

UNITED PROPERTIES (WHISTLER) LTD.

and

DELTA HOTELS LIMITED

"DELTA WHISTLER VILLAGE SUITES"

HOTEL MANAGEMENT AND RENTAL POOL AGREEMENT

September 24, 1997

**DELTA WHISTLER VILLAGE SUITES
HOTEL MANAGEMENT AND RENTAL POOL AGREEMENT**

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DELTA WHISTLER VILLAGE SUITES
HOTEL MANAGEMENT AND RENTAL POOL AGREEMENT

This Agreement dated for reference September 24, 1997

BETWEEN:

UNITED PROPERTIES (WHISTLER) LTD., a Corporation duly incorporated under the laws of the Province of British Columbia

- and -

THE OWNERS OF THE STRATA LOTS (AS DEFINED HEREIN), from time to time, who are parties to this Agreement in accordance with Article 16 hereof

(collectively called the "Owners")

AND:

DELTA HOTELS LIMITED, a Corporation duly constated under the laws of the Province of Ontario

("Delta")

WHEREAS:

- A. The Owners are the owners of the Strata Lots;
- B. Delta is knowledgeable in the operation of First-Class Hotels, and has performed such functions throughout Canada;
- C. The Owners desire to engage Delta to act as the Owners' exclusive manager for the operation of the Hotel in accordance with the terms and conditions set out in this Agreement; and
- D. Delta agrees to perform such services for the Owners in accordance with this Agreement.

THEREFORE the parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Definitions.** The following terms as used in this Agreement have the following meanings, except as otherwise expressly provided or unless the context otherwise requires:

- (1) "Administration Fee" has the meaning set forth in section 7.3;
- (2) "Affiliate" means, with respect to any person:

- (a) any person which is Controlled by that particular person; or
 - (b) any person which Controls that particular person,
- whether such Control be direct or indirect;
- (3) "Annual General Meeting" means the annual general meeting of the Strata Corporation or the Residential Section, as the case may be, pursuant to the Condominium Act;
 - (4) "Annual Statements" has the meaning set forth in section 8.2(2);
 - (5) "Approved Operating Plan and Budget" means any Operating Plan and Budget approved pursuant to section 5.1(3) or deemed to be approved pursuant to section 5.1(2);
 - (6) "Arm's Length" means "arm's length" according to the Income Tax Act (Canada), determined in accordance with such Act, the interpretation bulletins issued in connection therewith and all relevant case law, all as from time to time in effect;
 - (7) "Audited Annual Financial Statements" means comparative financial statements for the Rental Pool prepared in accordance with sections 145(1) and (2) of the *Securities Rules*, B.C. Reg. 479/95, as amended or replaced from time to time, as if the Rental Pool were a reporting issuer, together with an auditor's report on the comparative financial statements prepared by a person that is qualified under the *Securities Act* to make the auditor's report;
 - (8) "Base Fee" means the fee payable to Delta established and paid pursuant to section 7.1;
 - (9) "Business Day" means any day which is not a Saturday, Sunday, or a statutory holiday in Vancouver, British Columbia, or Easter Monday or Boxing Day;
 - (10) "Capital Expenditures" means all expenditures of the Hotel of a capital nature which are not expensed, as determined in accordance with Generally Accepted Hotel Accounting Principles;
 - (11) "Chartered Accountants" means the firm of chartered accountants selected by Delta and approved by the Owners' Committee;
 - (12) "Commencement Date" means the date that the Hotel (including the parking areas contained therein) is opened by Delta for business as a "Delta" hotel;
 - (13) "Commercial Strata Lots" means all strata lots within the Strata Plan other than the Strata Lots and the Hotel Manager's Strata Lots;
 - (14) "Common Facilities" means the common facilities (as defined in the Condominium Act) within the Strata Plan;
 - (15) "Common Property" means the common property (as defined in the Condominium Act) within the Strata Plan, other than any limited common property designated for the exclusive use of any of the Strata Lots, the Hotel Manager's Strata Lots or the Commercial Strata Lots or otherwise allocated or designated for the exclusive use of the Strata Lots, the Hotel Manager's Strata Lots or the Commercial Strata Lots;
 - (16) "Condominium Act" means the Condominium Act (British Columbia);
 - (17) "Control" means:

- (a) the right to exercise a majority of the votes which may be put at a meeting of the shareholders of a corporation; and
 - (b) the right to elect or appoint, directly or indirectly, a majority of the directors of a corporation or other persons who have the right to manage or supervise the management of the affairs and business of a person;
- (18) "Delta" means Delta Hotels Limited;
- (19) "Delta Group" means the group of hotels located in Canada or the United States as may, from time to time be managed by Delta or any Affiliate of Delta as a "DELTA" hotel using the trademark and tradename "DELTA";
- (20) "Delta Marketing and Sales Expenses" has the meaning set forth in section 7.4;
- (21) "Delta Recoveries" has the meaning set forth in section 7.6;
- (22) "Development" means the development being developed by the Owner-Developer on the lands situated in the Resort Municipality of Whistler and legally described as:
- Strata Lots 1 to 303
District Lot 3483
Strata Plan LMS2940;
- (23) "Employees" means the employees of the Hotel hired by Delta pursuant to section 9.7;
- (24) "Escalation Factor" means the fraction (which may be greater than, equal to or less than one) of which:
- (a) the numerator is the All-Items Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the date that the Escalation Factor is to be determined; and
 - (b) the denominator is the All-Items Consumer Price Index for Vancouver, British Columbia published by Statistics Canada, or its successor, as of the prior date to which the date of the determination of the Escalation Factor is being compared,
- except that if at any time Statistics Canada no longer publishes an All-Items Consumer Price Index for Vancouver or is no longer operated by the Canadian government, the Escalation Factor will be determined by the agreement of the Owners' Committee and Delta or, failing such agreement, by arbitration in accordance with section 18.1;
- (25) "FF&E Reserve" means the reserve to be established by Delta pursuant to the terms of section 6.6;
- (26) "Financial Information" means:
- (a) Audited Annual Financial Statements for the most recent financial year, which include financial statements for the prior comparative year; and
 - (b) Interim Financial Statements for any interim periods after the most recent financial year end;
- (27) "First-Class Hotel" means the standards of a first class commercial trade hotel in accordance with hotel industry standards with regard to hotels comparable to the Hotel in the Resort

Municipality of Whistler, having regard to the facilities of the Hotel (which, for example, will not contain a restaurant);

- (28) "Form 43B" means Form 43B under Notice NIN#96/37 issued by the British Columbia Securities Commission, as amended or replaced from time to time;
- (29) "Fringe Benefits" means those benefits normally given from time to time to employees or personnel at any hotel within the Delta Group, including without limitation, pension, medical, health and life insurance and similar employee plans, bonus or gain sharing plan participation, the benefits of any housing loan and relocation costs;
- (30) "Furniture, Fixtures and Equipment" means all furniture, equipment, fixtures and furnishings necessary for the proper operation of the Hotel and situated in the Hotel Premises, including, without limitation, office equipment and furniture, computers and computer systems, telephones and telephone systems, video machines, mini bars, refrigerators, stoves, kitchen equipment, carpeting, rugs and other floor coverings, draperies, curtains, tapestries, screens, works of art, pictures, paintings, prints, beds, mattresses, bedspreads, pillows, radios and television sets, including such items bearing the Delta name or identifying characteristics as Delta, acting reasonably, considers appropriate, excluding any of the foregoing owned by the Strata Corporation;
- (31) "Generally Accepted Hotel Accounting Principles" means generally accepted accounting principles as published and observed by the Canadian Institute of Chartered Accountants and as supplemented by the Uniform System of Accounts for Hotels published by the Hotel Association of New York City, Inc.;
- (32) "Gross Revenue" means all revenue of any kind whatsoever derived directly or indirectly from the Hotel Premises or any portion thereof and the operation of the Hotel, including, without limitation, all of the following:
- (a) all revenue from the use and enjoyment of the Hotel by Hotel Guests and Owners pursuant to this Agreement, including room charges, mini-bar revenue (if applicable), room service revenue (if applicable), housekeeping charges, telephone revenue, movie rental revenue and the fees and charges referred to in section 10.2;
 - (b) all revenue from parking;
 - (c) proceeds received from any business interruption insurance; and
 - (d) all other revenue from the operation of the Hotel, including revenue from any business or facility operated within the Hotel Premises, vending machine revenue and revenue and fees from licensees, lessees or concessionaires within the Hotel Manager's Strata Lots,

excluding, however, all of the following;

- (e) revenue from any portion of the Development which is not included in the Hotel Premises;
- (f) applicable excise, sales, income, hotel, room, entertainment and use taxes or similar government charges collected directly from Hotel Guests and Owners or as part of the sales price of any goods or services;
- (g) gains arising from the sale or other disposition of capital assets or unwanted inventory;

- (h) revenue from expropriation awards or sales or other transfers in lieu of and under the threat of expropriation;
 - (i) proceeds of any insurance other than business interruption insurance;
 - (j) rebates, discounts or credits of a similar nature (other than credit card discounts, which will be included as an item of revenue and considered a Hotel Expense);
 - (k) gratuities paid to Employees; and
 - (l) payments received at the Hotel for accommodation, goods or services to be provided at other hotels;
- (33) "Head Office Personnel" means any member of the staff of Delta operating on behalf of the Delta Group and not for the Hotel only;
- (34) "Hotel" means the Hotel Premises and the hotel operation known as "Delta Whistler Village Suites" managed by Delta for the Owners in respect of the Hotel Premises pursuant to this Agreement, but does not include the Common Property, Common Facilities or other assets of the Strata Corporation (except the Hotel Manager's Strata Lot);
- (35) "Hotel Bank Account" means the bank account established pursuant to section 8.1;
- (36) "Hotel Expenses" means all expenses properly incurred in accordance with Generally Accepted Hotel Accounting Principles and the terms and conditions set out in this Agreement in connection with the earning of the Gross Revenue and chargeable to the Owners in accordance with this Agreement, including, without limitation:
- (a) the Base Fee;
 - (b) the Administration Fee;
 - (c) the Delta Marketing and Sales Expenses;
 - (d) the Delta Recoveries;
 - (e) any amount payable to and in respect of the Employees in accordance with this Agreement, including hiring costs and expenses, Fringe Benefits, withholding amounts and costs of termination;
 - (f) utility costs and charges;
 - (g) any amount payable by Delta pursuant to the Hotel Manager's Strata Lot Lease;
 - (h) the cost of the Operating Supplies and Expendables;
 - (i) expenses in connection with the maintenance and repair of the Strata Lots and the maintenance, repair and replacement of any Furniture, Fixtures and Equipment;
 - (j) the cost of operating and maintaining any parking facility within the Hotel Premises;
 - (k) travel agent commissions, credit card commissions and Whistler Resort Association commissions (but not Whistler Resort Association dues);
 - (l) insurance premiums;

but excluding the following:

- (m) the Owners' Strata Lot Expenses;
 - (n) the Incentive Fee;
 - (o) depreciation and amortization;
 - (p) capital lease payments;
 - (q) Capital Expenditures;
 - (r) any taxes personal to the Owners, including income taxes, capital taxes and large corporation taxes; and
 - (s) debt service payments payable by the Owners;
- (37) "Hotel Guests" means the users and occupants of the Strata Lots from time to time, other than the Owners using the Strata Lots in accordance with Schedule C and persons claiming under the Owners pursuant to Schedule C;
- (38) "Hotel Manager's Strata Lots" means:
- Resort Municipality of Whistler
Strata Lots 3 and 253
District Lot 3483
Strata Plan LMS2940,
- together with any limited common property designated for the exclusive use of any of such strata lots;
- (39) "Hotel Manager's Strata Lot Lease" means the lease or leases of the Hotel Manager's Strata Lots made by the Owner-Developer or the Strata Corporation in favour of Delta;
- (40) "Interim Financial Statements" means interim financial statements for the Rental Pool prepared in accordance with sections 144(1), (3) and (4) of the *Securities Rules*, B.C. Reg. 479/95, as amended or replaced from time to time, as if the Rental Pool were a reporting issuer;
- (41) "Hotel Premises" means:
- (a) the Strata Lots; and
 - (b) the Hotel Manager's Strata Lots;
- (42) "Incentive Fee" means the fee payable to Delta established and paid pursuant to section 7.2;
- (43) "Initial Term" has the meaning set forth in section 2.2;
- (44) "In the Rental Pool" has the meaning set forth in section 6.3;
- (45) "Interest Upon Destruction" means the interest upon destruction of any Strata Lot or Strata Lots, as set out on the Strata Plan;

