situation or unless it is reasonably necessary to continue operations in accordance with good management practice and in such event, the General Manager may make such expenditure and shall advise the Owner in writing thereof with the statement referred to in Article 4.07 hereof.

#### **4.00 RENTAL INSURANCE AND INDEMNITY PROVISIONS**

4.01 The Owner acknowledges that the object of the Pooling Arrangement is to minimize the risk of financial loss to individual Owners due to their Units being unrented for any period of time and in order to carry out that object, the Owner hereby authorizes the General Manager to pool all the revenues and deduct the expenses attributable to his Unit including cost which may be assessed by the Corporation, together with the revenue and expenses of all other Units in Tantalus.

4.02 Each Owner must specify to the resident manager by July 1 of each year such days during the next ensuing period from November 1 to May 31 and by February 1 for the period from June 1 to October 31 that he wishes to occupy his Unit. For all days not specifically reserved for the Owner's use, or the use of his guests or designates, the Unit shall be available to the resident manager for rental. The resident manager shall make all reasonable effort to permit an Owner and his guests, to use the Unit if the Owner so requests it throughout the relevant period.

#### **4.02A Notwithstanding paragraph 4.02 of the Rental Pooling Agreement:**

- (a) an Owner may remove his Unit from the Pooling Arrangement by giving written notice (the "Withdrawing Notice") thereof to the General Manager on or before May 31 in any year;
- (b) upon giving the Withdrawing Notice and provided that the Pooling Arrangement contains a minimum of 50 Units, the Owner's Unit will be removed from the Pooling Arrangement effective on the following July 1 and such Unit will remain out of the Pooling Arrangement until July 1 following

the date upon which the Owner delivers a Re-entry Notice (as defined herein) to the General Manager;

- (c) if, as a result of Withdrawing Notices, the Pooling Arrangement would contain less than 50 Units, then Withdrawing Notices will be accepted in order of the time of receipt until such time as the Pooling Arrangement is reduced to 50 Units such that the Pooling Arrangement will at all times include not less than 50 Units;
- (d) each Owner who has removed his Unit from the Pooling Arrangement will deliver to the General Manager 12 monthly post dated cheques in June of each year representing the budgeted monthly common area maintenance costs relating to the operation of Tantalus Lodge which are allocated to each Unit for the ensuing year pursuant to the provisions of the Condominium Act of British Columbia;
- (e) an Owner may return his Unit to the Pooling Arrangement by giving written notice (the "Re-entry Notice") thereof to the General Manager on or before May 31 in any year and such notice will take effect on the following July 1 provided that the Owner's Unit and its appliances, furniture and furnishings have been maintained to the minimum standards required in respect of those Units which are then in the Pooling Arrangement and furniture and furnishings within the Unit are appropriate for a unit within a condominium lodge offering overnight accommodation to the public;
- (f) during such time as a Unit is removed from the Pooling Arrangement, the Owner will be wholly responsible for the maintenance and repair of his Unit and its appliances, furniture and furnishings at his sole cost and expense and no changes of linens and towels or other maid service will be provided to the Unit.

(Amended effective June 11, 1984).

4.03 It is specifically provided and agreed that no Owner shall rent or lease his Unit, except pursuant to the arrangements of this Rental Pooling Agreement without the consent in writing of the General Manager, which consent may be arbitrarily withheld. If such consent is granted, it shall not become effective until any such renter or lessee has entered into a binding contract whereby he agrees to make the Unit available for rental pursuant to the Pooling Arrangement and the terms of this Agreement for at least 80% of the days of the lease or such rental. This proviso shall not be amended except by the agreement of 60% of the Owners.

Each Owner must inform the resident manager if he, his guests or designates will not be occupying the Unit for any period for which the Owner has reserved the Unit. Provided that the Owner so informs the resident manager:



- (a) 14 or more days prior to the reserved period, the Unit will be included in the Pooling Arrangement for the entire reserved period;
- (b) less than 14 days but more than 7 days prior to the period, the unit will be excluded from the Pooling Arrangement for the first day of the reserved period and included in the Pooling Arrangement for the balance of the reserved period;
- (c) 7 or less days prior to the reserved period, the Unit will be excluded from the Pooling Arrangement for the entire reserved period.

In the calculations of days as aforesaid, the first day of the reserved period will not be included.

If the Owner fails to "check-in" to his Unit, or arrange with the resident manager for a late "check-in", by 10:00PM on the first day of any reserved period, the Owner will thereby forfeit his entire reserved period and the Unit will be excluded from the Pooling Arrangement for the entire reserved period.

If the Unit is excluded from the Pooling Arrangement as aforesaid, the resident manager will thereby be entitled to make the Unit available for rental notwithstanding that the owner will not share in the revenue from the Pooling Arrangement.

Notwithstanding the foregoing, the Unit will not be excluded from the Pooling Arrangement if the cancellation of the reserved period or a portion thereof results from a specific request to the Owner by the resident manager for cancellation due to high rental demand.

(Amended effective February 21, 1995).

4.04 Except as provided in Article 4.03, each Owner whose Unit was available for rental will be entitled to share in the daily gross revenue derived from the rental of all such Units which were rented pursuant to this Pooling Arrangement. Each Owner's share will be that proportion of the total daily gross revenue which is the same ratio to such revenue as the number of Units each Owner has made available for rental bears to the total number of Units available for rental.

4.05 It is specifically noted and agreed that:

- (a) No Owner shall be entitled to the specific revenue derived from the rental of his Unit except in accordance with this Agreement;
- (b) Except as provided in this Agreement, each Owner shall be entitled to share in the daily gross revenue derived pursuant to the Pooling Arrangement if he has made his Unit available for rental pursuant to the terms of this Agreement, notwithstanding that such Unit has become unrentable due to damage by fire,

vandalism, theft or other event beyond the control of the Owner and not due to events or conditions caused by the Owner.

- (c) All costs, expenses and disbursements incurred in pursuance of this Agreement shall be paid by each Owner irrespective of whether his Unit was available for rental, rented, leased or not rented or leased;
- (d) The General Manager may determine reasonable rental rates for each Unit, which may vary from Unit to Unit; and
- (e) The resident manager shall make reasonable efforts only to ensure that Units made available for rental are subject to approximately equal periods of occupation.

4.06 Each Owner will, at the General Manager's request, deposit with the General Manager at such time as he deems suitable such amount as the General Manager deems reasonably necessary to perform the obligations under this Agreement, until the first Annual Meeting, and thereafter an amount determined by Owners at the Annual Meeting by ordinary resolution (the "Operating Fund"). The General Manager shall pay all such costs, charges, expenses and disbursements incurred on behalf of the Owner in pursuance of this Agreement, from the Operating Fund and shall credit thereto all revenue and income derived for the Unit in pursuance of this Agreement.

4.07 Within thirty (30) days of the end of a Management Period (the "Payment Date") the General Manager shall forward a statement to each Owner indicating the balance of the Operating Fund and each Owner shall, within fifteen (15) days of the date of the statement, pay to the General Manager the difference between the balance of the Owner's account and the Operating Fund. Any arrears of any Owner shall bear interest at the rate of 2% per month. If the balance to the Owner's account exceeds the Operating Fund, the General Manager shall forward such difference to each respective Owner with the statement referred to in this paragraph.

## 5.00 RESERVES

5.01 In addition to the Operating Fund, the Owner hereby authorizes the General Manager to set up and establish all such reserves, contingent funds and holdbacks (the "Reserves") which the General Manager reasonably considers are necessary so as to make the management of the Units in Tantalus and the Pooling Arrangement more efficient and economical, and without restricting the generality of the foregoing, the General Manager may set up any of the following:

- (a) Reserves to cover contingent liabilities;
- (b) Reserves to cover expenses which by the application of generally accepted accounting principles and practice should be accounted for and paid over a period of time which is longer than a Management Period.



6.00 TERM AND EFFECTIVE DATE

6.01 Subject to the terms hereof, this Agreement shall become effective on the first day of January, 1980 (the "Effective Date").

6.02 The term of this Agreement shall continue from the Effective Date (the "Term") for a period which is 21 years less one day after the death of the last survivor of all the descendants of His Late Majesty King George V, living at this date.