- (46) **"Land Title Office"** means the New Westminster/Vancouver Land Title Office or the successor thereto;
- (47) **"Monthly Statement"** has the meaning set forth in section 6.1;
- (48) **"Net Hotel Return"** means Gross Revenue less the aggregate of all of the following:
- (a) the Hotel Expenses;
 - (b) the Owners' Strata Lot Expenses in respect of all of the Strata Lots; and
 - (c) the FF&E Reserve in respect of all of the Strata Lots;
- (49) **"Operating Cash Reserve"** means the reserve to be established pursuant to section 6.7;
- (50) **"Operating Plan and Budget"** means the marketing and operating plan and budget for the operations of the Hotel for any Operating Year established pursuant to the terms of sections 5.1 and 5.2;
- (51) **"Operating Supplies and Expendables"** means any operating supplies used by Delta in the operation of the Hotel in accordance with this Agreement, including the terms of any Approved Operating Plan and Budget, including, without limitation, laundry supplies, linens, housekeeping supplies, engineering supplies, accounting supplies, miscellaneous general supply items, uniforms, inventories, paper supplies and other such items that when used once are considered to be disposed of and all other similar items necessary or appropriate for the operation of the Hotel as contemplated by this Agreement;
- (52) **"Operating Year"** means:
- (a) firstly, the period from the Commencement Date to and including December 31 in the year after the year in which the Commencement Date occurs; and
 - (b) thereafter, each period of 12 months from and including the first day of January to and including the last day of December, or the portion thereof in the case of the last year of the Term;
- (53) **"Owner-Developer"** means United Properties (Whistler) Ltd.;
- (54) **"Owners' Committee"** means the committee representing the Owners, established pursuant to section 4.2;
- (55) **"Owners' Strata Lot Expenses"** means the following amounts payable in respect of the Strata Lots:
- (a) property taxes and other charges levied by the Resort Municipality of Whistler with the property taxes;
 - (b) Whistler Resort Association dues; and
 - (c) monthly maintenance fees and other amounts (other than any amounts payable on account of capital replacements or capital improvements) payable to the Strata Corporation;
- (56) **"person"** means any individual, corporation, body corporate, partnership, joint venture, trust, unincorporated organization or other entity, government or governmental or regulatory

authority, however constituted, or any trustee, executor, administrator or other legal representative;

- (57) **"Prime Rate"** means the floating rate of interest used by the main branch in Vancouver, British Columbia of Bank of Montreal from time to time as a reference rate for establishing rates of interest for Canadian dollar loans payable on demand and commonly known as its "prime rate", except that if at any time Bank of Montreal no longer publishes its prime rate, the Prime Rate will be the prime rate published by another chartered bank of Canada, as selected by Delta, and if there is no prime rate published by any other chartered bank of Canada, the Prime Rate will be determined by the agreement of the Owner's Committee and Delta or, failing such agreement, by arbitration in accordance with section 18.1;
- (58) **"Related Person"** means, with respect to any person:
- (a) any Affiliate of such person;
 - (b) any person who is not at Arm's Length to such person or any Affiliate of such person; and
 - (c) any person who is a director, officer, employee or agent of such person or any Affiliate of such person or any spouse, parent, child or relative (including by marriage) of any of the foregoing;
- (59) **"Rental Pool"** means the rental management arrangement in respect of the Hotel Premises undertaken by Delta on behalf of the Owners pursuant to this Agreement;
- (60) **"Rental Pool Covenant"** means the Section 219 Land Title Act (British Columbia) restrictive covenant or covenants charging the Development in favour of the Resort Municipality of Whistler and registered in the Land Title Office under instrument number BK253246, as the same may be amended and superseded from time to time;
- (61) **"Residential Section"** means the residential section of the Strata Corporation, created by the bylaws of the Strata Corporation;
- (62) **"Restrictive Covenant"** means the restrictive covenant or covenants charging the Strata Lots in favour of the Hotel Manager's Strata Lot Lease;
- (63) **"Revpar"** means "Room Revenue" divided by "Available Rooms", where:
- (a) "Room Revenue" means all gross revenue derived from the rental of sleeping rooms, net of any applicable rebates and discounts and excluding any incidental revenue such as telephone charges and movie rental; and
 - (b) "Available Rooms" means the total number of rooms available for rental to the public on a daily basis, and in the case of the Hotel, the Available Rooms will mean the total number of rooms in the Rental Pool on a daily basis;
- (64) **"Security"** has the meaning set forth in section 16.5;
- (65) **"Security Holder"** has the meaning set forth in section 16.5;
- (66) **"Special Resolution"** means a resolution passed at a meeting of the Owners properly convened in accordance with section 4.1, of which at least 14 days' notice specifying the purpose of the special resolution has been given, passed by Owners present or represented by proxy and

representing not less than 75% of the Strata Lots entitled to vote thereon in accordance with section 4.1;

- (67) "Strata Corporation" means The Owners, Strata Plan No. LMS2940;
- (68) "Strata Corporation Bylaws" means bylaws and rules and regulations of the Strata Corporation;
- (69) "Strata Council" means the members of the executive of the Residential Section, or if there is no executive of the Residential Section, then the members of the strata council of the Strata Corporation who are appointed by the owners of the Strata Lots or who are representatives of the owners of the Strata Lots;
- (70) "Strata Lots" means:

Resort Municipality of Whistler
Strata Lots 13 to 210, 222 to 252 and 254 to 303
District Lot 3483
Strata Plan LMS2940,

together with any limited common property designated for the exclusive use of any such strata lots;

- (71) "Strata Plan" means Strata Plan LMS2940;
- (72) "Summary Disclosure Statement" means a summary of this Agreement and the Rental Pool that includes:
- (a) items 1, 3(1), 6, 7, 9(1), (2), (3) and (4), 10(b) and 16 of Form 43B, modified as necessary to reflect the operation of the Rental Pool and the form of disclosure; and
 - (b) items 12(2), (3) and (4) of Form 43B with respect to Delta, modified so that the period of disclosure runs from the date of the certificate attached to the summary,
- and is certified by Delta in the form of certificate required under item 19 of Form 43B;
- (73) "Term" has the meaning set forth in section 2.2;
- (74) "Two-thirds Resolution" means a resolution passed, at a meeting of the Owners properly convened in accordance with section 4.1, of which at least 14 days' notice specifying the purpose of the resolution has been given, passed by Owners present or represented by proxy and representing not less than two-thirds of the Strata Lots entitled to vote thereon;
- (75) "Unit Entitlement" means the unit entitlement of any Strata Lot or Strata Lots, as set out in the Strata Plan;
- (76) "Unit Revenue Share" has the meaning set forth in section 6.2; and
- (77) "Unit Share Ratio" means, with respect to any Strata Lot, the fraction which has as its numerator the Interest Upon Destruction of such Strata Lot and as its denominator the aggregate of the Interests Upon Destruction of all of the Strata Lots.

1.2 **Interpretation.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (1) "this Agreement" means this hotel management and rental pool agreement, as it may from time to time be supplemented or amended by one or more agreements between the parties in accordance with the terms hereof;
- (2) all references in this Agreement to designated "Articles", "sections" and other subdivisions are to be designated Articles, sections and other subdivisions of this Agreement;
- (3) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole or not to any particular Article, section or other subdivision;
- (4) the headings are for convenience only and do not form a part of this Agreement and they will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (5) the word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", without limiting the generality of the foregoing, or "but not limited to" or words of similar import) is used with reference thereto, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (6) words importing the neuter gender include the masculine or feminine gender and words in the singular include the plural, and vice versa.

1.3 **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof, and, subject to Article 18, the courts of British Columbia will have exclusive jurisdiction in connection with all matters under this Agreement and the interpretation and enforceability hereof.

1.4 **Statutes.** Any reference in this Agreement to any statute means such statute and any statute or law enacted to supersede or replace such statute.

ARTICLE 2 COMMENCEMENT DATE, TERM OF AGREEMENT

2.1 **Commencement Date.** This Agreement will be a binding agreement and bind the Strata Lots, Delta and all of the Owners upon the execution and delivery hereof by the Owner-Developer and Delta. The duties and obligations of the parties under this Agreement will come into full force and effect upon the Commencement Date.

2.2 **Initial Term.** The initial term of the appointment of Delta as the Owners' manager under this Agreement will be a period commencing on the Commencement Date and terminating at midnight at the end of the day on April 30, 2007 (the "Initial Term"). For purposes of this Agreement, the word "Term" means the Initial Term and any extensions thereof pursuant to section 2.3 or section 2.6.

2.3 **Renewals by Delta.** Following the Initial Term, the appointment of Delta as the Owners' manager pursuant to this Agreement will be automatically renewed (without the requirement for notice by either the Owner or Delta) for two successive periods of five years each (each called a "Renewal Term"), provided that:

- (1) the Owners have not, prior to the end of the Initial Term or any Renewal Term, elected to terminate the appointment of Delta as manager under this Agreement pursuant to section 15.2;

- (2) Delta has not, prior to the end of the Initial Term or any Renewal Term, elected to terminate the appointment of Delta as manager under this Agreement pursuant to section 15.3;
- (3) the Initial Term has been extended for all prior periods;
- (4) Delta, in its sole discretion, has not given the Owners' Committee written notice of its election not to so renew such appointment on or before the date which is six months prior to the end of the then existing Initial Term or Renewal Term, as the case may be; and
- (5) the Owners have not elected to terminate the appointment of Delta as manager under this Agreement in accordance with section 2.4.

2.4 **Performance by Delta - Revpar Test.** On or before August 31 in the year before the expiry of the Initial Term and any Renewal Term, Delta will deliver to the Owners' Committee a written notice setting out:

- (1) the Revpar for the three closest competitors of the Hotel in the Resort Municipality of Whistler for the most recent two year period then available, as compiled by an accredited independent hotel consulting firm such as Pannel Kerr Forster; and
- (2) Revpar Statistics for the operation of the Hotel for the same two year period as referred to in subsection 2.4(1), as calculated by Delta,

certified by an officer of Delta to be true and correct, to the best of such officer's knowledge. Notwithstanding section 2.3, if the Revpar for the Hotel for such two year period is below the average Revpar of the three closest competitors of the Hotel in the Resort Municipality of Whistler for such two year period, the Owners may, by a Two-thirds Resolution, terminate the appointment of Delta as the Owners' manager pursuant to this Agreement, effective at the end of the Initial Term or Renewal Term then in effect, as the case may be. The Owners or the Owners' Committee will give Delta notice of such termination on or before the date which is 120 days before the end of the then current Initial Term or Renewal Term, as the case may be. If at any time statistics as to Revpar are not available, the Owner's Committee and Delta will agree on a similar performance test for the Hotel for the purposes of this section 2.4 and failing such agreement, such matter will be referred to and settled by arbitration in accordance with section 18.1. Any dispute as to any other matter arising under this section 2.4 will be referred to and settled by arbitration in accordance with section 18.1. Any such arbitration will be completed prior to the date which is 90 days before the end of the then current Initial Term or Renewal Term, as the case may be.

2.5 **Topping up by Delta.** Notwithstanding the provisions of section 2.4, if the Owners or the Owners' Committee have given a notice of termination in accordance with section 2.4, within 30 days after receipt by Delta of such notice, Delta will have the right, but not the obligation, to pay to the Owners the amount equal to:

- (1) the amount which, if included in the Gross Revenue for the two year period described in section 2.4 would have had the effect of making the Revpar of the Hotel equal to the average of that of its three closest competitors in the Resort Municipality of Whistler;

less:

- (2) 50% of the amount referred to in subsection 2.5(1) (in respect of expenses that would have been incurred in connection with the earning of such revenue),

in which event the Owners' notice of termination will be deemed to be withdrawn upon payment by Delta of such amount into the Hotel Bank Account and written notice from Delta to the Owners thereof. Any such amount will be deemed to be Gross Revenue.