7.00 SALE

7.01 The Owner shall not assign or transfer his interest in the Unit except by a grant of mortgage or by an assignment of this Agreement as security collateral to a grant of mortgage unless or until he obtains an executed agreement in the form of this Agreement as the same may be amended from time to time between the transferee of the Unit and the Owners, whereby the transferee agrees to be bound by the terms, provisos and conditions of this Agreement, in like manner as if he had been a signatory thereto, in place of the Owner. The Owners' copy of this Agreement shall be held for and on behalf of the Owners by the General Manager.

7.02 If the Owner sells his Unit then the General Manager shall not be bound to make any adjustments as between the Owner and his assignee and upon the happening of this event, the pro rata share of cash balance (if any) which may become due and payable by the General Manager to the Owner, on the next ensuing payment date shall be deemed to have been properly paid if it is paid to the person who is shown on the General Manager's records as at that date, as the Owner of the Unit.

8.00 RELATIONSHIP OF GENERAL MANAGER TO OWNER AND THE CORPORATION

8.01 The relationship between the General Manager and the Owners shall be one of agency. The General Manager shall carry out his activities in accordance with any recommendations which the Corporation may make.

9.00 RELATIONSHIP OF OWNERS

9.01 The Pooling Arrangement is a joint venture agreement relating solely to the Unit and Tantalus exclusive of the operation, care, responsibilities, duties and rights of the Corporation and, therefore, nothing herein contained shall be deemed to create a partnership relationship among any of the parties hereto. No Owner shall have nor represent that he has the authority to act for or on behalf of or bind any other Owner or Owners.

9.02 Each Owner shall have the right to hold interests in any other venture or investment and to carry on in any other business for profit, including without limitation, any form of ownership, development and management of real property.

9.03 Any right to ownership to property and assets shall be a sole individual right, and not a joint, collective or partnership right, and any one Owner shall not, under any circumstances, be considered or deemed to be carrying on business together with any other Owner or with the General Manager. Except for the indemnity relationship which is established by these presents, each of the Owners, in their individual capacity, shall be entitled to rights and benefits and each in their individual capacity shall be liable for only their own losses and not the losses or liabilities of any other Owner.

9.04 For the purposes of voting pursuant to any of the provisions of this Agreement, it is acknowledged and agreed that each Owner will be entitled to only one vote for each Unit, notwithstanding that several parties may comprise the Owner.

9.05 Except as otherwise provided herein, this Agreement may be amended from time to time by agreement of 60% of all Owners, and all Owners shall be bound by any such amendment to this Agreement.

**9.06 The Owners acknowledge that the inclusion of a Unit within a time share, interval ownership or other arrangement whereby the Unit or the right to use the Unit is sold or rented for specific periods of time to different parties is inconsistent with and contrary to the intent of the joint venture agreement between the Owners as evidenced by this Agreement. Accordingly, each Owner hereby specifically agrees with the other Owners not to place or allow his Unit to be placed in any such arrangement whether or not such Unit is within the Pooling Arrangement. (Amended effective February 15, 1994)**

#### **10.00 LAW SUITS AND OBLIGATIONS**

10.01 The General Manager shall promptly notify the Owner of any suit, proceeding or action commenced or taken against the Owner or the General Manager, or the resident manager, which may be related to the Unit or Tantalus or the operation thereof, and the General Manager may in his own name and as Attorney for the Owner and the Owners, object to, contest the validity of, challenge or appeal any tax (other than municipal tax assessments or levies for school, hospital or general purposes), rate, charge, law, statute, by-law, ordinance, regulation, order or judgment of any Court of authority or agency, conduct and defend any proceeding, action or motion.

#### **11.00 INDEMNITY**

11.01 The Owner, to the extent of his pro rata portion, agrees to indemnify and save the General Manager harmless from all costs, claims and damages which may arise from its management of the Unit and of Tantalus provided that the General Manager shall not be in default hereunder and shall have acted in good faith and within the scope of his authority.

11.02 The General Manager agrees to indemnify and save the Owner harmless from any claim, loss or damage which the Owner may suffer or incur by reason of dishonest acts of the General Manager or by virtue of his exceeding his authority, and the General Manager warrants to the

Owner that he shall be fully liable to the Owner for any applications of funds in relation to Tantalus which is not substantially applied in accordance with the provisions of this Agreement.