2.6 **Renewal - By Agreement and Special Resolution by Owners.** In addition to renewals pursuant to section 2.3, the parties may agree to renew the appointment of Delta as the Owners' manager pursuant to this Agreement for a Renewal Term or Renewal Terms for such period or periods and upon such terms and conditions as may be approved by both:

- (1) an agreement in writing signed by Delta; and
- (2) an agreement in writing signed by the Owners' Committee and approved by a Special Resolution of the Owners in accordance with Article 4,

and both Delta and all of the Owners will be bound by any such renewal.

ARTICLE 3 **HOTEL RENTAL MANAGEMENT**

3.1 **Management of Hotel Rental Pool.** The Owners hereby appoint Delta as their exclusive manager to manage the operation of the Hotel and the Rental Pool in respect thereof in accordance with the terms and conditions set out in this Agreement and to undertake on an exclusive basis, on behalf of and for the account of the Owners, all duties and obligations coming within the scope of the management and marketing of the Hotel Premises, including those specific services as set forth herein. Without limiting any of its duties or obligations set out in this Agreement, Delta agrees to operate the Hotel Premises as a First-Class Hotel, except to the extent that Delta is prevented from maintaining this standard of service due to any default by any Owner pursuant to this Agreement.

3.2 **Hotel Rental Pool.** Delta will manage the rental of the Strata Lots in accordance with this Agreement. Each of the Owners hereby irrevocably covenants and agrees to be bound by the rental bookings of its Strata Lot made by Delta in accordance with this Agreement.

3.3 **Use.** The Strata Lots will be used only as condominium hotel units and only in accordance with the Rental Pool Covenant, this Agreement and the Rental Pool and will not be used for any other purpose without the prior written consent of the Owners and Delta. Any use of the Strata Lots will comply with the Rental Pool Covenant, all applicable laws, bylaws, rules and regulations and the Strata Corporation Bylaws and the Restrictive Covenant.

3.4 **Restrictions on Bookings.** Delta will not:

- (1) book the use of any Strata Lot for Hotel Guests for any Canadian or American statutory holiday, except in accordance with section 4 of Schedule C;
- (2) book the use of more than 50% of the Strata Lots for Hotel Guests more than 12 months in advance; or
- (3) book the use of more than 25% of the Strata Lots for Hotel Guests more than 24 months in advance.

3.5 **Restrictions Re: Strata Corporation Bylaws.** No Owner will vote in favour of any Strata Corporation Bylaw which conflicts with a term or condition set out in this Agreement.

3.6 **Hotel Manager's Strata Lots.** The Owners (including the Owner-Developer, as owner of the Hotel Manager's Strata Lots as of the date of this Agreement) and Delta agree that:

- (1) any revenue earned from or in respect of the Hotel Manager's Strata Lots or any portion thereof will be revenue belonging to the Owners (and not to the Strata Corporation or Delta) and included in the Gross Revenue; and

- (2) any costs or expenses in respect of the Hotel Manager's Strata Lots (including, without limitation, amounts payable by Delta pursuant to the Hotel Manager's Strata Lot Lease) will be costs and expenses payable by the Owners (and not by the Strata Corporation or Delta) and included in the Hotel Expenses.

ARTICLE 4
OWNERS' DECISIONS AND OWNERS' COMMITTEE

4.1 **Owners' Meetings.** The Owners will have meetings in respect of this Agreement as follows:

- (1) any duly-called meeting of the Strata Corporation or the Residential Section of the Strata Corporation to which the Owners are entitled to attend and vote in respect of the Strata Lots will be deemed to be a meeting of the Owners under and in respect of this Agreement;
- (2) the Owners' Committee may, upon notice to the Owners equivalent to the notice required to be given to owners of strata lots of a properly convened general meeting of the Owners under the Condominium Act and the Strata Corporation Bylaws, call a meeting of the Owners under and in respect of this Agreement;
- (3) Owners who own or hold proxies to vote in respect of not less than 75% of the Strata Lots may require the Owners' Committee to call a meeting of the Owners under and in respect of this Agreement in accordance with section 4.1(2);
- (4) without limiting any rights of Delta if Delta is an Owner, unless otherwise determined by the Owners' Committee from time to time, Delta, as manager, will be given notice of and be entitled to attend meetings of the Owners; and
- (5) any meeting of the Owners will be in Whistler or Vancouver, British Columbia, as determined by the Owner's Committee.

4.2 **Owners' Committee.** The Owners will be represented by an owners' committee established pursuant to this section 4.2 as follows:

- (1) unless otherwise elected by the Owners, the Owners' Committee will be comprised of each of the members of the Strata Council;
- (2) notwithstanding the foregoing, the Owners may, at any time, elect at a meeting called pursuant to section 4.1 a different Owners' Committee, comprised of up to five Owners, upon which the new Owners' Committee will notify Delta in writing thereof;
- (3) each Strata Lot will be allocated one vote in the selection of the Owners' Committee; no Owner may nominate or elect more than one representative to the Owners' Committee and no group of two or more Owners who are Related Persons may nominate or elect more than one representative to the Owners' Committee;
- (4) Delta will advise the Owners of any nominee to the Owners' Committee who is a representative of Delta or a representative of a person who is a Related Person to Delta prior to the election of such person to the Owners' Committee;
- (5) the Owner-Developer will act as the first Owners' Committee until the establishment of another Owners' Committee pursuant to this section 4.2;

- (6) all decisions of the Owners' Committee will be made by a majority of the members of the Owners' Committee, provided that no person on the Owners' Committee who is a Related Person to Delta or appointed to the Owners' Committee by Delta may vote in respect of any matter under or relating to this Agreement; a quorum for a meeting of the Owners' Committee will be a majority of the members of the Owners' Committee;
- (7) meetings of the Owners' Committee will be held in Whistler or Vancouver, British Columbia, as determined by the Owners' Committee, or such other place as may be determined by the Owners' Committee and such meetings may be held by telephone conference call;
- (8) the members of the Owners' Committee will be given not less than seven days' notice of meetings of the Owners' Committee, unless otherwise agreed by all members of the Owners' Committee;
- (9) in all other respects, meetings of the Owners' Committee will be governed by any rules applicable to meetings of the Strata Council pursuant to the Condominium Act and the Strata Corporation Bylaws;
- (10) unless otherwise determined by the Owners' Committee from time to time, Delta will be given notice of and be entitled to attend meetings of the Owners' Committee;
- (11) Delta will be entitled to rely on any agreement, document or instrument signed by the chairperson or any two members of the Owners' Committee; and
- (12) all acts and thing done by the Owners' Committee as set out in this Agreement will be binding upon all of the Owners and Delta will be entitled to rely on all acts and things done by the Owners' Committee in purported compliance with this Agreement, except where a Special Resolution is expressly required.

4.3 **Release and Indemnity of Owners' Committee.** The Owners hereby release and agree to fully indemnify and hold harmless the members of the Owners' Committee for all acts and things done by the members of the Owners' Committee as members of the Owners' Committee in good faith in connection with this Agreement.

4.4 **Major Decisions - Special Resolutions.** The following will be subject to the approval of the Owners by Special Resolution:

- (1) any amendment to or modification of this Agreement;
- (2) the renewal of the Term pursuant to section 2.6; and
- (3) any other matter which, pursuant to the terms of this Agreement, is required to be approved by a Special Resolution.

4.5 **Owners to be Bound.** All of the Owners will be bound by any acts and things done by the Owners' Committee in accordance with this Article 4 and this Agreement and any Special Resolutions passed by the Owner at any meeting of the Owners in accordance with this Article 4 and this Agreement.

ARTICLE 5
OPERATING PLAN AND BUDGET

5.1

Operating Plan and Budget.

- (1) For the first Operating Year, the Operating Plan and Budget will be prepared by Delta and approved by the Owner-Developer, acting as the Owners' Committee, prior to the Commencement Date. Such Operating Plan and Budget will be an Approved Operating Plan and Budget and Delta will mail a summary thereof to each of the Owners.
- (2) After the first Operating Year, on or before December 1 of each year, Delta will prepare and deliver to a meeting of the Owners' Committee duly convened in accordance with this Agreement a preliminary Operating Plan and Budget for the following Operating Year and Delta will review such preliminary Operating Plan and Budget with the Owners' Committee at such meeting. For a period of 30 days after receipt by the Owners' Committee of the preliminary Operating Plan and Budget at such meeting of the Owner's Committee, the Owners' Committee is entitled from time to time to request further details from Delta and to submit written comments to Delta. The Owners' Committee will give good faith consideration to the preliminary Operating Plan and Budget and not unreasonably refuse to accept any item, provided such item is in accordance with this Agreement. If the Owners' Committee does not respond to the preliminary Operating Plan and Budget within the 30 day period, then the Owners' Committee will be deemed to have approved the preliminary Operating Plan and Budget and such Operating Plan and Budget will be deemed to be an Approved Operating Plan and Budget. If after giving good faith consideration to the preliminary Operating Plan and Budget, the Owners' Committee, within such 30 day period, gives Delta written notice of its objection and proposals for amendment of any disputed items, the Owner's Committee and Delta, both acting reasonably, will endeavour to resolve any such differences between them.
- (3) Each Operating Plan and Budget is subject to the approval of the Owner's Committee and no Operating Plan and Budget will be an Approved Operating Plan and Budget unless it is approved by the Owner's Committee or otherwise in accordance with this section 5.1(3). If any Operating Plan and Budget is not approved by the Owner's Committee, then:
 - (a) pending resolution of any disputed item, the specific disputed items of the Operating Plan and Budget will be suspended and replaced for the Operating Year in question by an amount equal to the lesser of (i) that proposed by Delta for such Operating Year or (ii) such budget item in the Approved Operating Plan and Budget for the Operating Year prior thereto, subject to escalation per item by the Escalation Factor, over the 12 month period immediately preceding the start of the Operating Year in question, provided that if such budget item was not in the Approved Operating Plan and Budget for the Operating Year prior thereto, such item will be suspended pending resolution of such item; and
 - (b) either the Owners' Committee or Delta may submit the Operating Plan and Budget to be settled by arbitration in accordance with section 18.1.
- (4) Delta makes no assurances that actual performance of the Hotel will correspond to such estimates contained in the Approved Operating Plan and Budget. However, Delta agrees to use its best efforts to operate the Hotel within the Approved Operating Plan and Budget. The Owners acknowledge that notwithstanding Delta's experience and expertise in relation to the operation of hotels, the projections contained in each Approved Operating Plan and Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond Delta's control.

5.2 **Inclusions in Operating Plan and Budget.** The Operating Plan and Budget will be a reasonably detailed budget of revenue and expenses in connection with the operation of the Hotel, similar in kind and scope to operating plans and budgets prepared by Delta for other hotels in the Delta Group as of the Commencement Date, and will include the following:

- (1) the projected Gross Revenue, detailed as to each source of revenue, together with information and background as to how the various projections have been determined;
- (2) the budgeted Hotel Expenses, by major expense category, together with information and background as to how the various projections have been determined;
- (3) the projected Unit Revenue Share for each Strata Lot;
- (4) the marketing strategy and plan for the Hotel;
- (5) any recommended capital improvements to be made to the Hotel Premises; and
- (6) the basis upon which the Delta Marketing and Sales Expenses and Delta Recoveries will be charged.

5.3 **Budget Summary.** Delta will mail to each of the Owners a summary of each Approved Operating Plan and Budget once it is approved in accordance with this Article 5.

ARTICLE 6

OWNERS' REVENUES AND DISTRIBUTIONS TO OWNERS

6.1 **Calculations by Delta.** For each calendar month during the Term, Delta will prepare or cause to be prepared reasonably detailed financial statements, prepared in accordance with Generally Accepted Hotel Accounting Principles and for each such period Delta will calculate:

- (1) the Gross Revenue;
- (2) the Hotel Expenses;
- (3) the Capital Expenditures, if any;
- (4) the FF&E Reserve;
- (5) the Operating Cash Reserve; and
- (6) the Unit Revenue Share for each Strata Lot, determined in accordance with section 6.2.

No later than the 20th day following the end of each calendar month during the Term, Delta will

- (7) deliver to the Owner's Committee such financial statements; and
- (8) mail to each of the Owners a written summary statement (the "Monthly Statement"), setting out the amounts set out in sections 6.1(1) to 6.1(6) above and the calculations thereof, in reasonable detail.

6.2 **Calculations of Unit Revenue Share.** The Owners and Delta agree that:

- (1) for each day that a Strata Lot is In the Rental Pool, the Owner of such Strata Lot will be entitled to share in the gross revenue (as defined in accordance with Generally Accepted Hotel

Accounting Principles) from the Hotel Premises and the operation of the Hotel earned on such day, as calculated by multiplying the gross revenue earned on such day by the fraction which has as its numerator the Interest Upon Destruction of such Strata Lot and as its denominator the aggregate of the Interests Upon Destruction of all of the Strata Lots In the Rental Pool on such day;

- (2) each Owner of a Strata Lot will be responsible for the payment of all Hotel Expenses, Capital Expenditures exceeding the FF&E Reserve, capital lease payments and Incentive Fees payable for all days (whether or not the Strata Lot is In the Rental Pool), as calculated by multiplying the relevant Hotel Expenses the Capital Expenditures, capital lease payments and Incentive Fees by the Unit Share Ratio; and
- (3) each Owner will be responsible for the FF&E Reserve in accordance with section 6.6 and for the Operating Cash Reserve in accordance with section 6.7, as calculated by multiplying each of the FF&E Reserve and the Operating Cash Reserve by the Unit Share Ratio.

For the purposes of this Agreement, the "Unit Revenue Share" for any Strata Lot in respect of any period means the amount allocated to such Strata Lot in accordance with section 6.2(1) for such period less the amounts allocated to such Strata Lot in accordance with sections 6.2(2) and 6.2(3) for such period.

6.3 "In the Rental Pool"/ Exclusion of Hotel Manager's Strata Lots. For the purposes of this Agreement, a Strata Lot will be considered to be "In the Rental Pool" on a particular day only if it is not booked for use by the Owner in accordance with Article 10 (unless the Owner complies with the requirements of section 10.5 and Delta, acting reasonably, determines that the Strata Lot is In the Rental Pool). Delta will not share in the gross revenue pursuant to section 6.2 by virtue of the Interest Upon Destruction assigned to Hotel Manager's Strata Lots and the Hotel Manager's Strata Lots will not be "In the Rental Pool".

6.4 Payments to Owners. Concurrently with the mailing of the Monthly Statement, Delta will mail to each Owner a cheque, drawn upon the Hotel Bank Account, in the amount equal to the Owner's Unit Revenue Share for the month for which the Monthly Statement applies less the following amounts:

- (1) any unpaid amount then payable by the Owner to Delta pursuant to section 6.8; and
- (2) any amount deductible therefrom pursuant to section 6.9 or 10.2;
- (3) any other amount payable by the Owner to Delta pursuant to this Agreement; and
- (4) withholding tax, if applicable.

Notwithstanding the foregoing, Delta may at any time, in consultation with the Owners' Committee, prepare a reasonable estimate of the annual Unit Revenue Share payable to each of the Owners pursuant to this section 6.4 and distribute to the Owners concurrently with the mailing of the monthly statements the amount of such estimate, less a percentage (not to exceed 20%) established by Delta for seasonal working capital requirements in 12 equal monthly payments, in which case at the end of such Operating Year Delta will calculate or cause to be calculated the actual Unit Revenue Share payable to each of the Owners in accordance with this Agreement and include such calculation in the Annual Statement(s) as set out in section 8.2(3) and at such time Delta will pay to each Owner the balance of his or her Unit Revenue Share payable for such Operating Year.

6.5 Maintenance and Repair of Strata Lots. Delta will, for and on behalf of the Owners, keep the Strata Lots and the Hotel Manager's Strata Lots in substantially the same condition they were in as of the Commencement Date, normal wear and tear excepted, and the cost thereof will be a Hotel Expense. The Owners acknowledge and agree that the cost of maintaining and repairing the Strata Lots and the Hotel Manager's Strata Lots will be shared by all of the Owners during the Term.

6.6 **FF&E Reserve/Repair of FF&E.** Delta will establish for and on behalf of the Owners a reserve in the following amounts:

- (1) 0% of the Gross Revenue for the period from the Commencement Date to the end of the first full Operating Year; and
- (2) 3.0% of the Gross Revenue thereafter.

The FF&E Reserve will be held by Delta in the Hotel Bank Account as a reserve for the replacement of any Furniture, Fixtures and Equipment. Delta will, for and on behalf of the Owners, keep the Furniture, Fixtures and Equipment in substantially the same condition, quality and scope they were in as of the Commencement Date, normal wear and tear excepted, and the Owners hereby authorize Delta to utilize the FF&E Reserve for such purpose. Delta will be under no obligation to use its own funds for such purpose. The Owners acknowledge and agree that the FF&E Reserve will be for the benefit of all of the Strata Lots collectively and not for each individual Strata Lot separately and that the cost of maintaining, repairing and replacing the Furniture, Fixtures and Equipment will be shared by all of the Owners during the Term.

6.7 **Operating Cash Reserve.** A reserve in the amount of \$150,000 will be established for and on behalf of the Owners, for use by Delta on behalf of the Owners as working capital in connection with the operation of the Hotel. Initially, the Operating Cash Reserve will be loaned by the Owner-Developer to the Owners, without interest and placed by the Owner-Developer in the Hotel Bank Account. The Owners will repay such \$150,000 loan to the Owner-Developer by paying to the Owner-Developer the amount equal to 1.5% of the Gross Revenue, payable on the 20th day of each month on the Gross Revenue earned in the previous month, until repayment in full of such loan. The Owners hereby irrevocably authorize and direct Delta to pay when due such amounts to the Owner-Developer from the Gross Revenue held in the Hotel Bank Account. Delta will at all times be authorized to withhold from the Gross Revenue sufficient funds in order to keep the Operating Cash Reserve at such \$150,000 level throughout the Term. The Operating Cash Reserve will be held in the Hotel Bank Account and Delta may withdraw funds from the Operating Cash Reserve to pay any Hotel Expenses, Capital Expenditures, capital lease payments and the Incentive Fee.

6.8 **Shortfalls.** If at any time the funds in the Hotel Bank Account are not sufficient to pay when due any Hotel Expenses, Capital Expenditures, capital lease payments or Incentive Fees payable under this Agreement, then:

- (1) Delta may (such as in the case of seasonal operating shortfalls), but will not be obligated to, pay any such amount out of its own funds; in which case the Owners will repay such amount to Delta forthwith upon demand and will pay interest on any amount outstanding at the rate equal to the Prime Rate plus 2% per annum, calculated from the date of advance by Delta until the date of repayment by the Owners and Delta may deduct the amount of any such payment by Delta and interest thereon from the Hotel Bank Account; or
- (2) Delta may require the Owners to pay the amount of the shortfall estimated by Delta, by mailing to the Owners a written notice setting out such amount and each Owner's proportionate share thereof, as calculated by multiplying the amount of such shortfall by the Unit Share Ratio.

6.9 **Payment of Owner's Strata Lot Expenses by Owners.** Each of the Owners will promptly pay when due all taxes personal to the Owners in respect of such Owner's Strata Lot, including income taxes, capital taxes, large corporations taxes and goods and services taxes and all amounts owing under any financing of the Owner's Strata Lot arranged by such Owner and all of such Owner's Strata Lot Expenses in respect of or relating to the Owner's Strata Lot. For administrative purposes, Delta will pay for and on behalf of and in the name of each Owner, out of the Unit Revenue Share payable to such Owner, the following Owner's Strata Lot Expenses in respect of or relating to such Owner's Strata Lot:

- (1) Whistler Resort Association dues; and

- (2) monthly maintenance fees payable to the Strata Corporation for the period in which Delta is the strata manager for the Development.

If any Owner's Unit Revenue Share is not sufficient to pay any such amount, Delta will notify such Owner thereof and such Owner will either remit to Delta any shortfall and Delta will pay such amount or pay such amount directly, as directed by Delta.

6.10 **GST and Withholding Tax.** The parties agree that:

- (1) each Owner will be responsible for the payment of all goods and services tax and all other applicable taxes, charges, rates and levies in connection with its Strata Lot and each Owner will become registered and maintain its registration for goods and services tax purposes, if requested by Delta at any time, and provide Delta with such Owner's GST registration number;
- (2) Delta will, as agent for and on behalf of the Owners, if required under the applicable legislation, collect and remit to Revenue Canada and any other applicable authority, within the required time for the remittance thereof, any goods and services tax, hotel tax and other tax collected in connection with the use of the Hotel Premises by Hotel Guests and Owners, and make any necessary filings and reports in respect thereof; and
- (3) Delta may withhold from any of the Owners and remit to Revenue Canada or any other relevant authority any amount required to be withheld or remitted in respect of goods and services tax or withholding tax or any other applicable statutory tax, charge or levy which Delta is required to withhold or remit.

6.11 **No Separate Revenue for Delta.** Except as specifically set out in this Agreement or any other agreement in writing between Delta and the Owners or the Strata Corporation, neither Delta nor any person Related to Delta will receive any other revenue, profit or reward of any kind or nature from or in respect of the Hotel Premises or the Hotel or any portion thereof. Notwithstanding the foregoing, Delta and any person Related to Delta will be entitled to receive any amount payable to Delta or such person pursuant to this Agreement as an Owner of any Strata Lot.

ARTICLE 7
MANAGEMENT AND OTHER FEES AND REIMBURSABLE EXPENSES

7.1 **Base Fee.** The Owners and Delta agree that:

- (1) during the Term, Delta will receive a Base Fee as compensation for the services rendered in accordance with this Agreement as follows:
 - (a) for the period commencing on the Commencement Date and ending at the end of the month on the first anniversary of the Commencement Date, the Owners will pay to Delta a Base Fee of \$10,000 per month (with a pro rata portion thereof for a part of a month); and
 - (b) thereafter, the Owners will pay to Delta a Base Fee in an amount of 3.0% of Gross Revenue for each Operating Year payable in monthly instalments in respect of the Gross Revenue for the preceding month,

payable as a Hotel Expense in each case upon the delivery of the Monthly Statement in respect of such month;

- (2) the Base Fee paid in respect of each Operating Year will be adjusted annually, based on actual Gross Revenue for that Operating Year, within 30 days after the delivery of the Annual Statements.

7.2 **Incentive Fee.** The Owners and Delta agree that:

- (1) if for any Operating Year during the Term the Net Hotel Return exceeds \$2,900,000, the Owners will pay to Delta an Incentive Fee for such Operating Year equal to the aggregate of the following:
 - (a) 10% of the first \$500,000 by which the Net Hotel Return exceeds \$2,900,000; and
 - (b) 25% of any amount by which the Net Hotel Return exceeds \$3,400,000; and
- (2) the Incentive Fee in respect of each Operating Year, will be payable to Delta 30 days after the mailing of the Annual Statements.

7.3 **Administration Fee.** For the accounting and reporting services provided by Delta pursuant to this Agreement, each Owner will pay to Delta an administration fee (the "Administration Fee") of \$60.00 per annum, payable in instalments of \$5.00 each month during the Term.

7.4 **Sales, Reservations, Advertising and Marketing Expenses.** For the services provided by Delta pursuant to Article 9, including, without limitation, the Delta Group advertising and marketing programs, sales and reservation systems, the Owners will, pay to Delta and its Affiliates the fees and charges set out in sections 9.10(3) and 9.10(7), (net of any applicable credits) (collectively called "Delta's Marketing and Sales Expenses"). The Owners acknowledge that the basis and method of calculation of Delta's Marketing and Sales Expenses may change during the Term and the Owners agree to any such change provided it is in accordance with section 7.5.