## 12.00 GENERAL PROVISIONS

12.01 The parties agree that they have expressed herein their entire understanding and agreement concerning the subject matter contained herein, and it is expressly agreed that no implied covenant, condition, term or reservation shall be read into this Agreement relating to or concerning such subject matter.

12.02 The unenforceability of any clause contained herein, shall not affect the enforceability of any other clause and each of the clauses contained herein shall be deemed to be severable from all others.

12.03 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

12.04 Time shall be of the essence hereof.

12.05 This Agreement shall be binding upon and enure to the benefit of the Owner, his heirs, executors, administrators and assignees.

12.06 This Agreement shall be construed in accordance with the laws of the Province of British Columbia.

12.07 All terms, covenants, provisions and conditions of this Agreement shall run with and be binding upon the said lands during the term hereof.

12.08 Wherever the singular or the masculine is used throughout this Agreement the same shall be construed as meaning the plural, or the feminine, or the neuter or the body politic or corporate, where the context hereof so requires.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED )

by \_\_\_\_\_ and )

\_\_\_\_\_ in the )

presence of: )

\_\_\_\_\_ )

(Signature) )

\_\_\_\_\_ )

(Print Name) )

\_\_\_\_\_ )

(Address) )

\_\_\_\_\_ )

(Occupation) )

(as to all signatures) )

(or if a Corporation) )

THE CORPORATE SEAL of )

\_\_\_\_\_ was affixed )

in the presence of: )

\_\_\_\_\_ )

\_\_\_\_\_ )

Authorized Signatory )

\_\_\_\_\_ )

\_\_\_\_\_ )

Authorized Signatory )

\_\_\_\_\_

\_\_\_\_\_

c/s

## SCHEDULE "B"

### LIST OF TERMS AND DEFINITIONS

1. "Annual Meeting" - means a meeting of the Owners to be held immediately subsequent to the annual general meeting of the Corporation. For the purpose of calling the Annual Meeting the notice of annual general meeting of the Corporation shall be deemed to be a notice of the Annual Meeting. An extraordinary meeting of the Owners may be called by a notice of meeting 15 days from the date of the notice, co-signed by the Owners of 15 Units directed to each and every other Owner.
2. The "Budget" - means the Budget determined and approved by the Owners by ordinary resolution at the Annual Meeting other than the first budget, which is attached as Schedule "C".
3. "Cash Balance" - means total gross revenues in a Management Period less the reserves and gross operating expenditures.
4. The "Corporation" - means the Strata Corporation for Tantalus.
5. "Fiscal Year" - means any one year after the Effective Date of the anniversary of the Effective Date.
6. "Emergency Situation" - means a condition existing if not remedied without delay, which would result (with reasonable certainty) in damage to any Unit or to Tantalus.
7. "General Manager" - means Townsite Developments Ltd. until the first Annual Meeting, and thereafter such person, persons or body corporate as the Owners by ordinary resolution may agree, at such remuneration as the Owners may so agree.
8. "Gross Operating Expenditures" - means all operating expenditures incurred in a Management Period, in the operation and management of all Units in Tantalus as determined by the General Manager.
9. "Management Period" - means every three (3) calendar months during the term.
10. "Ordinary Resolution" - means 50% of the Owners entitled to vote in accordance with this Agreement, present in person or by proxy.
11. "Pooling Arrangement" - means the arrangement made herein or in any counterpart to these presents between each of the Owners and the other Owners in respect to the insurance to Owners of unrented Units of a lesser loss of rental income.
12. The "Owners" - means all of the Owners of the Units in Tantalus.

13. "Special Resolution" - means 75% of the Owners entitled to vote in accordance with this Agreement, present in person or by proxy.
14. "Unit" - means the Unit of the Owner signing this Agreement all as described in Schedule "A" hereto.
15. "Management Year" - means in the case of the first Management Year the period of time commencing on the Effective Date and ending on June 30th of the following year and thereafter shall mean the period from July 1st to the following June 30th.