7.5 **Limitation on Delta's Marketing and Sales Expenses.** Delta agrees that none of Delta's Marketing and Sales Expenses will be:

- (1) charged on a basis different than that charged to any other hotel in the Delta Group; or
- (2) calculated by a method other than that set out in the then current Approved Operating Plan and Budget.

7.6 **Reimbursement of Delta Recoveries.** The Owners agree to reimburse Delta for all reasonable costs incurred by Delta for the Owners' account in the ordinary course of business, which costs will be Hotel Expenses including, without limitation, the following:

- (1) the daily per diem rate for those personnel of Delta assigned to special projects, which will be based upon each individual's rate of pay and Fringe Benefits (such special projects will include, but not be limited to, special sales or marketing programs, training and installation of capital purchases and reasonable travel and out-of-pocket expenses will be included);
- (2) reasonable travel and out-of-pocket expenses incurred directly in connection with the operation of the Hotel by Head Office Personnel. When such expenses were incurred in visiting a number of hotels within the Delta Group, the cost will be reasonably prorated to all those hotels; and
- (3) the reasonable cost of the standard Delta corporate services utilized by hotels within the Delta Group such as, but not limited to, attendance at Delta's management seminars and other conferences, operating handbooks and manuals, purchasing services, departmental services, and corporate marketing services,

and provided that each of the foregoing is set out in an Approved Operating Plan and Budget or otherwise pre-approved by the Owner's Committee.

ARTICLE 8 **HOTEL BANK ACCOUNT AND BOOKS AND RECORDS**

8.1 **Hotel Bank Account.** Delta will have the right to designate the Canadian Chartered bank having a branch reasonably convenient to the Hotel with which the Hotel will conduct its various banking affairs, and all funds received in the operation of the Hotel will be deposited into a trust account bearing the name of the Hotel in such bank. The Hotel Bank Account will be under the control of Delta. Cheques and other documents of withdrawal will be signed only by persons authorized by Delta. All funds in the Hotel Bank Account will belong to the Owners and will be dealt with in accordance with this Agreement. Delta is hereby authorized to pay all Hotel Expenses, Capital Expenditures, capital lease payments and Incentive Fees incurred in accordance with this Agreement and all amounts repayable to the Owner-Developer pursuant to section 6.7 from funds in the Hotel Bank Account.

8.2 **Books, Records, Financial Statements.**

- (1) Delta agrees on behalf of the Owners, to keep on the Hotel Premises proper books of account and other records relating to or reflecting the results of the operations of the Hotel in accordance with this Agreement. All books of account and other records are the property of the Owners and will be available to the Owners' Committee at all reasonable times for examination, audit, inspection and copying. Upon any termination of this Agreement, all financial books and records and a list of the Hotel's individual guests who stayed at the Hotel during the preceding two years (with their names and addresses and the dates of their arrivals and departures) will be turned over forthwith to the Owners' Committee to ensure the orderly continuance of the operation of the Hotel. All books and records will thereafter be available to Delta at the Hotel, at all reasonable times, for inspection, audit, examination and copying. Any costs and expenses incurred in providing books and records to Delta after termination will be paid by Delta.
- (2) Delta agrees to cause to be prepared and mailed to all of the Owners the Interim Financial Statements on or before the 60th day after the date to which the Interim Financial Statements are made up.
- (3) Within 140 days after the end of each Operating Year, Delta agrees to cause to be prepared and mailed to all of the Owners the Audited Annual Financial Statements, together with an annual statement setting out the items referred to in sections 6.1(1) to (6) and the Incentive Fee, if any, and the calculation of each of them (collectively called the "Annual Statements"). The Annual Statements will be audited by the Chartered Accountants and will contain a certification by the Chartered Accountants to the effect that all of such items have been calculated in accordance with the terms of this Agreement.

ARTICLE 9 **SERVICES TO BE RENDERED BY DELTA**

9.1 **Management Services.** Delta will:

- (1) subject to section 3.4, use all reasonable efforts to sell room nights in respect of the Strata Lots to Hotel Guests;

- (2) carry out and perform all such acts and things as are reasonably necessary or desirable in connection with the operation of the Hotel as a First-Class Hotel in accordance with this Agreement;
- (3) procure and maintain any licenses and permits which may be required in connection with the carrying out of its duties and obligations under this Agreement;
- (4) strictly observe and abide by the terms and conditions set out in the Rental Pool Covenant; and
- (5) diligently and faithfully perform its duties and obligations under this Agreement as would a reasonably prudent hotel manager in the position of Delta.

9.2 **General Management.** Subject to the terms and conditions of this Agreement and any Approved Operating Plan and Budget, Delta agrees to perform on behalf of and for the account of the Owners, all appropriate and necessary management services in connection with the operation of the Hotel as a First-Class Hotel, including but not limited to:

- (1) the general organization of the Hotel;
- (2) the development and implementation of sales, advertising, personnel, employment, purchasing and maintenance programs consistent with the provisions of this Agreement;
- (3) the implementation of administrative accounting, budgeting, and operational policies and practices of Delta as used in the hotels within the Delta Group, from time to time. Such policies and practices will be deemed to be in compliance with Delta's obligations hereunder, and the Owners will accept such policies and practices so long as they do not conflict with any term or condition of this Agreement or any Approved Operating Plan and Budget;
- (4) the review of the conduct of hotel operations at the Hotel from time to time in accordance with the standards of a First-Class Hotel and established management practices and policies of Delta;
- (5) the establishment and supervision of Delta's standard accounting and inventory control systems which are normally used for the hotels within the Delta Group which are comparable to the Hotel;
- (6) the arrangement for the provision to the Hotel of all goods and services as are necessary for the proper operation and maintenance of a First-Class Hotel as contemplated by this Agreement;
- (7) the establishment of all prices, charges and rates, and in connection therewith, the supervision and control of the collection, receipt and giving of receipts for all goods or services provided or revenue of any nature derived from the operations of the Hotel;
- (8) the determination of the Hotel's purchasing policy, including the selection of the merchandise, supplies and materials and establishment and maintenance of all inventories required for the proper operation of the Hotel, and the selection of the suppliers and negotiation of supply contracts in order to assure purchases on the best available terms;
- (9) the negotiation and execution of contracts which are normally entered into within the scope of hotel operations and preparation of the corresponding legal documents;
- (10) the determination of credit practices applicable to suppliers and to the Hotel's clientele and negotiation of arrangements with credit organizations, in particular those issuing credit cards;

- (11) with the prior approval of the Owner's Committee, acting reasonably, instituting in the name of the Hotel any lawsuits or other legal actions having a direct link with the operations of the Hotel and deemed necessary or advisable by Delta; and
- (12) the supervision and control of the activities of Hotel Guests and any tenants, concessionaires and holders of privileges in respect of any portion of the Hotel Premises and their employees, including the dispossession of Hotel Guests and tenants for nonpayment of rent or any other proper cause, or the termination of the rights of concessionaires or licensees for proper cause.

9.3 Use of Hotel Manager's Strata Lots. Delta will:

- (1) use and operate the Hotel Manager's Strata Lots as an integrated part of the Hotel, to the standards of a First-Class Hotel in accordance with this Agreement;
- (2) make the Hotel Manager's Strata Lots available as part of the Hotel at all times during the Term and not use the Hotel Manager's Strata Lots for any purpose other than for the operation of the Hotel in accordance with this Agreement; and
- (3) observe and abide by all of the terms and conditions set out in the Hotel Manager's Strata Lot Leases.

9.4 Maintenance.

- (1) Delta agrees for the account of the Owners, to cause the Hotel Premises and the Furniture, Fixtures and Equipment to be maintained in good operating condition and repair, normal wear and tear excepted, and Delta will replace, at the expense of the Owners, such items of the Furniture, Fixtures and Equipment and Operating Supplies and Expendables as from time to time may be appropriate in accordance with the then current Approved Operating Plan and Budget. All items of Furniture, Fixtures and Equipment, including those in the Hotel Manager's Strata Lots, forthwith upon acquisition and receipt by Delta of any payment therefor, will become, without further act, the property of the Owners. Upon completion of construction of any change or addition to the Hotel, Delta will furnish to the Owners' Committee any guarantees and warranties relating to any portions of the Hotel or the Furniture, Fixtures and Equipment and Operating Supplies and Expendables. Delta agrees to co-operate with the Owners to enforce the provisions of such guarantees and warranties. Delta will make no expenditures for the repair and replacement of the Furniture, Fixtures and Equipment or for maintenance and repair which would result in or cause a change in the general character of the interior or exterior of any portion of the Hotel Premises or make any capital improvements except if the same is included in an Approved Operating Plan and Budget or otherwise pre-approved by the Owners' Committee.
- (2) The Owners acknowledge that the Hotel will be operated as a member of the Delta Group and that it will therefore be mandatory for the Hotel Premises and the Furniture, Fixtures and Equipment to be maintained in the manner befitting a First-Class Hotel in order to continue operation of the Hotel as part of the Delta Group.

9.5 Changes and Alterations. From time to time during the Term, Delta may make, at the Owners' expense, but subject to the terms of this Agreement and the then current Approved Operating Plan and Budget, reasonable changes and alterations to the Hotel Premises, or any part thereof, subject however in all cases to the following:

- (1) no change or alteration will be made which would:
 - (a) change the general character or design of the Hotel;

- (b) involve the excavation of any portion of the Hotel Premises; or
- (c) include alteration of, or result in increasing the burden upon the foundation of the Hotel Premises;

without the prior consent of the Owners by Special Resolution;

- (2) all permits, licenses and authorizations required to be procured in connection with any change or alteration will be procured (or caused to be procured) by Delta, and the cost of the same will be a Hotel Expense;
- (3) any change or alteration will be made promptly in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations and permits and insurance requirements;
- (4) the cost of any change or alteration will be promptly paid (or caused to be paid) so that the Hotel Premises will at all times be free from any lien, encumbrance, mortgage, chattel mortgage, conditional sales agreement, title retention agreement or other charge for labour, services or material supplied or claimed to have been supplied to the Hotel Premises;
- (5) if any such change or alteration involves an estimated cost of more than \$50,000:
 - (a) Delta agrees to obtain the specific approval (in addition to approval of the Approved Operating Plan and Budget) of the Owners' Committee to such change or alteration prior to Delta proceeding;
 - (b) if Delta proposes to have such change or alteration supervised by personnel of Delta or the Hotel, Delta will obtain the specific approval of the Owners' Committee as to whether such change or alteration requires the supervision of an independent engineer or architect; and
 - (c) if the Owners' Committee so advise Delta in writing prior to the Owners approving same, such change or alteration will be made under the supervision of an architect or engineer approved by the Owners' Committee in accordance with detailed plans and specifications approved by the Owners' Committee prepared by such architect or engineer and the Owners' Committee will have the right to approve the contractor and to supervise construction.

9.6 **Capital Expenditures.** Delta is authorized to make Capital Expenditures only in accordance with the terms of the then current Approved Operating Plan and Budget or otherwise pre-approved by the Owners' Committee, except where required in an emergency to preserve property or the safety of persons in or about the Hotel Premises.

9.7 **Personnel and Employees.**

- (1) The selection and employment of the general manager and all such other employees and personnel necessary for the proper operation of the Hotel is the responsibility of Delta and all such persons will be employed by Delta as employees of Delta. The hiring, promoting and discharging of the general manager and any other employees and personnel and the terms of their employment, including compensation, will be at the sole discretion of Delta, acting reasonably and in the best interest of the Owners.
- (2) Delta may delegate to the general manager of the Hotel, who in turn may delegate to others, the selection and hiring of all employees and personnel required for the operation of the Hotel.

- (3) The general manager may, during the Term be replaced by Delta, and likewise the employment of any other Employee may be terminated by Delta or the general manager or by the person or persons to whom the general manager will delegate such authority. The decision in regard to any such discharge, whether directly or through the general manager of the Hotel, will be at the sole discretion of Delta, acting reasonably.
- (4) The Owners agree that all costs and expenses incurred by Delta, acting reasonably and prudently, in connection with the employment of the Employees (including any hiring costs and expenses, Fringe Benefits, withholding amounts and termination costs payable, including the costs of terminating Employees at the end of the Term or earlier termination of the appointment of Delta under this Agreement), will be Hotel Expenses, payable by the Owners pursuant to this Agreement.

9.8 **Delta Group Advertising.**

- (1) Delta agrees to integrate the Hotel in all corporate publicity, advertising, audio visual and public relation programs and campaigns with respect to hotels affiliated with the Delta Group. Advertising may be implemented on a national or regional basis.
- (2) Delta will cause the hotels in and affiliated with the Delta Group to promote the Hotel with their own clientele in a similar manner to the other hotels in and affiliated with the Delta Group.

9.9 **Marketing at the Hotel.**

- (1) Delta will carry out on behalf of the Hotel all operational marketing activities and the implementation of the Delta Group marketing policy as applied to the Hotel.
- (2) Marketing at the Hotel level will be established and carried out by Delta for the market where the Hotel is located and other markets which Delta reasonably believes relevant considering the nature of the Hotel.
- (3) Delta agrees to establish for the Hotel, as part of the Operating Plan and Budget, an annual marketing plan for each Operating Year, including, but not limited to:
 - (a) the determination of the sales policy of the Hotel;
 - (b) the determination of yearly and long-term objectives regarding occupancy rates, revenues and clientele;
 - (c) the establishment of all Hotel rates (including the rates for any lounge or bar contained in the Hotel);
 - (d) the setting of any special sales terms;
 - (e) the determination of credit practices;
 - (f) the establishment of sales methods and procedures relating to the various clientele segments; and
 - (g) the analysis of results and permanent control.
- (4) Delta agrees to perform appropriate advertising and promotion services at the Hotel level including:

- (a) the definition of the Hotel policy regarding advertising and promotion;
 - (b) the preparation of advertising documents and brochures; and
 - (c) the reasonable distribution of such documents in the hotels of the Delta Group, and other sales outlets.
- (5) Delta agrees to make its central sales office available to the Hotel for marketing action intended for specific territories. Delta will assist the Hotel in reaching specific market segments through the drafting of potential clientele lists, the visiting of selected travel agencies, tour operators and corporations and the following up of such activities in the processing of sales orders.
- (6) Delta may undertake advertising campaigns in specific territories through the Delta Group sales offices if necessary, subject to the Approved Operating Plan and Budget.
- (7) Delta agrees to integrate the Hotel in the various trade shows and exhibitions attended by Delta or recommended for the Hotel.
- (8) The Owners consent to the integration of the Hotel's guest list and client list into Delta's guest history and client listing data base, which may be accessed by hotels in the Delta Group.

9.10

Reservation and Sales System.

- (1) The Hotel will be integrated into all reservation systems established and used by the Delta Group including:
- (a) the reciprocal reservation system among hotels of the Delta Group;
 - (b) toll free telephone and reservation systems; and
 - (c) other sales and reservation systems chosen by the Hotel and available under contract with the Delta Group according to the same terms and conditions negotiated by the Delta Group for the other hotels of the Delta Group (including international airlines and independent reservations systems).
- (2) Delta agrees with the Owners that throughout the Term, the Hotel will have the right to benefit from the sales communication systems used by the Delta Group.
- (3) The Owners agree to abide by the reservation charges negotiated or established by Delta with or for various reservation systems pursuant to which any of the above-mentioned services may be offered to hotels affiliated with the Delta Group. The method of calculation of such reservation charges will be set out in each Approval Operating Plan and Budget and the parties acknowledge and agree that as of February 1, 1996, such charges were as follows:
- (a) an overall charge of \$9.00 per available room per month; plus
 - (b) a per transaction fee of:
 - (i) \$6.25 per automated reservation booked; or
 - (ii) \$7.75 per manual telephone reservation booked,
- all charged monthly.

- (4) The Owners agree to honour all reservations made by Delta in accordance with this Agreement, including those made for the 24 month period after the termination of the appointment of Delta under this Agreement.
- (5) The Hotel will be entitled to benefit from the sales and promotional activities planned for groups undertaken at the national or international level and intended for travel agents, tour operators, incentive groups, conventions, corporations, governmental agencies, international associations and airline companies. These activities will be performed by or through Head Office Personnel.
- (6) Delta agrees to distribute to all sales outlets as determined by Delta, the following:
 - (a) information on services and facilities offered by the Hotel and advertising literature published by the Hotel; and
 - (b) the individual and group rates established annually by the Hotel, and if necessary, any special rates offered for specific markets.
- (7) The Owners will pay to Delta its annual advertising and marketing charge for the Hotel Premises, (the method of calculation of which will be set out in the Approved Operating Plan and Budget) and the parties acknowledge and agree that as of February 1, 1996 such advertising and marketing charge was \$45,000 plus 1.15% of Gross Revenue per year.
- (8) The Owners agree that the Hotel will abide by all commission agreements negotiated and established by Delta in good faith with third parties who are not Related to Delta, pursuant to which the services described in section 9.10(5) may be offered to hotels in the Delta Group.

9.11 Other Delta Systems. Delta agrees to make available to the Hotel:

- (1) all operational departmental supervision and control and other similar services furnished to other hotels within the Delta Group; and
- (2) all services used by hotels within the Delta Group generally, with regard to the procurement of all Furniture, Fixtures and Equipment and Operating Supplies and Expendables and other goods and services required for the Hotel.

9.12 Performance of Delta's Services.

- (1) In its management of the Hotel and to provide the Hotel with the benefits of volume purchasing, market research in the development of new and better equipment and supplies and design, decorating and other services, Delta may, subject to the Approved Operating Plan and Budget or the prior approval of the Owners' Committee, purchase goods, supplies and services from or through Delta or any of its Affiliates, so long as the prices and terms are competitive with the prices and terms of goods and services of equal quality available from others .
- (2) Delta may pay to any of its Affiliates a reasonable fee for the negotiation of contracts for the direct purchase by Delta from independent suppliers of goods, supplies and services so long as the prices and terms thereof when added to the fee are competitive. Such fee and the prices and terms of goods and services charged to the operation of the Hotel will be on the same basis as charged to the operation of hotels owned by Delta Affiliates.
- (3) Subject to the Approved Operating Plan and Budget, Delta may retain an Affiliate or division as a consultant and to perform technical services in connection with any substantial remodelling, repairs, construction or other capital improvement to the Hotel and the Affiliate or division will be reasonably compensated for its services.

9.13 **Meetings.** The Owners' Committee and Delta agree to meet not less frequently than quarterly, upon reasonable written notice from either party, to discuss general Hotel operating procedures, the current Approved Operating Plan and Budget the Operating Plan and Budget for an Operating Year, results of an Operating Year, or any other matter of interest or concern.

ARTICLE 10
USE OF STRATA LOTS BY OWNERS

10.1 **Use of Strata Lots by Owners.** The parties agree that the terms and conditions set out in Schedule C are binding upon all the Owners and Delta and are hereby incorporated into this Agreement. Each Owner will be permitted to use and to permit others to use its Strata Lot in accordance with Schedule C and in no other manner whatsoever. Delta will use reasonable efforts to accommodate any booking request by any Owner pursuant to Schedule C. If any Owner proposes to book the use of his or her Strata Lot in accordance with Schedule C, Delta will not be responsible if the Strata Lot has been otherwise booked, provided that Delta has complied with section 3.4. Notwithstanding anything contained in Schedule C (including the definition of "Day"), the Owners will be bound by and comply with the check-in and check-out times established by Delta for the use of the Strata Lots.

10.2 **Daily Cleaning/Changeover Fees.** The Owners will pay, upon checkout, Delta's daily mandatory base clean charge, daily optional full clean charge and mandatory changeover fees payable by an Owner for the periods in which the Owner or a person claiming under the Owner uses the Owner's Strata Lot in accordance with Schedule C. As of the Commencement Date, such fees and charges are as follows:

<u>Unit Type</u>	<u>Mandatory Base Clean</u>	<u>Optional Full Clean</u>	<u>Mandatory Changeover Fee</u>
Studio	\$10	\$20	\$40
One Bedroom	\$10	\$30	\$55
Two Bedroom	\$20	\$40	\$65

The changeover fee set out above will not be payable:

- (1) during the Summer Period (as defined in Schedule C), if the Owner's Strata Lot is used for less than four consecutive nights;
- (2) during the Winter Period (as defined in Schedule C), if the Owner's Strata Lot is used for less than two consecutive nights.

If an Owner elects to use Delta's full clean service, the base clean charge set out above will not be payable. Delta may change any of such fees and charges in any Approved Operating Plan and Budget, with the approval of the Owners' Committee. In addition, the Owners and those using the Strata Lots with the permission of the Owners in accordance with Schedule C will pay the standard charges established by Delta for the following:

- (3) long distance calls;
- (4) movie rentals;
- (5) vending machine charges; and
- (6) purchases of other goods and services offered by Delta.

If any Owner does not pay any fee or charge set out in this section 10.2, Delta may deduct such amount from the Owner's Unit Revenue Share. All of the fees and charges set out in this section 10.2 received by Delta will be included in the Gross Revenue.

10.3 **No Charge for Common Property or Common Facilities.** Except as set out in section 10.2, Delta will not charge any Owner or any person claiming under the Owner pursuant to Schedule C for the use or enjoyment of its Strata Lot or any portion of the Hotel Premises (including parking), provided that such use is in accordance with this Article 10 and Schedule C.

10.4 **Request to use Different Strata Lot.** If a Strata Lot is reserved under Schedule C, Delta may at any time request the Owner or any person claiming under such Owner to use a Strata Lot other than the Owner's Strata Lot, but such request will be subject to the agreement of the Owner or such person in his or her sole discretion.

10.5 **Owner Election Not to Use.** The Owner will forthwith notify Delta in writing if the Owner determines or discovers at any time that the Owner or any person claiming under such Owner will not use the Strata Lot on any of the days for which the Owner gave notice of the Owners use thereof pursuant to Schedule C and Delta may then rent out the Owner's Strata Lot to Hotel Guests on such days.

10.6 **Use by or on behalf of Owner.** No Owner will use or permit any person to use the Owner's Strata Lot or the Common Property or Common Facilities (other than the parking areas in the limited common property of the Strata Lots situated outside the security gate, which are allocated for Owner use pursuant to the Strata Corporation Bylaws) except in accordance with this Article 10 or with the prior written consent of Delta in its sole discretion. The Owner will be responsible for any use of its Strata Lot by the Owner or any person claiming under the Owner in accordance with this Article 10 and any amount payable from any Owner in respect of such use of such Owner's Strata Lot to Delta hereunder. Under no circumstances will the Owner during the Term directly or indirectly charge rent or accept any form of consideration for the use of the Owner's Strata Lot except in accordance with this Agreement.

ARTICLE 11

COVENANTS, REPRESENTATIONS AND WARRANTIES

11.1 **Covenants.** All of the terms and provisions of this Agreement will be deemed and construed to be "covenants" to be performed by the respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

11.2 **Representations and Warranties of Delta.** Delta represents and warrants, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

- (1) it is a corporation duly constated existing under the laws of the Province of Ontario and is duly qualified as a corporation authorized to do business in British Columbia and is extra-provincially registered under the laws of the Province of British Columbia;
- (2) it has full corporate power, authority and legal right to operate the Hotel and to perform and observe the provisions of this Agreement; and
- (3) this Agreement constitutes a binding obligation of Delta enforceable in accordance with its terms; and

covenants that it will, during the Term, preserve and keep in effect, at its own expense and not as a Hotel Expense, its corporate existence, rights and licenses as required to carry on business in the Province of British Columbia.

11.3 **Representations and Warranties of Owners.** Each of the Owners represents and warrants, as representations and warranties that are true as of the date hereof and will be true at all times during the Term, as follows:

- (1) unless otherwise disclosed by the Owner to Delta in writing, the Owner is not a non-resident of Canada for the purposes of the Income Tax Act (Canada);
- (2) if such Owner is a corporation, it is a corporation duly authorized to do business under the laws of the Province of British Columbia;
- (3) it has full power, authority and legal right to own real property in British Columbia and to execute and deliver, and to perform and observe the provisions of this Agreement;
- (4) this Agreement constitutes the valid and binding obligations of the Owners enforceable in accordance with its terms; and

covenants that if such Owner is a corporation, it will, during the term of this Agreement, preserve and keep in effect, at its own expense, its corporate existence, rights and licenses to carry on business in the Province of British Columbia.

ARTICLE 12 TRADEMARKS

12.1 **Trademarks.** The parties agree that:

- (1) subject to section 12.2, during the Term, the Hotel will at all times be known and designated as follows:

"Delta Whistler Village Suites"

or such other name as may be agreed by Delta and the Owners' Committee.

It is however, agreed between the parties hereto that the name "DELTA", when used alone or in conjunction with some other work or words, is and will remain the exclusive property of Delta which has all rights to the names "DELTA", "DELTA HOTELS", "DELTA HOTELS & RESORTS" and "DELTA SUITE HOTEL"; and

- (2) upon termination of this Agreement for any reason whatsoever or Delta removing the "Delta" brand pursuant to section 12.2, the Owners will remove the names "DELTA", "DELTA HOTELS", "DELTA HOTELS & RESORTS" and "DELTA SUITE HOTEL" from all locations within the Hotel and from all advertising or other materials used by the Hotel, and will cease absolutely the use of the names "DELTA", "DELTA HOTELS", "DELTA HOTELS & RESORTS" and "DELTA SUITE HOTEL" in any trademark thereof with respect to the Hotel. The Owners hereby give Delta a power of attorney to cancel any licence agreement granted hereunder for the use of such names.

12.2 **Removal of "Delta" Brand.** If at any time during the Term:

- (1) if the number of Strata Lots subject to this Agreement is less than 275; or
- (2) Delta is removed by the Strata Corporation as the strata property manager for the Hotel Premises and the Common Property and Common Facilities applicable thereto,

then Delta may, at its option, cease to operate or identify the Hotel Premises as part of the Delta Group, in which case:

- (3) Delta may carry out its duties and obligations hereunder through a subsidiary or assign this Agreement to a subsidiary;
- (4) Delta will change the name of the Hotel to remove any references to "Delta"; and
- (5) Delta will not offer any of the Delta Group services described in this Agreement and will not charge for such services accordingly and alternate reservation services and marketing will be provided by Delta or its subsidiary for the fees and charges to be set out in the Approved Operating Plan and Budget or otherwise approved by the Owners' Committee.

ARTICLE 13 **INSURANCE**

13.1 **Insurance.** Delta will, for itself and the Owners, at the sole cost and expense of the Owners as a Hotel Expense, take out and maintain at all times during the Term:

- (1) insurance in respect of all the Furniture, Fixtures and Equipment, including those in the Strata Lots, against loss or damage by fire and all other reasonably insurable perils included in the broad form extended coverage endorsement available under fire policies in an amount not less than the actual replacement cost;
- (2) comprehensive public, products and innkeepers' liability and property damage insurance against claims for personal and bodily injury or death and property damage occurring in or about the Hotel Premises, or the Common Property, with a single limit of not less than \$50,000,000 per occurrence, wherever practicable, or such higher amount as the Owners' Committee and Delta may agree, acting prudently;
- (3) reasonable levels of business interruption insurance, as determined by Delta, acting reasonably;
- (4) employer's liability insurance, with a minimum liability limit of \$1,000,000;
- (5) employee honesty insurance in the amount of \$500,000 per occurrence; and
- (6) reasonable levels of boiler and machinery insurance, except to the extent that the Strata Corporation is responsible therefor,

in all cases to the extent that such insurance is available.

13.2 **Insurance For Owners' Contents.** The Owners will each be responsible for insuring their own personal belongings (other than any Furniture, Fixtures and Equipment) contained in their Strata Lots from time to time.

13.3 **Parties Insured.** All insurance policies provided for in section 13.1 will, to the extent reasonably possible, include the Owners and Delta as parties insured as their interests may appear. All insurance policies referred to in section 13.1 will provide that the same may not be cancelled or materially modified until at least 10 days after prior notice to the Owner's Committee and Delta. Delta and the Owner's Committee will be provided copies of all such policies.

13.4 **Insurance by Delta.** The cost of furnishing any insurance pursuant to section 13.1 will be borne by the Owners and charged by Delta to the Owners as a Hotel Expense.

13.5 **Schedules of Insurance.** Delta will provide the Owner's Committee with copies of insurance certificates for any insurance obtained pursuant to section 13.1. At least once during each Operating Year, Delta will furnish to the Owners a schedule of insurance, listing the number of the policies of insurance obtained by Delta then outstanding and in force with respect to the Hotel Premises, or any part thereof, the names of the companies issuing such policies, or dates of such policies and the risks covered thereby.

ARTICLE 14
TITLE

14.1 **Title.** Each Owner represents, warrants, covenants and agrees that:

- (1) it has, and that throughout the Term it will maintain, full ownership of the Owner's Strata Lot and the Furniture, Fixtures and Equipment therein, free and clear of all liens and encumbrances except those registered against title as of the Commencement Date, any Security and any other liens or encumbrances which do not materially affect the operation of the Hotel by Delta, and those hereafter approved in writing by Delta;
- (2) the Owner will not remove, and will not permit any person claiming under the Owner to remove, any item of FF&E in the Owner's Strata Lot except in accordance with this Agreement; and
- (3) Delta, upon fulfilling its duties and obligations herein, will and may peaceably and quietly possess, manage and operate the Owner's Strata Lot and the Furniture, Fixtures and Equipment therein during the Term.

Each Owner will, at its own expense, undertake and prosecute any appropriate action, judicial or otherwise, to assure peaceful and quiet possession of such Owner's Strata Lot by Delta. Each Owner further agrees that throughout the Term it will observe and perform all terms, covenants, conditions, duties and obligations required under any lease, mortgage, or other agreement creating a lien on the Owner's Strata Lot and the Furniture, Fixtures and Equipment therein and pay all property taxes and other charges levied by the Resort Municipality of Whistler with the property taxes.

ARTICLE 15
DEFAULT, OBLIGATIONS ON TERMINATION

15.1 **Events of Default.** The following will constitute events of default on the part of Delta:

- (1) the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Delta;
- (2) the consent to an involuntary petition in bankruptcy or the failure to vacate within 60 days from the date of entry thereof any order approving an involuntary petition by Delta;
- (3) the entering of an order, judgement, or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Delta a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgement or decree will continue unstayed and in effect for a period of 120 consecutive days; and
- (4) the failure of Delta to perform, keep or fulfil any of its material covenants, undertakings, obligations or conditions set forth in this Agreement.

15.2 **Remedies for Owners.** If Delta is in default pursuant to section 15.1, the Owners' Committee may give to Delta notice of its intention to call a meeting of the Owners to terminate the appointment of Delta under this Agreement after the expiration of a period of 15 days from the date of such notice. Notwithstanding the foregoing, with respect to events of default referred to in section 15.1(1) and (4), upon receipt of such notice if Delta, promptly and with all due diligence, proceeds to cure the default referred to in section 15.1(4), or if such default is not susceptible of being cured within a 15 day period, Delta will take and continue action to cure such default with all due diligence until the same is cured, such additional period not to exceed 90 days from such notice. Once a cure has been effected the notice will be of no effect. If, following the expiration of such period such default has not been cured, the Owners may, by Special Resolution, terminate the appointment of Delta pursuant to this Agreement. The remedies granted in this section 15.2 will not be in substitution for, but will be in addition to any rights and remedies otherwise available for breach of contract or otherwise.

15.3 **Termination by Delta.** Delta may terminate its appointment as manager under this Agreement at any time upon 60 days' written notice to the Owners' Committee if:

- (1) the Owners fail to make or authorize Delta to make (at the sole cost and expense of the Owners) Capital Expenditures without which the Hotel cannot be operated as a First Class Hotel (and Delta hereby acknowledges and agrees that as of the Commencement Date the capital improvements within the Hotel Premises are sufficient for the Hotel to be operated as a First Class Hotel); or
- (2) the number of Strata Lots subject to this Agreement is less than 205.

Any termination by Delta pursuant to this section 15.3 is without prejudice to any other rights that Delta might otherwise have against the Owners or any of them.

15.4 **Remedies for Delta.** The Owners acknowledge and agree that if any Owner or Owners are in breach of any of their duties or obligations under this Agreement Delta may seek an injunction or the specific performance by such Owner or Owners of such duties or obligations, instead of or in addition to seeking damages against such Owner or Owners.

15.5 **Obligations on Termination.** Upon termination or expiry of the appointment of Delta under this Agreement, the following will apply:

- (1) Delta and the Owners will cooperate with respect to all matters relating to the transition of the Management of the Hotel;
- (2) all fees and payments payable to Delta in accordance with this Agreement, other than those referred to in subsection 15.5(3) will be paid to Delta when due, provided that Delta will not be entitled to any Base Fee, Incentive Fee, Administration Fee, Delta Marketing and Sales Expenses or Delta Recoveries for any period following such termination or expiry;
- (3) all fees and payments due to Delta in accordance with this Agreement which are computed on an annual or other periodic basis will be annualized, prorated and paid within 30 days after termination of the appointment of Delta under this Agreement, including all deferred, accrued and unpaid fees;
- (4) Delta will peacefully vacate and surrender the Hotel Manager's Strata Lots and the Hotel Manager's Strata Lot Lease to the Strata Corporation and the management of the Hotel to or to the order of the Owners; and
- (5) Delta will deliver to the Owners all the Owners' books and records respecting the Hotel in the custody and control of Delta, and assign and transfer to or to the order of the Owners all of Delta's right, title and interest in and to all licenses and permits, if any, used by Delta in the operation of the Hotel, provided that if Delta has expended any of its own funds in the

acquisition of such licenses or permits, the Owners will reimburse Delta therefor if the Owners request assignment and transfer of such licenses and permits.

ARTICLE 16
OWNER-DEVELOPER, STRATA LOTS, DISPOSITIONS

16.1 **Initial Agreement by Owner-Developer.** The parties acknowledge and agree that this Agreement is initially entered into with the Owner-Developer, as the owner of all of the Strata Lots. The Owner-Developer has entered into this Agreement on behalf of all of the owners of the Strata Lots and each of the owners of the Strata Lots will be bound by the terms and conditions of this Agreement insofar as this Agreement relates to such Owner's Strata Lot as though such Owner was a signatory hereto. This Agreement will run with each of the Strata Lots and bind the Owners from time to time of all of the Strata Lots and all of the Strata Lots will continue to be in the Rental Pool in accordance with the terms and conditions of this Agreement. Forthwith upon the completion of the sale of each Strata Lot from the Owner-Developer will provide to Delta the assignment and assumption agreement in the form of Schedule A, duly executed by the Owner-Developer and the purchaser.

16.2 **Limitation of Owners' Liability.** Notwithstanding anything contained in this Agreement, the duties, obligations and liabilities of each Owner pursuant to this Agreement will be limited to:

- (1) with respect to the duties and obligations relating directly to the Strata Lots, to such Owner's duties and obligations arising directly in respect of any Strata Lot owned by such Owner; and
- (2) with respect to duties and obligations of the Owners collectively under this Agreement, to such Owner's proportionate share of such duties and obligations, as calculated in accordance with the Unit Share Ratio,

and without limiting the generality of the foregoing:

- (3) Delta will not look to any Owner for the payment of any amount in connection with this Agreement except as is expressly set out herein; and
- (4) no Owner will be liable for any act or omission of any other Owner.

The duties and obligations of the Owners are several only and not joint duties or obligations.

16.3 **Sale of Strata Lot by any Owner.** The Owners and Delta agree that if at any time any Owner wishes to sell, lease or otherwise directly or indirectly dispose of its Strata Lot or any interest therein to any person (in this section 16.3 called a "Transferee") (other than by way of financing to any Security Holder):

- (1) prior to entering into any contract or agreement with any Transferee, the Owner will:
 - (a) notify Delta of the intended sale, lease or other disposition and, if the intended sale, lease or other disposition occurs within 12 months of, or prior to, the date of issuance by the Resort Municipality of Whistler of permission to occupy the Owner's Strata Lot, notify the Owner-Developer of the intended sale, lease or other disposition;
 - (b) notify the proposed Transferee of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of Delta and the Hotel Guests pursuant to this Agreement and the Rental Pool, notify the proposed Transferee of any bookings of the Strata Lot by the Owner pursuant to Article 10 and provide the proposed Transferee with a true copy of this Agreement; and

- (c) notify the Transferee of the right of the Transferee to obtain from Delta the Financial Information in accordance with section 16.3(3) and to obtain from the Owner-Developer the Disclosure Statement or from Delta the Summary Disclosure Statement, as the case may be, in accordance with section 16.3(4);
- (2) the Owner will not directly or indirectly sell, lease or otherwise directly or indirectly dispose of the Strata Lot or any interest therein unless prior to the completion of such transaction the proposed Transferee covenants pursuant to an agreement in writing in favour of Delta, in the form and content of Schedule A (modified to change the name of the Owner-Developer to the name of the vendor of such Strata Lot), to fully assume and be bound by this Agreement insofar as it relates to such Strata Lot, and Delta will provide the Owner and the Transferee with copies of such agreement, duly executed by Delta, as soon as reasonably possible thereafter;
- (3) upon reasonable notice of an intended sale of a Strata Lot by an Owner, Delta will provide to the prospective Transferee the Financial Information before the agreement to sell, lease or otherwise dispose of the Strata Lot is entered into;
- (4) upon reasonable notice of an intended sale of a Strata Lot by an Owner:
 - (a) in the case of any such sale which occurs within 12 months of, or prior to, the date of the issuance by Resort Municipality of Whistler of permission to occupy the Strata Lot, the Owner-Developer will provide the prospective Transferee the Disclosure Statement for the Development, together with any amendment thereto, before the agreement to sell, lease or otherwise dispose of the Strata Lot is entered into; or
 - (b) in the case of any such sale which occurs after 12 months from the date of the issuance by Resort Municipality of Whistler of permission to occupy the Strata Lot, Delta will provide the prospective Transferee a Summary Disclosure Statement before the agreement to sell, lease or otherwise dispose of the Strata Lot is entered into;
- (5) upon written request from the Owner, Delta will provide any prospective Transferee therein with details of any bookings of the Strata Lot by the Owner pursuant to Article 10;
- (6) the Owner or the Transferee will notify Delta of the completion of the sale, lease or other disposition of the Strata Lot and provide Delta with reasonable evidence thereof, together with the assignment and assumption agreement in the form of Schedule A, duly executed by the Owner and the Transferee;
- (7) Delta will not be required to make any adjustments as between the Owner and any Transferee and Delta will be deemed to have fully discharged its obligations hereunder if Delta pays the Unit Revenue Share payable to such Owner in accordance with section 6.4 to or to the order of the person who was, according to the records of Delta, the registered owner of the Strata Lot on the days such Unit Revenue Share is payable to such Owner in accordance with section 6.4; and
- (8) subject to Delta's approval, acting reasonably, the Transferee may upon not less than 30 days' notice to Delta, reschedule the use by the Transferee pursuant to Article 10.

The Owner agrees that the Owner will not market the economic benefits of the Rental Pool or this Agreement to any Transferee or prospective Transferee.

16.4 Assumption and Release. Upon the execution and delivery of the assignment and assumption agreement in the form of Schedule A by the vendor (including the Owner-Developer as vendor) and purchaser of any Strata Lot and the transfer of title of such Strata Lot to the purchaser thereof:

- (1) the vendor of such Strata Lot will be released from its duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and including the date of such transfer of title, provided that the vendor of such Strata Lot will not be released from any of its duties or obligations under this Agreement in respect of any other Strata Lot owned by such vendor; and
- (2) the purchaser of such Strata Lot will be responsible for all duties and obligations under this Agreement insofar as such duties and obligations relate to such Strata Lot for the period from and including the date of such transfer of title.

16.5 **Financing of Strata Lots.** If title to any Strata Lot is at any time to be subject to any mortgage, assignment of rents or other security registered or to be registered by any Owner against title to its Strata Lot, including any renewals, modifications, replacements or extensions thereof (collectively called the "Security"), then:

- (1) prior to granting any Security, the Owner of such Strata Lot will notify the proposed holder of such Security (the "Security Holder") of the existence and substance of this Agreement and the fact that the ownership and use of the Strata Lot are subject to the rights of Delta and the Hotel Guests pursuant to this Agreement and the Owner will provide the Security Holder with a true copy of this Agreement; and
- (2) if the Security Holder in respect of such Security does not agree to the priority of the Restrictive Covenant and this Agreement over the Security, the Restrictive Covenant and this Agreement will be subordinate to such Security and Delta will, upon request of the Owner, execute any instrument of postponement or in confirmation of the subordination of the Restrictive Covenant and this Agreement pursuant to this section 16.5(2) and in such case the Owner will use its best efforts to obtain a non-disturbance agreement in the form of Schedule B from such Security Holder.

16.6 **Estoppel Certificates.** Delta will, from time to time, upon not less than 10 days' prior notice by any Owner or any Security Holder, execute and deliver to such Owner or Security Holder, a certificate in writing certifying that this Agreement is unmodified and in force (or, if there have been modifications, that the same is in force as modified and stating the modifications), stating such facts as to this Agreement as such Owner or Security Holder reasonably requires, and stating whether or not to the best knowledge of the signer of such certificate, there exists any default in the performance of any duty or obligation contained in this Agreement, and, if so, specifying each such default of which the signer may have knowledge. Any certificate so delivered may be relied upon by such Owner and by any such Security Holder or prospective Security Holder. Delta, upon similar notice, will be entitled to a similar certificate from each Owner.

16.7 **Attornment by Delta.** Delta agrees to attorn to and become the manager, in accordance with this Agreement, of any purchaser, mortgagee or trustee who becomes entitled to possession of any Strata Lot in accordance with any requirements set out in this Article 16.

ARTICLE 17

ASSIGNMENT BY DELTA

17.1 **Assignment by Delta.** Delta has the right to assign its rights under this Agreement as security to its bankers, provided prior thereto the assignee agrees to be liable hereunder for the obligations of Delta to the Owners upon any enforcement by the assignee of its security comprising Delta's rights under this Agreement. Delta has the further right, so long as it is not then in default under this Agreement, to assign its rights under this Agreement:

- (1) to an Affiliate of Delta; or

- (2) to any successor assignee of Delta which may result from any merger, transfer, consolidation or reorganization,

provided in any such case that such assignee enjoys the benefits of the organization of Delta and that Delta will continue to be liable for its obligations hereunder and following any such assignment, Delta will deliver to the Owners' Committee an agreement pursuant to which such assignee agrees to assume and be bound by all of the provision of this Agreement on terms and conditions determined by Delta, acting reasonably. Except as provided, Delta will not directly or indirectly assign, transfer, convey or otherwise dispose of this Agreement, any interest in this Agreement or any of its rights or duties and obligations under this Agreement without the Owners' prior approval by Special Resolution.

ARTICLE 18 **ARBITRATION**

18.1 **Arbitration.** Where pursuant to the terms and conditions of this Agreement a matter is submitted to arbitration, such matter will be settled by arbitration in accordance with this section 18.1. If any such matter is so submitted to arbitration, the arbitration will be final and binding upon the parties and will be conducted as follows:

- (1) The rules of procedure (the "Rules") for domestic arbitrations of the British Columbia International Commercial Arbitration Centre (the "Centre") will apply to the arbitration, except as otherwise provided in this section 18.1.
- (2) Such matter will be determined by a single arbitrator agreed upon by the parties, or, failing agreement on the arbitrator by the date which is 10 days after the party submitting the matter to arbitration has notified the other party that it wishes the matter to be determined by arbitration, the arbitrator will be appointed by the Centre, upon request by either party at any time after such date.
- (3) The arbitrator will be an experienced hotel consultant or such other person as is approved by Delta and the Owners' Committee.
- (4) The arbitrator will make his determination on the basis of written submissions and affidavits (including expert evidence) submitted by the parties, without any hearing, unless the arbitrator determines that a hearing is necessary, and the arbitrator may require the parties to make further and other written submissions or provide further and other affidavits. Each party will receive a copy of each such submission and affidavit.
- (5) The arbitrator's decision will be final and binding on the parties.
- (6) The parties will share all costs of the arbitrator equally, unless otherwise determined by the arbitrator.
- (7) The parties acknowledge and agree that they have provided for arbitration to determine the matters set out in this section 18.1 so as to promote the efficient, expeditious and inexpensive resolution of the issue. The parties agree to act at all times so as to facilitate, and not frustrate nor delay, such efficient, expeditious and inexpensive resolution of the issue. The arbitrator is authorized and directed to make orders, on his initiative or upon application of either party, to ensure that the arbitration proceeds in an efficient, expeditious and inexpensive manner, and, in particular, to enforce strictly the time limits provided for in the Rules or as set by order of the arbitrator, unless the arbitrator considers it inappropriate to do so. The parties acknowledge and agree that it is their wish that the issue be determined within 30 days after appointment of the arbitrator, subject to an order of the arbitrator extending the date.

ARTICLE 19
MISCELLANEOUS

19.1 **Cooperation.** Subject to the terms and conditions set out in this Agreement, the parties will at all times during the Term act in good faith, cooperate and act reasonably in respect of all matters within the scope of this Agreement.

19.2 **Canadian Funds.** All amounts payable by either party to the other hereunder will be paid in Canadian funds.

19.3 **No Waiver of Breach.** No failure by Delta or the Owners to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach, will constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach will affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

19.4 **Severability of Provisions.** If any provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

19.5 **Notices.** All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement will be in writing and addressed to the parties as follows:

(1) if to Delta:

DELTA HOTELS LIMITED
350 Bloor Street East, Suite 300
Toronto, Ontario
M4W 1H4

Attention: Chairman

Fax No.: (416) 926-7875

and:

(2) if to the Owners:

(i) in the case of the Owner-Developer:

United Properties (Whistler) Ltd.
Suite 550 - 1333 West Broadway
Vancouver, British Columbia
V6H 4C1

Attention: President

Fax No.: (604) 736-3811

(ii) in the case of any other Owner, to the address of such Owner as notified by such Owner to Delta,

or, in any case, at such other address as the party to whom the notice is sent will have designated in accordance with the provision of this section 19.5. All notices will be delivered personally, transmitted by fax or mailed by postage prepaid mail (provided that in the event of a disruption in mail services, notices will be delivered personally or transmitted by fax). Notices will be deemed to be received:

- (3) on the date of delivery or transmittal thereof if delivered personally or sent by fax; or
- (4) on the fifth Business Day after the mailing thereof, if sent by mail.

19.6 **Successors and Assigns.** Subject to section 16.4, this Agreement will enure to the benefit of and will be binding upon the heirs, executors, successors, legal representatives and permitted assigns of the parties.

19.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, but all of which will constitute but one and the same instrument.

19.8 **Waiver.** No provision of this Agreement may be changed orally, but only by an instrument in writing signed by the party against which the enforcement of the change is sought.

19.9 **No Partnership or Joint Venture.** Nothing contained in this Agreement will constitute or be deemed to create a partnership or joint venture between the Owners and Delta.

19.10 **Approvals.** Except as expressly set out herein, whenever any party hereto is requested to give its approval to any matter, such approval will not be withheld or delayed unreasonably. If a party will desire the approval of the other party hereto to any matter, such party will give notice to such other party that it requests such approval, specifying in such notice the matter (in reasonable detail) as to which such approval is requested.

19.11 **Force Majeure.** If a party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation, war, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or materials, economic or market conditions, plant breakdown or failure of operation equipment or any disabling cause (other than lack of funds), without regard to the foregoing enumeration, beyond the control of either party or which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay will not be deemed to be a breach of this Agreement but performance of any of the said obligations or requirements will be suspended during such period or disability and the period of all such delays resulting from any such thing required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is to be done, or made pursuant hereto will be extended by the total period of all such delays.

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

